

立法會
Legislative Council

LC Paper No. CB(1)629/03-04
(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 Thursday, 27 November 2003 at 2:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon HUI Cheung-ching, JP
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 Cyd HO Sau-lan
Hon Margaret NG
Hon CHAN Kam-lam, JP
Dr Hon YEUNG Sum
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)383/03-04 - Minutes of meeting on
31 October 2003

The minutes of meeting held on 31 October 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 (as at 26.11.2003)

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 on the 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. At members' request, the Administration undertook to follow up the issues specified below:

Proposed section 118C

- (a) After deliberation, members in general did not have objection to the Administration's revised proposal for the offence in proposed section 118C(2). Under the revised proposal, a person commits an offence if for the purpose of or in the course of a copying service business, he possesses a reprographic copy of a copyright work as published in a book, magazine or periodical, being a copy that is an infringing copy of the copyright work. Members however were concerned about the adequacy of the defences provided under proposed sections 118C(3), (4) and (5). They were keen to ensure that where needed, a person should have no difficulty in invoking the appropriate defence(s) as stipulated in the legislation. At members' request, the Administration would consult the publishing industry, the copying service business, the Hong Kong Bar Association and Law Society of Hong Kong on its revised proposal (Issue 3.3 and Annexes to Table 3).
- (b) The Administration would review the scope of "copying service business" under proposed section 118C(1) (Issue 3.3).
- (c) The Administration would clarify the offence under section 118C(2) regarding the possession of infringing copies by a copying service business as to whether the copying service business in question might also be caught under proposed section 118(1)(e)(ii) for possession of an infringing copy of a copyright work for "storing for profit or financial reward" if the copying service business keeps the copyright work for reproduction at a later stage (Issue 3.4).
- (d) The offence in relation to a copying service business under proposed section 118C(2) was based on possession whilst the defences in proposed sections 118C(3) and (4) concerned the act of making of infringing copies of copyright work. The Administration would clarify whether this would cause any problem and how proposed

sections 118C(3) and (4) could be used as a defence for the offence of possession under proposed section 118C(2) (Issue 3.3 and Annexes to Table 3); and

- (e) The Administration would reconsider whether the use of the term "reward" in proposed section 118C(4) could adequately reflect the intention of sanctioning only the making of infringing copies for commercial profits (Issue 3.3)*.

Proposed section 118A(1)

- (f) The Administration would consult organizations concerned on the suggested amendments to remove the "same trade or business" nexus under proposed section 118A(1) and consequential changes to proposed section 196A (Issues 2.2 and 2.7).

Proposed section 118

- (g) Arising from the Business Software Alliance's concern on the need to specify a profit making motive for infringing acts under proposed section 118, the Administration would reconsider whether it was appropriate to use the word "reward", instead of "financial reward", in the expression "for profit or financial reward" under the proposed section; and whether "reward" was wider in scope than "material advantage" proposed by BSA (Issue 5.2)*.

- * The Administration would address the concerns under paragraphs (e) and (g) which were similar.

4. At the Chairman's request, the Administration would incorporate its response to the submission from the Hong Kong Video Development Foundation Ltd (subsequently issued vide LC Paper No. CB(1)467/03-04(01) on 28 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 Clerk would convey the Administration's response to the further submission of the Association of American Publishers, Inc.(AAP) dated 29 October 2003.

(Post-meeting note: The Clerk had emailed the Administration's response to AAP for reference on 27 November 2003.)

6. In connection with the discussion on the scope of end-user criminal liability under proposed section 118A at the last meeting, the Administration undertook to 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.

III Any other business

7. To allow sufficient time for the Administration to consult relevant parties and follow up on the issues raised, members agreed to hold the next meeting on **Thursday, 15 January 2004 at 2:30 pm.**

8. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
19 December 2003

**Proceedings of the meeting of the
Bills Committee on Copyright (Amendment) Bill 2001
and Copyright (Amendment) Bill 2003
on Thursday, 27 November 2003 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000138	Chairman	Confirmation of minutes Discussion on the updated Administration's response to views/concerns of deputations, members and the Assistant Legal Adviser (as at 26.11.2003) (LC Paper No. CB(1)191/03-04(01))	
000139 – 001927	Administration Dr LAW Chi-kwong Mrs Selina CHOW Mr HUI Cheung-ching Ms Audrey EU Mr MA Fung-kwok Chairman	Issue 3.3 - scenarios and defences under the Administration's revised proposal for the offence in proposed section 118C regarding possession of infringing copies by a copying service business (Annexes to Table 3 of LC Paper No. CB(1)191/03-04(01))	Admin to follow up as per para. 3(a) of the minutes
001928 – 002725	ALA2 Dr LAW Chi-kwong Mrs Selina CHOW Ms Audrey EU Mr HUI Cheung-ching Administration	Definition of the term "copying service business" under proposed section 118C(1) Concern that Government departments, universities and other non-governmental organizations which offered copying services at a charge might also be caught.	Admin to follow up as per para. 3(b) of the minutes
002726 – 003139	Chairman Ms Audrey EU Administration	Offences in relation to possession of infringing copies of copyright works under proposed sections 118(2), 118A(1) and 118C(2) (Annexes to Tables 2, 3 and 5 of LC Paper No. CB(1)191/03-04(01))	
003140 – 005004	ALA2 Mrs Selina CHOW Ms Audrey EU Dr LAW Chi-kwong Mr MA Fung-kwok Chairman Administration	Whether the use of the term "reward" under proposed section 118C(4) could adequately reflect the intention of sanctioning only the making of infringing copies for commercial profits	Admin to follow up as per para. 3(e) of the minutes
005005 – 005251	Ms Audrey EU ALA2 Chairman	Concern about how proposed sections 118C(3) and (4) could be used as defences for the offence of possession under proposed section 118C(2)	Admin to follow up as per para. 3(d) of the minutes

Time marker	Speaker	Subject(s)	Action required
005252 – 005917	Dr LAW Chi-kwong Mrs Selina CHOW Ms Audrey EU Mr Kenneth TING ALA2 Chairman Administration	Burden of proof in relation to an offence for the possession of infringing copies of a copyright work by a person for the purpose of or in the course of a copying service business under proposed section 118C(2)	
005918 – 011203	ALA2 Administration	Implications of tackling copyright infringement by civil proceedings and criminal sanctions	
011204 – 011335	Dr LAW Chi-kwong Mrs Selina CHOW Mr MA Fung-kwok Chairman	Adequacy of defences provided under proposed sections 118C(3), (4) and (5) and whether the defences could be readily available to persons in need of them	
011336 – 012651	Mrs Selina CHOW Dr LAW Chi-kwong Chairman Administration	Enforcement against copyright infringement and the role of the Government	
012652 – 012947	Chairman Administration	<p><u>LC Paper No. CB(1)191/03-04(01)</u></p> <p>Issue 1.1 - Noted by members</p> <p>Issue 1.2 - Concern expressed by the Association of American Publishers, Inc. (AAP) on the need to ensure that proposed section 118A would cover "piracy on a commercial scale" in Article 61 of World Trade Organization's Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS)</p> <p>Clarification by the Administration that the possession of an infringing copy of a copyright work for use in business was not a copyright piracy on a commercial scale and therefore not covered by Article 61 of TRIPS.</p> <p>Amendment to pages 7 and 9 of the English and Chinese versions respectively of Issue 1 of LC Paper No. CB(1)191/03-04(01) (replacement pages subsequently issued vide LC Paper No. CB(1)467/03-04(02) on 28 November 2003)</p> <p>Issue 1.3 - Noted by members.</p>	The Clerk to follow up as per para. 5 of the minutes

Time marker	Speaker	Subject(s)	Action required
012948 – 013029	Chairman Administration	Issue 1.4 - Clarification that if an e-book contained an infringing copy of movie, television drama, musical recordings, or a computer program that did not meet the condition in proposed section 118A(5)(b), the possession of it would attract criminal liability under proposed section 118A(1) Issues 1.5 and 1.6 - Noted by members	
013030 – 013052	Chairman ALA2 Administration	Issue 2.1 - The Administration would consider amending 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 update progress in due course
013053 – 013134	ALA2 Administration	Issue 2.2 - Amendments to proposed section 118A(1) to remove the “same trade or business” nexus in the proposed section (Annex to Table 2 of LC Paper No. CB(1)191/03-04(01)). Consequential changes would be made to proposed section 196A. Issues 2.3 and 2.4 - Noted by members	Admin to follow up as per para. 3(f) of the minutes
013135 – 013220	Chairman Administration	Issue 2.5 - Further refinement of the scope of exemption under proposed section 118A(5) Issue 2.6 - Noted by members	The Admin to update progress in due course
013221 – 013302	Chairman Administration	Issue 2.7 - Consequential amendments to proposed section 196A to tie in with the changes in proposed section 118A(1)	Admin to follow up as per para. 3(f) of the minutes
013303 – 013332	Chairman Administration	Issues 3.1 and 3.2 - Noted by members Issue 3.3 - Noted and discussed by members	
013333 – 013719	Chairman Administration ALA2	Issue 3.4 - The Administration to clarify the offence under section 118C(2) regarding the possession of infringing copies by a copying service business as to whether the copying service business in	Admin to follow up as per para. 3(c) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>question might also be caught under proposed section 118(1)(e)(ii) for possession of an infringing copy of a copyright work for "storing for profit or financial reward" if the copying service business keeps the copyright work for reproduction at a later stage</p> <p>Issues 3.5 to 3.12 and 4.1 - Noted by members</p>	
013720 – 013835	Chairman Administration	<p>Issues 4.2 - Need to clarify that the defence under proposed section 118B would apply to parallel imports only</p> <p>Issues 4.3 and Issues 5.1 - Noted by members</p>	The Admin to update progress in due course
013836 – 014639	ALA2 Mrs Selina CHOW Dr LAW Chi-kwong Administration Chairman	<p>Issue 5.2 - The Administration proposed to revise proposed section 118(1)(d) and (e) to include the expression "for the purpose of or in the course of any trade or business" and to remove the word "financial" from the expression "for profit or financial reward" as appeared in proposed section 118 (Annex to Table 5 of LC Paper No. CB(1)191/03-04(01))</p> <p>Concern that the term "reward" in the expression "for profit or financial reward" under proposed section 118 was wider in scope than "material advantage" proposed by the Business Software Alliance</p>	Admin to follow up as per para. 3(g) of the minutes
014640 – 014644	Chairman	The remaining part of LC Paper No. CB(1)191/03-04(01) to be discussed at the next meeting	
014645 – 014849	Administration	Submission dated 25 November 2003 from Hong Kong Video Development Foundation Ltd (subsequently issued vide LC Paper No. CB(1)467/03-04(01) on 28 November 2003)	Admin to follow up as per para. 4 of the minutes
014850 – 014860	Chairman	Date of next meeting	