

立法會
Legislative Council

LC Paper No. CB(1)1226/06-07
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/05/1

Bills Committee on Copyright (Amendment) Bill 2006

Minutes of the 21st meeting
held on Thursday, 1 March 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 Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
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 WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Albert Jinghan CHENG
- Members absent** : Hon Bernard CHAN, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Dr Hon YEUNG Sum
Hon CHIM Pui-chung
- Public officers attending** : Mr Christopher K B WONG
Deputy Secretary for Commerce,
Industry and Technology
(Commerce and Industry)

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 Assistant Law Draftsman
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)1009/06-07 -- Minutes of meeting held on 25 January 2007

The minutes of the meeting held on 25 January 2007 were confirmed.

II Papers issued since last meeting

LC Paper No. CB(1)951/06-07(01) -- Submission dated 12 February 2007 from Heads of Universities Committee (English version only)

LC Paper No. CB(1)965/06-07(01) -- List of "Issues requiring follow-up action/consideration by the Administration" on clause-by-clause examination of the Bill for meetings held from 15 December 2006 to 25 January 2007

2. Members noted that the above papers had been issued for the Bills Committee's information.

III Meeting with the Administration

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**).

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

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

4. The Chairman recapped that at the last meeting, Ms Margaret NG sought clarification on the operation of proposed section 273H and the criteria to be adopted by the Secretary for Commerce, Industry and Technology (SCIT) in determining the exceptions to the application of the anti-circumvention provisions. 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 and would not be ultra vires of the primary legislation. In response, the Administration explained that proposed section 273H sought to empower 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 only if he was satisfied that their use of or dealing did not constitute or lead to an infringement of copyright and that any such use or dealing had been adversely impaired or affected as a result of the application of the aforesaid provisions. As such, SCIT's power to provide for the exceptions in question was not unfettered and was subject to the conditions stipulated in proposed section 273H(a) and (b).

5. On whether there were examples in other Ordinances which provided that exceptions might be made to the application of certain provisions in the principal Ordinances by notice published in the Gazette, the Administration advised that there were similar empowering provisions in other Ordinances like the Inland Revenue Ordinance (Cap. 112), the Companies Ordinance (Cap. 32) and the Education Ordinance (Cap 279), etc. The Administration added that provisions conferring powers on appropriate officers to provide further exceptions to the anti-circumvention provisions could be found in the copyright legislation of US and Singapore. In this connection, the Chairman requested the Administration to provide the Bills Committee examples of specific provisions in other Ordinances, including provisions in overseas jurisdictions which were similar to section 273H. On Ms Margaret NG's concern of whether the drafting of proposed section 273H should be improved to put beyond doubt that the notice to be published in the Gazette was subsidiary legislation subject to negative vetting by the Legislative Council, the Administration took the view that it was sufficiently clear that the notice published in Gazette under section 273H was subsidiary legislation.

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Clause 61 - Schedule 7 added

Section 5 in Part 3 of proposed Schedule 7 on savings for existing stocks in relation to rental right of copyright owners

6. The Administration explained that under section 5(1) in Part 3 of proposed Schedule 7, any new right arising by virtue of section 4 of the 2006 Amendment

Ordinance (insofar as it related to section 25(1)(c) of the Copyright Ordinance) did not apply to a copy of a film acquired by a person before the commencement date of that section for the purpose of renting it to the public. Mrs Selina CHOW expressed the view that it would be difficult for copyright owners to distinguish between stocks acquired before and after the commencement date, in particular where classic films were concerned. She asked who would bear the burden of proof in respect of "existing stocks" and how the onus of proof could be discharged (e.g. proof of purchase with date). The Chairman questioned whether the industry had made any submission on this point.

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7. The Administration reported that it had not received any strong views from deputations on the proposed provision. It had only received enquiries from copyright owners on the operation of section 5 of Part 3 in the proposed Schedule 7. The Administration advised that whether the copies of the film in question would constitute existing stocks would need to be determined on the facts of individual cases. Nevertheless, the Administration would revert to the Bills Committee on the point about the burden of proof in cases involving existing stocks.

Proposed way forward after completion of clause-by-clause examination of the Bill

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8. To facilitate discussion at the next meeting, the Administration undertook to provide a detailed response to the submissions from the deputations on proposed Committee Stage Amendments (CSAs), as well as information that the Administration undertook to provide, for example, information on the term of copyright protection. Revised CSAs to the Bill would be submitted in due course. The Chairman also drew the attention of the Administration to the outstanding issues as stated in the list of "Issues requiring follow-up action/consideration by the Administration" on clause-by-clause examination of the Bill prepared by the Secretariat.

The Administration's latest advice on proposed section 273F(12) and (12A) (page 31 of LC Paper No. CB(1)871/06-07(01) issued on 2 February 2007)

9. Regarding the Administration's proposal that the anti-circumvention provisions would apply to an effective technological measure which was applied solely in relation to a broadcast or a cable programme the reception of which took place in response to requests made by users of the video-on-demand service, the broadcasting industry had reflected their concerns on the proposal. As a result of technological convergence and the interoperability of different technologies, it had become common for the same technological measure to be used in relation to copyright works delivered over different media platforms. The broadcasting industry also pointed out that technological measures could have been applied by the content providers. Therefore, it would be unlikely for a particular set of technological measure to be used only in relation to video-on-demand services. The broadcasting industry further submitted that no similar exception on private

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time-shifting could be found in the copyright legislation of other countries. Instead, this issue was dealt with through broadcasting regulatory measures or by a mechanism to provide exception as and when problems arose. The Administration had also been assured at its meetings with the broadcasters that the broadcasting industry generally appreciated users' legitimate interests in recording broadcast and cable programmes for private time-shifting purposes. Having discussed with the industry concerned and considered the existing industry practice which already provided for appropriate arrangements to allow such time-shifting activities, the Administration proposed to remove the entire exception. In other words, both section 273F(12) in the Bill and section 273F(12 A) in the proposed CSAs would be deleted. The Administration also advised that if in future, there was a proven need to provide for such exception through a legislative means, SCIT could do so by way of subsidiary legislation subject to the conditions stipulated in proposed section 273H(a) and (b). The Chairman said that the Bills Committee would need to consider this matter in its examination of further CSAs to the Bill in due course.

IV Any other business

Arrangements for the next meeting

10. Members agreed that the 22nd meeting would be held on Thursday, 15 March 2007 at 8:30 am.
11. There being no other business, the meeting ended at 3:39 pm.

Council Business Division 1
Legislative Council Secretariat
26 March 2007

**Proceedings of the 21st meeting of the
Bills Committee on Copyright (Amendment) Bill 2006
on Thursday, 1 March 2007, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000745	Chairman Administration ALA5	(a) Confirmation of the minutes of the 19 th meetings on 25 January 2007 (LC Paper No. CB(1)1009/06-07) (b) Members noted the two papers issued	
000746 – 001450	Ms Audrey EU Administration Chairman	<p><u>Clause 56 – Sections added (namely, 273A, 273B, 273C, 273D, 273E, 273F, 273G and 273H)</u></p> <p>(a) The Administration's advice that:</p> <p style="padding-left: 40px;">(i) SCIT's power to make the subsidiary legislation was subject to the conditions in proposed section 273H(a) and (b) being met;</p> <p style="padding-left: 40px;">(ii) the notice in the Gazette was subsidiary legislation and upon its enactment would become subsidiary legislation of Cap. 528; and</p> <p style="padding-left: 40px;">(iii) similar empowering provisions were found in existing Ordinances such as the Inland Revenue Ordinance (Cap. 112), the Companies Ordinance (Cap. 32) and the Education Ordinance (Cap 279), etc.</p> <p>(b) Discussion on the legislative intent of proposed section 273H and the exceptions made under similar provisions in the copyright legislation of the US and Singapore.</p>	The Administration to follow up as stated in paragraph 5 of the minutes

001451 – 001834	Administration Chairman	<p><u>Clause 57 – Rights and remedies in respect of unlawful acts to interfere with rights management information</u></p> <p>The Administration's advice that copyright owners welcomed the proposal of including the copyright owner and the exclusive licensee as additional parties who could enforce the provision. They raised no objection to the knowledge requirement in proposed section 274(2A) which sought to incorporate the provision of the international treaties concerned.</p>	
001835 – 001918	Administration Chairman	<p><u>Clause 58 – Transitional provisions and savings</u></p> <p>Members raised no query</p>	
001919 – 002204	Administration Chairman	<p><u>Clause 59 – Section added</u></p> <p>The Administration's advice that the Chief Executive in Council might make regulations containing transitional provisions and savings consequent on the enactment of the Bill. In the event of an inconsistency between any regulations made under proposed section 283 and the provisions of Schedule 7, Schedule 7 should prevail to the extent of the inconsistency.</p>	
002205 – 002300	Chairman Administration	<p><u>Clause 60 – Educational establishments</u></p> <p>Members raised no query</p>	
002301 – 005806	Chairman Administration Mrs Selina CHOW Ms Audrey EU	<p><u>Clause 61 - Schedule 7 added</u></p> <p>(a) The Administration's advice that it had not received any strong views from deputations on the proposed provision. It had only received enquiries from copyright owners on the operation of section 5 of Part 3 in proposed Schedule 7.</p>	

		<p><i>Part 2 - Acts permitted in relation to copyright works and performances</i></p> <p>(b) Discussion of possible scenarios in which proposed section 2 of Part 2 in relation to savings for certain existing agreements might apply</p> <p><i>Part 3 – Rental right of copyright owners</i></p> <p>(c) Discussion of the operation of proposed section 4 in part 3 in relation to the new rental right on the effect of pre-commencement authorization of copying and possible scenarios in which the proposed section might apply</p> <p>(d) The Chairman's concern about the difficulty in distinguishing newly acquired copies of comic book from copies of existing stocks</p> <p>(e) The Administration's advice that as reflected by the local comic industry, they might probably adopt the "sticker approach" used by the comic industry of Japan to distinguish new copies from existing stocks upon enactment of the proposed transitional provision.</p> <p>(f) Mrs Selina CHOW raised questions on what constituted "existing stocks" of film, and pointed out that, after commencement of the rental rights, a retailer might not only acquire copies of films which were currently showing, but also copies of past classic films. It might be difficult in practice to prove the date of acquisition of classic films.</p> <p>(g) Members questioned the party who would bear the burden of proof and how the onus of proof could be discharged (e.g. proof of purchase with date).</p> <p>(h) The Administration's advice that whether the copies of the film in question would constitute existing stocks would need to be</p>	<p>The Administration to follow up as stated in paragraph 7 of the minutes</p>
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		determined on the facts of individual cases.	
005807 – 005839	Chairman Administration	<u>Clause 62 - Repeal</u> Members raised no query	
005840 – 005944	Chairman Administration	<u>Clause 63 - Offences relevant to definitions of "organized crime" and "specified offence"</u> Members raised no query	
005945 – 010119	Chairman Administration	<u>Clause 64 -Time limit for prosecutions</u> Members raised no query	
010120 – 010844	Chairman Administration	(a) Follow-up action on the proposed way forward after completion of clause-by-clause examination of the Bill (b) The Administration's advice that the broadcasting industry had reflected their concern that given technological convergence and the interoperability of different technologies, it would be likely for the same technological measure to be applied to different copyright works delivered across different media platforms. In view of the latest information available and having regard to the practical difficulties the industry would be facing, the Administration proposed to remove the entire exception.	The Administration to follow up as stated in paragraphs 8 and 9 of the minutes
010845 – 010900	Chairman Administration	Arrangements for the next meeting	