

立法會
Legislative Council

LC Paper No. CB(2) 2113/01-02
(These minutes have been seen by
the Administration)

Ref : CB2/BC/7/01

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

**Minutes of meeting
held on Friday, 3 May 2002 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 Margaret NG
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
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
Hon Michael MAK Kwok-fung
Hon WONG Sing-chi
Hon MA Fung-kwok

Members absent : Hon Eric LI Ka-cheung, JP
Hon CHEUNG Man-kwong
Hon Audrey EU Yuet-mee, SC, JP

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 LING Sin-ching
Senior 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. Confirmation of minutes of meeting held on 17 April 2002

The minutes of the meeting held on 17 April 2002 were confirmed.

II. Meeting with the Administration

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Bills Committee noted that the Administration's written response to the following issues raised at the last meeting on 17 April 2002 was still outstanding -
 - (a) 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;
 - (b) 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; and
 - (c) Response to the questions raised in the Assistant Legal Adviser's letter

dated 14 March 2002 on the Bill.

4. The Bills Committee requested the Administration -
 - (a) To explain the rationale for the proposed two-tier definition for pornographic depiction involving children;
 - (b) To provide information on whether the concept of "appears to be a child" was adopted in existing legislation in Hong Kong and overseas legislation against child pornography, and to reconsider whether the concept should be adopted in the definition of child pornography in the Prevention of Child Pornography Bill (the Bill);
 - (c) To provide information on overseas legislation and prosecutions relating to computer-generated images;
 - (d) To consider whether virtual images of child pornography should be dealt with under the Control of Obscene and Indecent Articles Ordinance (Cap. 390), instead of under the Bill;
 - (e) To provide information on a recent judgment relating to child pornography handed down by the Supreme Court of the United States in April 2002, and to explain the implications of the judgment on the Bill;
 - (f) To explain the criteria for determining whether an article or film has artistic merit, and whether there are defence provisions in respect of artistic merit in overseas legislation, and to reconsider the need for a defence provision in respect of artistic merit in the Bill;
 - (g) To explain how the defence provisions would apply to the possession of electronic mails and articles without the knowledge that they contain child pornography, to situations where a person forgot to delete an electronic mail containing child pornography, and to situations where a person had deleted an electronic mail containing child pornography but the mail was not yet deleted from the server;
 - (h) To provide information on overseas legislation relating to the possession of child pornography; and
 - (i) To consider revising the offence provision related to possession of child pornography, having regard to members' view that different levels of penalty should be applied to "mere possession" and "possession for publication" of child pornography, and to consider incorporating the element of "knowingly" in the offence provision.

III. Date of next meeting

5. The Bills Committee noted that the next meeting had been scheduled for Friday, 17 May 2002 at 10:45 am to receive the views of deputations on the Bill.
6. The meeting ended at 12:50 pm.

Council Business Division 2
Legislative Council Secretariat
30 May 2002

**Proceedings of the meeting of the Bills Committee on
Prevention of Child Pornography Bill
on Friday, 3 May 2002 at 10:45 am
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action Required
000000 - 000108	Chairman	Confirmation of minutes of meeting held on 17 April 2002 and relevant papers	
000108 - 001201	Administration	Briefing on the Administration's papers entitled "The Prevention of Child Pornography Bill and the Control of Obscene and Indecent Articles Ordinance", "Penalty levels" and "Proposed statutory defence in relation to age of person pornographically depicted : clause 4(5)(a) and (b)"	
001201 - 001455	Ms Miriam LAU	Proposed two-tier definition for pornographic depiction involving children and judgment relating to child pornography handed down by the Supreme Court of the United States	
001455 - 002124	Administration	- Ditto -	
002124 - 002331	Ms Miriam LAU	- Ditto -	
002331 - 002453	Chairman	Proposed two-tier definition for pornographic depiction involving children, judgment relating to child pornography handed down by the Supreme Court of the United States and whether the concept of "appears to be a child" should be adopted in the definition of child pornography	√ The Administration was requested to explain the rationale for the proposed two-tier definition for pornographic depiction involving children, and to reconsider whether the concept of appears to be a child" should be adopted in the definition of child pornography in the Prevention of Child Pornography Bill (the Bill)
002453 - 002857	Administration	- Ditto -	
002857 - 003321	Mr SIN Chung-kai	Judgment relating to child pornography handed down by the Supreme Court of the United States, computer-generated images, responsibility of Internet service providers and defence provisions in the Bill	√ The Administration was requested to explain how the defence provisions would apply to the possession of electronic mails and articles without the knowledge that they contain child pornography

003321 - 003708	Administration	- Ditto -	
003708 - 003910	Mr SIN Chung-kai	- Ditto -	
003910 - 004453	Administration	- Ditto -	
004453 - 004702	Mr SIN Chung-kai	Overseas legislation and prosecutions in respect of computer-generated images	√ The Administration was requested to provide information on overseas legislation and prosecutions relating to computer-generated images
004702 - 004715	Chairman/Ms Miriam LAU	Issues related to the concept of "appears to be a child"	√ The Administration was requested to provide information on whether the concept of "appears to be a child" was adopted in overseas legislation against child pornography
004715 - 004812	Chairman	Recent judgment relating to child pornography handed down by the Supreme Court of the United States	√ The Administration was requested to provide information on a recent judgment relating to child pornography handed down by the Supreme Court of the United States in April 2002, and to explain the implications of the judgment on the Bill
004812 - 005403	Miss Cyd HO	Defence in respect of artistic merit and issue of whether virtual images of child pornography should be dealt with under the Bill	√ The Administration was requested to reconsider the need for a defence provision in respect of artistic merit in the Bill, and to consider whether virtual images of child pornography should be dealt with under the Control of Obscene and Indecent Articles Ordinance, instead of under the Bill
005403 - 005710	Administration	-Ditto -	
005710 - 010054	Miss Cyd HO	- Ditto -	
010054 - 010728	Mr MA Fung-kwok	Issue of whether virtual images of child pornography should be dealt with under the Bill	
010728 - 011340	Administration	- Ditto -	

011340 - 011521	Mr MA Fung-kwok	Difficulties in determining whether a child "appears to be" under the age of 16 and issue of possession of child pornography	
011521 - 011829	Administration	- Ditto -	√ The Administration undertook to provide information about overseas legislation relating to possession of child pornography and to provide information on whether the concept of "appears to be a child" was adopted in existing legislation in Hong Kong
011829 - 011911	Mr MA Fung-kwok	- Ditto -	
011911 - 012049	Chairman	- Ditto -	
012049 - 012610	Mr Michael MAK	Criteria for determining whether an article or film had artistic merit and overseas experience, penalty levels and defence provisions in the Bill	√ The Administration was requested to explain the criteria for determining whether an article or film has artistic merit, and provide information on defence provisions in respect of artistic merit in overseas legislation
012610 - 012819	Administration	- Ditto -	
012819 - 013003	Mr Michael MAK	Penalty levels and situations where a person forgot to delete an electronic mail containing child pornography	√ The Administration was requested to explain how the defence provisions would apply to situations where a person forgot to delete an electronic mail containing child pornography
013003 - 013044	Chairman	Possession of child pornography	
013044 - 013050	Administration	- Ditto -	
013050 - 013137	Chairman	- Ditto -	
013137 - 013319	Administration	- Ditto -	

013319 - 013349	Chairman	- Ditto -	√ The Administration was requested to consider revising the offence provision related to possession of child pornography, having regard to members' view that different levels of penalty should be applied to "mere possession" and "possession for publication" of child pornography
013349 - 013549	Ms Miriam LAU	- Ditto -	√ The Administration was requested to provide information on overseas legislation relating to the possession of child pornography, and to consider incorporating the element of "knowingly" in the offence provision
013549 - 013835	Mr SIN Chung-kai	Defence relating to possession of child pornography	√ The Administration was requested to explain how the defence provisions would apply to situations where a person had deleted an electronic mail containing child pornography but the mail was not yet deleted from the server
013835 - 013904	Administration	- Ditto -	
013904 - 013947	Mr SIN Chung-kai/Admin	- Ditto -	
013947 - 014015	Administration	- Ditto -	
014015 - 014035	Mr MA Fung-kwok	- Ditto -	
014035 - 014110	Chairman	- Ditto -	
014110 - 014132	Admin/Chairman	- Ditto -	
014132 - 014244	Chairman/Admin	- Ditto -	
014244 - 014309	Mr MA Fung-kwok	- Ditto -	
014309 - 014338	Administration	- Ditto -	
014338 - 014406	Chairman	- Ditto -	
014406 - 014655	Chairman	Paragraph 8 of the Administration's paper entitled "The Prevention of Child pornography Bill and the Control of Obscene and Indecent Articles Ordinance"	
014655 - 015011	Administration	- Ditto -	
015011 - 015200	Chairman	- Ditto -	

015200 - 015410	Administration	- Ditto -	
015410 - 015446	Chairman	- Ditto -	
015446 - 015624	Mr Henry WU	Practical difficulties encountered by the Obscene Articles Tribunal	
015624 - 015731	Miss Margaret NG	- Ditto -	
015731 - 015819	Miss Margaret NG	Defence provisions relating to possession of child pornography	
015819 - 015826	Chairman	- Ditto -	
015826 - 020010	Mr MA Fung-kwok	Difficulties in determining whether a child "appears to be" under the age of 16	
020010 - 020120	Administration	- Ditto -	
020120 - 020355	Chairman	Provision of the Administration's response to issues raised by members and date of next meeting	

Council Business Division 2
Legislative Council Secretariat
30 May 2002