

立法會
Legislative Council

LC Paper No. CB(1)290/06-07
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/05/1

Bills Committee on Copyright (Amendment) Bill 2006

**Minutes of the twelfth meeting
held on Monday, 23 October 2006, 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 Bernard CHAN, GBS, JP
Hon CHAN Kam-lam, SBS, JP
Dr Hon YEUNG Sum
Hon Audrey EU Yuet-mee, SC, JP
Hon LI Kwok-ying, MH, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : Dr Hon Philip WONG Yu-hong, GBS
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Vincent FANG Kang, JP
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 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)27/06-07 -- Minutes of meeting held on 21 September 2006

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

2. The minutes of the meeting held on 21 September 2006 were confirmed.

II Papers issued since last meeting

LC Paper No. CB(1)117/06-07(01) -- Updated list of "Issues requiring follow-up action/consideration by the Administration" for meetings of the Bills Committee held from April to September 2006

3. Members noted that the updated list of "Issues requiring follow-up action/consideration by the Administration" for meetings of the Bills Committee held from April to September 2006 had been issued for members' reference.

III Meeting with the Administration

Improving enforcement efficiency and operation of the Copyright Ordinance and other views

LC Paper No. CB(1)2042/05-06(01) -- The Administration's response to deputations' views raised at the meeting on 8 May 2006 : Improving enforcement efficiency and operation of the Copyright Ordinance and other views

Time limit for prosecution

4. On the time limit for prosecution, Dr YEUNG Sum and Mrs Selina CHOW expressed their support in principle for the Administration's proposed amendment to section 120A of the Copyright Ordinance (CO) as it would facilitate enforcement and prosecution actions. Members noted the Administration's explanation that in the light of the frequent need to obtain evidence from overseas copyright owners; the growing complexity of copyright-related offences; and possible involvement of

triad and syndicate elements in some individual cases, the current time limitation provision in the CO (namely, one year from the date of discovery of the offence or three years from the date of commission of the offence whichever is the earlier), was considered too restrictive from the enforcement point of view. Hence, the Administration had proposed to remove the "one year" limb.

Proof of absence of licence from copyright owners

5. The Administration advised that when prosecuting a criminal act (e.g. selling infringing copies) under section 118 of CO, the prosecution had to prove that the offending acts had been done without the licence of the copyright owner. As it might be difficult to secure the attendance of the copyright owner in court, particularly where he was overseas, the Administration proposed to introduce new provisions to section 121 of CO so that an affidavit might be sworn stating on behalf of the copyright owner that he had not licensed the defendant to do the offending acts. Should the defendant choose to challenge the affidavit, he would have to show cause. It was hoped that this proposal would help ease prosecution.

6. Members noted that the Business Software Alliance had suggested the Administration to amend sections 121(2A), (2B) and (2C) of CO so that these provisions could refer to the absence of authorization rather than a licence. This was because some industries did not issue licences to resellers or sub-distributors but provided general authorization to them to distribute legitimate copies of their works. The Law Society of Hong Kong (the Law Society) also held a similar view on this point. The Law Society added that a licence had technical connotations and might not for example cover a sub-licence. Mrs Selina CHOW requested the Administration to take note of the aforesaid concerns and considered whether the drafting of the provisions should be improved.

7. In response, the Administration advised that the word "licence" in the proposed amendments was in line with that of the respective offences which referred to "lack of licence" as an element of offence under section 118 of CO. A licence, in the present context, meant no more than a permission to do an act restricted by copyright. The Administration confirmed that according to its legal advice, there was no difference between "authorization" and "licence". It was the substance rather than the form which was of material relevance. On the question of "sub-licence", the Administration agreed that technically, a sub-licence might be granted by the licensee rather than by the copyright owner. It would consider if amendments should be made to the provisions to address the Law Society's concern.

Admin

Recognition of foreign copyright registration certificates

8. Members noted that the Administration had completed a study on the feasibility of establishing a local copyright register in Hong Kong and further consulted copyright owners on the proposal to prescribe overseas copyright

registers. The study revealed that it would not be cost-effective to set up a copyright register in Hong Kong. The Administration had put on hold the proposal to prescribe overseas copyright registers in view of the divergent views of copyright owners towards the proposal.

9. The Chairman informed the meeting that the Panel on Commerce and Industry had discussed the aforesaid issue at its meeting on 18 July 2006. Panel members raised no objection to the Administration's proposal not to pursue, for the time being, the prescription of overseas copyright registers. Nevertheless, the Administration had been requested to review the operation of section 121 of CO and the efficacy of the administrative measures, say in a few years' time, and where appropriate, report the findings to the Panel.

Proposal to extend the term of copyright protection

10. The Administration advised that the current provision under the CO (namely, that copyright would expire at the end of the period of 50 years from the end of the calendar year in which the author died or the copyright work was released) was in line with the minimum standard stipulated in the Berne Convention and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

11. On the Motion Picture Association (MPA)'s proposal to extend the existing term of copyright protection by 20 years, the Administration observed that given the significant implications of the proposal, and the fact that this was not included in the last consultation exercise on the review of the CO, it was necessary to conduct further public consultation before any proposed change was pursued. Ms Audrey EU suggested that apart from Hong Kong's obligations under international agreements, the Administration should take into account the impact that the proposed change might have on investments and the further development of local creative industries, including the film industry.

12. According to the Administration, some overseas jurisdictions including the United States, Australia, the European Union, Japan and Singapore had already extended the term of copyright protection for certain categories of copyright works to 70 years while the Mainland, South Korea, the Philippines, Vietnam and New Zealand had maintained the existing duration of copyright. According to the submissions made by MPA, there were some countries in Central America and Africa which had also extended the term of their copyright protection. In this connection, DR YEUNG Sum requested the Administration to provide relevant information on overseas practices and developments for the Bills Committee's reference.

Admin

Copyright protection in the digital environment

13. Mrs Selina CHOW opined that public consultation should be conducted as soon as possible on the subject of copyright protection in the digital environment.

In response, the Administration advised that it planned to issue a consultation document on the subject by the end of 2006.

(Post-meeting note: The issue had been included in the Panel's list of outstanding items for discussion and would be followed up by the Panel.)

IV Any other business

LC Paper No. CB(1)38/06-07(01) -- Proposed approach to deal with clause-by-clause examination of the Bill

Proposed approach to deal with clause-by-clause examination of the Bill

14. The Chairman sought members' views on the Administration's proposed approach to deal with clause-by-clause examination of the Bill as follows:

- (a) to save time, the Bills Committee might start examining two less controversial clauses, namely, clauses 11 and 53 of the Bill, which related to the introduction of copyright exemption for persons with a print disability and moral rights for certain performers; and
- (b) to examine the remaining clauses together with the Administration's proposed Committee Stage Amendments (CSAs) when available.

15. The Administration supplemented that the proposed approach would enable better time management as the examination of the two relatively less controversial clauses could proceed in parallel with the Administration's discussion with stakeholders and preparation of the necessary CSAs. Members noted that the validity period of the Copyright (Suspension of Amendments) Ordinance 2001 would expire on 31 July 2007. However, they had reservation about the Administration's proposal to proceed to examine clauses 11 and 53 of the Bill pending finalization of major policy issues and the outcome of the Administration's negotiations with stakeholders. Assistant Legal Adviser 5 advised in response to members that it was the usual practice for a Bills Committee to first discuss the general principles and policy issues before proceeding to examine the bill clause by clause and it would be for the Bills Committee to decide whether it should proceed to examine the aforesaid clauses of the Bill as proposed by the Administration instead of following the usual practice.

16. After discussion, members agreed that the Bills Committee should follow the usual practice of completing deliberation on the general principles and policy issues first before proceeding to examine the Bill clause by clause. In this connection, the Administration was requested to report its proposed way forward to deal with the outstanding issues and the progress or outcome of its continued

Admin

discussions with the stakeholders, with particular reference to the list of "Issues requiring follow-up action/consideration by the Administration" prepared by the Secretariat. Some members referred to the grave concerns maintained by the publication, comic book, film and music industries and recapped that the Bills Committee might need to consider whether to meet with the deputations again to hear their further views on the Bill.

17. The Administration assured members that it would maintain positive dialogue with stakeholders to try and further narrow down the differences on controversial proposals under the Bill. Nonetheless, the Administration also pointed out that the best endeavours on the part of the Administration might not be able to yield the consensus that individual LegCo Members looked for, bearing in mind the need to strike a reasonable balance between the demands of copyright owners and the community's claim for legitimate use of copyright works.

18. To facilitate the work of the Bills Committee, Ms Audrey EU urged the Administration to prepare the necessary CSAs in parallel so that they could be ready for members' early consideration. In response, the Administration advised that it would strive to submit the CSAs to the Bills Committee as soon as practicable.

Arrangements for the next meeting

19. The Chairman said that he would discuss with the Administration and sort out the meeting arrangement, including whether the meeting originally scheduled for 2 November 2006 should be re-scheduled. Once the schedule for the next meeting was confirmed, the Secretariat would issue the notice of meeting and agenda.

(Post-meeting note: The notice of the next meeting to be held on 20 November 2006 at 8:30 am was issued to members on 25 October 2006 vide LC Paper No. CB(1)156/06-07.)

20. There being no other business, the meeting ended at 10:15 am.

Council Business Division 1
Legislative Council Secretariat
16 November 2006

**Proceedings of the twelfth meeting of the
Bills Committee on Copyright (Amendment) Bill 2006
on Monday, 23 October 2006, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000520	Chairman	Confirmation of the minutes of the tenth meeting on 21 September 2006 (LC Paper No. CB(1) 27/06-07)	
000521 – 000815	Chairman Administration	The Administration's briefing on its response to deputations' views raised at the meeting on 8 May 2006: improving enforcement efficiency and operation of the CO and other views (LC Paper No. CB(1)2042/05-06(01))	
000816 – 002759	Chairman Dr YEUNG Sum Ms Audrey EU Mr LI Kwok-ying Mrs Selina CHOW Ms Margaret NG Administration	(a) Members' support in principle for the proposed amendment to section 120A of CO on time limit for prosecution (b) The Administration's advice that according to past experience, it was very rare that an offence was only discovered after two years from the date of commission of the offence. In fact, many of the offences were discovered by the Customs and Excise Department within one year from the date of commission of the offence.	
002800 – 003759	Chairman Dr YEUNG Sum Mr LI Kwok-yin	The Administration's advice that the proposed amendment to section 121 of CO on particulars	

Time Marker	Speaker	Subject(s)	Action Required
	Ms Audrey EU Administration	of the author in affidavit evidence was sufficient to deal with cases of joint authorship and transfer of titles	
003800 – 005145	Chairman Mrs Selina CHOW Administration	Discussion on the proposed amendment to section 118 of CO on proof of absence of licence from copyright owners	The Administration to follow up as stated in paragraph 7 of the minutes
005146 – 05824	Chairman Dr YEUNG Sum Administration	Members noted the Administration's decision that it had put on hold the proposal to prescribe overseas copyright registers in view of the divergent views of copyright owners towards the proposal and that it would not establish a local copyright register	
05825 – 010359	Ms Audrey EU Dr YEUNG Sum Chairman Administration	Discussion on the Motion Picture Association's proposal to extend the existing term of copyright protection by 20 years which was outside that the scope of the current Bill	The Administration to follow up as stated in paragraph 12 of the minutes
010400 – 010516	Chairman Administration Ms Selina CHOW	The Administration's advice that a consultation exercise on the review of copyright protection in the digital environment would be launched by the end of 2006	
010517 – 010654	Chairman Administration	The Administration's response to the Phonographic Performance (South East Asia) Ltd's proposed amendment to limit the scope of the permitted act in section 81 of CO	
010655 - 011239	Chairman Administration	(a) The Administration's clarification of section 82 of	

Time Marker	Speaker	Subject(s)	Action Required
		<p>CO in response to PCCW Limited's proposed amendment relating to the re-transmission of television broadcasts signal</p> <p>(b) The Chairman's suggestion that the Administration should maintain communication with PCCW to explain its stance direct</p> <p>(c) The Administration's response to Mr Yip Ming's suggested amendment to item 15 of Schedule 1 of the Bill</p>	
011240 – 013939	Chairman Administration Ms Audrey EU Dr YEUNG Sum Ms Margaret NG ALA5 Mr CHAN Kam-lam	<p>(a) Discussion on the proposed approach to deal with clause-by-clause examination of the Bill</p> <p>(b) Members' decision that the Bills Committee should follow the ongoing practice of completing deliberation on the general principles and policy issues of the Bill before proceeding to examine the Bill clause by clause</p>	The Administration to follow up as stated in paragraph 16 of the minutes
013940 - 014230	Chairman	Arrangements for the next meeting	