

立法會
Legislative Council

LC Paper No. CB(1)204/06-07
(These minutes have been seen
by the Administration)

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Bills Committee on Copyright (Amendment) Bill 2006

**Minutes of the eleventh meeting
held on Wednesday, 4 October 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 Bernard CHAN, GBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon EU Yuet-mee, Audrey, SC, JP
Hon FANG Kang, Vincent, JP
Hon LI Kwok-ying, MH, JP
Hon LAM Kin-fung, Jeffrey, SBS, JP
Hon LEUNG Kwan-yuen, Andrew, SBS, JP
Hon WONG Ting-kwong, BBS
Hon LAU Sau-shing, Patrick, SBS, JP
- Members absent** : Dr Hon YEUNG Sum
Dr Hon WONG Yu-hong, Philip, GBS
Hon Ronny TONG Ka-wah, SC
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 Government Counsel
Department of Justice

Ms Rayne CHAI
Senior Government Counsel
Department of Justice

Mr Y K TAM
Assistant Commissioner (Intelligence and Investigation)
Intellectual Property Investigation Bureau
Customs and Excise Department

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 Meeting with the Administration

Liberalization in the use of parallel imports

LC Paper No. CB(1)1437/05-06(06) -- Administration's response to deputations' views raised at the meeting on 8 May 2006 : Parallel importation

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

2. On liberalization in the use of parallel import, members noted that the Administration had proposed to further liberalize parallel importation by shortening the criminal liability period from the existing 18 months to nine months (amended section 35(4)(b) in clause 7(2)); and by removing the civil and criminal liability pertaining to the importation and possession for use of parallel imports of copyright works by all business end-users except those for commercial dealing purposes, or for public showing of movies, television dramas, musical sound recordings and musical visual recordings (other than by educational establishments and libraries) (new sections 35B and 229A in clauses 8 and 45).

Liberalization of parallel imports for business end-use

3. The Hong Kong Comics and Animation Federation Ltd (HKCAF) was concerned that the proposed liberalization would enable comic book tea houses to source parallel imported items for on-the-spot reference under the name of "business end-use". The Administration advised that it would consider HKCAF's view in conjunction with the comic book industry's concern, including whether 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. The Administration would revert to the Bills Committee on this point in due course.

Admin

4. A member opined that the Administration, when reviewing the issue of rental rights for comic books, should bear in mind the need to avoid hampering the free flow of information or stifling the operation of small enterprises.

Meaning of "parallel imported copy"

5. In relation to the meaning of "parallel imported copy", members noted that by virtue of section 35(3) of the Copyright Ordinance (CO), a copy of a work would be regarded as an infringing copy if it had been or was proposed to be imported into Hong Kong; and its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive

licence agreement relating to that work. Under the existing CO, importation (other than for private and domestic use) and commercial dealing in a parallel imported copy of a copyright work (except computer software) that had been or was proposed to be imported into Hong Kong within 18 months of the first publication of the work would attract criminal liability. In addition, possession of a parallel imported movie, television drama, musical sound or visual recording for the purpose of or in the course of any trade or business was currently a criminal offence if the work had been published for not more than 18 months. If a copyright work had been published for more than 18 months, the above acts would only attract civil liability.

Enforcement action and prosecution against illegal parallel importation of copyright works

6. Members enquired about enforcement and prosecution difficulty, if any. The Administration advised that for prosecution action against parallel importation of copyright works to be initiated, it was necessary to obtain, amongst others, direct evidence to prove the following:

- (a) the copy in question was imported into Hong Kong; and
- (b) the copy in question was made abroad by a licensed manufacturer who was licensed to make the copy in the place where it was made, but who did not have the right to make the copy in Hong Kong.

To substantiate (a), it was necessary to seek the assistance of the overseas manufacturer who actually made the copy in question to prove that the copy was made by him since most of those cases were detected at retail shops but not at the import and export level such as at the control points. To substantiate (b), it was necessary to seek the assistance of copyright owners to confirm that the person identified in (a) above was licensed to make copies of the work overseas but not in Hong Kong. Where there was more than one copyright owner for the work, each of the copyright owners was required to give a witness statement to confirm that he did not grant the right of making the copy in Hong Kong to the manufacturer in question. They were also required to testify in court if their statements were challenged by the defendant.

7. The Administration informed members that local licensees had difficulty in obtaining direct evidence from the overseas manufacturer particularly where the two parties had no contractual relationship with each other. In addition, it might not always be in the commercial interest of the overseas manufacturer to prohibit copies which it manufactured from distribution in another territory. Hence, there was no incentive for the overseas manufacturer to assist the local licensee.

8. On the enforcement situation, members noted that the Customs and Excise Department had received 54 complaints alleging the sale of parallel imported

copies of copyright works since 2002. Arising out of these complaints, three cases went to trial with one convicted and two acquitted. Most of the complaints were not pursuable primarily due to the difficulties in securing co-operation from overseas licensees and copyright owners.

Members' views on criminal enforcement against illegal parallel importation

9. On the proposed shortening of the period of criminal liability for parallel importation from 18 to nine months, members noted that the legislative proposal, if enacted, might result in a shorter timeframe for the copyright owners to establish a case for the enforcement authority to follow up. Some members raised doubt as to whether the Administration had taken into account the enforcement problems when formulating the proposals to liberalize parallel importation. The Administration responded that the proposed liberalization was in response to the community's aspiration for greater ease in access to parallel imported copyright works. Enforcement difficulty in relation to parallel importation was a separate issue. Members suggested that the Administration should review the existing provisions on the evidence required for criminal prosecution to see if the difficulty in substantiating an offence could be suitably alleviated.

Admin

10. In response to a member's enquiry on whether shortening the criminal sanction period would mean less protection for copyright owners, the Administration reiterated that the currently proposed nine-month period had the support of the educational bodies, trade organizations and the Consumer Council. However, the Administration was fully aware of the concerns of copyright owners, in particular those in the publication, comic book, film and music industries and would continue to engage them in positive dialogue. The Administration would carefully consider whether the currently proposed duration was appropriate before reverting to the Bills Committee.

Admin

11. For criminal cases relating to illegal parallel importation, the Administration advised that direct evidence from copyright owners and overseas manufacturers was required to prove that the copy in question was an infringing copy under section 35(3) of CO. The Administration acknowledged that there were difficulties in securing the necessary assistance from overseas manufacturers while some copyright owners, in particular the overseas ones, might find it too burdensome to render assistance for satisfying the evidential requirements under existing section 35(3) of CO. Noting some members' concern, the Administration advised that it would consider whether amendments should be made to the relevant provisions in CO with a view to facilitating enforcement and prosecution against illegal parallel importation. The objective was to provide facilitation measures within the existing framework without making changes to the fundamental issue of what constituted parallel importation. In this connection, the Administration would also make reference to overseas regimes, such as the statutory requirements under the criminal and civil provisions of the copyright legislation in Australia. In reply to the Chairman, the Administration said that if necessary, it would introduce

such amendments in the context of the current Bill and the Bills Committee would be duly informed.

12. Noting the difficulty of securing the attendance of overseas witnesses at court hearings, a member suggested that the Administration should explore the feasibility or admissibility of using video-link evidence from overseas witnesses. The Administration took note of the member's suggestion.

Parallel importation of trade mark goods

13. In response to the Chairman's enquiry, the Administration confirmed that there were no restrictions against parallel importation of trade mark goods under the Trade Marks Ordinance (Cap. 559).

Arrangements for the next meeting

14. Members noted that the 12th meeting of the Bills Committee originally scheduled for 20 October 2006 at 10:45 am would clash with the policy briefings on the Chief Executive's Policy Address 2006/2007 by Bureau Secretaries. In this connection, they agreed that the meeting be re-scheduled to Monday, 23 October 2006 at 8:30 am. The Bills Committee would proceed to discuss issues relating to "improving enforcement efficiency and operation of the Copyright Ordinance and other views" at the meeting.

II Any other business

15. There being no other business, the meeting ended at 12:01 pm.

Council Business Division 1
Legislative Council Secretariat
31 October 2006

**Proceedings of the eleventh meeting of the
Bills Committee on Copyright (Amendment) Bill 2006
on Wednesday, 4 October 2006, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000131 – 002649	Chairman Administration Mr LI Kwok-ying Mr CHAN Kam-lam	The Administration's briefing on its response to deputations' views on parallel importation raised at the meeting on 8 May 2006 and the revision in its paper (LC Paper No. CB(1) 1437/05-06(06))	The Administration to follow up as stated in paragraph 3 of the minutes
002650 – 011319	Chairman Administration Mrs Selina CHOW Ms Audrey EU Mr CHAN Kam-lam Ms Margaret NG Mr WONG Ting-kwong Mr Vincent FANG	<p>(a) The Administration's briefing on its paper tabled at the meeting in relation to the issue raised by the Bills Committees at the meeting on 8 May 2006 on the enforcement action taken on criminal cases concerning parallel imported copies of copyright works (subsequently issued vide LC Paper No. CB(1) 2302/05-06(06) on 5 October 2006)</p> <p>(b) The music and film industries' concern that pirated copies were often disguised as parallel imports and relaxation would encourage piracy activities</p> <p>(c) Discussion about cases involving copyright piracy rather than parallel imported copies and enforcement statistics on parallel imported copies of copyright works since 2002</p>	The Administration to follow up as stated in paragraphs 10 and 11 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		(d) Direct evidence required to initiate prosecution action against parallel importation of copyright works (e) Period of criminal liability for parallel importation (f) Overseas provisions on parallel imports of copyright works	
011320 – 011535	Chairman	Arrangements for the next meeting	

Council Business Division 1
Legislative Council Secretariat
31 October 2006