

立法會
Legislative Council

LC Paper No. CB(1) 427/02-03
(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 Tuesday, 8 October 2002 at 10:45 am
in Conference Room A of the Legislative Council Building

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

Mr Sunny CHAN
Senior Government Counsel

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 Meeting with the Administration

- LC Paper No. CB(1) 2621/01-02(01) -- Administration's response dated 30 September 2002 to written submissions from organizations
- LC Paper No. CB(1) 2621/01-02(02) -- Comparison between relevant provisions of the Hong Kong Copyright (Amendment) Bill 2001 and the Australian Copyright Amendment (Parallel Importation) Bill 2002
- LC Paper No. CB(1) 2621/01-02(03) -- Second submission from the Consumer Council dated 24 September 2002
- LC Paper No. CB(1) 2621/01-02(04) -- Second submission from the Business Software Alliance dated 30 September 2002
- LC Paper No. CB(1) 2644/01-02(01) -- Second submission from the International Federation of the Phonographic Industry (Hong Kong Group) Limited dated 4 October 2002
- LC Paper No. CB(1) 2584/01-02 -- Submission from the Hong Kong General Chamber of

	Commerce
LC Paper No. CB(1) 2480/01-02(23)	-- Correspondence between the Legal Service Division and the Administration
LC Paper No. CB(1) 2480/01-02(24)	-- Administration's response dated 6 September 2002 to written submissions from organizations
LC Paper No. CB(1) 2533/01-02	-- Administration's response dated 13 September 2002 to written submissions from organizations
LC Paper No. CB(1) 2516/01-02(02)	-- A summary of views from the written submissions received prepared by the Clerk
LC Paper No. CB(1) 18/02-03	-- List of drafting issues raised in submissions to the Bills Committee prepared by Assistant Legal Adviser 2

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

- Admin 2. The Administration undertook to take follow-up actions as follows:
- (a) to reconsider the scope of proposed liberalization on parallel importation to examine whether it should be narrowed to cover only commercial/business computer software and to exclude software for educational and recreational purposes;
 - (b) to study the relevant provisions of other jurisdictions such as the United States, Australia and member states of the European Union and reconsider the need for defining the term "computer program";
 - (c) to consider whether the concepts of "lawfully put on the market" and/or "has been published elsewhere" should be included in section 35A of the Bill;
 - (d) to consider amending section 35A(3)(a) of the Bill to prevent a feature film of less than 20 minutes in duration from being disguised as computer software and parallel imported into Hong Kong; and prescribing a "percentage limit" to allow part of a feature film to be embodied in the software; and
 - (e) to provide members with details on complaints relating to breaches of parallel importation received by the Administration which might not be established.

II Any other business

3. Members agreed to hold the next meeting in early November 2002.

(Post-meeting note: The next meeting of the Bills Committee had been scheduled for Thursday, 7 November 2002 at 8:30 am.)

4. There being no other business, the meeting ended at 12:40 pm.

Council Business Division 1
Legislative Council Secretariat
3 December 2002

**Proceedings of the meeting of the
Bills Committee on Copyright (Amendment) Bill 2001
on Tuesday, 8 October 2002 at 10:45 am
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
000000 - 000144	Chairman	Opening remarks	
000144 - 000510	Administration	Administration's response to written submissions from organizations (LC Paper No. CB(1) 2621/01-02(01))	
000510 - 000900	Chairman ALA2 Administration	The definition of "computer program" Suggestion to study relevant provisions of other jurisdictions including the United States, Australia and member states of the European Union to reconsider the need for defining the term	Admin
000900 - 001918	Chairman Mr HUI Cheung-ching Mr Kenneth TING Administration	Enquiry on the concept of "lawfully made" in section 35A(1)(a) of the Bill The term was ambiguous. Parallel imported computer program made in violation of contractual terms in a manufacturing licence could not be regarded as "lawfully made". "lawfully made" was already used in section 35(4) of the Copyright Ordinance. If at the time of making copies of a computer program, an overseas licensed manufacturer did not intend to import them to Hong Kong, such copies would be regarded as "lawfully made" even though they were subsequently parallel imported to Hong Kong by a third party.	
001918 - 002058	Mr YEUNG Yiu-chung Mr Kenneth TING Administration	Concern about liability of end-users if they used parallel imported computer software in violation of the geographical restrictions in the end-user licence agreement The Bill proposed to remove the end-user criminal liability that arose as a	

Time	Speaker	Subject(s)	Action required
		<p>result of such violation. In view of possible intervention into a private contract, the Bill did not propose to remove the civil liability.</p>	
002058 - 011107	<p>Mr MA Fung-kwok Ms Cyd HO Mr Kenneth TING Administration Chairman</p>	<p>Concern about the scope of the proposed liberalization</p> <p>As movies and music recordings were increasingly packaged and sold as digital multi-media products, the "20-minute" rule and the "economic value test" in section 35A(3) of the Bill for exempting film and music clips from restriction of parallel importation would not sufficiently protect the interest of copyright owners. The proposal would seriously disrupt the "window system" of the movie and music distribution industry. The local movie or music industry might collaborate with software industry to develop multi-media products using film or music clips. The proposal would stifle the development of such new business.</p> <p>The scope should be wide enough to cover computer software for educational and recreational purposes. This had been widely supported by the public and the Panel on Commerce and Industry. The "window system" would not be affected by the proposal.</p> <p>Supported that computer software for educational purpose should be allowed to be parallel imported.</p> <p>Suggestion to reconsider the scope of the proposed liberalization to examine whether it should be narrowed to cover only commercial/business computer software and to exclude software for educational and recreational purposes</p>	Admin

Time	Speaker	Subject(s)	Action required
011107 - 011505	Chairman ALA2 Administration	Clarification on the definition of "associated works" under section 35A(2) of the Bill	
011505 - 014542	Mr Kenneth TING Ms Cyd HO Miss Margaret NG Chairman Administration	<p>Concern that the "20 minutes" rule could not prevent a feature film of less than 20 minutes in duration (e.g. a documentary usually only lasted for about 10 minutes) from being disguised as computer software and parallel imported into Hong Kong</p> <p>To prevent the loophole, copyright owners could insert appropriate terms in the licence agreement to prevent the licensee from breaking down a feature film into several parts to protect their interests.</p> <p>Suggestion to amend section 35A(3)(a) to prevent a feature film of less than 20 minutes in duration from embodied in a computer software</p> <p>Suggestion to prescribe a "percentage limit" in the provision to allow part of a feature film to be embodied in a computer software</p>	Admin Admin
014542 - 015205	Administration ALA2	<p>Comparison between relevant provisions of the Bill and the Australian Copyright Amendment (Parallel Importation) Bill 2002 (LC Paper No. CB(1) 2621/01-02(02))</p> <p>Observation that a more comprehensive definition of "feature film" was provided in the Australian Bill</p> <p>Consideration should be given on whether the concepts of "lawfully put on the market" and/or "has been published elsewhere" should be included under section 35A of the Bill.</p>	Admin

Time	Speaker	Subject(s)	Action required
015205 - 015600	Mr CHAN Kam-lam Mr MA Fung-kwok Chairman Administration	Concern on complaints relating to breaches of parallel importation received by the Administration which might not be established Request for details on such complaints	Admin
015600 - 015620	Chairman	Date of next meeting	

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

Council Business Division 1
Legislative Council Secretariat
3 December 2002