

立法會
Legislative Council

LC Paper No. CB(1)1639/05-06
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/05/1

Bills Committee on Copyright (Amendment) Bill 2006

**Minutes of the third meeting
held on Monday, 8 May 2006, at 4:45 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-ye, Selina, GBS
Hon CHAN Kam-lam, SBS, JP
Dr Hon WONG Yu-hong, Philip, GBS
Hon Timothy FOK Tsun-ting, GBS, JP
Hon EU Yuet-mee, Audrey, SC, JP
Hon FANG Kang, Vincent, JP
Hon LAM Kin-fung, Jeffrey, SBS, JP
Hon LEUNG Kwan-yuen, Andrew, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon LAU Sau-shing, Patrick, SBS, JP
Hon Albert Jinghan CHENG
- Members absent** : Hon Bernard CHAN, JP
Dr Hon YEUNG Sum
Hon LI Kwok-ying, MH
Hon CHIM Pui-chung
- 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 Assistant Law Draftsman (Acting)
Department of Justice

Ms Rayne CHAI
Government Counsel
Department of Justice

Mr Y K TAM
Acting Assistant Commissioner
(Intelligence and Investigation)
Customs and Excise Department

Mr Albert S K HO
Acting Senior Superintendent
Intellectual Property Investigation Bureau
Customs and Excise Department

Attendance by Invitation : Business Software Alliance
Ms Belinda LUI
Chairperson, Business software Alliance, Hong Kong

Federation of Hong Kong Filmmakers

Mr NG See-yuen
Chairman

Mr CHEUNG Tung-joe
Representative

Film Industry Response Group

Mr Gordon CHAN
Convenor

Hong Kong and International Publishers' Alliance

Mr Simon LI
Convenor (Hong Kong)

Hong Kong Educational Publishers Association

Mr SHEK Kwok-kei
Representative

Hong Kong Comics & Animation Federation Limited

Mr WONG Yuk-long
Chairman
Mr WAN Siu-lun
Secretary

Hong Kong Information Technology Federation

Ms Winnie YEUNG
Councilor

Hong Kong Kowloon and New Territories Motion
Picture Industry Association Ltd

Mr Peter LAM
Vice Chairman

Mrs Roberta CHIN
Executive Director
Goldern Harrest Entertainment Company Limited

Hong Kong Publishing Federation Limited

Mr WONG Sing
Representative

Hong Kong Reprographic Rights Licensing Society

Ms Dillys YU
General Manager

Hong Kong Video Development Foundation Ltd

Ms CHU Fung-mui
Vice Chairman

Mr Frank WAN
Legal Consultant

International Federation of the Phonographic Industry
(Hong Kong Group) Limited

Mr Ricky FUNG
Chief Executive Officer

Movie Producers and Distributors Association of Hong
Kong Limited

Mr Tony SHU Tat-ming
Executive Secretary

Phonographic Performance (South East Asia) Ltd

Ms TSANG Pak Lin, Patricia
General Manager

The Anglo-Chinese Textbook Publishers Organization

Mr LEE Ka-kui
Representative

The Hong Kong Copyright Licensing Association

Ms Joanne LAW
Representative

ABRS Professional Learning Services

Mr POON Hoi-wah, Ritchie
General Manager

Concern Group of the Education Sector on Copyright
Law

Mr CHIU Ping-kwan
Chairman

Educational Booksellers' Association Ltd

Mr HUI Chiu-ming
Representative
Hong Kong Professional Teachers' Union

Mr CHIK Pun-shing
Deputy Chief Executive

The Hong Kong Association for Computer Education

Mr NG Hok-ling
Chairman

The Hong Kong Institute of Education

Prof Bernard LUK
Vice President (Academic)

Miss Connie WONG
Council Secretarial and Administration Manager

The Joint University Librarians Advisory Committee

Mr Michael ROBINSON
Librarian

The Task Force on Copyright in Education,
Established under the Heads of Universities
Committee

Dr Colin STOREY
University Librarian

The Chinese University of Hong Kong

Mrs Shirley LEUNG
Head of Public Services, University Library
The Chinese University of Hong Kong

Cable and Satellite Broadcasting Association of Asia

Mr Simon Twiston DAVIES
Chief Executive Officer

Mr John MEDEIROS
Vice President
Government-Relations and Regulatory Affairs

Federation of Hong Kong Industries

Mr Clement CHEN
Deputy Chairman

Mr Roger TAM
Manager

Hong Kong Blind Union

Mr YUEN Kin-ming
Vice President

Miss TO Wai-yin
Executive Manager

The American Chamber of Commerce in Hong Kong

Ms Anita LEUNG
Intellectual Property Committee Chairman

The Institute of Electrical and Electronics Engineers
(Hong Kong Joint Chapter) CAS/COM

Mr Y W LIU
Committee Member

The Law Society of Hong Kong

Mr Henry WHEARE
Member of Intellectual Property Committee

Ms Monique WOO
Registered Foreign Lawyer

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (1)3

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Mr Paul WOO
Senior Council Secretary (1)3

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

Ms Sharon CHAN
Legislative Assistant (1)6

I Meeting with deputations and the Administration

Meeting with deputations

Copyright owners groups

1. Business Software Alliance
(LC Paper No. CB(1)1385/05-06(01) -- Submission)
2. Federation of Hong Kong Filmmakers
(LC Paper No. CB(1)1385/05-06(02) -- Submission)
3. Film Industry Response Group
(LC Paper No. CB(1)1385/05-06(03) -- Submission)
4. Hong Kong and International Publishers' Alliance
(LC Paper No. CB(1)1385/05-06(04) -- Submission)
5. Hong Kong Educational Publishers Association
(LC Paper No. CB(1)1385/05-06(05) -- Submission)
6. Hong Kong Comics & Animation Federation Limited
(LC Paper No. CB(1)1397/05-06(01) -- Submission)
7. Hong Kong Information Technology Federation
(LC Paper No. CB(1)1426/05-06(01) -- Submission)
8. Hong Kong Kowloon and New Territories Motion Picture Industry Association Ltd
9. Hong Kong Publishing Federation Limited
(LC Paper No. CB(1)1385/05-06(06) -- Submission)
10. Hong Kong Reprographic Rights Licensing Society
(LC Paper No. CB(1)1385/05-06(07) -- Submission)
11. Hong Kong Video Development Foundation Ltd
(LC Paper No. CB(1)1385/05-06(08) -- Submission)
12. International Federation of the Phonographic Industry (Hong Kong Group) Limited
(LC Paper No. CB(1)1385/05-06(09) -- Submission)

(LC Paper No. CB(1)1413/05-06(01) -- Submission)
13. Movie Producers and Distributors Association of Hong Kong Limited
(LC Paper No. CB(1)1397/05-06(02) -- Submission)

14. Phonographic Performance (South East Asia) Ltd
(LC Paper No. CB(1)1444/05-06(01) -- Submission)
15. The Anglo-Chinese Textbook Publishers Organization
(LC Paper No. CB(1)1385/05-06(10) -- Submission)
16. The Hong Kong Copyright Licensing Association
(LC Paper No. CB(1)1426/05-06(02) -- Submission)

Educational

17. ABRS Professional Learning Services
18. Concern Group of the Education Sector on Copyright Law
(LC Paper No. CB(1)1385/05-06(11) -- Submission)
19. Educational Booksellers' Association Ltd
(LC Paper No. CB(1)1385/05-06(18) -- Submission)
20. Hong Kong Professional Teachers' Union
(LC Paper No. CB(1)1413/05-06(02) -- Submission)
21. The Hong Kong Association for Computer Education
(LC Paper No. CB(1)1385/05-06(12) -- Submission)
22. The Hong Kong Institute of Education
(LC Paper No. CB(1)1413/05-06(03) -- Submission)
23. The Joint University Librarians Advisory Committee
(LC Paper No. CB(1)1385/05-06(13) -- Submission)
24. The Task Force on Copyright in Education, Established under the
Heads of Universities Committee
(LC Paper No. CB(1)1385/05-06(14) -- Submission)

Other organizations

25. Cable and Satellite Broadcasting Association of Asia
(LC Paper No. CB(1)1385/05-06(15) -- Submission)
26. Federation of Hong Kong Industries
(LC Paper No. CB(1)1426/05-06(03) -- Submission)
27. Hong Kong Blind Union
(LC Paper No. CB(1)1397/05-06(03) -- Submission)

28. The American Chamber of Commerce in Hong Kong
29. The Institute of Electrical and Electronics Engineers (Hong Kong Joint Chapter) CAS/COM
(LC Paper No. CB(1)1444/05-06(02) -- Submission)
30. The Law Society of Hong Kong
(LC Paper No. CB(1)1426/05-06(04) -- Submission)

Submissions from organizations/individual that will not attend the meeting

1. Aristo Educational Press Ltd
(LC Paper No. CB(1)1426/05-06(05) -- Submission)
2. Chung Tai Educational Press
(LC Paper No. CB(1)1385/05-06(16) -- Submission)
3. Consumer Council
(LC Paper No. CB(1)1444/05-06(03) -- Submission)
4. Copyright Agency Limited
(LC Paper No. CB(1)1385/05-06(17) -- Submission)
5. Excellence Publication Co Ltd
(LC Paper No. CB(1)1385/05-06(19) -- Submission)
6. Greenwood Press
(LC Paper No. CB(1)1385/05-06(20) -- Submission)
7. Hong Kong Cable Television Limited
(LC Paper No. CB(1)1444/05-06(04) -- Submission)
8. Hong Kong Educational Publishing Co
(LC Paper No. CB(1)1385/05-06(21) -- Submission)
9. Hong Kong General Chamber of Commerce
(LC Paper No. CB(1)1444/05-06(05) -- Submission)
10. Hong Kong Library Association
(LC Paper No. CB(1)1385/05-06(22) -- Submission)
11. Hong Kong Subsidized Secondary Schools Council
(LC Paper No. CB(1)1385/05-06(23) -- Submission)
12. Hon Wing Book Co Ltd
(LC Paper No. CB(1)1385/05-06(24) -- Submission)

13. Hung Fung Book Co Ltd
(LC Paper No. CB(1)1385/05-06(25) -- Submission)
14. International Federation of Reproduction Rights Organizations
(LC Paper No. CB(1)1385/05-06(26) -- Submission)
15. International Intellectual Property Alliance
(LC Paper No. CB(1)1385/05-06(27) -- Submission)
16. Jing Kung Educational Press
(LC Paper No. CB(1)1385/05-06(28) -- Submission)
17. Lovells
(LC Paper No. CB(1)1394/05-06(01) -- Submission)
18. Motion Picture Association
(LC Paper No. CB(1)1397/05-06(04) -- Submission)
19. PCCW Limited
(LC Paper No. CB(1)1385/05-06(29) -- Submission)
20. Pilot Publishers Services Ltd
(LC Paper No. CB(1)1385/05-06(30) -- Submission)
21. Pilot Publishing Company Ltd
(LC Paper No. CB(1)1385/05-06(31) -- Submission)
22. Professional Information Security Association
(LC Paper No. CB(1)1385/05-06(32) -- Submission)
23. Project Management Institute Hong Kong
(LC Paper No. CB(1)1444/05-06(07) -- Submission)
24. Religious Education Resource Centre
(LC Paper No. CB(1)1397/05-06(05) -- Submission)
25. Springer China Limited
(LC Paper No. CB(1)1385/05-06(33) -- Submission)
26. Tai Chung Publisher Limited
(LC Paper No. CB(1)1385/05-06(34) -- Submission)
27. Television Broadcasts Limited
(LC Paper No. CB(1)1397/05-06(06) -- Submission)
28. The Chinese General Chamber of Commerce
(LC Paper No. CB(1)1385/05-06(35) -- Submission)

29. The Chinese Manufacturers' association of Hong Kong
(LC Paper No. CB(1)1385/05-06(36) -- Submission)
30. The Commercial Press (HK) Ltd
(LC Paper No. CB(1)1385/05-06(37) -- Submission)
31. The Hong Kong Association of Bank
(LC Paper No. CB(1)1385/05-06(38) -- Submission)
32. The Hong Kong Institute of Trade Mark Practitioners
(LC Paper No. CB(1)1444/05-06(06) -- Submission)
33. The Open University of Hong Kong
(LC Paper No. CB(1)1385/05-06(39) -- Submission)
34. Witman Publishing Co (HK) Ltd
(LC Paper No. CB(1)1426/05-06(06) -- Submission)
35. Mr YIP Ming, Edward
(LC Paper No. CB(1)1385/05-06(40) -- Submission)

Meeting with the Administration

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| LC Paper No. CB(1)1323/05-06(01) | -- Information paper provided by 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

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

Directors' and partners' criminal liability

2. Mr Jeffrey LAM noted that under the Bill, the directors of the body corporate or the partners of the partnership responsible for internal management functions would also be liable to conviction for a proposed offence if the body corporate or partnership in question had been using infringing copies of copyright works in the course of business, unless there was evidence showing that the directors/partners had not authorized the infringing act. Mr LAM said that the business community was concerned about the implied shift of burden of proof to the directors/partners under the proposed offence. He considered that the proposal contravened the presumption of innocence under the common law principle.

3. In response, the Administration assured members that the burden of proof on the defendant was only an evidential burden. The defendant would absolve his liability if he could adduce sufficient evidence to raise an issue that he did not authorize the infringing act in question. Provisions along similar lines were found in the intellectual property legislation of some overseas jurisdictions. To clarify the type of evidence that the defendant might adduce, the Administration had included in proposed sections 118(2H) in clause 22(4) and 119B(8) in clause 24 a list of non-exhaustive factors for the court to consider.

Parallel importation

4. The Chairman noted that imported copies of local movies from the Mainland were often found available in Hong Kong soon after the movies were first released for public viewing in Hong Kong, which obviously were in breach of the existing 18-month restriction applicable to parallel imports. The Chairman requested the Administration to provide more detailed information on the enforcement action, if any, taken on such cases, the number of prosecutions and cases successfully prosecuted.

Admin

Arrangements for the next meeting

5. Members agreed that the Administration should be requested to provide a detailed written response to the views made by the deputations on the Bill at the next Bills Committee meeting scheduled for Friday, 12 May 2006 at 3 pm.

II Any other business

6. There being no other business, the meeting ended at 8:09 pm.

Council Business Division 1
Legislative Council Secretariat
1 June 2006

**Proceedings of the third meeting of the
Bills Committee on Copyright (Amendment) Bill 2006
on Monday, 8 May 2006, at 4:45 pm
in the Chamber of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000347	Chairman	Opening remarks	
000348 – 000700	Business Software Alliance (BSA)	Presentation of views	
000701 – 001109	Federation of Hong Kong Filmmakers (FHKF)	Presentation of views	
001110 – 001406	Film Industry Response Group	Presentation of views	
001407 – 001736	Hong Kong and International Publishers' Alliance (HKIPA)	Presentation of views	
001737 – 002102	Hong Kong Educational Publishers Association (HKEPA)	Presentation of views	
002103 – 002444	Hong Kong Comics & Animation Federation Limited (HKCAF)	Presentation of views	
002445 – 002808	Hong Kong Information Technology Federation	Presentation of views	
002809 – 003148	Hong Kong Kowloon and New Territories Motion Picture Industry Association Ltd (MPIA)	Presentation of views	

Time Marker	Speaker	Subject(s)	Action Required
003149 – 003453	Hong Kong Publishing Federation Limited (HKPF)	Presentation of views	
003454 – 003810	Hong Kong Reprographic Rights Licensing Society	Presentation of views	
003811 – 004050	Hong Kong Video Development Foundation Ltd (HKVDF)	Presentation of views	
004051 – 004442	International Federation of the Phonographic Industry (Hong Kong Group) Limited (IFPI)	Presentation of views	
004443 – 004733	Movie Producers and Distributors Association of Hong Kong Limited (MPDA)	Presentation of views	
004734 – 005023	Phonographic Performance (South East Asia) Ltd	Presentation of views	
005024 – 005336	The Anglo-Chinese Textbook Publishers Organization	Presentation of views	
005337 – 005744	The Hong Kong Copyright Licensing Association	Presentation of views	
005745 – 010105	ABRS Professional Learning Services (ABRSPLS)	Presentation of views	

010106 – 010446	Concern Group of the Education Sector on Copyright Law (CGESCL)	Presentation of views	
010447 – 010657	Educational Booksellers' Association Ltd	Presentation of views	
010658 – 011119	Hong Kong Professional Teachers' Union	Presentation of views	
011120 – 011416	The Hong Kong Association for Computer Education	Presentation of views	
011417 – 011825	The Hong Kong Institute of Education	Presentation of views	
011826 – 012101	The Joint University Librarians Advisory Committee (JULAC)	Presentation of views	
012102 – 012429	The Task Force on Copyright in Education, Established under the Heads of Universities Committee (TFCEHUC)	Presentation of views	
012430 – 012744	Cable and Satellite Broadcasting Association of Asia	Presentation of views	
012745 – 013125	Federation of Hong Kong Industries (FHKI)	Presentation of views	
013126 – 013720	Hong Kong Blind Union (HKBU)	Presentation of views	

013721 – 014145	The American Chamber of Commerce in Hong Kong	Presentation of views	
014146 – 014355	The Institute of Electrical and Electronics Engineers (Hong Kong Joint Chapter) CAS/COM	Presentation of views	
014356 – 014826	The Law Society of Hong Kong (LSHK)	Presentation of views	
014827 – 015415		Break	
015416 – 020048	Mr Ronny TONG Chairman FHKF Administration	(a) Difficulty in distinguishing pirated copies from parallel imported copies (b) FHKF objected to the proposed liberalization of parallel importation (c) The Administration's response that it was necessary for the exclusive licensees, with the cooperation of copyright owners, to adduce sufficient evidence before legal action could be taken against distributors or retailers for the selling of infringing copies	
020049 – 020151	LSHK	Proposed amendments to the definition of "lawfully made"	
020152 – 021001	Mr Jeffrey LAM Administration HKVDF BSA	Directors' and partners' criminal liability	

021002 – 021738	Ms Audrey EU FHKF MPIA Chairman	Period of criminal liability for parallel importation	
021739 – 022719	Mr Ronny TONG FHKF HKVDF MPDA MPIA FHKF Mr Timothy FOK	Industries' objection to the proposed shortening of the period of criminal liability for parallel importation from 18 months to nine months	
022720 – 023235	Ms Audrey EU Chairman BSA Administration	(a) Defence for employees in respect of business end-user criminal liability (b) BSA objected to the proposed employees' defence (c) The Administration's advice that in respect of business end-user criminal liability, if the employee acted under the instruction of his employer to use the pirated software in business, then, the employee could raise the statutory defence.	
023236 – 023347	FHKI	Objection to the proposed directors' and partners' criminal liability	
023348 – 023741	BSA Administration LSHK	(a) Defence for employees (b) Parallel imports	
023742 – 024934	Chairman Administration HKVDF Mr Ronny TONG HKCAF	(a) Enforcement action on imported copies of local movies from the Mainland which were in breach of the existing 18	The Administration to provide detailed information as

	<p>HKVDF HKIPA</p>	<p>month criminal sanction period applicable to parallel imports</p> <p>(b) Difficulty in prosecuting offences relating to parallel importation of copyright works</p>	<p>required under paragraph 4 of the minutes.</p>
<p>024935 – 032629</p>	<p>Chairman Administration LSHK IFPI ABRSPLS CGESCL MPDA TFCEHUC HKIPA IFPI MPIA HKPF CGESCL HKEPA JULAC HKBU IFPI MPDA HKVDF TFCEHUC Chairman</p>	<p>(a) Individuals importing infringing copies of copyright works for private and domestic use</p> <p>(b) Fair dealing of the parallel-imported items (including digital copies) by education establishments and libraries</p> <p>(c) Recording of broadcasts and cable programmes as well as reprographic copying made by educational establishments of passages from published works</p> <p>(d) The Administration's proposal to introduce new sections 40A to 40F in clause 11 to facilitate the production of specially adapted copies of copyright works to meet the special reading needs of persons with a print disability.</p> <p>(e) Suggestion by the film and music industry to include new provisions to reflect the use of the digital channel for storing and distributing copyright works</p>	

		<p>(f) The Administration's advice that:</p> <p>(i) 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>(ii) the removal of civil and criminal liability relating to importation and possession of parallel imports would not apply if the parallel-imported item was imported for commercial dealing purposes or if the work was a movie, TV drama, musical sound recording, or musical visual recording and was parallel-imported for the purpose of public showing by entities other than educational establishments and libraries.</p>	
032450 - 032629	Chairman	Closing remarks	