

立法會
Legislative Council

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(These minutes have been seen by
the Administration)

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

**Minutes of meeting
held on Wednesday, 17 April 2002 at 8:30 am
in Conference Room A of the Legislative Council Building**

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

Mr Rick CHAN
Assistant Secretary for Security E3

Miss Betty CHEUNG
Senior Government Counsel
Department of Justice

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 KAU Kin-wah
Assistant Legal Adviser 6

Mr Raymond LAM
Senior Assistant Secretary (2)5

I. Election of Chairman

Mr Andrew CHENG was elected Chairman of the Bills Committee.

II. Meeting with the Administration

2. The Bills Committee deliberated (Index of proceedings attached at **Annex**).
3. The Bills Committee requested the Administration to consider the following and provide a written response -
 - (a) To consider revising clause 4(5), having regard to the fact that a defendant who believed on reasonable grounds that a person pornographically depicted in the child pornography was not a child at the time of depiction would naturally consider it unnecessary to take further steps to ascertain the age of the person;
 - (b) To consider including child pornography in the definition of an obscene

article and revising clause 22(b) to provide for the Obscene Articles Tribunal to classify an article as child pornography;

- (c) To consider whether it was appropriate for the courts to determine whether an article or film which was alleged to constitute child pornography had artistic merit; and
 - (d) To reconsider whether the concept of "look like under the age of 16" should be used in the definition of child pornography having regard to members' concerns about the enforcement difficulties.
4. The Administration undertook to provide –
- (a) A comparison of the penalty levels proposed in the Bill and those in other jurisdictions; and
 - (b) A response to the questions raised in the Assistant Legal Adviser's letter dated 14 March 2002 on the Bill.

III. Invitation for submissions and dates of subsequent meetings

5. Members agreed that the next meeting be held on 3 May 2002 at 10:45 am to continue discussion with the Administration.
6. Members also agreed that a meeting be held on 17 May 2002 at 10:45 am to receive the views of deputations on the Bill. They agreed that the Hong Kong Bar Association, The Law Society of Hong Kong, Oxfam Hong Kong, The Hong Kong Committee on Children's Rights and the individuals/organisations which had made submissions to the Administration in the recent consultation exercise be invited to express views on the Bill. The Chairman invited members to inform the Secretariat of their suggestions, if any, on the organisations to be invited to express views on the Bill.
7. There being no other business, the meeting ended at 10:35 am.

**Proceedings of the meeting of the Bills Committee on
Prevention of Child Pornography Bill
on Wednesday, 17 April 2002, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
0000 - 0043	Mr David CHU, Ms Audrey EU, Mr CHEUNG Man-kwong, Mr Andrew CHENG	Election of Chairman	
0044 - 0219	Chairman	Opening remarks	
0220 - 1623	Admin	Briefing on the Bill	
1624 - 1750	Chairman	Relevant papers	
1751 - 2201	Miss Margaret NG	Defence under clause 4(5), refusal of the Obscene Articles Tribunal under clause 22(b) to classify an article and extra-territorial effect of provisions related to child sex tourism	
2202 - 3159	Admin	- ditto -	
3200 - 3638	Miss Margaret NG	Defence under clause 4(5) and refusal of the Obscene Articles Tribunal under clause 22(b) to classify an article	√ The Administration was requested to consider revising clause 4(5), having regard to the fact that a defendant who believed on reasonable grounds that a person pornographically depicted in the child pornography was not a child at the time of depiction would naturally consider it unnecessary to take further steps to ascertain the age of the person

3639 - 4106	Admin	- ditto -	
4107 - 4132	Miss Margaret NG	Refusal of the Obscene Articles Tribunal under clause 22(b) to classify an article	
4133 - 4334	Chairman	- ditto -	
4335 - 4656	Admin	- ditto -	
4657 - 5058	Ms Miriam LAU	Proposed two-tier definition for pornographic depiction involving children, defences proposed in paragraphs 20 and 25 of the LegCo Brief, and whether a film would fall within the definition of child pornography if a person aged over 18 was made to look like a person aged below 16	
5059 - 5916	Admin	- ditto -	
5917 - 010137	Ms Miriam LAU	- ditto -	
010138 - 010244	Chairman	Proposed definition of child pornography in the Bill and definitions adopted in other jurisdictions	
010245 - 010601	Admin	- ditto -	
010602 - 010619	Chairman	- ditto -	
010620 - 010836	Admin	- ditto -	
010837 - 011247	Mr CHEUNG Man-kwong	Proposed two-tier definition for pornographic depiction involving children, defences proposed in paragraph 25 of the LegCo Brief, refusal of the Obscene Articles Tribunal under clause 22(b) to classify an article, and whether a film would fall within the definition of child pornography if a person aged over 18 was made to look like a person aged below 16	
011248 - 011258	Admin	Whether a film would fall within the definition of child pornography if a person aged over 18 was made to look like a person aged below 16	
011259 - 011354	Mr CHEUNG Man-kwong	- ditto -	
011355 - 011458	Admin	- ditto -	
011459 - 011645	Mr CHEUNG Man-kwong	- ditto -	
011646 - 011723	Chairman	Role of the Obscene Articles Tribunal to classify an article as child pornography	
011724 - 012140	Admin	- ditto -	

012141 - 012154	Chairman	- ditto -	√ The Administration was requested to consider revising clause 22(b) to provide for the Obscene Articles Tribunal to classify an article as child pornography
012155 - 012528	Mr Henry WU	Exclusion of a depiction for a genuine family purpose from the definition of pornographic depiction and practical difficulties experienced by the Obscene Articles Tribunal	
012529 - 012758	Admin	- ditto -	
012759 - 012859	Mr Henry WU	- ditto -	
012900 - 012956	Chairman	Refusal of the Obscene Articles Tribunal under clause 22(b) to classify an article and amendment of the clause to provide for the Tribunal to classify an article as child pornography	
012957 - 013015	Admin	- ditto -	
013016 - 013110	Mr CHEUNG Man-kwong	- ditto -	
013111 - 013138	Chairman	- ditto -	√ The Administration was requested to consider including child pornography in the definition of an obscene article
013139 - 013226	Mr YEUNG Yiu-chung	Interpretation of "appears to be" in the definition of child pornography and pornographic depiction	
013227 - 013441	Admin	- ditto -	
013442 - 013453	Mr YEUNG Yiu-chung	- ditto -	
013454 - 013515	Admin	- ditto -	
013516 - 013635	Ms Cyd HO	Whether a film would fall within the definition of child pornography if a person aged over 18 was made to look like a person aged below 16 and the role of the courts to determine the artistic merit of an article	
013636 - 013957	Admin	- ditto -	
013958 - 014118	Ms Cyd HO	- ditto -	
014119 - 014256	Admin	- ditto -	
014257 - 014315	Chairman	- ditto -	
014316 - 014324	Admin	- ditto -	

014325 - 014348	Ms Cyd HO	- ditto -	
014349 - 014434	Admin	- ditto -	
014435 - 014510	Chairman	- ditto -	√ The Administration was requested to reconsider whether the concept of "look like under the age of 16" should be used in the definition of child pornography having regard to members' concerns about the enforcement difficulties
014511 - 014535	Admin	- ditto -	
014536 - 014602	Ms Cyd HO	Age limits in clause 18	
014603 - 014624	Admin	- ditto -	
014625 - 014925	Mr MA Fung-kwok	Interpretation of "appears to be" in the definition of child pornography and pornographic depiction, and defence for a person who received an electronic mail without knowledge that it was child pornography	
014926 - 015116	Admin	Defence for a person who received an electronic mail without knowledge that it was child pornography and enforcement aspects	
015117 - 015142	Chairman	Discussion on the policy and drafting aspects of the Bill	
015143 - 015328	Mr LAW Chi-kwong	Issue of an actor aged over 18 appearing to be aged below 16 because of health problems	
015329 - 015512	Mr Michael MAK	Criteria for determining the artistic merit of an article and penalty levels proposed in the Bill	
015513 - 015827	Mr CHEUNG Man-kwong	Inclusion of child pornography in the definition of an obscene article and enforcement aspects	
015828 - 020226	Admin	Issue of an actor aged over 18 appearing to be aged below 16 because of health problems, criteria for determining the artistic merit of an article, inclusion of child pornography in the definition of an obscene article and enforcement aspects	√ The Administration was requested to consider whether it was appropriate for the courts to determine whether an article of film had artistic merit

020227 - 020322	Chairman	Invitation for submissions on the Bill and dates of subsequent meetings	
020323 - 020343	Ms Cyd HO	- ditto -	
020344 - 020518	Chairman	- ditto -	
020519 - 020531	Admin	- ditto -	
020532 - 020601	Chairman	- ditto -	
020602 - 020627	Admin	Penalty levels proposed in the Bill and list of deputations which had submitted views during the Administration's recent consultation exercise	√ The Administration undertook to provide members with a comparison of the penalty levels proposed in the Bill and those in other jurisdictions and a response to the questions raised in the Assistant Legal Adviser's letter dated 14 March 2002 on the Bill

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

Council Business Division 2
Legislative Council Secretariat
30 April 2002