

立法會
Legislative Council

LC Paper No. CB(1)1816/05-06
(These minutes have been seen
by the Administration)

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Bills Committee on Copyright (Amendment) Bill 2006

**Minutes of the fifth meeting
held on Tuesday, 23 May 2006, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, JP (Chairman)
Hon NG Margaret
Hon Mrs CHOW LIANG Suk-ye, Selina, GBS, JP
Hon CHAN Kam-lam, SBS, JP
Dr Hon WONG Yu-hong, Philip, GBS
Dr Hon YEUNG Sum
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 Albert Jinghan CHENG
- Members absent** : Hon Bernard CHAN, JP
Hon LI Kwok-ying, MH
Hon CHIM Pui-chung
Hon LAU Sau-shing, Patrick, 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
Acting Assistant Commissioner
(Intelligence and Investigation)
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)1524/05-06

-- Minutes of meeting held on
25 April 2006

- LC Paper No. CB(1)1513/05-06(01) -- Schedule of meetings from April to December 2006
- LC Paper No. CB(1)1513/05-06(02) -- Major proposals under the Copyright (Amendment) Bill 2006 with meetings earmarked for discussion of each of the major issues

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

2. The minutes of the meeting held on 25 April 2006 were confirmed.
3. Members endorsed the schedule of meetings and the major proposals under the Copyright (Amendment) Bill 2006 with meetings earmarked for discussion of each of the major issues.

II Meeting with the Administration

- LC Paper No. CB(1)1437/05-06(05) -- Administration's response to deputations' views raised at the meeting on 8 May 2006 : (I) Rental rights for films and comic books (II) Issues relating to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty

Other relevant papers as listed in the Appendix of the agenda.

Rental rights for films and comic books

4. In principle, members present at the meeting had no objection to the proposed introduction of "rental rights" for films and comic books. However, they cautioned that the proposed provisions must be carefully drafted to avoid any unintended consequences such as adversely affecting the normal activities of establishments not engaged in the commercial renting of films and comic books as their business. They also urged the Administration to exercise caution in delineating the scope of the rental activities to be regulated and the rental rights provisions. They also considered it important to strike a right balance between the interests of copyright owners, business operators and consumers.

5. Members took note of the Administration's advice that in determining whether certain activities would be covered under the rental rights provisions, consideration would be given to whether the copies of the works were rented for the purposes of direct or indirect economic or commercial advantage. Members also noted that the Administration would consider the comic book industry's request that the proposed rental rights provision should also apply to the offering of comic books for "on-the-spot reference" at a fee, given the impact of such activities on the copyright owners' interests.

6. Members considered that the scope of the rental activities to be covered should be clearly stipulated to avoid uncertainty and ensure enforceability of the provisions. In this connection, some members were concerned that there might be grey areas arising from the application of the proposed rental right provisions in the following examples:

- (a) private clubs or private libraries which charged their members membership fees and provided films and comic books for on-the-spot reading or for renting by the members;
- (b) club-houses attached to residential estates financed by management fees providing a wide range of facilities including films and comic books for the enjoyment of the residents;
- (c) salons or teahouses which provided magazines and comic books for the enjoyment of their clients.

7. The Administration explained the meaning of "rental" under section 25(2) of the Copyright Ordinance. If the rental services were operated for return of a fee, or if the private clubs/libraries charged for membership fees and offered the rental services to their members for indirect economic or commercial return, the rental rights provisions would apply. In response to some members' queries, the Administration advised that according to the comic book industry's submission, places offering comic books for on-the-spot reference (such as teahouses) usually charged customers according to the number of comic books read or the amount of time spent on the spot. The Administration would consider whether and how the scope of rental rights for comic books should be amended to cover such operation.

8. Members also noted the Administration's proposal not to bring the new rental rights provisions for films and comic books into effect unless and until a proper licensing scheme was in place, in order to ensure that existing film and comic book rental shops had a legal means of carrying on their current business after the introduction of rental rights. Members also noted the music industry's request that this pre-condition of having a licensing scheme should not apply to musical visual recordings on the ground that rental of musical visual recordings would lead to massive copying of their works by customers.

9. The Administration was requested to follow up on the following matters:

- (a) to consider the need to clarify the scope of the rental rights provisions in relation to the copyright works stipulated in proposed section 25(1) of the Copyright Ordinance, and to consider whether the proposed rental rights for comic books should cover the provision of comic books (and not the other categories of copyright works listed in proposed section 25(1)) for on-the-spot reference at a fee and if yes, to draft Committee Stage amendments for the proposal;
- (b) to consider whether the pre-condition of having a licensing scheme in place before the commencement of the rental rights provisions should also apply to musical visual recordings; and
- (c) to continue dialogue with the comic book industry, film industry and business operators on putting in place a reasonable licensing scheme so that the operators could obtain authorization through the payment of a fee to rent out the items.

10. On overseas practice, the Administration advised that the United Kingdom provided rental rights for all copyright works while rental rights for films and comic books were provided respectively in France and Japan. In the Hong Kong context, under the existing CO, “rental” was defined in existing section 25(2) and (3) in relation to computer programs and sound recordings and “on-the-spot reference” was expressly excluded. Some members observed that if the Administration’s proposed amendment to the Bill to include “on-the-spot reference” in the rental provisions for comic books was enacted, Hong Kong might be the first jurisdiction in the world to adopt such a legislative approach to deal with the rental rights of comic books.

Arrangements for the next meeting

11. Members agreed that the 6th meeting of the Bills Committee would be held on Thursday, 8 June 2006 at 8:30 am.

III Any other business

12. There being no other business, the meeting ended at 12:11 pm.

Council Business Division 1
Legislative Council Secretariat
21 June 2006

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

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000959	Chairman ALA2 Administration	<p>(a) Confirmation of the minutes of the second meeting on 25 April 2006 (LC Paper No. CB(1)1524/05-06)</p> <p>(b) Endorsement of the schedule of meetings and the major proposals under the Copyright (Amendment) Bill 2006 with meetings earmarked for discussion of each of the major issues (LC Paper Nos. CB(1)1513/05-06(01) and (02))</p> <p>(c) The need for the Administration to move a resolution to extend the validity period of the Copyright (Suspension of Amendments) Ordinance 2001 at the Council meeting on 21 June 2006 for a further period of 12 months ending 31 July 2007</p> <p>(d) Pending availability of the Administration's paper early next week, discussion on "Business end-user liability" to be deferred to the next meeting on 8 June 2006</p>	
001000 – 001609	Chairman Administration	Rental rights for films and comic books	

Time Marker	Speaker	Subject(s)	Action Required
001610 – 005730	Chairman Mr CHAN Kam-lam Mr Andrew LEUNG Mr Vincent FANG Ms Margaret NG Mr Ronny TONG Dr YEUNG Sum Mrs Selina CHOW Administration	(a) Grey areas arising from the application of the proposed rental rights provisions (b) The scope of the rental activities to be regulated and the rental rights provisions as well as the importance to strike a balance between the interests of copyright owners, business operators and consumers (c) The Administration's advice that on overseas practice, the United Kingdom provided rental rights for all copyright works while rental rights for films and comic books were provided respectively in France and Japan. (d) The Administration's advice that the ordinary dictionary meaning would be used for "comic books" under the Bill (e) The Administration's advice that under the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights, there were no requirements on the WTO members to provide for rental rights for copyright works other than computer programs and sound recordings. Rental rights for films should be	The Administration to take follow-up action as required in paragraph 9 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		<p>provided if rental activities led to widespread copying of the works. However, individual jurisdictions were at liberty to legislate for a higher level of copyright protection in the light of their needs</p> <p>(f) Private clubs or private libraries which charged their members membership fees and provided films and comic books for on-the-spot reading or for renting by the members</p> <p>(g) Licensing schemes to facilitate administration of rental rights</p> <p>(h) Transitional arrangement before the commencement of the rental rights provisions</p> <p>(i) The scope of the rental rights provisions in relation to the copyright works stipulated in proposed section 25(1) of the Copyright Ordinance</p>	
005731 – 011900	Chairman Mrs Selina CHOW Mr Ronny TONG Mr YEUNG Sum Mr Andrew LEUNG Mr Jeffrey LAM Mr CHAN Kam-lam Administration	Members' views that (a) in principle, they had no objection to the proposed introduction of "rental rights" for films and comic books; (b) however, the proposed provisions must be carefully drafted to avoid any unintended consequences such as adversely affecting the normal activities of	

Time Marker	Speaker	Subject(s)	Action Required
		<p>establishments not engaged in the commercial renting of films and comic books as their business; and (c) the scope of the rental activities to be covered should be clearly stipulated to avoid uncertainty and ensure enforceability of the provisions</p> <p>The Administration's advice that in determining whether certain activities would be covered under the rental rights provisions, consideration would be given to whether the copies of the works were rented for the purposes of direct or indirect economic or commercial advantage</p> <p>The Administration's advice that according to the comic book industry's submission, places offering comic books for on-the-spot reference (such as teahouses) usually charged customers according to the number of books read or the amount of time spent on the spot. The Administration would consider whether and how the scope of rental rights for comic books should be amended to cover such operation</p>	
011901 – 012240	Administration Chairman	Issues relating to the World Intellectual Property Organization (WIPO) Copyright Treaty and WIPO Performances and Phonograms Treaty	

Time Marker	Speaker	Subject(s)	Action Required
012241 – 012345	Chairman	Arrangements for the next meeting	

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