

立法會
Legislative Council

LC Paper No. CB(1)1494/06-07
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/05/1

Bills Committee on Copyright (Amendment) Bill 2006

Minutes of the 23rd meeting
held on Tuesday, 3 April 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 Timothy FOK Tsun-ting, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Bernard CHAN, GBS, JP
Hon CHAN Kam-lam, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Dr Hon YEUNG Sum
Hon Vincent FANG Kang, JP
Hon LI Kwok-ying, MH, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
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 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)5

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)1226/06-07 -- Minutes of meeting held on 1 March 2007

The minutes of the meeting held on 1 March 2007 were confirmed.

II Papers issued since last meeting

LC Paper No. CB(1)1154/06-07(01) -- submission dated 8 March 2007 from Hong Kong Record Merchants Association Ltd (Chinese version only)

LC Paper No. CB(1)1160/06-07(01) -- Submission dated 14 March 2007 from International Federation of the Phonographic Industry (Hong Kong Group) Limited (English version only)

LC Paper No. CB(1)1161/06-07(01) -- Submission dated 13 March 2007 from International Intellectual Property Alliance (English version only)

LC Paper No. CB(1)1244/06-07(01) -- Joint submission dated 26 March 2007 from the International Federation of the Phonographic Industry (Hong Kong Group) Ltd, Hong Kong Publishing Federation Ltd and Hong Kong Video Development Foundation Ltd (English version only)

LC Paper No. CB(1)1283/06-07(01) -- Joint submission dated 30 March 2007 from Hong Kong Book and Stationery Industry Association Co Ltd, Educational Booksellers' Association Ltd and Hong Kong Book and Magazine Trade Association Ltd (Chinese version only)

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

III Meeting with the Administration

LC Paper No. CB(1)1288/06-07(01) -- Administration's paper on further proposed Committee Stage Amendments to the Bill

LC Paper No. CB(1)1288/06-07(02) -- Proposed Committee Stage Amendments to the Bill (as at 30 March 2007) provided by the Administration

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

Clause 24 – New section 119B(3) and (14) (offence of making for distribution or distributing infringing copies of copyright works in printed form contained in books, etc)

4. Noting that a new Committee Stage Amendment (viz. new section 119B(15)) had been added to define the scope of the empowering provision in the new section 119B(14), Ms Margaret NG considered that the expression "without limiting the generality of subsection (14)" in the new section 119B(15) was still unclear on the circumstances which could be specified in the regulations made under the new section 119B(14). As such, the empowering provisions remained too wide in scope.

5. The Administration responded that the new section 119B(15) set out the factors that the Secretary for Commerce, Industry and Technology (SCIT) presently intended to make reference to for the purposes of delineating the "safe harbour" in the regulations to be made under the new section 119B(14). Although the Administration had previously indicated, in general terms, the proposed scope of the "safe harbour", the details could only be finalized after consultation with the copyright owners and the users. Furthermore, certain modes of copying and distribution (such as distribution via the intranet) might be excluded from the offence until licensing schemes for such modes of distribution were available to users. The Administration considered that it was important to include the expression "without limiting the generality of subsection (14)" in the new section 119B(15) to provide for some flexibility in future when formulating the detailed scope of the safe harbour in the subsidiary legislation and to make reference to factors that were presently unknown. Ms Audrey EU considered that the proposed provision should provide in a more definitive and exhaustive manner the factors to which SCIT should make reference to. The Administration

agreed to re-consider the new section 119B(14) and (15) in the light of members' concerns and revert to the Bills Committee.

IV Any other business

Arrangements for the next meeting

Admin

6. Members agreed that the 24th meeting would be held on Thursday, 19 April 2007 at 10:45 am. To facilitate discussion, the Chairman advised that the Administration should take follow-up action as follows :

- (a) advise the Bills Committee of the criminal sanction period for parallel importation ;
- (b) provide a written response to the Chairman's enquiry on whether proposed section 41A(4) would also cover programmes which were broadcast simultaneously over the Internet (as raised at the meeting on 4 January 2007) ;
- (c) inform the Bills Committee of specific provisions in other Ordinances, as well as provisions in overseas jurisdictions, which were similar to proposed section 273H (as raised at the meeting on 1 March 2007) ; and
- (d) provide the Administration's written response, where necessary, to further submissions received after 12 March 2007 for the Bills Committee's consideration.

7. There being no other business, the meeting ended at 12:45 pm.

(Post-meeting note: The information under (c) was circulated to members on 16 April 2007 vide LC Paper CB(1)1362/06-07). At the request of the Administration and to allow more time for the Administration to prepare the remaining requisite information, the Chairman agreed that the meeting of the Bills Committee originally scheduled for 19 April 2007 at 10:45 am would not be held. On his instruction, the next meeting would be re-scheduled to be held on 4 May 2007 at 8:30 am.)

**Proceedings of the 23rd meeting of the
Bills Committee on Copyright (Amendment) Bill 2006
on Tuesday, 3 April 2007, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 001615	Chairman	(a) Confirmation of the minutes of the 21 st meeting on 1 March 2007 (LC Paper No. CB(1)1226/06-07). (b) Members noted the five submissions issued.	
001616 – 002514	Administration Chairman	(LC Paper No. CB(1)1288/06-07(01) and (02)) <u>Long title to the Copyright Ordinance</u> Members raised no query <u>Clause 7(2A) – New section 35(6A) (presumption of importation to facilitate enforcement against parallel imports)</u> The Administration's advice that new section 35(6A) would also cover blue ray optical discs by virtue of section 2(1) of the Prevention of Copyright Piracy Ordinance (Cap. 544)	
002515 – 002800	Administration Chairman	<u>Clause 8 – New section 35B (imported copy not an "infringing copy" for the purposes of section 35(3))</u> Members raised no query	
002801 – 003023	Administration Chairman	<u>Criminal sanction period for parallel importation</u> The Administration's report on the views of copyright owners as follows: (a) some industries indicated that the reduction of the criminal sanction period from the existing 18 months to 15 months would only be acceptable in view of the Administration's proposal to facilitate enforcement against parallel imports;	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) for some industries, the proposed shortening of the criminal sanction period from the existing 18 to 12 months was not acceptable. It could not safeguard proper returns, taking into account the lead time required to obtain the necessary licence from overseas copyright owners; and</p> <p>(c) the film industry indicated that it would be unacceptable to shorten the criminal sanction period to 12 months. This was because a longer period of time was needed for the industry to fully exploit their works through different windows, namely, the theatrical release, the home video market, the paid TV market and the free TV market. The industry's practice was that a movie was exploited in these windows at different times with a view to maximizing the income.</p> <p>The Administration's undertaking to continue dialogue with copyright owners and to revert to the Bills Committee on the finalized proposal.</p>	
003024 – 003414	Administration Chairman	<p><u>Clause 13 – Section 43 (performing, playing or showing work in course of activities of educational establishments)</u></p> <p>Members raised no query</p>	
003415 – 003728	Administration Chairman	<p><u>Clause 16 – New section 54B (Legislative Council)</u></p> <p>Members raised no query</p>	
003729 – 004226	Administration Chairman Ms Audrey EU	<p><u>Clause 18 – New section 81A (playing of sound broadcasts inside vehicles)</u></p> <p>(a) The Administration's policy intent in introducing the permitted act under new section 81(A) in relation to the playing of a sound broadcast inside a vehicle primarily for the purpose of affording the driver of the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>vehicle access to public information.</p> <p>(b) The Administration's advice that the new section 81A, as currently drafted, would not apply to the playing of radio broadcast for the enjoyment of passengers (e.g. traveling on public transport) and such playing, if it constituted public performance, should be subject to royalty payment.</p>	
004227 – 004450	Administration Chairman	<p><u>Clause 22(3) – New section 118(2E) (exemption for legal professionals from the business end-user possession offence)</u></p> <p>The Administration's advice that whilst the response of the Hong Kong Bar Association was still awaited, the Law Society had raised no objection to the revised version of new section 118(2E).</p>	
004451 – 012200	Administration Chairman Ms Margaret NG Ms Audrey EU	<p><u>Clause 24 – New section 119B(3) and (14) (offence of making for distribution or distributing infringing copies of copyright works in printed form contained in books, etc)</u></p> <p>(a) Discussion of the effect of the new section 119B(14) and (15)</p> <p>(b) Discussion of the formulation and operation of the proposed "safe harbour"</p> <p>(c) Ms Margaret NG's view that the expression "without limiting the generality of subsection (14)" in the new section 119B(15) was still unclear on the circumstances which could be specified in the regulations made under the new section 119B(14). As such, the empowering provisions remained too wide in scope.</p> <p>(d) The Administration's advice that proposed section 119B(15) had stipulated some of the factors that the Secretary for Commerce, Industry and Technology (SCIT) presently</p>	The Administration to follow up as stated in paragraph 5 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		<p>intended to make reference to for the purposes of delineating the “safe harbour” in the regulations to be made under the new section 119B(14)”. However, it was important to include the expression “without limiting the generality of subsection (14)” in the new section 119B(15) to provide for some flexibility in future when formulating the detailed scope of the "safe harbour" in the subsidiary legislation and to make reference to factors that were presently unknown.</p> <p>(e) Ms Audrey EU's view that the proposed provision should provide in a more definitive and exhaustive manner the factors to which SCIT should make reference to.</p>	
012201 – 012416	Administration Chairman	<p><u>Clause 27 – Affidavit evidence (references to "has been granted with a licence of the owner" and "has not been granted with a licence of the owner"</u></p> <p>Members raised no query</p>	
012417 – 012524	Administration Chairman	<p><u>Clause 27 – Section 121 (references to "the owner of a copyright work" and "the owner")</u></p> <p>Members raised no query</p>	
012525 – 012649	Administration Chairman	<p><u>Clauses 31 and 32 (Licensing schemes to which sections 155 to 160 apply)</u></p> <p>Members raised no query</p>	
012650 – 012815	Administration Chairman	<p><u>Clause 34 – Section 187 (groundless threat of proceedings in relation to parallel import)</u></p> <p>Members raised no query</p>	
012816 – 012830	Administration Chairman	<p><u>Clause 34(C) – Requirement of signature : application in relation to body corporate</u></p> <p>Members raised no query</p>	

Time Marker	Speaker	Subject(s)	Action Required
012831 – 013139	Administration Chairman	<u>Clause 35 – Section 198(1) (the definition of "business"</u> Members raised no query	
013140 – 013318	Administration Chairman	<u>Clause 35 – Section 198(1) (the definition of "specified course of study")</u> Members raised no query	
013319 – 013648	Administration Chairman	<u>Clause 35 – New section 198(3) (the definition of "lawfully made")</u> Members raised no query	
013649 – 013805	Administration Chairman	<u>Clause 37 – Section 200 (Meaning of artistic work)</u> Members raised no query	
013806 – 013918	Administration Chairman	<u>Clause 51 – Section 272E(2)(a) (Right to object to derogatory treatment)</u> Members raised no query	
013919 – 014104	Administration Chairman	<u>Clause 55 – New Section 273(1)(c) (Interpretation of sections 273 to 273H)</u> Members raised no query	
014105 – 014445	Administration Chairman	<u>Clause 55 – New section 273F(12) and (12A) (Exception to the anti-circumvention provisions for private time-shifting purposes)</u> Members raised no query	
014446 – 014652	Administration Chairman	<u>Clause 57 – Section 274 (Rights and remedies in respect of unlawful acts to interfere with rights management information)</u> Members raised no query	

Time Marker	Speaker	Subject(s)	Action Required
014653 – 014813	Administration Chairman	<u>Clause 61 (Section 5 of the new Schedule 7) – savings for existing stocks in relation to rental right for film</u> Members raised no query	
014814 – 014934	Administration Chairman	<u>Clause 61 (Section 16(3) of the new Schedule7) – Transitional provisions and savings in relation to amendments effected by section 8 of the 2006 Amendment Ordinance</u> Members raised no query	
014935 – 015439	Administration Chairman Ms Margaret NG	Discussion of the scope of the empowering provision under proposed section 119B(14) in relation to the proposed business end-user copying/distribution offence under proposed section 119B(1).	
015440 – 015635	Chairman	(a) Arrangements for the next meeting (b) The Chairman's summing up of the follow-up actions.	The Administration to follow up as stated in paragraph 6 of the minutes

Council Business Division 1
Legislative Council Secretariat
 2 May 2007