

立法會
Legislative Council

LC Paper No. CB(1)1298/02-03
(These minutes have been seen
by the Administration)

Ref: CB1/BC/4/01/2

Bills Committee on Copyright (Amendment) Bill 2001

**Minutes of meeting
held on Friday, 14 February 2003 at 10:45 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai (Chairman)
Hon Cyd HO Sau-lan
Hon Margaret NG
Hon HUI Cheung-ching, JP
Hon CHAN Kam-lam, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok, JP
- Members absent** : Hon Kenneth TING Woo-shou, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
- Public officers attending** : Mr Kenneth MAK
Deputy Secretary for Commerce, Industry and Technology
(Commerce and Industry)
- Mr Donald CHEN
Principal Assistant Secretary for Commerce, Industry and
Technology (Commerce and Industry)
- Ms Pancy FUNG
Assistant Director of Intellectual Property

Ms Maria NG
Senior Solicitor, Intellectual Property Department

Mr Jonothan ABBOTT
Senior Assistant Law Draftsman, Department of Justice

Mr Sunny CHAN
Senior Government Counsel, Department of Justice

Mr Y K TAM
Senior Superintendent, Intellectual Property Investigation
Bureau, Customs and Excise Department

Clerk in attendance : Ms Connie SZETO
Chief Assistant Secretary (1)4

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Mr S C TSANG
Senior Assistant Secretary (1)7

Action

I Confirmation of minutes
(LC Paper No. CB(1) 641 and 673/02-03)

The minutes of meetings held on 7 November and 10 December 2002 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1) 524/02-03(01) -- Outstanding issues relating to the
Copyright (Amendment) Bill 2001

LC Paper No. CB(1) 675/02-03(01) -- Administration's response on issues
arising from the Bills Committee
meeting on 10 December 2002 and
revised draft Committee Stage
amendments

LC Paper No. CB(1) 906/02-03(01) -- Marked-up copy of draft Committee
Stage amendments provided by the
Administration

- LC Paper No. CB(1) 906/02-03(02) -- Information paper provided by the Administration on "Excluding electronic publications from the scope of liberalization"
- LC Paper No. CB(1) 869/02-03(01) -- Joint submission from the publishing industry dated 7 February 2003
- LC Paper No. CB(3) 238/01-02 -- The Copyright (Amendment) Bill 2001
- LC Paper No. CB(1)481/02-03(01) -- Marked-up copy of the Committee Stage amendments prepared by Legal Service Division)

2. The Bills Committee deliberated (Index of proceedings attached at the **Annex**).

Admin 3. The Administration undertook to take follow-up actions as below:

- (a) To provide information on the legal concept of "economic value" adopted by overseas jurisdictions and relevant court cases; and
- (b) To consult the publishing industry on the proposal of excluding electronic publications from the scope of liberalization for parallel importation and the draft Committee Stage amendments to effect the proposal.

4. As the Copyright (Amendment) Bill 2001 (2001 Bill) and Copyright (Amendment) Bill 2003 (2003 Bill) were related and contained provisions relating to publications, possession of copies of copyright works, parallel importation of copyright works, scope of exclusion, etc, some members took the view that it was advisable to have one Bills Committee to study the two Bills in order to ensure consistency and compatibility of the related provisions. If the Bills Committee was satisfied that the two Bills were not in conflict, the Second Reading debate on either Bill could be resumed upon completion of the relevant scrutiny work.

5. Members agreed to refer the matter for consideration of the House Committee at the meeting scheduled for the afternoon of 14 February 2003.

(Post-meeting note: The House Committee agreed at the meeting held on 14 February 2003 that the Bills Committee on Copyright (Amendment) Bill 2001 should study the 2003 Bill and reopen its membership.)

III Date of next meeting

6. There being no other business, the meeting ended at 12:00 noon.

Council Business Division 1
Legislative Council Secretariat
1 April 2003

**Proceedings of the meeting of the
Bills Committee on Copyright (Amendment) Bill 2001
on Friday, 14 February 2003 at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000329	Chairman	Opening remarks; Confirmation of minutes	
000329 - 001119	Administration Ms Audrey EU Chairman	Administration's response to members' concern on the civil liability of end-users arising from violation of geographical restriction on use of parallel imported computer software (LC Paper No. CB(1) 675/02-03(01)) In view of possible intervention into a private contract between the copyright owner and end-user, the Administration maintained the view that the civil liability should not be removed. There was no evidence in the market on the use of geographic restriction to circumvent the purpose of the Copyright (Amendment) Bill 2001 (the 2001 Bill).	
001119 - 001752	Administration	Briefing on the proposal of excluding electronic publications from the scope of liberalization for parallel importation (LC Paper No. CB(1) 906/02-03(02)) The Administration was consulting the publishing industry on the proposal and the draft Committee Stage amendments to effect the proposal.	Admin
001752 - 002508	Mr CHAN Kam-lam Mr HUI Cheung-ching Chairman Administration	Concern on the need to define clearly the scope of electronic publications for which restrictions on parallel importation should be maintained	

Time marker	Speaker	Subject(s)	Action required
002508 - 003020	Ms Cyd HO Administration	Confirmation that the permitted acts in relation to copyright works for educational purposes in the Copyright Ordinance (Cap.528) (the Ordinance) were in general applicable to electronic publications. The Administration was developing guidelines on copying of electronic publications with the relevant stakeholders.	
003020 - 003838	Ms Audrey EU Mr CHAN Kam-lam Chairman Administration	<p>Concern on the propriety of adopting the "economic value" approach in determining whether an electronic publication would be allowed for parallel importation</p> <p>The concept of "economic value" was used in section 35(8) of the Ordinance. The Administration would take into account all relevant factors and apply the "reasonable man" test in determining the "economic value" of a parallel import.</p> <p>The Administration undertook to provide information on the legal concept of "economic value" adopted by overseas jurisdictions and relevant court cases.</p>	Admin
003838 - 004940	Mr MA Fung-kwok Administration	<p>Concern about the adverse impact of the proposed scope of liberalization for parallel importation on the development of creative industries</p> <p>The Administration stressed that the proposed scope was in line with the Government's policy to facilitate free flow of genuine goods and was generally supported by the public as reflected in the outcome of public consultations conducted in 2001.</p>	

Time marker	Speaker	Subject(s)	Action required
004940 - 005520	Chairman ALA2 Administration	<p>Concern on whether the Administration's proposal on parallel importation in the 2001 Bill would conflict or duplicate with the Copyright (Amendment) Bill 2003 (the 2003 Bill)</p> <p>The Administration assured members that the proposal was compatible with the 2003 Bill. Drafting amendments would be made to fine-tune the 2003 Bill if the proposal under the 2001 Bill was enacted.</p>	
005520 - 005744	Chairman Mr MA Fung-kwok	Suggestion to consider in parallel the 2001 Bill with the 2003 Bill as the two Bills were related	
005744 - 005835	Mr CHAN Kam-lam	Concern on the timetable for scrutinizing the 2003 Bill as the suspension arrangements under the Copyright (Suspension of Amendments) Ordinance (the Suspension Ordinance) would expire on 31 July 2003	
005835 - 010115	Ms Cyd HO Administration	<p>Enquiry on legislative amendments relating to other proposals arising from the public consultation</p> <p>The 2003 Bill would mainly deal with end-user criminal liability for use of pirated copies of copyright works in business. Other outstanding issues arising from the public consultation would be addressed in separate bills to be introduced in stages.</p>	
010115 - 010814	Mr MA Fung-kwok Chairman Administration	Confirmation that it would not be feasible to carve out the "associated works" from the proposed scope of liberalization for parallel importation	
010814 - 011522	Ms Cyd HO	Discussion on possible options for	

Time marker	Speaker	Subject(s)	Action required
	Mr MA Fung-kwok Chairman	scrutinizing the 2001 Bill and 2003 Bill	

Note: The audio records of the above proceedings are kept at the Legislative Council Library.

Council Business Division 1
Legislative Council Secretariat
1 April 2003