

立法會
Legislative Council

LC Paper No. CB(1) 641/02-03
(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 Thursday, 7 November 2002 at 8:30 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 Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon HUI Cheung-ching, JP
Hon CHAN Kam-lam, JP
Hon YEUNG Yiu-chung, BBS
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok, JP
- Member absent** : Dr Hon YEUNG Sum
- 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
- Ms Maria NG
Senior Solicitor, Intellectual Property Department

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 Confirmation of minutes of previous meeting
(LC Paper No. CB(1) 120/02-03 -- Minutes of the meeting held on
16 September 2002)

The minutes of meeting held on 16 September 2002 were confirmed.

II Meeting with the Administration
(LC Paper No. CB(1) 188/02-03(01) -- Information paper provided by
the Administration on Scope of
Liberalization under the
Copyright (Amendment) Bill
2001

LC Paper No. CB(1) 188/02-03(02) -- Information paper provided by
the Administration on
Definition of the term
“computer program”

- LC Paper No. CB(1) 188/02-03(03) -- Information paper provided by the Administration on Proposed use of the expressions “lawfully put on the market” and “has been published elsewhere” in section 35A under the Copyright (Amendment) Bill 2001
- LC Paper No. CB(1) 188/02-03(04) -- Information paper provided by the Administration on Enforcement on Parallel Importation
- 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) 2533/01-02 -- Administration’s response dated 13 September 2002 to written submissions from organizations
- 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) 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) 188/02-03(05) -- Submission from Interactive Digital Software Association dated 17 October 2002
- LC Paper No. CB(1) 50/02-03 -- Submission from Music Publishers Association of Hong Kong Limited dated 10 October 2002
- LC Paper No. LS 132/01-02 -- Information paper prepared by Assistant Legal Adviser 2 on “List of draft issues raised in submissions to the Bills Committee”
- LC Paper No. CB(1) 2480/01-02(23) -- Correspondence between the Legal Service Division and the Administration
- LC Paper No. CB(1) 2516/01-02(02) -- A summary of views from the written submissions received prepared by the Clerk)

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

Admin 3. The Administration undertook to take the following follow-up actions:

(I) Scope of proposed liberalization

- (a) To assess the impact of the proposed liberalization enshrined in the Bill with reference to industries and/or products likely to be affected;
- (b) In view of the growing trend that literary works were published in electronic forms, to consult the publishing industry's view on the Bill which would allow parallel importation of publications in the form of an "associated work" embodied in computer software; and
- (c) To consult the Consumer Council for views on liberalizing parallel importation of publications in electronic forms.

(II) Incorporation of film or music clips in computer software

- (a) To follow up on the Bills Committee's suggestion of amending section 35A of the Bill to prevent a feature film of less than 20 minutes from being disguised as computer software and parallel imported into Hong Kong in consultation with the film industry; and
- (b) To consider the music industry's proposal on ways to prevent circumvention from restrictions on parallel importation of music recordings.

III Any other business

4. Members agreed to hold the next meeting on Tuesday, 10 December 2002, at 4:30 pm.

5. There being no other business, the meeting ended at 10:00 am.

**Proceedings of the meeting of the
Bills Committee on Copyright (Amendment) Bill 2001
on Thursday, 7 November 2002 at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000202	Chairman	Confirmation of minutes of previous meeting	
000202 - 001600	Administration Chairman	Briefing by the Administration on the following issues (LC Paper Nos. CB(1) 188/02-03(01) to (04)): (a) scope of liberalization; (b) 20-minute rule on feature film; (c) definition of the term "computer program"; (d) proposed use of the expressions "lawfully put on the market" and "has been published elsewhere" in section 35A of the Bill; (e) complaints and enforcement in relation to the parallel importation provision in the Copyright Ordinance; and (f) impact of the Bill on the computer games industry and the Administration's response to further submission from the music industry	
001600 - 001920	Mr HUI Cheung-ching Mr MA Fung-kwok Administration Chairman	Enforcement difficulties encountered by the Customs and Excise Department in relation to parallel importation of computer software e.g. lack of evidence to prove copyright infringement such as, the failure for copyright owners to establish the exclusive licence right on parallel imported products	
001920 - 002118	Ms Cyd HO Chairman Administration	The propriety of the 20-minute rule on feature film in section 35A of the Bill Concern about how feature film of less than 20 minutes in duration could be	

Time marker	Speaker	Subject(s)	Action required
		<p>protected from being disguised as computer software and parallel imported into Hong Kong</p> <p>To consider Committee Stage amendments to address the concern in consultation with the film industry</p>	Admin
002118 - 002600	Ms Audrey EU Administration	Concern that the proposed liberalization might aggravate copyright piracy in computer software	
002600 - 002829	Ms Audrey EU Administration Chairman	<p>Concern about the liability of end-users if they used parallel imported computer software in violation of the geographical restrictions in the end-user licence agreement</p> <p>The Bill proposed to remove the end-user criminal liability resulting from such violation. In view of the possible intervention into a private contract, the Bill did not propose to remove the civil liability.</p> <p>According to the Administration's observation, computer software developers seldom imposed geographical restrictions on end-user licence.</p>	
002829 - 003500	Mr MA Fung-kwok Administration	<p>Concern that allowing parallel importation of computer software incorporating film or music clips would increase copyright piracy, make it difficult to distinguish pirated works from genuine or parallel imported works, and undermine the development of the movie and music industries</p> <p>There were safeguards to prevent abuse of the proposed liberalization.</p> <p>The Administration seldom encountered cases where pirated products were sold as parallel imports</p>	

Time marker	Speaker	Subject(s)	Action required
		in Hong Kong.	
003500 - 004452	Mrs Selina CHOW Ms Audrey EU Chairman Administration	Concern on the views from the music industry on the proposed liberalization Suggestion to consider the music industry's proposal to prevent circumvention from restrictions on parallel importation of music recordings	Admin
004452 - 005143	Mrs Selina CHOW Chairman Administration	Enquiry on the progress of the legislative amendments relating to criminal liability on end-user piracy under the Copyright Ordinance The Administration was drafting the concerned Bill for introduction to the LegCo in due course.	
005143 - 011340	ALA2 Mrs Selina CHOW Mr CHAN Kam-lam Mr MA Fung-kwok Chairman Administration	Concern that literary works published in electronic forms would be allowed for parallel importation under the Bill in the form of an "associated work" embodied in computer software Suggestion to consult the publishing industry on the issue	Admin
011340 - 012552	Mrs Selina CHOW Mr MA Fung-kwok Administration	Enquiry on overseas experience in dealing with parallel importation of products According to the Agreement on Trade related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organizations (WTO), WTO members were allowed to make their own rules governing parallel importation of copyright works.	
012552 - 012621	Ms Cyd HO Administration	The Consumer Council should be consulted on liberalizing parallel importation of publications in electronic forms.	Admin
012621 - 012749	Chairman Mrs Selina CHOW Mr HUI Cheung-ching Administration	Reservation on the wide scope of proposed liberalization The Administration has to assess the impact of the proposed liberalization	Admin

Time marker	Speaker	Subject(s)	Action required
		enshrined in the Bill with reference to industries and/or products likely to be affected	
012749 - 012810	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
7 January 2003