

立法會
Legislative Council

LC Paper No. CB(1)789/06-07
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/05/1

Bills Committee on Copyright (Amendment) Bill 2006

**Minutes of the sixteen meeting
held on Thursday, 4 January 2007, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, JP (Chairman)
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Bernard CHAN, GBS, JP
Hon CHAN Kam-lam, SBS, JP
Dr Hon YEUNG Sum
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : Dr Hon Philip WONG Yu-hong, GBS
Hon LI Kwok-ying, MH, JP
Hon CHIM Pui-chung
Hon Albert Jinghan CHENG
- Public officers attending** : Mr Christopher K B WONG
Deputy Secretary for Commerce,
Industry and Technology
(Commerce and Industry)

Ms Priscilla TO
Principal Assistant Secretary for
Commerce, Industry and Technology
(Commerce and Industry)

Miss Eugenia CHUNG
Assistant Secretary for Commerce,
Industry and Technology
(Commerce and Industry)

Ms Maria NG
Senior Solicitor
Intellectual Property Department

Mr Michael LAM
Senior Government Counsel
Department of Justice

Ms Rayne CHAI
Senior Government Counsel
Department of Justice

Mr Ben HO
Senior Superintendent
Intellectual Property Investigation Bureau
Customs and Excise Department

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (1)3

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Ms YUE Tin-po
Senior Council Secretary (1)5

Action

I Confirmation of minutes and matters arising

LC Paper No. CB(1)605/06-07 -- Minutes of meeting held on
1 December 2006

The Bills Committee deliberated (Index of proceedings attached at
Appendix).

2. The minutes of the meeting held on 1 December 2006 were confirmed.

II Papers issued since last meeting

3. Members noted that no paper had been issued for the Bills Committee's information.

III Meeting with the Administration

LC Paper No. CB(1)630/06-07(01) -- Revised marked-up version of the Administration's proposed Committee Stage Amendments (from clause 12 to 24)

LC Paper No. CB(3)433/05-06 -- The Bill

LC Paper No. CB(1)1323/05-06(02) -- Marked-up copy of the Bill prepared by the Legal Service Division

LC Paper No. CB(1)510/06-07(01) -- Marked-up version of the Administration's proposed Committee Stage Amendments (up to clause 24)

Revised Committee Stage Amendments

4. The Chairman informed members that the Administration had prepared some further amendments to some clauses considered by the Bills Committee at the last meeting, mainly with the aim to improve their drafting. To facilitate more systematic discussion, he suggested that the Administration submit all revised Committee Stage Amendments (CSAs) in one batch for members' consideration after the Bills Committee had completed clause-by-clause examination of the Bill instead of back-tracking every now and then. Members agreed.

Clause 12 – Section added immediately before section 41 (i.e. 41A – fair dealing for purposes of giving or receiving instruction)

Fair dealing for education in the digital environment

5. On whether proposed section 41A(4A) on fair dealing for education in the digital environment had adequately balanced the divergent interests of copyright owners and users, the Administration advised that copyright owners and users

remained divided on the question of how best the fair dealing provision should be applied in the digital environment. The former had proposed requiring educational establishments to adopt technological measures encompassing use controls to prevent or inhibit unauthorized downloading, printing or further dissemination of the works as a pre-requisite for the application of the fair dealing provision in the digital environment. The Administration had reservations about the proposal as the required measures were costly and complicated. Educational establishments might not have the necessary resources to implement such measures. On balance, the Administration had decided to propose the following CSAs to section 41A: where any dealing with a work involved the making available of a work on wire or wireless network wholly or partly controlled by an educational establishment, the applicability of the fair dealing provision should be subject to two conditions, namely, (i) the adoption of technological measures (e.g. use of password) to restrict access to the copies of the work through the network so that the copies of the work were made available only to persons who needed to use the copies of the work for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network, and (ii) that the copies of the work were not stored in the network for a period longer than was necessary for the purposes of giving or receiving instruction in the specified course of study in question, or, in any event, for a period longer than 12 consecutive months. Mrs Selina CHOW considered the Administration's proposal acceptable.

6. Some copyright owners remained concerned about possible abuse of the fair dealing provisions by copyright users in the education sector. On this, the Administration advised that whether an act in question qualified for "fair dealing" would have to be determined in the light of the circumstances of the case having regard to the non-exhaustive factors stipulated in proposed section 41A(2). Indeed, with the operation of proposed section 41A(2), it was envisaged that the kind of abusive use that copyright owners had in mind could not constitute fair dealing. However, in the light of copyright owners' concerns, the two conditions set out in proposed section 41A(4A) were introduced to provide added assurance to copyright owners, aimed at putting their minds at ease.

Operation of proposed section 41A(4A)

7. Dr YEUNG Sum was concerned that educational establishments, particularly secondary and primary schools, might not be equipped with the necessary technical support to adopt the required technological measures. He asked whether the education sector had been consulted on the arrangements under proposed section 41A(4A). In response, the Administration said that it had consulted the Concern Group of the Education Sector on Copyright Law and the Education and Manpower Bureau on the proposed additional conditions. The Administration was given to understand that the current network infrastructure of primary and secondary schools should be capable of supporting the adoption of such technological measures. In fact, the Concern Group of the Education Sector

on Copyright Law, which comprised representatives from primary and secondary schools as well as tertiary institutions, had raised no objection to the Administration's proposal.

8. The Administration advised that educational establishments should be encouraged to put in place proper measures to manage copyright materials on their respective network systems. For example, it was good practice to conduct a review annually during the summer vacation to remove from the school's Intranet copyright materials which were no longer necessary for the purposes of giving or receiving instruction in the specified courses of study in question. The Administration would also consider encouraging the school management to keep records on the maintenance of copyright material on its network system. The Administration assured members that, to tie in with the enactment of the fair dealing provisions, it would launch public education activities to facilitate understanding of and compliance with the requirements, and to provide the education sector with guidance on the coverage and implications of the provisions.

Internet broadcasting

Admin 9. Given the prevalence of "Internet broadcasting", the Chairman asked whether proposed section 41A(4) would also cover programmes which were broadcast simultaneously over the Internet. In this connection, the Administration was requested to provide its views in writing for the Bills Committee's consideration.

Clause 13 – Performing, playing or showing work in the course of activities of educational establishments

Proposed amendments to section 43

10. The Administration explained that under the existing section 43, the performance of a literary, dramatic or musical work either (i) by a teacher or pupil in the course of activities of the establishment; or (ii) at the establishment by any person for the purposes of instruction, before an audience consisting of teachers and pupils of an educational establishment and the parents or guardians of the pupils was not a public performance for the purposes of copyright infringement. In addition, the playing or showing of a sound recording, film, broadcast or cable programme before such audience at an educational establishment for the purposes of giving or receiving instruction was not a playing or showing of the work in public for the purposes of copyright infringement. The proposed amendment to section 43 sought to expand the composition of the permitted "audience" to include "near relatives" (as defined under proposed section 43(3)). The Administration considered that the proposed amendment would better meet the needs of educational establishments, including a high level of family participation in school activities.

11. Ms Audrey EU and Dr YEUNG Sum agreed that today's educational use of copyright works covered not only classroom instruction but also interactive and project-based teaching and learning involving participation by family members, near relatives and friends of the pupils. Ms Audrey EU, Dr YEUNG Sum and Mr CHAN Kam-lam questioned if it was appropriate to define "near relative" in the manner as delineated under proposed section 43(3). Mr Ronny TONG opined that it might be more desirable to consider the scope of audience from the angle of teaching relationship instead of blood relationship. Members considered that such a definition too restrictive and lacking in flexibility. There might also be practical difficulty for schools in exercising the permitted act if verification of these persons' identity was required.

12. The Administration explained that the purpose of defining "near relative" was to avoid expanding the composition of audience too wide in respect of the permitted acts in question as this might unduly jeopardize the interests of copyright owners.

13. The Administration further advised that the right of public performance of a work was provided under the Berne Convention which was also incorporated in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) of the World Trade Organization. Although there was no express provision in the Berne Convention which allowed the granting of exceptions to the right of public performance, it had been recognized that minor exceptions (e.g. religious ceremonies) could be provided. These minor exceptions should not however extend beyond a *de minimis* use of the work. Furthermore, TRIPs required that any limitations and exceptions should comply with the three-step test. Any extension of the scope of the permitted acts in the Bill should therefore be considered with the above international obligations in mind.

14. Whilst noting that the proposed amendments sought to enhance educational objectives on one hand and safeguard the interests of copyright owners on the other, members and the Chairman asked the Administration to re-consider the drafting of proposed section 43(3) without losing sight of the policy objective. On whether it was advisable to delete the existing section 43(3) altogether, the Administration advised that some copyright owners were concerned that without a clear definition of the audience in respect of the permitted act, there would be less incentives for the education sector to acquire licences from copyright owners for use of their copyright works. Moreover, the Administration considered that the deletion of section 43(3) might not result in greater flexibility as envisaged by members. Nevertheless, noting members' views, the Administration agreed to re-examine proposed section 43(3) to see whether some other formulation should be provided.

Admin

15. Mrs Selina CHOW did not object to the proposed definition of "near relative". Whilst noting some members' concern about the rigidity of the proposed definition, Mrs CHOW considered that such definition would help send

the right message to the community, namely that copyright should be observed and that exemption was only given under very restrictive circumstances.

16. Mr Ronny TONG noted that under the existing or proposed section 43(1)(a), the performance of a copyright work might qualify as a permitted act even if it was not for the purposes of instruction. He was concerned whether section 43(1)(a) should be aligned with the other provisions in section 43 by specifying the purposes of the act, on top of its performance being in the course of the activities of the establishment. The Administration explained that performance by a teacher or pupil in the course of activities of the establishments should be generally related to educational purposes. It should also be noted that, by limiting the scope of section 43(1)(a) to performances for the purposes of instruction, some activities of the educational establishments which currently fell within the scope of the exemption under section 43 might be excluded from the exemption. The Administration advised that it would first re-examine proposed section 43(3) and revert to the Bills Committee on this point. As to whether it was desirable to introduce amendments to section 43(1), the Administration considered that in view of the wide implications of such changes, the matter should be considered with great care having regard to the possible impact on the current operation of educational establishments. Members agreed with the Administration's proposed approach.

Admin

Clause 16 - Sections added immediately after section 54 (i.e. 54A on Fair dealing for purposes of public administration and 54B on Legislative Council)

17. In response to the Chairman's enquiry, the Administration reported that it had consulted the Judiciary Administrator (JA) on the need to include the Judiciary under new section 54A on fair dealing for purposes of public administration and JA welcomed the Administration's proposal.

18. The Chairman informed members that the Administration had provided its response to the views raised by the Legislative Council Commission on proposed section 54A on fair dealing provision for purposes of public administration (circulated vide LC Paper No. CB(1)592/06-07(01) on 27 December 2006). Having considered the Legislative Council Commission's views, the Administration considered it reasonable to expand the existing copyright exemption for LegCo under CO to cover any acts done by it for the purpose of exercising its powers and functions pursuant to Article 73 of the Basic Law. With the exemption for LegCo thus expanded, proposed section 54A on fair dealing provision of public administration would not need to apply to LegCo business. Instead, the Administration had proposed CSA to add a new section 54B to the Bill under which both the existing exemption and the newly proposed exemption were included.

Admin

19. The Chairman asked the Administration to provide a copy of the relevant proposed CSAs to the Legislative Council Commission for consideration.

Arrangements for the next meeting

20. Members agreed that the 17th meeting would be held on Thursday, 11 January 2006 at 8:30 am.

IV Any other business

21. There being no other business, the meeting ended at 12:34 pm.

Council Business Division 1
Legislative Council Secretariat
23 January 2007

**Proceedings of the sixteen meeting of the
Bills Committee on Copyright (Amendment) Bill 2006
on Thursday, 4 January 2007, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000356	Chairman	<p>(a) Confirmation of the minutes of the 14th meeting on 1 December 2006 (LC Paper No. CB(1) 605/06-07)</p> <p>(b) Members agreed that to facilitate more systematic discussion, the Administration should submit all revised CSAs in one batch for members' consideration after the Bills Committee had completed clause-by-clause examination of the Bill instead of back-tracking every now and then.</p>	
000357 – 004314	Administration Dr YEUNG Sum Mr Ronny TONG Mrs Selina CHOW Chairman	<p><u>Clause 12 – Section added immediately before section 41 (i.e. 41A – fair dealing for purposes of giving or receiving instruction)</u></p> <p>(a) The Administration's explanation on proposed section 41A(4A) on the application of the fair dealing provision for purposes of education in the digital environment</p> <p>(b) Dr YEUNG Sum's concern that educational establishments, particularly secondary and primary schools, might not be equipped with the necessary technical support to adopt the required technological measures, and whether the education sector had been consulted on proposed section 41A(4A).</p> <p>(c) The Administration's advice that:</p> <p>(i) it had consulted the Concern Group of the Education Sector on Copyright Law and the Education and</p>	The Administration to follow up as stated in paragraph 9 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		<p>Manpower Bureau, and was given to understand that the current network infrastructure of primary and secondary schools should be capable of supporting the adoption of such technological measures;</p> <p>(ii) the Concern Group of the Education Sector on Copyright Law, which comprised representatives from primary and secondary schools as well as tertiary institutions, had raised no objection to the Administration's proposal;</p> <p>(iii) Educational establishments should be encouraged to put in place proper measures to manage copyright materials on their respective network systems to remove copyright materials which were no longer necessary for the purposes of giving or receiving instruction in the specified courses of study in question from the school's network system; and</p> <p>(iv) to tie in with the enactment of the fair dealing provisions, it would launch public education activities to facilitate understanding of and compliance with the requirements, and to provide the education sector with guidance on the coverage and implications of the provisions.</p>	
004315 – 013758	Administration Chairman Mrs Selina CHOW Ms Audrey EU Dr YEUNG Sum Mr CHAN	<p><u>Clause 13 – Performing, playing or showing work in course of activities of educational establishments</u></p> <p>(a) The Administration's explanation on the proposal to extend the scope of the existing permitted act as provided in existing section 43 of CO, i.e. to expand</p>	The Administration to follow up as stated in paragraph 14 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
	Kam-lam Mr Ronny TONG	<p>the composition of audience to include the "near relatives" of the pupils.</p> <p>(b) Members' views on the definition of "near relative" at proposed section 43(3) of the Bill.</p> <p>(c) Discussion on the performance of a copyright work under the condition specified in proposed section 43(1)(a)</p> <p><u>Clause 14 - to be deleted</u></p> <p>Members raised no query</p>	
013759 – 013939	Administration Chairman	<p><u>Clause 15 - Reprographic copying made by educational establishments of passages from published works</u></p> <p>Members raised no query</p>	
013940 – 014528	Administration Chairman Mr YEUNG Sum ALA5	<p><u>Clause 16 - Sections added immediately before section 54 (i.e. 54A on fair dealing for purposes of public administration and 54B on Legislative Council)</u></p> <p>(a) The Administration reported that the Judiciary Administrator welcomed the Administration's proposal to include the Judiciary under new section 54A on fair dealing provision for purposes of public administration.</p> <p>(b) Members noted the following:</p> <p>(i) having considered the Legislative Council Commission's views, the Administration considered it reasonable to expand the existing copyright exemption for LegCo under CO to cover any acts done by it for the purpose of exercising its powers and functions pursuant to Article 73 of the Basic Law; and</p>	The Administration to follow up as stated in paragraph 19 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		(ii) while proposed section 54A on fair dealing provision of public administration would not need to apply to LegCo business, the Administration had proposed CSA to add a new section 54B to the Bill to provide for copyright exemption for LegCo.	
014529 – 014549	Administration Chairman	<u>Clause 16A - Legislative Council and Judicial proceedings</u> Members raised no query	
014550 – 014614	Administration Chairman	<u>Clause 16B - Use of typeface in ordinary course of printing</u> Members raised no query	
014615 – 014719	Administration Chairman	<u>Clause 17 - Advertisement of sale of artistic work</u> Members raised no query	
014720 – 014747	Chairman	Arrangements for the next meeting	