

立法會
Legislative Council

LC Paper No. CB(2) 2756/01-02

(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 Wednesday, 26 June 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, JP
Hon Eric LI Ka-cheung, JP
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 Henry WU King-cheong, BBS
Hon Michael MAK Kwok-fung
Hon WONG Sing-chi
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon Cyd HO Sau-lan
Hon CHEUNG Man-kwong
Hon CHOY So-yuk
Hon MA Fung-kwok

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 Stephen LAM
Assistant Legal Adviser 4

Mr Raymond LAM
Senior Assistant Secretary (2)5

I. Confirmation of minutes of meeting held on 3 June 2002

The minutes of the meeting held on 3 June 2002 were confirmed.

II. Meeting with the Administration

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Bills Committee requested the Administration -
 - (a) To provide information on overseas court cases relating to the possession of child pornography for the purpose of publication and explain the practical difficulties in enforcement and human rights implications of an offence provision for such possession;
 - (b) To explain the difference between possession for the purpose of distribution and for the purpose of publication;
 - (c) To provide the draft Committee Stage amendments to clause 4(5) of the Bill;

- (d) To provide a response on providing an express mental element in offence provisions in the Bill, including the following :
 - (i) The suggestion of adding the element of "knowingly" to the offence provision on possession of child pornography;
 - (ii) Whether the offences set out in clause 3 of the Bill were strict liability offences;
 - (iii) The respective burden of proof of the prosecution and the defendant in respect of "knowledge"; and
- (e) To provide a response on the following issues raised by Assistant Legal Adviser -
 - (i) Whether clause 4(3) of the Bill should be widened to also provide that it was a defence for a person who received a pornographic article to report the matter to a law enforcement agency, as in the relevant legislation of the United States; and
 - (ii) Whether a person with an article that the Obscene Articles Tribunal had refused classification would be in breach of clause 3(1) of the Bill relating to production of child pornography even though he had destroyed the article within a reasonable time.

III. Date of next meeting

4. The Bills Committee agreed that the next meeting would be held on Tuesday, 16 July 2002 at 2:30 pm, pending confirmation of the Chairman's availability.

(Post-meeting note : As the Chairman had other commitments, the meeting scheduled for 16 July 2002 was subsequently cancelled.)

5. The Bills Committee agreed that relevant scenes of six movies would be shown by the Administration during the next meeting to demonstrate how mainstream movies were unlikely to be affected by the Bill. The Committee also agreed that it would not be necessary for the scenes to be shown at a closed session.

6. The meeting ended at 10:40 am.

Bills Committee on Prevention of Child Pornography Bill
Meeting on Wednesday, 26 June 2002 at 8:30 am
in Conference Room A of the Legislative Council Building

Time	Speaker	Subject(s)	Action required
000000 - 000218	Chairman	Confirmation of minutes of meeting on 3 June 2002 and relevant papers for the meeting	
000218 - 004630	Administration	Briefing on the Administration's response in respect of overseas legislation on possession of child pornography	
004630 - 004915	Chairman	Possession of child pornography for the purpose of publication and relevant court cases in overseas countries	
004915 - 005202	Administration	- Ditto -	
005202 - 005324	Chairman	- Ditto -	The Administration was requested to provide information on overseas court cases relating to the possession of child pornography for the purpose of publication and explain the practical difficulties in enforcement and human rights implications of an offence provision for such possession
005324 - 005356	Administration	- Ditto -	
005356 - 005717	Mr David CHU Yu-lin	Punishment for possession of child pornography for publication and mere possession and deletion of child pornography in computers	
005717 - 010040	Administration	- Ditto -	
010040 - 010153	Chairman	Overseas legislation on possession of child pornography	The Administration was requested to explain the difference between possession of child pornography for the purpose of distribution and for the purpose of publication
010153 - 010613	Miss Margaret NG	Drafting of clause 4(5) of the Bill	
010613 - 010807	Administration	- Ditto -	

Time	Speaker	Subject(s)	Action required
010807 - 010828	Miss Margaret NG, Administration, Chairman	- Ditto -	
010828 - 011220	Administration	- Ditto -	
011220 - 011514	Miss Margaret NG	- Ditto -	
011514 - 011836	Administration	Difference in punishment for possession and publication of child pornography and protection for innocent persons	
011836 - 012005	Miss Margaret NG	- Ditto -	
012005 - 012039	Chairman	- Ditto -	The Administration was requested to provide the draft Committee Stage amendments (CSAs) to clause 4(5) of the Bill
012039 - 012446	Mr Henry WU King-cheong	Regulation of computer games and liability of a film producer of a movie of which the Obscene Articles Tribunal had refused classification	
012446 - 012906	Administration	- Ditto -	
012906 - 012925	Chairman	- Ditto -	
012925 - 013305	Mr Michael MAK Kwok-fung	Scope of provisions relating to possession of child pornography, issues relating to express mental element and overseas court cases relating to possession of child pornography	
013305 - 013526	Administration	- Ditto -	
013526 - 013605	Mr Michael MAK Kwok-fung	- Ditto -	
013605 - 013758	Administration	Express mental element and overseas court cases relating to possession of child pornography	
013758 - 013816	Mr YEUNG Yiu- chung	Criminal responsibility in relation to age for possession of child pornography	
013816 - 013857	Administration	- Ditto -	
013857 - 013919	Mr YEUNG Yiu- chung	- Ditto -	
013919 - 014042	Administration	- Ditto -	
014042 - 014341	Ms Miriam LAU Kin-ye	Drafting of clause 4 of the Bill and addition of the element of "knowingly" to the offence provision on possession of child pornography	
014341 - 014449	Administration	- Ditto -	The Administration was requested to provide a response on the suggestion of adding the element of

Time	Speaker	Subject(s)	Action required
			"knowingly" to the offence provision on possession of child pornography
014449 - 014532	Ms Miriam LAU Kin-ye	- Ditto -	
014532 - 014613	Administration	- Ditto -	
014613 - 014855	Ms Audrey EU Yuet-mee	Issue of whether the offences set out in clause 3 of the Bill were strict liability offences, and the respective burden of proof of the prosecution and the defendant in respect of "knowledge"	
014855 - 014859	Administration	- Ditto -	The Administration undertook to provide a response on whether the offences set out in clause 3 of the Bill were strict liability offences, and the respective burden of proof of the prosecution and the defendant in respect of "knowledge"
014859 - 015002	Chairman	Arrangements for showing the scenes of six movies to demonstrate how mainstream movies would unlikely be affected by the Bill	
015002 - 015027	Mrs Sophie LEUNG LAU Yau-fun	- Ditto -	
015027 - 015142	Mr Michael MAK Kwok-fung	- Ditto -	
015142 - 015226	Chairman	- Ditto -	
015226 - 015315	Mr Henry WU King-cheong, Administration, Chairman	- Ditto -	
015315 - 015414	Mrs Sophie LEUNG LAU Yau-fun, Chairman, Administration	- Ditto -	
015414 - 015453	Ms Miriam LAU Kin-ye	- Ditto -	
015453 - 015529	Administration	- Ditto -	
015529 - 015633	Ms Audrey EU Yuet-mee, Chairman, Administration, Mr Michael MAK Kwok-fung	- Ditto -	
015633 -	Chairman	Date of next meeting	

Time	Speaker	Subject(s)	Action required
015907			
015907 - 020100	ALA4	Scope of clause 4(3) of the Bill and liability of a person with an article that the Obscene Articles Tribunal had refused classification and had destroyed the article within a reasonable time	<p>The Administration was requested to provide a response on -</p> <p>(a) whether clause 4(3) of the Bill should be widened to also provide that it was a defence for a person who received a pornographic article to report the matter to a law enforcement agency, as in the relevant legislation of the United States; and</p> <p>(b) whether a person with an article that the Obscene Articles Tribunal had refused classification would be in breach of clause 3(1) of the Bill relating to production of child pornography even though he had destroyed the article within a reasonable time</p>
020100 - 020159	Mr Michael MAK Kwok-fung, Chairman	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
 6 September 2002