

立法會
Legislative Council

LC Paper No. CB(1)2526/02-03
(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 Monday, 8 September 2003 at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai (Chairman)
Hon Margaret NG
Hon CHAN Kam-lam, JP
Dr Hon YEUNG Sum
Hon Timothy FOK Tsun-ting, SBS, JP
Dr Hon LAW Chi-kwong, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok, JP
- Members absent** : Hon Kenneth TING Woo-shou, JP
Hon Cyd HO Sau-lan
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon HUI Cheung-ching, JP
Hon YEUNG Yiu-chung, BBS
- 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

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 Assistant Secretary (1)3

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)2391/02-03 - Minutes of meeting on 4 July 2003

The minutes of meeting held on 4 July 2003 were confirmed.

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

LC Paper No. CB(1)2404/02-03(01) - Marked-up copy of the Copyright (Amendment) Bill 2003 incorporating the changes effected by the Copyright (Amendment) Ordinance 2003 (formerly the Copyright (Amendment) Bill 2001) provided by the Administration

LC Paper No. CB(1)2410/02-03(01) - Administration's response to deputations' views raised at the meeting held on 4 July 2003

LC Paper No. CB(1)2410/02-03(02) - Letter dated 30 August 2003 from Assistant Legal Adviser to the Administration

Other relevant papers as listed in the Appendix of the agenda.

2. The Bills Committee deliberated according to the sequence of issues listed out in the paper "Administration's response to deputations' views raised at the meeting held on 4 July 2003" (LC Paper No. CB(1)2410/02-03(01) (Index of proceedings attached at the **Appendix**).

3. The Bills Committee noted that the Administration's response had been uploaded to the web site of the Legislative Council to facilitate perusal by the public. At members' request, the Administration undertook to follow up the issues specified below:

- (a) to clarify whether legal practitioners and other professionals would be held liable under proposed section 118A(1) for possessing infringing copies of works provided by their clients for the purpose of or in the course of their practice (Issue 2.1);
- (b) to examine whether proposed section 118A(5)(b) would inadvertently eliminate the end-user criminal liability for computer software available over the Internet and the rationale for excluding a copy of computer program in printed form from the proposed section (Issue 2.5);
- (c) to consider the issue of liability (including end-user liability) arising from copying and distributing government publications such as consultation papers by members of the public (Issue 3.6);
- (d) to clarify whether proposed section 118(C)(5) would apply where an electronic version of the book was freely distributed while the hard copies were not (Issue 3.7);
- (e) to examine the amendments suggested by the Hong Kong Bar Association to proposed section 118(C)(4) (Issue 3.10);
- (f) to study the Law Society of Hong Kong's remarks on the defence under proposed section 118B in relation to parallel imported copies of copyright works and consider whether amendments should be introduced to the Bill to clarify the Administration's intention that proposed sections 118(B)(2) and (3) should apply to parallel imported copies only (Issue 4.2);

- (g) to consider whether the expression “for profit or financial reward” under proposed section 118 and where appropriate, elsewhere in the Bill, could cover infringing acts done for significant advantage which might not be of a monetary nature (Issue 5.2);
- (h) to review the infringing acts in relation to the offences under proposed section 118(1)(e) with reference to concerns raised in ALA’s letter dated 30 August 2003 issued to the Administration (Issue 5.3);
- (i) to clarify whether a company could be regarded as an employee and be eligible for the defence under proposed section 118A(3) (Issue 9.1);
- (j) to review the “fair dealing” provisions in the Copyright Ordinance (CO) (Cap. 528) in a separate exercise (Issue 10.1);
- (k) on protection of rental rights of musical visual recordings and movies, to study the matter in consultation with all concerned parties in a separate exercise (Issue 10.7);
- (l) to study the concerns from the Law Society of Hong Kong about groundless threat of proceedings in relation to parallel import under existing section 187 and consider whether reference should also be made to the existing section 35(4) on top of section 35(3) (Issue 10.9);
- (m) to examine proposed section 118A(5) in conjunction with existing section 65 and whether the latter section would dramatically reduce the scope of protection for copyright works available in digital forms (Issue 10.11); and
- (n) to study in a separate exercise the proposal on introducing a statutory exemption for the making of specialized formats of printed works by non-profit-making bodies exclusively for the blind (Issue 10.12).

4. At the Chairman's request, the Administration undertook to provide members with a consolidated paper by incorporating its response to the above and to ALA’s concerns raised in her letter dated 30 August 2003 into LC Paper No. CB(1)2410/02-03(01). Further updates would be provided where appropriate.

5. The Clerk would make available relevant extracts from the existing Copyright Ordinance (Cap. 528) to facilitate members' reference.

(Post-meeting note : The relevant extracts were issued vide LC Paper No. CB(1) 2433/02-03 on 9 September 2003. Members had also been informed that a full copy of the existing Copyright Ordinance would be available at each meeting for members' perusal, if necessary.)

III Any other business

6. At the request of the Administration for sufficient time to prepare its detailed response, members agreed to hold the next meeting on **Friday, 31 October 2003 at 10:45 am.**

7. There being no other business, the meeting ended at 12:15 pm.

Council Business Division 1
Legislative Council Secretariat
30 September 2003

**Proceedings of the meeting of the
Bills Committee on Copyright (Amendment) Bill 2001
and Copyright (Amendment) Bill 2003
on Monday, 8 September 2003 at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000328	Chairman	Confirmation of minutes The Bills Committee deliberated according to the sequence of issues listed in the Administration's paper (LC Paper No. CB(1)2410/02-03(01)).	
000329 – 000807	Administration	Issue 1.1 - Proposal under new section 118A on maintaining the arrangements under the Copyright (Suspension of Amendments) Ordinance 2001 (Cap.568) to confine criminal liability for the use of pirated copies of copyright works in business to four categories of works, namely, computer programs, movies, television dramas and musical recordings	
000808 – 001726	Chairman Miss Margaret NG Administration	Issue 1.2 - Legislation relating to end-user criminal liability for business purposes in other jurisdictions Clarification on the provision under section 107(1)(c) of the Copyright, Designs and Patents Act 1988 in the United Kingdom	
001727 – 002104	Mr MA Fung-kwok Administration Chairman	Issue 1.3 - The Administration's stance that end-user criminal liability for the use of pirated copies of copyright works in business in respect of television dramas should not be extended to cover non-dramatic television programmes	
002105 – 002225	Miss Margaret NG Chairman Administration	Issue 1.4 - Whether there was a need to explicitly spell out the copyright works which should be exempted from end-user criminal liability under proposed section 118A Issues 1.5 to 1.6 - Noted by members	

Time marker	Speaker	Subject(s)	Action required
002226 – 002447	Miss Margaret NG Administration	Issue 2.1 - The Administration to study the concern about whether legal practitioners and other professionals would be held liable under proposed section 118A(1) for possessing infringing copies of works provided by their clients for the purpose of or in the course of their practice	Admin
002448 – 003808	Mr MA Fung-kwok Miss Margaret NG Chairman Administration	Issue 2.2 – End-user criminal liability arising from the expression "in the course of trade or business" under proposed section 118A(1) with reference to proposed section 196A Enforcement difficulty against an offence under proposed section 118A(1) Issues 2.3 to 2.4 - Noted by members	
003809 – 004330	Chairman Administration	Issue 2.5 - Rationale for computer programs in printed form not to be covered for end-user criminal liability under proposed section 118A(5)(a) Given some deputations' concern that proposed section 118A(5)(b) would inadvertently eliminate end-user criminal liability for computer software available over the Internet, the Administration would study the issue and revert in due course. Issues 2.6, 3.1 to 3.3 - Noted by members	Admin
004331 – 004459	Chairman Administration	Issue 3.4 – Clarification on the 20% threshold for the defence under proposed section 118C(4) for copy-shops Issue 3.5 - Noted by members	
004460 – 004930	Chairman Miss Margaret NG Administration	Issue 3.6 – Clarification on the defence under proposed section 118C(5) in relation to possession of infringing copies of copyright works by copy shops The Administration would consider the	Admin

Time marker	Speaker	Subject(s)	Action required
		issue of liability (including end-user liability) arising from copying and distributing government publications such as consultation papers by members of the public.	
004931 – 004958	Chairman Administration	Issue 3.7 - The Administration to clarify whether proposed section 118(C)5 would apply where an electronic version of the book was freely distributed while the hard copies were not	Admin
004959 – 005834	Chairman Miss Margaret NG Dr LAW Chi-kwong Administration	Issues 3.8 and 3.9 – Clarification on end-user criminal liability under proposed section 118C(2) regarding the possession by a copy shop of two or more copies of copyright works as published in a book, magazine or periodical	
005835 – 010000	Chairman Administration	Issue 3.10 – The Administration would examine the amendments to proposed section 118(C)(4) suggested by the Hong Kong Bar Association	Admin
010001 – 010118	Chairman Administration	<p>Issue 4.1 - Noted by members</p> <p>Issue 4.2 – Defence under proposed section 118B in relation to parallel imported copies of copyright works</p> <p>The Administration undertook to study the Law Society of Hong Kong's remarks and revert in due course.</p> <p>Issue 4.3 - Noted by members</p>	Admin
010019 – 010336	Chairman Administration	<p>Issue 5.1 - Noted by members</p> <p>Issue 5.2 – The Administration would examine whether the expression “for profit or financial reward” under proposed section 118 and where appropriate, elsewhere in the Bill, could cover infringing acts done for significant advantage which might not be of a monetary nature</p>	Admin

Time marker	Speaker	Subject(s)	Action required
010337 – 010531	Miss Margaret NG Administration	<p>Definition of infringing acts under the Copyright Ordinance (CO) (Cap.528)</p> <p>The Clerk would make available relevant extracts from the existing CO to facilitate members' reference. A full copy of the existing CO would also be available at each meeting for members' perusal, if necessary.</p>	Clerk
010532 – 011520	Assistant Legal Adviser (ALA) Chairman Administration	<p>Issue 5.3 – Infringing acts in relation to offences under proposed section 118(1)(e) with reference to concerns raised in ALA's letter dated 30 August 2003 issued to the Administration</p> <p>The Administration to provide a written response</p> <p>Issues 5.4 and 5.5 - Noted by members</p>	Admin
011521 – 012105	Chairman Ms Audrey EU Administration	<p>Issues 6.1 to 6.2, 7.1 to 7.4 and 8.1 to 8.3 - Noted by members</p> <p>Issue 9.1 - The Administration undertook to clarify whether a company could be regarded as an employee and be eligible for the defence under proposed section 118A(3)</p> <p>Issue 9.2 - Noted by members</p>	Admin
012106 – 012659	Chairman Dr YEUNG Sum Administration	<p>Issue 10.1 – The Administration would review the "fair dealing" provisions in the CO in a separate exercise</p> <p>Issues 10.2 to 10.6 - Noted by members</p>	Admin
012700 – 012719	Chairman Administration	<p>Issue 10.7 – On protection of rental rights of musical visual recordings and movies, the Administration undertook to study the matter in consultation with all concerned parties in a separate exercise</p> <p>Issue 10.8 - Noted by members</p>	Admin

Time marker	Speaker	Subject(s)	Action required
012720 – 012745	Chairman Administration	<p>Issue 10.9 – Groundless threat of proceedings in relation to parallel imports under existing section 187</p> <p>The Administration to study the suggestions from the Law Society of Hong Kong and revert in due course.</p> <p>Issue 10.10 - Noted by members</p>	Admin
012746 – 012542	Chairman Administration	Issue 10.11 – The Administration would study proposed section 118A(5) in conjunction with existing section 65 and see whether the latter would dramatically reduce the scope of protection for copyright works available in digital forms.	Admin
012543 – 012837	Chairman Administration	<p>Issue 10.12 – The Administration to study in a separate exercise the proposal on introducing a statutory exemption for the making of specialized formats of printed works by non-profit-making bodies exclusively for the blind</p> <p>Issue 10.13 - Noted by members</p>	Admin
012838 – 012926	Chairman	<p>The Administration would take follow-up action as listed in paragraph 3 of the minutes.</p> <p>Date of next meeting - 31 October 2003 at 10:45 am.</p>	Admin