

立法會
Legislative Council

LC Paper No. CB(1)27/06-07
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/05/1

Bills Committee on Copyright (Amendment) Bill 2006

**Minutes of the tenth meeting
held on Thursday, 21 September 2006, at 2:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, JP (Chairman)
Hon NG Margaret
Hon Bernard CHAN, GBS, JP
Dr Hon YEUNG Sum
Hon Timothy FOK Tsun-ting, GBS, JP
Hon EU Yuet-mee, Audrey, SC, JP
Hon LI Kwok-ying, MH, JP
Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon Mrs CHOW LIANG Suk-ye, Selina, GBS, JP
Hon CHAN Kam-lam, SBS, JP
Dr Hon WONG Yu-hong, Philip, GBS
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 CHIM Pui-chung
Hon LAU Sau-shing, Patrick, SBS, JP
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 Government Counsel
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)3

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)1984/05-06 -- Minutes of meeting held on 19 June 2006
- LC Paper No. CB(1)2063/05-06 -- Minutes of meeting held on 6 July 2006
- LC Paper No. CB(1)2137/05-06 -- Minutes of meeting held on 19 July 2006

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

2. The minutes of the meetings held on 19 June 2006, 6 July 2006 and 19 July 2006 were confirmed.

II Paper issued since last meeting

- LC Paper No. CB(1)2048/05-06(01) -- Submission dated 17 July 2006 from Entertainment Software Association (English version only)
- LC Paper No. CB(1)2092/05-06(01) -- Submission dated 25 July 2006 from Hong Kong Televisioners Association (English version only)
- LC Paper No. CB(1)2113/05-06(01) -- List of "Issues requiring follow-up action/consideration by the Administration" for meetings of the Bills Committee held from April to July 2006
- LC Paper No. CB(1)2214/05-06(01) -- Submission dated 14 September 2006 from International Federation of the Phonographic Industry Asian Regional Office (English version only)
- LC Paper No. CB(1)2231/05-06(01) -- Submission dated 15 September 2006 from Johnson Stokes & Master on behalf of the Hong Kong Comics & Animation

3. Members noted that the above papers had been issued for the Bills Committee's information.

4. The Chairman referred to the list of "Issues requiring follow-up action/consideration by the Administration" and reminded the Administration to provide further updates and responses to the outstanding issues in due course.

III Meeting with the Administration

Circumvention and Rights Management Information

LC Paper No. CB(1)1982/05-06(01) -- Administration's response to deputations' views raised at the meeting on 8 May 2006 : Circumvention of technological measures for copyright protection

LC Paper No. CB(1)1982/05-06(02) -- Administration's response to deputations' views raised at the meeting on 8 May 2006 : Issues relating to rights management information

Exception for time-shifting

5. The Administration would consider if amendments should be made to the proposed section 273F(12) in the light of deputations' concern as stated in paragraph 8.9 of its tabulated response to deputations' submissions on exception for time-shifting (LC paper No. CB(1)1982/05-06(01)) and to revert to the Bills Committee in due course.

Exceptions for parallel imports

6. On exceptions for parallel imports, the Administration explained that the policy intention was not to impose liability under the new anti-circumvention provisions on users who gained access to or used parallel imported copyright works. Hence, the proposed section 273D(7) of the Bill provided for an exception to the proposed section 273A when the act of circumvention was committed solely for the purpose of gaining access to parallel imported works. Besides, to ensure that users' legitimate interest in using parallel imported copyright works would not be undermined, the criminal provision against commercial dealing of circumvention devices (section 273C) would not apply to a technological protection measure

which also contained a regional coding function (section 273F(11)). The Administration explained that the current formulation of the proposed section 273F(11) would encourage copyright owners not to integrate a regional coding measure into a TPM so that the TPM could enjoy the criminal law protection.

7. In response to members' questions on the computer game industry's concerns about the scope of the proposed exception under section 273F(11) for parallel imports and the possible loophole in the legal protection for TPMs, the Administration assured members that it would continue to maintain dialogue with the industry concerned. The Administration would also consider if it was suitable to redraft the proposed section 273F(11) to exclude from the proposed section 273C circumvention devices with the sole function to enable access to parallel imported copyright works. Consideration would be given as to whether such "sole function" devices would exist in the market having regard to the fact that regional coding and other protection measures might be integrated in the same TPM system. The Administration further advised that the proposed section 273D(7) was not intended to apply to copyright works disseminated in the online environment or by way of broadcast or cable transmission. The Administration would consider if amendments should be made to this provision to clarify the policy intention.

Consultation with stakeholders

8. Noting that it was important to strike a right balance between the interests of copyright owners and users, some members recapped that copyright owners, in particular those from the publishing, comic book, film and music industry, were very concerned about the operation and effect of the proposed provisions of the Bill which, if enacted, would adversely affect their viability and the development of local creative industries. On the anti-circumvention provisions and other controversial issues arising from the major proposals under the Bill which had been discussed at previous meetings, members urged the Administration to maintain discussion with the stakeholders to see if some consensus could be reached with a view to narrowing down their differences so that the legislative proposals, if enacted, would be generally acceptable to the public at large.

9. In response, the Administration advised that the Bill sought to implement proposals to enhance copyright protection and to make the copyright exemption regime more flexible having regard to the interests of copyright owners and users. The Administration was fully aware that copyright owners demanded for more protection of their works and were not fully content with some of the proposals under the Bill. The Administration would maintain dialogue with them and the outcome of the discussion would be reported to the Bills Committee. Nonetheless, it might not be possible to work out a formulation that met the demands of owners in full having regard to the need to balance the community's need for reasonable use of copyright works. To facilitate follow-up action by the Bills Committee, the Chairman requested the Administration to refer to the list of "Issues requiring follow-up action/consideration by the Administration"

and provide a report in due course on the progress on the outcome of its discussion with stakeholders on issues on which further consultation /discussion was required.

Further meeting with deputations

10. On Ms Audrey EU's suggestion to invite deputations to provide further views on the Bill and meet with them, the Chairman suggested that as a series of meetings had been scheduled for discussion of the remaining issues listed in the major proposals under the Bill (LC Paper No. CB(1) 1513/05-06(02)), the Bills Committee should follow the agreed work plan. The Bills Committee would then consider the outcome of the Administration's discussion with stakeholders, as well as the Administration's response to the outstanding issues in the list of "Issues requiring follow-up action/consideration by the Administration". It would then decide on whether it would be necessary to invite deputations to provide further views on the Bill and meet with them before the commencement of clause-by-clause examination of the Bill. Members agreed.

Arrangements for the next meeting

11. Members agreed that the 11th meeting would be held on Wednesday, 4 October 2006 at 10:45 am. The Bills Committee would proceed to discuss "liberalization in the use of parallel imports" at the meeting.

IV Any other business

12. There being no other business, the meeting ended at 3:36 pm.

Council Business Division 1
Legislative Council Secretariat
11 October 2006

**Proceedings of the tenth meeting of the
Bills Committee on Copyright (Amendment) Bill 2006
on Thursday, 21 September 2006, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000525	Chairman	<p>(a) Confirmation of the minutes of the seventh, eighth, and ninth meetings on 19 June, 6 and 19 July 2006 (LC Paper Nos. CB(1) 1984/05-06, CB(1) 2063/05-06 and CB(1) 2137/05-06)</p> <p>(b) The Chairman informed members of the following developments:</p> <p>(i) the schedule of the eight additional meetings had been issued to members on 17 August 2006 (LC Paper No. CB(1)2133/05-06); and</p> <p>(ii) on “fair dealing” for purposes of public administration, the Bills Committee had requested the Administration to consult the Legislative Council and the Judiciary Administrator on the need to include the Legislative Council and the Judiciary under proposed section 54A and to explain to them the operation and effect of new section 54A.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration was consulting the two organizations and would revert to the Bills Committee in due course.</p>	
000526 – 000840	Dr YEUNG Sum Administration Secretariat	<p>(a) Dr YEUNG Sum's enquiry on whether the drafting on knowledge of copyright infringement under proposed sections 273A and 273B of the Bill would be improved to address deputations' concern</p> <p>(b) The Administration's advice that it was still considering whether amendments should be made to the relevant proposed provisions to address deputations' concerns about the difficulty to prove the mental state of the defendant. If so, the Administration would draft Committee Stage Amendments for the proposal and revert to the Bills Committee.</p> <p>(c) The Clerk's advice that the issue concerned had been included in the list of "Issues requiring follow-up action/consideration by the Administration" (LC Paper No. CB(1) 2113/05-06(01)). The Secretariat would update the list and circulate the Administration's response to members for consideration and follow-up</p>	

Time Marker	Speaker	Subject(s)	Action Required
		once it was available. Draft amendments submitted by the Administration would be addressed upon the commencement of the clause-by-clause examination.	
000841 – 005449	Chairman Ms Audrey EU Mr Ronny TONG Dr YEUNG Sum Administration	(a) The Administration's briefing on its response to deputations' submissions on circumvention of technological measures for copyright protection as stated in paragraphs 8.8 to 12.1 of its paper (LC Paper No. CB(1) 1982/05-06(01)) (b) Discussion on consultation with stakeholders and further meeting with deputations (c) The Administration's advice on the issue on exceptions for parallel imports	
005450 – 010129	Administration Dr YEUNG Sum Chairman	The Bills Committee's decision on further meeting with deputations	The Administration to follow up as stated in paragraph 9 of the minutes
010130 – 010510	Chairman Administration	The Administration's briefing on its response to deputations' submissions on issues relating to rights management information (LC Paper No. CB(1) 1982/05-06(02))	

Time Marker	Speaker	Subject(s)	Action Required
010511 – 010515	Chairman	Arrangements for the next meeting	

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