

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1673/06-07  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/1/05/1

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

**Minutes of the 24<sup>th</sup> meeting  
held on Friday, 4 May 2007, at 8:30 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 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  
Prof Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : Hon Bernard CHAN, GBS, JP  
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 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)1334/06-07 -- Minutes of meeting held on 15 March 2007

LC Paper No. CB(1)1494/06-07 -- Minutes of meeting held on 3 April 2007

The minutes of the meetings held on 15 March 2007 and 3 April 2007 were confirmed.

**II Papers issued since last meeting**

LC Paper No. CB(1)1313/06-07(01) -- Submission from Hong Kong Kowloon and New Territories Motion Picture Industry Association

LC Paper No. CB(1)1339/06-07(01) -- Submission dated 10 April 2007 from Entertainment Software Association

LC Paper No. CB(1)1355/06-07(01) -- Joint submission dated 4 April 2007 from Hong Kong Publishing Federation Limited, Hong Kong Video Development Foundation Limited, International Federation of the Phonographic Industry (Hong Kong Group) Limited and Television Broadcasts Limited

LC Paper No. CB(1)1358/06-07(01) -- Submission dated 11 April 2007 from Hong Kong Cable Television Limited

LC Paper No. CB(1)1381/06-07(01) -- Submission dated 16 April 2007 from International Association of Scientific, Technical & Medical Publishers

LC Paper No. CB(1)1393/06-07(01) -- Submission dated 12 April 2007 from Cable & Satellite Broadcasting Association of Asia

- LC Paper No. CB(1)1393/06-07(02) -- Submission dated 13 April 2007 from Hon LI Kwok-ying
- LC Paper No. CB(1)1458/06-07(01) -- Submission dated 24 April 2007 from Hong Kong and International Publishers' Alliance

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)1512/06-07(01) -- Paper on outstanding Committee Stage Amendments proposed by the Administration
- LC Paper No. CB(1)1497/06-07(02) -- Administration's response to deputations' further submissions : (I) Business end-user liability (II) Rental rights for film and comic books (as at 30 April 2007)
- LC Paper No. CB(1)1497/06-07(03) -- Administration's response to deputations' further submissions : (III) Copyright exemption (as at 30 April 2007)
- LC Paper No. CB(1)1497/06-07(04) -- Administration's response to deputations' further submissions : (IV) Anti-circumvention provisions (V) Parallel importation (VI) Others (as at 30 April 2007)
- LC Paper No. CB(1)1497/06-07(01) -- Administration's response to the Chairman's question raised at the meeting on 4 January 2007 : Programmes broadcast simultaneously over the Internet
- LC Paper No. CB(1)1362/06-07(01) -- Paper provided by the Administration on examples of

provisions in other Ordinances which exclude the application of certain provisions in the principal Ordinances by notice published in the Gazette, as well as provisions in overseas jurisdictions which are similar to section 273H of the Copyright (Amendment) Bill 2006

- LC Paper No. CB(1)1524/06-07(01) -- Updated list of "Issues requiring follow-up action/consideration by the Administration" on clause-by-clause examination of the Bill prepared by the Secretariat
- LC Paper No. CB(1)1524/06-07(02) -- Marked-up copy of the outstanding Committee Stage Amendments provided by the Administration
- LC Paper No. CB(1)1524/06-07(03) -- Administration's reply dated 3 May 2007 to Hon LI Kwok-ying
- LC Paper No. CB(1)1524/06-07(04) -- Paper on exemption for the legal profession provided by the Administration
- LC Paper No. CB(1)1524/06-07(05) -- Extract of the First Schedule to the Copyright (Libraries) Regulations

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

Civil liability for the act of circumvention

4. The Administration advised that, having re-considered the concerns of copyright owners, it would propose to remove the defence provision under proposed section 273A. This would make the act of circumventing any effective technological protection measures civilly liable under the law. This, however, should be subject to the introduction of two proposals to address the concerns of users of copyright works (especially the library and education sectors). Firstly,

proposed section 273A would not apply if the act of circumvention was done by the librarian or archivist of a library or archive (e.g. any library administered by the Government, or any library of a school/university) specified under section 46 of the Copyright Ordinance (CO), and the act was done for the sole purpose of carrying out any of the permitted acts under sections 50, 51 and 53 (relating to supply of copies to other libraries, replacement copies of works, and copying of articles of cultural or historical importance). Secondly, if the application of section 273A was likely to cause or had caused undue encroachment on users' legitimate interests, the Administration would provide exceptions to the relevant provisions (in the form of subsidiary legislation to be made under proposed section 273H) should copyright owners fail to address users' concerns using voluntary measures. To safeguard users' interests, the Administration would put on hold the commencement of section 273A until the first list of exceptions had been drawn up and enacted after consultation with copyright owners and users. The Administration would also make some amendments to the wording in section 273H to reflect the intention.

5. The Chairman was concerned about possible abuse of the provisions by libraries which were administered by private clubs on a commercial basis, and enquired on the definition of "specified library" in relation to new section 273D(7A). The Administration advised that the Secretary for Commerce, Industry and Technology was empowered under section 46 of CO to specify, by notice in the Gazette, libraries and archives for the purpose of the permitted acts in sections 47 to 53. Until such notice was published, the Copyright (Libraries) Regulations (tabled at the meeting and issued vide LC Paper No. CB(1)1524/06-07(05)) (including the various classes of libraries specified in the Regulations), should continue in force and have effect during the transitional period. As the act of copying of copyright works by a specified library and supplying such copies by a specified library to other libraries would be permitted under the existing copyright exemption regime subject to compliance with the specific conditions under the relevant provisions, the Administration considered it reasonable that such libraries should also be given an exemption from the civil liability for the act of circumvention done for the sole purpose of carrying out any of the permitted acts under sections 50, 51 and 53. The Chairman considered the scope of "specified library" too wide. In response, the Administration advised that the First and Second Schedules to the Copyright (Libraries) Regulations would be reviewed in a separate legislative exercise.

#### Change to the post title of the Secretary for Commerce, Industry and Technology

6. Mr CHAN Kam-lam enquired about the legislative amendments to be introduced to reflect the change to the post title of the Secretary for Commerce, Industry and Technology arising from the re-organization of policy bureaux of the Government Secretariat. In this connection, the Chairman said that as he understood, the Legislative Council might, by resolution, provide for the substitution of the current title of the Director of Bureau by the new title of the Director of Bureau in whom policy responsibility for the relevant provisions in the

legislation was to be vested. It might also by resolution provide for the transfer of statutory functions vested in one public officer to another public officer.

**IV Any other business**

Arrangements for the next meeting

7. Members agreed that the 25<sup>th</sup> meeting of the Bills Committee, if required, would be held on Friday, 18 May 2007, at 10:45 am. The Chairman said that members who intended to propose Committee Stage Amendments (CSAs) to the Bill were requested to forward such proposed CSAs to the Secretariat on or before 11 May 2007 for onward consideration by the Bills Committee at the next meeting. Members also agreed that the meeting on 18 May 2007 would not be held if the Secretariat did not hear from members or the Administration regarding any proposed CSAs or further/outstanding issues. They would be notified of the need or otherwise for holding the meeting in due course.

*(Post-meeting note: The Chairman had instructed that the meeting originally scheduled to be held on 18 May 2007 would not be held.)*

8. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1  
Legislative Council Secretariat  
21 May 2007

**Proceedings of the 24<sup>th</sup> meeting of the  
Bills Committee on Copyright (Amendment) Bill 2006  
on Friday, 4 May 2007, at 8:30 am  
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000145	Chairman	<p>(a) Confirmation of the minutes of the 22<sup>nd</sup> and 23<sup>rd</sup> meetings on 15 March 2007 and 3 April 2007 (LC Paper No. CB(1)1334/06-07 and LC Paper No. CB(1)1494/06-07).</p> <p>(b) Members noted the eight submissions issued.</p>	
000146 – 010439	Administration Chairman Mr CHAN Kam-lam Mr Vincent FANG	<p>LC Paper No. CB(1)1512/06-07(01)  <u>Outstanding Committee Stage Amendments (CSAs)</u></p> <p>(a) Members raised no query</p> <p>LC Paper No. CB(1)1524/06-07(02)  <u>Marked-up copy of the outstanding CSAs</u></p> <p>(b) The Administration's advice that:</p> <p>(i) proposed section 119B(5A) sought to exempt, under specified circumstances, distribution of infringing copies forming part of the special collection of a library or archive owned by the Government (an archive owned by the government included a museum owned by the Government) , or a library or archive designated under subsection (5B) from proposed section 119B(1);</p> <p>(ii) proposed section 119B(5B) sought to empower the Secretary for Commerce, Industry and Technology to designate, on the advice of the Director of Leisure and Cultural Services, by way of notice any other non-profit making libraries, museums and archives to which the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>exemption from the new business end-user copying/distribution offence would apply subject to the conditions, if any, by way of regulations; and</p> <p>(iii) the proposal would ensure that the functions of conserving heritage by the concerned institutions would not be adversely affected.</p> <p>(c) Discussion of the definition of "library" specified under the First Schedule to the Copyright (Libraries) Regulations (LC Paper No. CB(1)1524/06-07(05))</p> <p>(d) The Chairman's concern about possible abuse of the provisions by libraries which were administered by private clubs on a commercial basis</p> <p>(e) The Administration's advice that as the act of copying of copyright works by a specified library for archival or preservation purposes and supplying copies by a specified library to other libraries would be permitted under the existing copyright exemption regime subject to compliance with the specific conditions set out under the relevant provisions, the Administration considered it reasonable that such libraries should also be given an exemption from the civil liability for the act of circumvention done for the sole purpose of carrying out any of the permitted acts under sections 50, 51 and 53.</p> <p>(f) The Chairman's view that the scope of "specified library" was too wide</p> <p>(g) The Administration's advice that the First and Second Schedules to the Copyright (Libraries) Regulations would be reviewed in a separate legislative exercise</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(h) Mr CHAN Kam-lam's enquiry about the legislative amendments to be introduced to reflect the change to the post title of the Secretary for Commerce, Industry and Technology arising from the re-organization of policy bureaux of the Government Secretariat.</p> <p>(i) The Chairman's remark that:</p> <p>(i) the Legislative Council might by resolution provide for the substitution of the current title of the Director of Bureau by the new title of the Director of Bureau in whom policy responsibility for the relevant provisions in the legislation was to be vested; and</p> <p>(ii) it might also by resolution provide for the transfer of statutory functions vested in one public officer to another public officer.</p> <p>(j) Discussion of the effect of proposed section 273H in relation to the civil liability for the act of circumvention.</p> <p>(k) The Administration's advice that:</p> <p>(i) if the application of section 273A was likely to cause or had caused undue encroachment on users' legitimate interests, it would provide exceptions to the relevant provisions (in the form of subsidiary legislation made under section 273H) should copyright owners fail to address users' concerns using voluntary measures;</p> <p>(ii) it was necessary to add the expression ",or is likely to be," in section 273(H)(b) as the Administration intended to put on hold the commencement of section 273A until</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>the first list of exceptions had been drawn up and enacted after consultation with copyright owners and users so as to safeguard users' interests; and</p> <p>(iii) The US copyright legislation contained a similar expression.</p>	
010440 – 011219	Administration Chairman	<p>LC Paper No. CB(1)1497/06-07(02) <u>Administration's response to deputations' further submissions : (I) Business end-user liability (II) Rental rights for film and comic books</u></p> <p>Members raised no query</p>	
011220 – 011537	Administration Chairman Dr YEUNG Sum	<p>LC Paper No. CB(1)1497/06-07(03) <u>Administration's response to deputations' further submissions : (III) Copyright exemption</u></p> <p>Dr YEUNG Sum's view that the Administration's proposal on fair dealing for education was a reasonable attempt to balance the divergent interests of copyright owners and users</p>	
011538 – 013734	Administration Chairman Dr YEUNG Sum	<p>LC Paper No. CB(1)1497/06-07(04) <u>Administration's response to deputations' further submissions : (IV) Anti-circumvention provisions (V) Parallel importation (VI) Others</u></p> <p>The Administration's advice that it did not intend to make any CSA to alter its original proposal to remove the civil and criminal liability pertaining to the educational and library use of parallel imports of copyright works by libraries and educational establishments</p>	
013735 – 013940	Administration Chairman	<p>LC Paper No. CB(1)1497/06-07(01) <u>Administration's response to the Chairman's question raised at the meeting on 4 January 2007 : Programmes broadcast simultaneously over the Internet</u></p> <p>Members raised no query</p>	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
013941 – 014104	Administration	LC Paper No. CB(1)1362/06-07 <u>Examples of provisions in other Ordinances which exclude the application of certain provisions in the principal Ordinances by notice published in the Gazette, as well as provisions in overseas jurisdictions which are similar to section 273H of the Copyright (Amendment) Bill 2006</u>  Members raised no query	
014105 – 014243	Administration	LC Paper No. CB(1)1524/06-07(03) <u>Administration's reply dated 3 May 2007 to Hon LI Kwok-ying</u>  Members raised no query	
014244 – 015825	Administration Chairman Ms Margaret NG	LC Paper No. CB(1)1524/06-07(04) <u>Administration's paper on exemption for the legal profession</u>  Discussion on the Hong Kong Bar Association's suggestion concerning general exemption for providing legal services	
015826 – 015900	Chairman	LC Paper No. CB(1)1524/06-07(01) <u>Updated list of "Issues requiring follow-up action/consideration by the Administration" on clause-by-clause examination of the Bill prepared by the Secretariat</u>  Members raised no query	
015901 – 020130	Chairman Ms Margaret NG Dr YEUNG Sum	Arrangements for the next meeting	