

立法會
Legislative Council

Ref : CB2/BC/7/01

LC Paper No. CB(2) 990/02-03
(These minutes have been seen by
the Administration)

**Bills Committee on
Prevention of Child Pornography Bill**

**Minutes of meeting
held on Thursday, 9 January 2003 at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Andrew CHENG Kar-foo (Chairman)
Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Hon Eric LI Ka-cheung, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon SIN Chung-kai
Hon YEUNG Yiu-chung, BBS
Hon Miriam LAU Kin-ye, JP
Hon CHOY So-yuk
Hon Henry WU King-cheong, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok, JP
- Member attending** : Dr Hon LAW Chi-kwong, JP
- Members absent** : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon Michael MAK Kwok-fung
Hon WONG Sing-chi
- Public Officers attending** : Miss Eliza YAU
Principal Assistant Secretary for Security E

Miss Vivian CHAN
Assistant Secretary for Security E3

Miss Betty CHEUNG
Senior Government Counsel
Department of Justice (Law Drafting Division)

Mr Ian Robert MACKNESS
Chief Superintendent (Crime) (Support)
Hong Kong Police Force

Miss Shirley CHU
Superintendent (Crime) (Support)
Hong Kong Police Force

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr Raymond LAM
Senior Assistant Secretary (2)5

I. Meeting with the Administration

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

2. The Bills Committee requested the Administration -

- (a) To reconsider the need for a provision to the effect that the proposed defence in clause 4(5)(a) (which might be singled out) would not apply to a person who possessed more than three copies of the same child pornography, and if so, the number of copies to be used as a threshold and how such a provision would apply in relation to child pornography stored inside computers;
- (b) To consider the suggestion of providing a defence of reasonable excuse for the possession of child pornography;
- (c) To provide precedents, if any, to illustrate how the concept of possession was applied in relation to materials stored inside computers;

- (d) To consider exempting Internet service providers and courier service operators which had complied with a code of practice on materials deposited by their users from the offence of possession of child pornography;
- (e) To consider setting out the standard of proof required of the term "establish" in the defence provisions not relating to possession of child pornography, such as by revising the provisions along the line that the accused need to establish his defence on a balance of probabilities; and
- (f) To provide the draft Committee Stage amendments to the Bill.

II. Date of next meeting

- 3. The Bills Committee noted that the next meeting would be held on Friday, 17 January 2003 at 10:45 am to continue discussion with the Administration.
- 4. The meeting ended at 12:45 pm.

Council Business Division 2
Legislative Council Secretariat
22 January 2003

**Proceedings of the meeting of the Bills Committee on
Prevention of Child Pornography Bill
on Thursday, 9 January 2003 at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 – 000159	Chairman	Relevant papers	
000200 – 000838	Admin	Briefing on the Administration's response to issues raised at the meeting on 29 November 2002 (LC Paper No. CB(2) 825/02-03(01))	
000839 – 002208	Hon CHEUNG Man-kwong Chairman Admin ALA4	Possession of an article or material without knowing that it was child pornography	
002209 – 003051	Hon CHEUNG Man-kwong Admin Dr Hon LAW Chi-kwong Chairman	Whether there was a need for a provision to the effect that the proposed defence in clause 4(5)(a) would not apply to a person who possessed more than three copies of the same child pornography and application of such a provision to child pornography stored inside computers	
003052 – 003456	Hon SIN Chung-kai Chairman Admin	Difference between using “appears to be” and “depicted as being” in the definition of child pornography	
003457 – 004510	Hon Miriam LAU Chairman Admin	Whether there was a need for a provision to the effect that the proposed defence in clause 4(5)(a) would not apply to a person who possessed more than three copies of the same child pornography	
004511 – 010044	Hon Cyd HO ALA4 Chairman Hon SIN Chung-kai Dr Hon LAW Chi-kwong Admin	Possibility of narrowing the offence of possession of child pornography to materials or articles which could be read or seen; child pornography inside computers or attached to electronic mails	

010045 - 010156	Hon YEUNG Yiu-chung Admin	Providing a defence of reasonable excuse for the possession of child pornography	Admin to consider the suggestion of providing a defence of reasonable excuse for the possession of child pornography
010157 - 010654	Chairman Admin Hon MA Fung- kwok	Whether there was a need for a provision to the effect that the proposed defence in clause 4(5)(a) (which might be singled out) would not apply to a person who possessed more than three copies of the same child pornography	Admin to reconsider the need for a provision to the effect that the proposed defence in clause 4(5)(a) (which might be singled out) would not apply to a person who possessed more than three copies of the same child pornography, and if so, the number of copies to be used as a threshold and how such a provision would apply in relation to child pornography stored inside computers
010655 - 010754	Dr Hon David CHU	Providing a defence of reasonable excuse for the possession of child pornography	
010755 - 011123	Hon SIN Chung- kai Admin	Prosecution relating to possession of child pornography	
011124 - 013527	Hon Margaret NG Chairman Hon Audrey EU Admin	Mental element of the offence of possession of child pornography; precedents illustrating how the concept of possession was applied in relation to materials stored inside computers and prosecution against possession of child pornography inside a computer used by two persons	Admin to provide precedents, if any, to illustrate how the concept of possession was applied in relation to materials stored inside computers
013528 - 013633	Dr Hon LAW Chi-kwong	Problems encountered by Internet service providers in relation to child pornography deposited by users	
013634 - 013744	Hon CHOY So- yuk	Electronic mails containing child pornography	

013745 - 014625	Hon SIN Chung-kai Hon MA Fung- kwok Hon Margaret NG Hon CHOY So- yuk Hon Miriam LAU Admin	Exemption of Internet service providers and courier service operators which had complied with a code of practice on materials deposited by their users from the offence of possession of child pornography	Admin to consider exempting Internet service providers and courier service operators which had complied with a code of practice on materials deposited by their users from the offence of possession of child pornography
014626 - 014800	Chairman	Provision of the Administration's response to issues raised by members and the draft Committee Stage amendments to the Bill	Admin to provide the draft Committee Stage amendments to the Bill
014801 - 014912	ALA4	Setting out the standard of proof required of the term "establish" in the defence provisions not relating to possession of child pornography, such as by revising the provisions along the line that the accused need to establish his defence on a balance of probabilities	Admin to consider setting out the standard of proof required of the term "establish" in the defence provisions not relating to possession of child pornography, such as by revising the provisions along the line that the accused need to establish his defence on a balance of probabilities
014913 - 015035	Hon Margaret NG Hon CHEUNG Man-kwong	Provision of the draft Committee Stage amendments to the Bill	
015036 - 015134	Chairman Admin	Date of next meeting	

Note : The audio records of the above proceedings are kept at the LegCo Library

Council Business Division 2
Legislative Council Secretariat
22 January 2003