

**立法會**  
**Legislative Council**

LC Paper No. LS95/05-06

**Section 54 of Copyright Ordinance (Cap. 528) and  
Proposed section 54A of Copyright (Amendment) Bill 2006**

At the meeting of the Bills Committee of the Copyright (Amendment) Bill 2006 held on 6 July 2006, the Legal Service Division was asked to provide more information on the interpretation of the scope of “the proceedings of the Legislative Council” as provided in section 54 of the Copyright Ordinance (Cap. 528) (“CO”).

2. Section 54 of CO reads as follows –

**“54. Legislative Council and judicial proceedings**

(1) Copyright is not infringed by anything done for the purposes of the proceedings of the Legislative Council or judicial proceedings.

(2) Copyright is not infringed by anything done for the purposes of reporting such proceedings, but this is not to be construed as authorizing the copying of a work which is itself a published report of the proceedings.”

3. Section 54 of CO is modelled on section 45 of the Copyright, Designs and Patent Act 1988 of the UK (“the UK Act”) which provides that copyright is not infringed by anything done for the purposes of parliamentary or judicial proceedings. The term “parliamentary proceedings” in the context of copyright law is not defined in the UK Act. Neither is the term “Legislative Council proceedings” defined in CO or any other relevant Hong Kong legislation.

**“Parliamentary proceedings” - UK Position**

4. No attempt has been made to give a comprehensive definition to the term “parliamentary proceedings” in the UK (*Halsbury’s Laws of England*, 4<sup>th</sup> ed., Vol. 34, para. 1008). The term “proceedings in parliament” has received judicial attention in not only the UK but also in other common law jurisdictions but comprehensive lines of decision have not emerged and indeed it has been concluded that an exhaustive definition could not be achieved (*Rost v. Edwards* [1990] 2 QB 478).

5. Nevertheless, the authors of *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (23<sup>rd</sup> ed.) (2004), when examining the extent of protection or privileges of members of parliament in the UK, come to the view that a broad description of the term "parliamentary proceedings" is not difficult to arrive at. According to them, "the primary meaning of proceedings, as a technical parliamentary term, is some formal action, usually a decision, taken by the House in its collective capacity which is extended to the forms of business in which the House takes action, and the whole process, the principal part of which is debate, by which it reaches a decision." An individual member of parliament takes part in a proceeding usually by speech, but also by various recognized forms of formal action, such as voting, giving notice of a motion or presenting a petition or report from a committee, most of such actions being time-saving substitutes for speaking. Officers of the House take part in its proceedings principally by carrying out its orders, general or particular (at p. 111).

6. The Select Committee on the Official Secrets Act in 1938-39 was of the opinion that the term "proceedings" [of parliament] covered both the asking of a question and the giving of written notice of the question, and included everything said or done by a member in the exercise of his functions as a member in either House or in a committee, as well as everything said or done there in the transaction of parliamentary business (ibid. *Erskine May*, p. 111-112 and *Halsbury's*, Vol. 34, para. 1008).

### ***"Legislative Council proceedings" - Hong Kong Position***

7. Under section 2 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("P&P Ordinance"), a "committee" means a standing committee or select committee or any other committee (including a panel) of the Legislative Council. Since panels and committees are established by the Legislative Council and they have to report to the Legislative Council on their work, they should be regarded as part of the proceedings of the Legislative Council. The position is analogically similar to that of UK and the term "proceedings of the Legislative Council" includes everything said or done by a member in the exercise of his functions as a member in either the Legislative Council or in a committee, as well as everything said or done there in the transaction of Legislative Council business.

8. In the UK, however, letters to the Parliamentary Commissioner for Standards (who is appointed by the House of Commons and is an officer of the House) regarding complaints against members do not form part of the parliamentary proceedings and are not privileged unless and until the Commissioner decides that the case has sufficient substance to merit further inquiry and he may eventually decide to report to the Committee for Standards and Privileges (ibid., *Erskine May*, p. 494).

9. The Complaints Division of the Legislative Council, as it is, receives and handles complaints from Hong Kong residents in the exercise of its functions or powers as provided under Article 73(8) of the Basic Law. By convention and practice, the Complaints Division has always been operating in an informal manner and the member handling the complaint may at his discretion reject the complaint without further reference or report to the Legislative Council or any Panel or committee. It seems that the situation bears little resemblance to the practical examples of “parliamentary proceedings” as given in Erskine May and hence section 54 of CO arguably does not apply.

10. Where a complaint is referred by the Complaints Division to a Panel or committee or where a complaint is handled in a formal manner either by way of petition under Rule 20 or motion under Rule 29 of the Rules of Procedure, and where such complaint is discussed by members of the Legislative Council and a decision is to be reached thereon, such activities would become part of the “proceedings of the Legislative Council”. In such a case, the copyright exemption provided in section 54 of CO applies.

Prepared by

Kitty Cheng  
Assistant Legal Adviser  
Legislative Council Secretariat  
14 July 2006