

立法會
Legislative Council

LC Paper No. CB(1)1524/05-06
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/05/1

Bills Committee on Copyright (Amendment) Bill 2006

**Minute of second meeting
held on Tuesday, 25 April 2006, at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, JP (Chairman)
Hon NG Margaret
Hon Mrs CHOW LIANG Suk-yee, Selina, GBS, JP
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, SBS, JP
Dr Hon WONG Yu-hong, Philip, GBS
Hon Timothy FOK Tsun-ting, GBS, JP
Hon FANG Kang, Vincent, JP
Hon LI Kwok-ying, MH
Hon LAM Kin-fung, Jeffrey, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon LAU Sau-shing, Patrick, SBS, JP
Hon Albert Jinghan CHENG
- Members absent** : Dr Hon YEUNG Sum
Hon EU Yuet-mee, Audrey, SC, JP
Hon LEUNG Kwan-yuen, Andrew, SBS, JP
- Public officers attending** : Miss Mary CHOW
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
Government Counsel
Department of Justice

Mr Y K TAM
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 Anita HO
Assistant Legal Adviser 2

Paul WOO
Senior Council Secretary (1)3

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

I Confirmation of minutes and matters arising

LC Paper No. CB(1)1328/05-06 -- Minutes of meeting held on
7 April 2006

The minutes of the meeting held on 7 April 2006 were confirmed.

II Meeting with the Administration

- LC Paper No. CB(1)1323/05-06(01) -- Information paper provided by the Administration
- CIB CR 07/09/16 -- The Legislative Council Brief issued by the Commerce, industry and Technology Bureau
- 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. LS50/05-06 -- The Legal Service Division Report on the Bill
- LC Paper No. CB(1)1250/05-06 -- Background brief on Review of certain provisions of Copyright Ordinance prepared by the Secretariat
- LC Paper No. CB(1)1350/05-06(01) -- Information paper on "Liability of directors and partners" provided by the Administration as a follow-up to the Panel on Commerce and Industry meeting held on 15 November 2005

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

Citation of news articles on radio programmes

3. Mr Albert CHENG referred to radio programme hosts of public affairs programmes who very often read out editorials or newspaper reports during the programme. He asked whether such "citation" or public reading of news articles would amount to copyright infringement in breach of the Copyright Ordinance (Cap. 528) (CO), bearing in mind that it might not be practicable or realistic to expect the programme host to obtain the prior permission of the copyright owner in question on every occasion.

4. In response, the Administration referred to section 39 of CO which provided for "fair dealing" for criticism, review and news reporting, and section 23(2) providing a meaning on copying of a work, and advised that whether or not the act constituted "fair dealing" of a copyright work needed to be decided on the facts of the case in question. Mr Ronny TONG stated his view that reproduction of a

copyright work (such as a newspaper) in another dimension (such as through sound broadcasting) constituted copyright infringement. The Chairman requested the Administration to set out its advice in writing on whether the scenario depicted by Mr Albert CHENG constituted copyright infringement with reference to provisions in CO, and to provide information on decided cases, if any.

Parallel importation of copyright works

5. On parallel importation, Mr Ronny TONG pointed out that copyright owners, in particular those from the comic book industry, were strongly against shortening the existing criminal liability period for parallel imports. He expressed concern that any liberalization would adversely affect their viability, the development of local creative industries, personnel engaged in the industry, as well as intellectual property protection. In his view, the proposed liberalization in the use of parallel imports had to be dealt with in a cautious manner.

6. Mr Albert CHENG considered that the proposed shortening of the criminal sanction period from 18 months to nine months would still limit benefit to consumers. He supported further shortening of the criminal liability period or the complete removal of civil and criminal liability for parallel importation.

7. Mr WONG Ting-kwong pointed out that the music and film industry maintained strong objection to liberalizing parallel importation. Noting that the Administration would continue to actively discuss with the copyright owners on the details of the proposal, he agreed that the Administration should balance the widespread demand from the business sectors and consumer groups against the interests of copyright owners.

8. Mr CHAN Kam-lam considered that given the grave concern of copyright owners about the proposed shortening of the criminal sanction period from 18 months to nine months, the existing restrictions on parallel imports of copyright works should be maintained.

9. On the proposal to shorten the period of criminal liability for parallel importation from 18 to nine months, the Administration noted views against and in support of its proposal. The Administration advised that the currently proposed nine-month period sought to strike a balance between the interests of copyright owners and those of users. The Administration was prepared to listen to views and if justified, revise the currently proposed duration.

Rental rights for comic books

10. In response to concerns raised by the comic book industry, the Administration would need to consider whether or not the proposed rental right provisions should also apply to the provision of comic books for on-the-spot reference in return for a charge at premises such as tea houses.

Arrangements for the next meeting

11. The Chairman reminded members that as agreed at the first meeting on 7 April 2006, the next meeting of the Bills Committee would be held on 8 May 2006 to meet with deputations.

III Any other business

12. There being no other business, the meeting ended at 3:47 pm.

Council Business Division 1
Legislative Council Secretariat
18 May 2006

**Proceedings of the second meeting of the
Bills Committee on Copyright (Amendment) Bill 2006
on Tuesday, 25 April 2006, at 2:30 pm
in the Chamber of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000330 – 001540	Chairman Administration	<p>(a) Confirmation of the minutes of the first meeting on 7 April 2006 (LC Paper No. CB(1)1328/05-06)</p> <p>(b) Briefing by the Administration on the major proposals under the Bill (LC Paper No. CB(1)1323/05-06(01))</p> <p>(c) The Administration's advice that the "safe harbour" perimeters for the proposed business end-user copying/distribution criminal offence for infringing printed works would be dealt with by way of subsidiary legislation to be introduced into the Legislative Council at a later stage</p>	
001541 – 002512	Mr Ronny TONG Chairman Administration	<p>(a) The comic book industry's concern that the proposed shortening of the period of criminal liability for parallel importation of copyright works from 18 months to nine months would jeopardize their business and employment opportunities</p> <p>(b) The Administration's response that it would strive to balance the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>demands from the business sectors and consumer groups for complete liberalization of parallel imports against the interests of copyright owners, and would continue to maintain dialogue with them on how best to resolve the differences</p>	
002513 – 003210	Mr Albert CHENG Administration Assistant Legal Adviser	<p>(a) Members noted that no civil or criminal liability would arise from individuals importing parallel imports of copyright works (defined as infringing copies under the CO) for private and domestic use</p> <p>(b) discussion of Section 30 of the Copyright Ordinance (Cap. 528) (CO) on "Secondary infringement: importing or exporting infringing copy"; and Section 118(1)(b) of the CO which provided that a person committed an offence if he, without the licence of the copyright owner, imported an infringing copy of a copyright work into Hong Kong otherwise than for his private and domestic use</p> <p>(c) The Administration's advice that the removal of civil and criminal liability relating to importation and possession of parallel imports would not</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>apply in the use of the parallel-imported items for commercial dealing purposes or public showing of movies, TV dramas and musical recordings by entities other than educational establishments and libraries</p>	
003211 – 004039	<p>Mr Albert CHENG Administration Chairman Mr Ronny TONG</p>	<p>Whether or not citation of newspaper reports/articles by radio programme hosts in their programmes would constitute copyright infringements under the Copyright Ordinance (Cap. 528)</p>	<p>The Administration to provide written advice as required under paragraph 4 of the minutes</p>
004040 – 004249	<p>Mr FOK Tsun-ting Administration</p>	<p>The proposal about shortening the criminal liability period for parallel imports should be examined in a cautious manner in view of the concern of the music, film and publication industries</p>	
004250 – 005200	<p>Mr FANG Kang Administration</p>	<p>(a) difficulty in prosecuting offences relating to parallel importation of copyright works</p> <p>(b) measures to regulate tea houses or cafes providing comic books for on-the-spot reading at a charge</p> <p>The Administration's advice on:</p> <p>(a) the meaning of "infringing copy" under section 35(3) of the CO and exclusive licence agreement relating to</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>copyright works</p> <p>(b) the comic book industry's suggestion to extend the application of rental rights to the provision of comic books for on-the-spot reading in return for a charge would need to be further considered</p>	
005201 – 005803	Mr Ronny TONG Administration Mr Albert CHENG	<p>(a) Arguments for and against shortening the period of criminal liability for parallel importation from 18 to nine months</p> <p>(b) The Administration's advice that it was prepared to listen to views and would revise the currently proposed duration if justified</p>	
005804 – 010125	Mr FANG Kang Administration	Assistance from owners of copyright works was needed in distinguishing pirated copies or parallel imports	
010126 – 011532	Mr WONG Ting-kwong Administration Chairman Mr CHAN Kam-lam Mr Albert CHENG	<p>(a) consultation of copyright owners and users on liberalization in the use of parallel imports</p> <p>(b) overseas practice on parallel imports of copyright works</p>	
011533 – 011820	Chairman Mr CHAN Kam-lam Clerk	Next meeting of the Bills Committee on 8 May 2006 to receive views from deputations	