

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1126/06-07  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/1/05/1

**Bills Committee on Copyright (Amendment) Bill 2006**

**Minutes of the 20th meeting**  
**held on Monday, 12 February 2007, at 2:30 pm**  
**in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, JP (Chairman)  
Hon Margaret NG  
Hon Bernard CHAN, GBS, JP  
Dr Hon YEUNG Sum  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Vincent FANG Kang, JP  
Hon LI Kwok-ying, MH, JP  
Hon Jeffrey LAM Kin-fung, SBS, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP  
Hon Ronny TONG Ka-wah, SC  
Prof Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP  
Hon CHAN Kam-lam, SBS, JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon WONG Ting-kwong, BBS  
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 Ada LEUNG  
Assistant Director of Intellectual Property  
Intellectual Property Department

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

**I Confirmation of minutes and matters arising**

LC Paper No. CB(1)839/06-07 -- Minutes of meeting held on 11 January 2007

LC Paper No. CB(1)894/06-07 -- Minutes of meeting held on 18 January 2007

The minutes of the meetings held on 11 and 18 January 2007 were confirmed.

**II Papers issued since last meeting**

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

**III Meeting with the Administration**

LC Paper No. CB(1)769/06-07(01) -- Marked-up version of the Administration's proposed Committee Stage Amendments (from clause 25 to 53)

LC Paper No. CB(1)871/06-07(01) -- Marked-up version of the Administration's proposed Committee Stage Amendments (from clause 54 to 64)

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

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

Right to object to derogatory treatment under Part IIIA on performers' moral rights

4. The Administration advised that it had recently received a submission from the Hong Kong Institute of Certified Public Accountants concerning the right to object to derogatory treatment under relevant proposed provisions of Part

Admin IIIA of the Bill. The Administration would provide in due course a response to submissions by stakeholders, including the above submission, for members' consideration.

Clause 56 – Sections added (namely, 273A, 273B, 273C, 273D, 273E, 273F, 273G and 273H)

*Proposed section 273E - Exceptions to section 273B*

5. Dr YEUNG Sum considered it important that Hong Kong's copyright protection regime should be capable of encompassing the latest technological developments in the circumvention of technological measures and that the relevant legislative provisions should not be overtaken by technological advancement. The Chairman shared Dr YEUNG's view and drew the Administration's attention to the filters used to protect against illegal "phishing" activities in a digital environment (e.g. website forgery) to fraudulently acquire sensitive data from the user. The Administration was requested to take into account members' concerns. The Administration responded that proposed section 273H would provide a mechanism under which future exceptions to the circumvention provisions might be made by subsidiary legislation. The mechanism would help to cater for future technological developments. The term "circumvention" was also left undefined to provide flexibility in future.

*Proposed section 273F - Exceptions to section 273C*

Admin 6. The Administration advised that it would re-examine proposed sections 273F(12) and 273F(12A) in view of the broadcasting industry's concern about the effect of the provisions. There might be substantial amendments to the provisions.

*Proposed section 273H - Exceptions to sections 273A, 273B, 273C and 273G*

7. The Administration explained that proposed section 273H sought to empower the Secretary for Commerce, Industry and Technology (SCIT) to exclude, by notice in the Gazette, from the application of any provisions of sections 273A, 273B, 273C and 273G any work or performance, class of works or performances or class of devices, products, components, means or services if he was satisfied that any use of or dealing with (i) the work or performance, (ii) class of works or performances or (iii) class of devices, products, components, means or services did not infringe copyright and that any such use or dealing had been adversely impaired or affected as a result of the application of the aforesaid provisions. The Administration advised that the notice under proposed section 273H was subsidiary legislation subject to negative vetting by the Legislative Council. The Administration would consult the stakeholders on the proposed exceptions before publishing the relevant notice in the Gazette.

8. Ms Margaret NG sought clarification on the operation of proposed section 273H and the criteria to be adopted by SCIT in determining whether he was satisfied that the conditions in proposed section 273H (a) and (b) could be met. She questioned if it was proper and intra vires to provide for exceptions to the civil and criminal liability imposed under the principal Ordinance by way of subsidiary legislation. She also questioned whether it was sufficiently clear that, as currently drafted, the proposed notice to be published in the Gazette would carry legislative effect. The Chairman requested the Administration to look into Ms NG's query and revert to the Bills Committee.

Arrangements for the next meeting

9. Members agreed that the 21<sup>st</sup> meeting would be held on Thursday, 1 March 2007 at 2:30 pm.

**IV Any other business**

10. There being no other business, the meeting ended at 4:35 pm.

Council Business Division 1  
Legislative Council Secretariat  
14 March 2007

**Proceedings of the 20th meeting of the  
Bills Committee on Copyright (Amendment) Bill 2006  
on Monday, 12 February 2007, at 2:30 pm  
in Conference Room A of the Legislative Council Building**

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 – 000444	Chairman	Confirmation of the minutes of the 17 <sup>th</sup> and 18 <sup>th</sup> meetings on 11 and 18 January 2007 (LC Paper Nos. CB(1)839/06-07 and CB(1)894/06-07)	
000445 – 001604	Chairman Administration	<u>Clause 53 – 272F, 272G, 272H, 272I, 272J, 272K, 272M, 272N, 272O</u>  (a) The Administration advised that the Chinese version of "sufficient disclaimer" (i.e. 足夠的卸責聲明) mirrored the wording used under existing provisions of CO relating to the right to object to derogatory treatment of work (i.e. sections 93 and 94)  (b) A submission received by the Administration from the Hong Kong Institute of Certified Public Accountants concerning the right to object to derogatory treatment under relevant proposed provisions of Part II of the Bill	The Administration to follow up as stated in paragraph 4 of the minutes
001605 – 001648	Chairman Administration	<u>Clause 54 – Cross-heading substituted</u>  Members raised no query	
001649 – 002325	Chairman Administration	<u>Clause 55 – Section substituted</u>  Members raised no query	
002326 – 020700	Chairman Administration Dr YEUNG Sum Ms Margaret NG ALA5	<u>Clause 56 – Sections added (namely, 273A, 273B, 273C, 273D, 273E, 273F, 273G and 273H)</u>  (a) The Administration's advice that the proposed amendments to section 273(1) and (2) sought to respond to the comments of some copyright owners (including those from the broadcasting industry) that technological protection measures (TPMs) might be	

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		<p>imposed by persons other than the copyright owners (for example, the persons set out in proposed section 273A(2)(b)&amp;(c) or 273B(3)(b)&amp;(c))</p> <p>(b) The Administration's advice that the "copyright infringement knowledge" requirement was replaced by a defence provision in response to concerns of some copyright owners and the Hon Audrey Eu's earlier comments</p> <p>(c) Discussion of the operation of proposed section 273B(1)(c) which mirrored the wording used under proposed section 118(1)(g)</p> <p>(d) Discussion of the operation of proposed sections 273B(5), 273B(6), 273B(7), 273B(8), 273B (9) and 273B (10) involving the copyright owner and the exclusive licensee in court proceedings seeking rights and remedies</p> <p>(e) Discussion of possible scenarios in which relevant proposed sections (i.e. 273C(1)(g), 273C(2) in respect of "circumvention business" and "circumvention device", and 273C(4)) might or might not apply</p> <p>(f) The Administration's advice that "specified educational establishments" might rely on proposed section 273D(3)(a) to obtain exemption from the liability arising from the act of circumvention, if the act was done for the sole purpose of research into cryptography and the conditions specified under 273D(3)(a) (including the requirement to disseminate the information derived from the research to the public in a specified manner) were fulfilled. Educational establishments other than those "specified educational establishments" or any other persons conducting research into</p>	

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		<p>cryptography might also fall under the exception if the conditions set out under proposed section 273D(3)(b) were met (i.e., the act or the dissemination to the public of information derived from the research did not affect prejudicially the copyright owner). The proposed exception was crafted to address the concerns of academic researchers that they might refrain from undertaking the research activities for fear that the publication of the research results would affect prejudicially the owner.</p> <p>(g) The Chairman's enquiry about stakeholders' views on proposed amendments to proposed section 273D in respect of research into cryptography</p> <p>(h) The Administration's advice that:</p> <p>(i) Some copyright owners from the sound recording industry considered that the act, which was done for the sole purpose of research into cryptography, should be subject to the sole test that the dissemination to the public of information derived from the research would not affect prejudicially the copyright owner.</p> <p>(ii) Whilst some individual organizations opposed the introduction of new liabilities against circumvention for fear that this would affect technological developments, the Concern Group of the Education Sector on Copyright Law raised no objection to the proposed provisions.</p> <p>(iii) The Administration considered that the proposed formulation, with the definition of "specified manner" in relation to the dissemination to the public of information derived from a</p>	



Time Marker	Speaker	Subject(s)	Action Required
		<p>research into cryptography set out in proposed section 273D(4), had balanced the divergent interests of copyright owners and users.</p> <p>(i) In reply to the Chairman, the Administration advised that proposed section 273E(4)&amp;(5) would apply to “professional hackers” (i.e., computer security companies) whose service was engaged to test, investigate or correct a security flaw or vulnerability of a computer, computer system or computer network under the authority of the owner or operator of the computer, computer system or computer network, as the case might be. However, for other hackers whose acts of circumvention were not done with the authority of the owner or operator of the computer, computer system or computer network, the proposed exception would not apply.</p> <p>(j) On the approach in providing for specific exceptions to sections 273A, 273B and 273C, the Administration's advice that it had made reference to the UK and US legislative approaches. However, the UK model (basically a remedial approach of acting in response to complaints) and the US model (relevant provisions subject to review once every two years) would not be the models which best suited Hong Kong's need</p> <p>(k) Dr YEUNG Sum's view that Hong Kong's copyright protection regime should be capable of encompassing the latest technological developments in the circumvention of technological measures and that the relevant legislative provisions should not be overtaken by technological advancement.</p> <p>(l) The Administration's advice that proposed section 273E(10A) was added to provide</p>	<p>The Administration to follow up as stated in paragraph 6 of the minutes</p>

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>exception for circumvention devices or services the sole purpose of which was to overcome the regional coding contained in the relevant TPMs. It was necessary to add section 273E(10A) as the “knowledge of copyright infringement” was removed under proposed section 273B. Hence, the making and dealing of "all-area-code" DVD players would be exempted from proposed section 273B.</p> <p>(m) The Administration’s advice that the proposed amendments to section 273F(11) sought to address the computer game industry’s concern that the exception at 273F(11) might exempt from the criminal net the commercial dealing of some existing modified game consoles as the relevant TPMs contained a measure controlling market segmentation on a geographical basis. With the proposed Committee Stage Amendments, the exception would only apply to the circumvention devices the sole purpose of which was to overcome the regional coding, or other measure for controlling market segmentation on a geographical basis. The Administration further advised that it was not aware that such a “sole purpose device” in respect of such existing game consoles was available in the market. With the commencement of the proposed anti-circumvention provisions, commercial dealing of such modified game consoles would attract criminal sanctions. In practice, users might need to acquire specific game consoles designed for playing computer games issued for the respective geographical regions.</p> <p>(n) The Administration's advice that it would re-examine proposed section 273F(12) and 273F(12A) in view of the broadcasting industry's concern about the effect of the provision. There might be substantial</p>	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>amendments to the two sections.</p> <p>(o) Ms Margaret NG sought the following clarification:</p> <p>(i) The operation of proposed section 273H and the criteria to be adopted by SCIT in determining whether he was satisfied that the conditions in proposed section 273H (a) and (b) could be met.</p> <p>(ii) Whether it was proper and intra vires to provide for exceptions to the civil and criminal liability imposed under the principal Ordinance by way of subsidiary legislation.</p> <p>(iii) Whether it was sufficiently clear that, as currently drafted, the proposed notice to be published in the Gazette would carry legislative effect.</p>	
020701– 020758	Chairman	Arrangements for the next meeting	