

立法會
Legislative Council

LC Paper No. CB(1)2316/02-03
(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, 12 June 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 Timothy FOK Tsun-ting, SBS, 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
Dr Hon LAW Chi-kwong, JP
Hon Audrey EU Yuet-mee, SC, 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)

Ms Pancy FUNG
Assistant Director of Intellectual Property

Mr Jonathan ABBOTT
Senior Assistant Law Draftsman, Department of
Justice

Mr Sunny CHAN
Senior Government Counsel, Department of Justice

Mr Alex LIU
Head, 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 Meeting with the Administration

2001 Bill

(LC Paper No. CB(1) 1923/02-03(01) -- Ruling given by the Federal
Court of Australia on a case
concerning the "essential
object" test

LC Paper No. CB(1) 1930/02-03(01) -- Information paper provided
by the Administration on the
concept of "essential object"

LC Paper No. CB(1) 1930/02-03(02) -- Information paper provided
by the Administration on the
revised draft Committee
Stage Amendments to the
Copyright (Amendment) Bill
2001

LC Paper No. LS 128/02-03

-- Information paper prepared by the Legal Service Division on the concept of "essential object")

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

Admin

2. The Administration undertook to take follow-up actions as below:
 - (a) To provide written responses to the submission from The Hong Kong Bar Association tabled at the meeting; and
 - (b) To follow up with the Assistant Legal Adviser of the Legislative Council on outstanding drafting issues of the 2001 Bill.

II Any other business

3. Members agreed to tentatively schedule the next meeting on **Tuesday, 17 June 2003 at 9:00 am**. Subject to no further views from members on the responses mentioned in paragraph 2(a) above, the Bills Committee supported the resumption of the Second Reading debate of the 2001 Bill at the Legislative Council meeting scheduled for 2 July 2003.

Council Business Division 1
Legislative Council Secretariat
31 July 2003

**Proceedings of the meeting of the
Bills Committee on Copyright (Amendment) Bill 2001
and Copyright (Amendment) Bill 2003
on Thursday, 12 June 2003 at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000220	Chairman	Opening remarks	
000220 – 000810	Administration	<p>Recapitulation of the policy intent behind the new formulation to define the scope of liberalization for parallel importation of articles which have embodied in them computer programs with or without other copyright works.</p> <p>Explanation on the concept of "essential object" proposed by the publishing, music and film industries and the ruling given by the Federal Court of Australia on a relevant court case (LC Paper No. CB(1) 1930/02-03(01))</p> <p>Given the ambiguity of the concept, the Administration did not agree to the industries' proposal. By adopting a negative approach, i.e. specifying the types of works that would be excluded from the scope of liberalization, the Administration considered it more in line with the policy of liberalizing parallel imports as far as possible to enhance consumer choice, and not restricting the beneficiaries of liberalization to business application software users only.</p>	
000810 – 001345	ALA2 Administration	<p>Comments on the concept of "essential object" (LC Paper No. LS 128/02-03)</p> <p>Propriety of using a negative approach in defining the scope of liberalization for parallel importation of articles which have embodied in them computer programs with or without other copyright works</p> <p>The Administration assured members that the negative approach would strike an acceptable balance between encouragement of creativity and protection of intellectual property on the one hand and enhancement</p>	

Time marker	Speaker	Subject(s)	Action required
		of consumer interest through more liberal parallel importation on the other.	
001345 – 002109	Ms Margaret NG Mr HUI Cheung-ching	Reservation to apply the "essential object" concept in Hong Kong given that court rulings in other common law jurisdictions were persuasive but not binding on local courts Support for the negative approach as apart from the specified exceptions, the parallel importation of other articles which embodied in them computer programmes would be liberalized.	
002109 – 002529	Administration Ms Margaret NG Chairman	Discussion on the submissions from The Hong Kong Bar Association (HKBA) tabled at the meeting. The Law Society of Hong Kong had put forwarded its preliminary submissions and would send in additional comments later. Request for the Administration to provide written responses to the submission from HKBA for circulation to members	Admin
002529 – 002839	Administration	Briefing on the revised draft Committee Stage Amendments to the Copyright (Amendment) Bill 2001 tabled at the meeting (LC Paper No. CB(1) 1930/02-03(02)) incorporating suggestions raised by members and ALA2 at the last meeting	
002839 – 003709	Chairman Ms Margaret NG	Legislative Timetable; Date of next meeting	

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