

立法會
Legislative Council

LC Paper No. CB(1)1358/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/4/01/2

**Bills Committee on Copyright (Amendment) Bill 2001
and Copyright (Amendment) Bill 2003**

**Minutes of meeting
held on Thursday, 26 February 2004 at 2:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon Margaret NG
Hon HUI Cheung-ching, JP
Hon CHAN Kam-lam, JP
Hon YEUNG Yiu-chung, BBS
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Dr Hon YEUNG Sum
Hon Timothy FOK Tsun-ting, SBS, JP
Dr Hon LAW Chi-kwong, JP
Hon MA Fung-kwok, JP
- Public officers attending** : Miss Mary CHOW
Deputy Secretary for Commerce, Industry and
Technology (Commerce and Industry)
- Mr Donald CHEN
Principal Assistant Secretary for Commerce, Industry
and Technology (Commerce and Industry)
- Mr Jeffrey CHAN
Assistant Secretary for Commerce, Industry and
Technology (Commerce and Industry)

Miss Pancy FUNG
Assistant Director of Intellectual Property

Mr Frederick WONG
Solicitor, Intellectual Property Department

Ms Eudora HSI
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 : Miss Polly YEUNG
Chief Council Secretary (1)3

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Mr S C TSANG
Senior Council Secretary (1)7

Action

I Confirmation of minutes

LC Paper No. CB(1)1080/03-04 - Minutes of meeting on 28 January 2004

The minutes of meeting held on 28 January 2004 were confirmed.

II Meeting with the Administration on the Copyright (Amendment) Bill 2003

LC Paper No. CB(1)191/03-04(01) - Updated Administration's response to views/concerns of deputations, members and the Assistant Legal Adviser (as at 23.2.2004)

- LC Paper No CB(1)1083/03-04(01) - Information paper provided by the Administration on "Proposed Way Forward and Relevant Committee Stage amendments (CSAs)"
- LC Paper No CB(1)1083/03-04(02) - Information paper provided by the Administration on "Comparison of provisions on exemptions to copyright infringement under the Hong Kong Copyright Ordinance and the United States Copyright Act"
- LC Paper No. CB(3) 343/02-03 - The Copyright (Amendment) Bill 2003
- LC Paper No. CB(1)1119/03-04(01) - Marked-up copy of the Copyright (Amendment) Bill 2003 incorporating the CSAs proposed by the Administration in LC Paper No. CB(1)1083/03-04(01)

Submissions received since last meeting

- LC Paper Nos. CB(1)897/03-04(01) to (03) - 3 submissions dated 5, 14 and 24 January 2004 from the International Federation of the Phonographic Industry (IFPI) (English version only)
- LC Paper No CB(1)923/03-04(01) - Letter dated 30 January 2004 from IFPI (English version only)
- LC Paper No CB(1)1069/03-04(01) - Submission dated 10 February 2004 from the Business Software Alliance (English version only)

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

3. The Bills Committee supported the Administration's proposal to delete provisions relating to end-user liability in the Bill and enact only provisions aiming to strengthen criminal sanctions against illicit reproduction of certain printed materials by copying service business (Option B in paragraph 2 of LC Paper No. CB(1)1083/03-04(01)) within the current legislative session. Pending further consultation with the copyright owners and users on the scope of end-user liability and the enactment of the necessary legislative provisions, the Administration would move a resolution at the Legislative Council (LegCo) to extend the effective period of

the Copyright (Suspension of Amendments) Ordinance 2001 (“Suspension Ordinance”)(Cap. 568) which would expire on 31 July 2004 for a period of 24 months, ending on 31 July 2006. The scope of end-user liability as provided under the Copyright Ordinance (CO) (Cap.528) as read together with the Suspension Ordinance would remain intact throughout the extended period. The Bills Committee also noted that the Administration would aim at completing discussion with the copyright owners and users on the scope of end-user liability and introduce a new Bill to the LegCo for enactment within the extended period.

4. Members had no objection to the Administration's proposal to resume the Second Reading debate of the Bill and to move a resolution to extend the effective period of the Suspension Ordinance at the same Council meeting on 24 March 2004. The Administration advised that the Bill, if enacted, would come into operation on 1 September 2004. Members had no objection to the commencement date of the Bill.

Admin

5. The Bills Committee scrutinized the Committee Stage amendments (CSAs) proposed by the Administration (Annex B to LC Paper No. CB(1)1083/03-04(01)). At members' request, the Administration undertook to take follow-up actions set out below:

- (a) to prepare frequently asked questions on the criminal liability on the possession of infringing copies in a copying service business so as to facilitate the compliance by copyshops after the enactment of the Bill; and
- (b) to improve the wording of the heading of proposed section 119A in both the Chinese and English versions of the Bill.

Admin

6. The Administration would consider the views raised by the Business Software Alliance in its submission dated 10 February 2004 in future discussion on the scope of end-user liability (LC Paper No. CB(1)1069/03-04(01)).

7. On the discussion regarding a written submission from a copyshop received by the Administration and referred to in paragraph 16 of LC Paper No. CB(1)1083/03-04(01) which was tabled at the meeting (subsequently circulated for members' information vide LC Paper No. CB(1)1143/03-04(01) on 27 February 2004), members enquired whether a person who placed an order with a copyshop for reproducing a book (which is a copyright work) would be criminally liable under the Bill. The Administration clarified that as long as the order made was not for the purpose of commercial dealing in of the infringing copies made, the person in question would not be liable for any criminal offence under CO.

8. Members in general had no objection to the CSAs proposed by the Administration. They agreed that the Bills Committee would submit its report to the House Committee on 12 March 2004. The Chairman said that he would make a verbal report on 5 March 2004.

(Post-meeting note: The Chairman decided to advance the reporting to the House Committee from 12 to 5 March 2004.)

III Any other business

9. There being no other business, the meeting ended at 3:15 pm.

Council Business Division 1
Legislative Council Secretariat
23 March 2004

**Proceedings of the meeting of the
Bills Committee on Copyright (Amendment) Bill 2001
and Copyright (Amendment) Bill 2003
on Thursday, 26 February 2004 at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000001-000034	Chairman	Confirmation of minutes	
000035-000724	Administration Chairman	Briefing on the updated Administration's response to views/concerns of deputations, members and the Assistant Legal Adviser (as at 23.2.2004) (LC Paper No. CB(1)191/03-04(01))	Admin to follow up as per para. 6 of the minutes
000725-001613	Administration	Proposed way forward and relevant Committee Stage amendments (CSAs) (LC Paper No. CB(1)1083/03-04(01))	
001614-001806	Ms Audrey EU Chairman Administration	Clause-by-clause examination of the Bill and proposed CSAs Clause 1 - commencement date of the Bill if enacted Clauses 2 & 3 – deletion noted by members Clause 3A – clarification on penalties for the offences under section 118	
001807-002855	Administration Chairman Ms Audrey EU Administration	Clause 4 - offence in relation to possession of infringing copies in a copying service business under proposed section 119A Discussion on the written submission from a copyshop received by the Administration and referred to in paragraph 16 of LC Paper No. CB(1)1083/03-04(01) which was tabled at the meeting (subsequently circulated for members' information vide LC Paper No. CB(1)1143/03-04(01) on 27 February 2004) Possibility of a person placing a photocopying order being charged for "aiding and abetting" the copyshop for reproducing an infringing copy Compliance of copyshops after enactment of the Bill	Admin to follow up as per para. 5(a) of the minutes

Time marker	Speaker	Subject(s)	Action required
002856-003007	ALA2 Administration	Enforcement against the offence in relation to making and possession of infringing copies by a copying service business under the existing Copyright Ordinance (CO) and the Bill	
003008-003236	ALA2 Administration Chairman	Textual improvement to the heading of proposed section 119A in both the Chinese and English versions of the Bill	Admin to follow up as per para. 5(b) of the minutes
003237-004022	ALA2 Chairman Administration	<p>Clauses 5 to 7 – deletion noted by members</p> <p>Clause 7A – clarification that seized articles, etc. liable to forfeiture would include copying machines and other evidence such as vouchers and receipts of a copyshop, etc.</p> <p>Clause 7B – clarification on procedures in relation to disposal of articles, etc. where a person was charged with an offence under sections 118, 120 or proposed section 119A</p> <p>Clause 7C – noted by members</p> <p>Clauses 8 to 13 – deletion noted by members</p> <p>Consequential amendments – noted by members</p> <p>Schedules 1 & 2 – deletion noted by members</p>	
004023-004419	Mr HUI Cheung-ching Administration	Comparison of provisions on exemptions to copyright infringement under the CO in Hong Kong and the Copyright Act in the US (LC Paper No. CB(1)1083/03-04(02))	
004420-004603	Chairman Administration	Date of reporting to the House Committee and resumption of Second Reading debate on the Bill	