

**立法會**  
**Legislative Council**

LC Paper No. CB(1)383/03-04  
(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 Friday, 31 October 2003 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 Mrs Mrs Selina CHOW LIANG Shuk-ye, GBS, JP  
Hon CHAN Kam-lam, JP  
Hon YEUNG Yiu-chung, BBS  
Dr Hon LAW Chi-kwong, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon MA Fung-kwok, JP
- Members absent** : Hon Cyd HO Sau-lan  
Hon Margaret NG  
Hon HUI Cheung-ching, JP  
Dr Hon YEUNG Sum  
Hon Timothy FOK Tsun-ting, SBS, 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

Mr Jonathan 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** : Mr Arthur CHEUNG  
Senior Assistant Legal Adviser 2

Mr S C TSANG  
Senior Assistant Secretary (1)7

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Action

**I Confirmation of minutes**

LC Paper No. CB(1)2526/02-03 - Minutes of meeting on  
8 September 2003

The minutes of meeting held on 8 September 2003 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

LC Paper No. CB(1)155/03-04(01) - Revised 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

2. The Bills Committee deliberated according to the sequence of issues listed in the paper "Updated Administration's response to views/concerns of deputations, members and the Assistant Legal Adviser" (LC Paper No. CB(1) 191/03-04(01)) (Index of proceedings attached at the **Appendix**).

3. The Bills Committee noted the Administration's response. To facilitate members' consideration, the Administration would provide the Bills Committee at the next meeting with a table listing the scenarios likely to happen under the Administration's revised proposal for the offence in section 118C regarding possession of infringing copies by a copy-shop; the actions (if any) to be taken by the Administration in respect of each scenario; as well as the relevant provisions under proposed section 118C to deal with each scenario.

4. At the Chairman's request, the Administration would incorporate the submission from the Association of American Publishers, Inc (referred by the Chairman and subsequently issued vide LC Paper No. CB(1)230/03-04(01) on 3 November 2003) together with members' views raised at the meeting into its consolidated response. Regarding the issues for which follow-up action was required, the Administration would provide further updates on their latest development in its consolidated response in due course.

5. The Administration would report to the Bills Committee in due course the outcome of its discussion with relevant organizations of copyright owners in the publishing industry and users on the operation of existing licensing schemes concerning the use of works in printed forms.

6. The Bills Committee agreed to discuss the concerns raised by the Assistant Legal Adviser and the Administration's response at the next meeting.

### **III Any other business**

7. There being no other business, the meeting ended at 12:30 pm.

**Proceedings of the meeting of the  
Bills Committee on Copyright (Amendment) Bill 2001  
and Copyright (Amendment) Bill 2003  
on Friday, 31 October 2003 at 10:45 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000243	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)191/03-04(01)).	
000244 – 000329	Chairman Administration	Issue 1.1 - Noted by members  Issue 1.2 - Clarification that even though the wording of section 506(a)(2) of title 17, United States (US) Codes would cover infringement of copyright works in printed forms, in practice the US authority had not applied it to works in printed forms.  Issue 1.3 - Noted by members	
000330 – 000538	Chairman Administration	Issue 1.4 - Confirmation that if a computer program in an e-book met the condition in proposed 118A(5)(b), it would be excluded from the scope of end-user criminal liability	
000539 – 000600	Chairman	Issues 1.5 to 1.6 - Noted by members	
000601 – 000742	Administration	The Administration had held separate discussion with copyright users and owners, including those from the publishing industry, to understand how the licensing schemes of printed works operated currently. To date, the Administration had not seen new evidence to suggest that there had been a change in circumstances to enable a change in the scope of end-user criminal liability proposed in the 2003 Bill.	Admin to follow up as per para.5 of the minutes

Time marker	Speaker	Subject(s)	Action required
000743 – 001046	Chairman Administration	Issue 2.1 - Consideration be given to amend proposed section 118A(1) so that legal practitioners and other professionals would not be held liable for possessing infringing copies of works provided by their clients for the purpose of or in the course of their practice	Admin to follow up
001047 – 001321	Chairman Administration	Issue 2.2 - Consideration be given to amend proposed section 118A(1) to simplify the wording so as to remove the “same trade or business” nexus in the proposed section. The removal would not make a difference to the practical effect of the provision. Possible consequential changes to the proposed section 196A which was linked to the proposed section 118A(1) would also be considered.	Admin to follow up
001322 – 001444	Chairman	Issues 2.3 to 2.4 - Noted by members	
001445 – 001502	Chairman Administration	Issue 2.5 - Further refinement of the scope of exemption under proposed section 118A(5).	Admin to follow up
001503 – 001530	Chairman	Issue 2.6 - Noted by members	
001531 – 001905	Administration	Issue 2.7 - Consequential amendments to proposed section 196A to tie in with the changes in proposed section 118A(1)	
001906 – 001923	Chairman	Issues 3.1 to 3.2 - Noted by members	
001924 – 001930	Mrs Selina CHOW Chairman Administration	<p>Issue 3.3 - Clarification that the defence under proposed sections 118C(4) and (5) in relation to possession of infringing copies of copyright works by a copy-shop would not be applicable to the offence in proposed section 118(1)(a) under which the making of one infringing copy for profit or financial reward could attract criminal liability</p> <p>The Administration intended to revise the proposed section 118C(2) to the effect that the possession by a person for the purpose of or in the course of a business that included the providing of a copying service, of a reprographic copy of a</p>	

Time marker	Speaker	Subject(s)	Action required
		copyright work as published in a book, magazine or periodical, being an infringing copy that had been made by the business for profit or reward would constitute an offence.	
001931 – 002718	Mrs Selina CHOW Mr MA Fung-kwong Mr LAW Chi-kwong Chairman Administration	Clarification that the mere possession by a copy shop of a reprographic copy of a copyright work as published in a book, magazine or periodical, the copy not having been made for profit or reward by the copy-shop would not incur criminal liability under the revised proposal.  Concern about possible loophole and abuse	
002719 – 002823	Mrs Selina CHOW Mr MA Fung-kwok Ms Audrey EU Admnistration	Ways to substantiate an offence that a reprographic copy of a copyright work as published in a book, magazine or periodical possessed by a copy-shop had been made for profit or financial reward	
002824 – 005432	Mr LAW Chi-kwong Mr MA Fung-kwok Mrs Selina CHOW Administration	Burden of proof on the copy-shop	
005433 – 010300	Mr Kenneth TING Administration	Clarification on the concept of "possession" and definition of "infringing copies"; threshold for determining whether a reprographic copy of copyright work would amount to copyright infringement	
010301 – 010824	Mrs Selina CHOW Ms Audrey EU Mr Kenneth TING Mr CHAN Kam-lam Chairman	Concern about the policy intent of proposed section 118C and its impact on the business of copy-shops	
010825 – 011529	Mr Kenneth TING Administration	Defence for offence under the proposed section 118C(2)	
011530 – 011557	Chairman Ms Audrey EU	Offence for possession of infringing copies by a copying service under proposed section 118C(2) and various scenarios which might arise	Admin to follow up as per para. 3 of minutes

Time marker	Speaker	Subject(s)	Action required
011558 – 011630	Chairman	Issues 3.4 to 3.12 and 4.1 - Noted by members	
011631 – 011828	Chairman Administration	Issue 4.2 – Confirmation on the need to clarify that the defence under proposed section 118B would apply to parallel imports only	Admin to follow up
011829 – 012054	Chairman	Issues 4.3 and 5.1 to 5.6 - Noted by members	
012055 – 012215	Chairman Administration	Issue 5.7 - As the criminal liability under the proposed section 118(1)(d) and (e) might be wider than that of the existing Copyright Ordinance (CO), the Administration would make appropriate amendments to confine the offences under the sections to activities carried out in business context only.	Admin to follow up
012216 – 012248	Administration	Issue 5.8 - Consideration to remove the word "financial" from the expression "for profit or financial reward" in proposed section 118	Admin to follow up
012249 – 012431	Chairman	Issue 5.9 - Noted by members  Issues 6.1 to 6.2 and 7.1 to 7.4 - Noted by members	
012432 – 012710	Administration	Issues 8.1 – Confirmation that the proposed removal of end-user criminal and civil liability for business end use in relation to parallel imports under clauses 2, 3 and 4 of the Bill would not affect the rights of copyright owners under section 27 of the CO to bring civil action against copyright infringement for playing or showing of a work in public without proper authorization	
012711 – 012809	Mr MA Fung-kwok	Concern about the effectiveness of civil action under section 27 of CO against copyright infringement in business end use of parallel imports	
012810 – 013317	Chairman Mr MA Fung-kwok Administration	Issues 8.2 to 8.4 and 9.1 - Noted by members	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		Issue 9.2 – Consideration be given to amend the proposed section 118A(3) to put it beyond doubt that the defence was only available to a natural person	
013318 – 013435	Chairman	Issue 9.3 and 10.1 to 10.8 - Noted by members	
013436 – 013512	Administration	Issue 10.9 - Confirmation that amendment would be made to clarify that the existing section 187 only applied to parallel imports	Admin to follow up
013513 – 013807	Chairman	Issues 10.10 and 10.11 - Noted by members  Date of next meeting	

Council Business Division 1  
Legislative Council Secretariat  
21 November 2003