

立法會
Legislative Council

LC Paper No. CB(1)2081/08-09
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/08

Bills Committee on Copyright (Amendment) Bill 2009

**Minutes of the second meeting on
Tuesday, 9 June 2009, at 2:30 pm
in the Chamber of the Legislative Council Building**

Members present : Dr Hon Samson TAM Wai-ho, JP (Chairman)
Dr Hon Margaret NG
Hon CHAN Kam-lam, SBS, JP
Hon LEUNG Yiu-chung
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Cyd HO Sau-lan
Hon Paul TSE Wai-chun

Members absent : Hon Albert HO Chun-yan
Hon Miriam LAU Kin-yee, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC

Public officers attending : Commerce and Economic Development Bureau

Mr Christopher K B WONG
Deputy Secretary for Commerce and Economic Development
(Commerce and Industry)

Ms Bonnie YAU
Principal Assistant Secretary for Commerce and Economic
Development (Commerce and Industry)

Mr Bill LI
Assistant Secretary for Commerce and Economic
Development (Commerce and Industry)

Intellectual Property Department

Ms Ada LEUNG
Assistant Director of Intellectual Property

Mr Thomas TSANG
Senior Solicitor

Department of Justice

Mr Michael LAM
Senior Assistant Law Draftsman

Ms Rayne CHAI
Senior Government Counsel

Customs and Excise Department

Mr Ben HO
Head of Intellectual Property Investigation Bureau

Attendance by invitation : The Hong Kong Copyright Licensing Services Limited

Ms Joanne LAW Shuk-lan
Business Manager

Hong Kong Economic Times

Mr Eric LAI Chun-fai
Circulation Director

Sing Tao News Corporation Limited

Mr WONG Wan-fong
General Manager, Content Sales

The Hong Kong Copyright Licensing Association

Ms Judy CHENG Lai-chu
Chairman

New Media Group Holdings Limited

Mr CHEUNG Wai-lun
Multi-Media Development Director

Hong Kong Publishing Federation

Mr LEE Ka-kui
Representative

Anglo-Chinese Textbook Publishers Organisation and
Hong Kong Educational Publishers Association

Mr SHEK Kwok-kei
Representative

Hong Kong and International Publishers' Alliance

Mr LI Hing-sang
Convenor (Hong Kong)

Hong Kong Reprographic Rights Licensing Society

Mr LEE Wai-wing
Director

Hong Kong Reprographic Rights Licensing Society

Ms Dillys YU Ka-po
General Manager

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Annette LAM
Senior Council Secretary (1)3

I. Meeting with deputations and the Administration

Meeting with deputations

1. The Hong Kong Copyright Licensing Services Limited
2. Hong Kong Economic Times
3. Sing Tao News Corporation Limited
4. The Hong Kong Copyright Licensing Association
(LC Paper No. CB(1)1819/08-09(01) – submission)
5. New Media Group Holdings Limited
6. Hong Kong Publishing Federation
(LC Paper No. CB(1)1899/08-09(01) – submission)
7. Anglo-Chinese Textbook Publishers Organisation
Hong Kong Educational Publishers Association
(LC Paper No. CB(1)1899/08-09(02) – submission)
8. Hong Kong and International Publishers' Alliance
(LC Paper Nos. CB(1)1834/08-09(01) and CB(1)1899/08-09(03) –
submissions)
9. Hong Kong Reprographic Rights Licensing Society
(LC Paper Nos. CB(1)1834/08-09(02) and CB(1)1899/08-09(04) –
submissions)

Submissions from deputations not attending the meeting

1. The Law Society of Hong Kong
(LC Paper No. CB(1)1819/08-09(02) – submission)
2. Federation of Hong Kong Industries
(LC Paper No. CB(1)1834/08-09(03) – submission)
3. The Chinese Manufacturers' Association of Hong Kong
(LC Paper No. CB(1)1834/08-09(04) – submission)

Meeting with the Administration

(LC Paper No. CB(3)525/08-09 -- The Bill

LC Paper No. CB(1)1638/08-09(01) -- Marked-up copy of the Bill

prepared by the Legal Service Division

- Ref: CITB 07/09/22 -- Legislative Council Brief on "Copyright (Amendment) Bill 2009" issued by the Commerce and Economic Development Bureau
- LC Paper No. LS59/08-09 -- Legal Service Division Report
- LC Paper No. CB(1)1639/08-09(01) -- Background brief prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1639/08-09(02) -- Letter from Assistant Legal Adviser to the Administration dated 11 May 2009
- LC Paper No. CB(1)1639/08-09(03) -- Administration's paper dated 18 May 2009 in response to letter from Assistant Legal Adviser as set out in LC Paper No. CB(1)1639/08-09(02)
- LC Paper No. CB(1)1834/08-09(05) -- Letter from Assistant Legal Adviser to the Administration dated 20 May 2009
- LC Paper No. CB(1)1834/08-09(06) -- Administration's paper dated 4 June 2009 in response to letter from Assistant Legal Adviser as set out in LC Paper No. CB(1)1834/08-09(05))

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

- Admin 2. At the request of the Bills Committee, the Administration undertook to:
- (a) provide a written response to the views expressed by deputations at the meeting and in the written submissions received;
 - (b) account for the rationale and basis for the definition of an "infringing page" as "a side of a page" in section 1(1) of the new Schedule 1AA in clause 4 of the Bill;

- (c) set out and illustrate, by example where appropriate, how the numeric limits would operate under the relevant provisions in the Bill, including the circumstances in which the copying and distribution offence would apply; and
- (d) provide information on experience of other relevant jurisdictions (including the United States, Taiwan and others) on prescribing a dollar value as numeric limits/thresholds in determining whether a criminal offence for copyright infringement had been committed. In the case that such numeric limits had been subsequently repealed, the reasons for the repeal.

(Post-meeting note: The information provided by the Administration in respect of 2(a) and 2(b) to (d) were circulated to members vide LC Paper Nos. CB(1)1974/08-09(01) and CB(1)1974/08-09(02) respectively on 18 June 2009.)

- Clerk 3. The Clerk was requested to follow up with the Law Society of Hong Kong (LSHK) on their submission to the Bills Committee, and forward the submission received to the Administration for a response.

(Post-meeting note: The Secretariat had written to the LSHK on 15 June 2009 inviting them to provide a submission on the Bill as soon as practicable to facilitate members' discussion at the forthcoming meetings scheduled for 22 June and 7 July 2009.)

II. Any other business

Date of next meeting

- 4. The Chairman reminded members that the next meeting would be held on Monday, 22 June 2009 at 8:30 am.
- 5. There being no other business, the meeting ended at 4:15 pm.

Council Business Division 1
Legislative Council Secretariat
29 June 2009

**Proceedings of the second meeting of
Bills Committee on Copyright (Amendment) Bill 2009
on Tuesday, 9 June 2009, at 2:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000632	Chairman	Opening remarks by the Chairman	
000633 - 000908	Chairman The Hong Kong Copyright Licensing Services Limited	Meeting with deputations Presentation of the following views: - strongly requested that the Copyright (Amendment) Bill be enacted without further delay to safeguard the interests of copyright owners and to combat serious and widespread copyright infringements carried out on a commercial scale.	
000909 - 001108	Chairman Hong Kong Economic Times	Presentation of the following views: - copyright infringing acts (copying and distribution of newspapers reports/articles, and distribution through the Internet and the Intranet) had led to a drop in newspapers circulation and loss in readership, thus seriously affecting the businesses of newspapers publishers. Copyright of computer programmes, movies, television dramas and musical recordings were already protected by the Copyright Ordinance. The scope of business-end user criminal liability should therefore be extended to cover printed works as soon as practicable to provide copyright protection for such works.	
001109 - 001324	Chairman Sing Tao News Corporation Limited	Presentation of the following views: - due to the high legal costs involved in seeking damages through civil proceedings, the current civil liability regime could not provide sufficient protection for copyright owners of printed work. Introduction of business-end user copying and distribution offence in relation to printed works was necessary.	
001325 - 001618	Chairman The Hong Kong Copyright Licensing Association	Presentation of views (LC Paper No. CB(1)1819/08-09(01))	
001619 - 001837	Chairman New Media Group	Presentation of the following views: - it was unfair to exclude the making or distribution of infringing copies of printed works from criminal liability.	

Time marker	Speaker	Subject(s)	Action required
	Holdings Limited	The numeric limits proposed were already a compromise, striking a balance between the interests of copyright owners and business-end users. The criminal provision should be extended to cover Intranet distribution as soon as possible.	
001838 - 002047	Chairman Hong Kong Publishing Federation	Presentation of views (LC Paper No. CB(1)1899/08-09(01))	
002048 - 002331	Chairman Anglo-Chinese Textbook Publishers Organisation and Hong Kong Educational Publishers Association	Presentation of views (LC Paper No. CB(1)1899/08-09(02))	
002332 - 002854	Chairman Hong Kong and International Publishers' Alliance	Presentation of views (LC Paper Nos. CB(1)1834/08-09(01) and CB(1)1899/08-09(03))	
002855 - 003056	Chairman Hong Kong Reprographic Rights Licensing Society	Presentation of views (LC Paper Nos. CB(1)1834/08-09(02) and CB(1)1899/08-09(04))	
003057 - 004508	Chairman Administration Deputations Assistant Legal Adviser (ALA) Dr Margaret NG Mr Andrew LEUNG Mr Paul TSE	<p>The Administration noted deputations' request to apply the copying and distribution offence to distribution of infringing copies through the Intranet. The Administration would continue to discuss with relevant stakeholders on matters including the prescription of numeric limits and the development of suitable licensing schemes in relation to Intranet distribution.</p> <p>Discussion on the impact of copyright infringement on the sales of newspapers</p> <p>Members' enquiry on the following: (a) statistics on the drop in newspapers circulation and loss in readership;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) the estimated percentage of listed companies that would make photocopies of newspapers on a frequent basis in the course of their daily business operation; and</p> <p>(c) the average photocopying volume of customers of the Hong Kong Copyright Licensing Association Limited (HKCLA).</p> <p>Deputations' response as follows:</p> <p>(a) online news had reduced the readership and sales of newspapers which in turn led to a decrease in income from advertisements. Advertisement income from online newspapers was much lower than that from the conventional newspapers;</p> <p>(b) while some websites such as Yahoo had obtained authorization from the copyright owners to post news on their website, a significant number of websites (up to 100 000) had displayed news on their webpages without proper authorization, thus infringing the copyright of the newspapers publisher;</p> <p>(c) while it was a common practice for companies to make copies of newspapers on a regular basis in the daily conduct of their business, only 10.46% of listed companies had obtained authorization under the licensing scheme administered by HKCLA;</p> <p>(d) based on the average photocopying volume of the customers of HKCLA, the proposed numeric limit (a maximum of 500 A4-size pages within any 14-day period) was very loose and was the bottom line acceptable to newspapers and magazines publishers; and</p> <p>(e) free newspapers, online newspapers and conventional newspapers, though different in distribution method, should enjoy the same level of copyright protection. Their intellectual property rights should be respected.</p>	
004509 - 014231	Chairman Administration ALA Dr Margaret NG Mr Andrew LEUNG Mr Paul TSE	<p>Meeting with the Administration</p> <p>Members noted that the Law Society of Hong Kong had yet to put in their submission.</p>	The Administration and the Clerk to follow up as stated in paragraphs 2(a) and 3 respectively

Time marker	Speaker	Subject(s)	Action required
		<p>Discussion on the definition of an "infringing page" as "a side of a page" in section 1(1) of the new Schedule 1AA in clause 4 of the Bill.</p> <p>Discussion on the method for determining the exchange rate of a foreign currency (ALA's letter to the Administration (LC Paper No. CB(1)1834/08-09(05)) and the Administration's response (LC Paper No. CB(1)1834/08-09(06))</p> <p>Members expressed concern about the difficulty in determining whether the numeric limit had been exceeded in a case involving books or specified journals with prices denominated in foreign currencies due to currency fluctuation.</p> <p>The Administration's advice that:</p> <p>(a) prescribing a reference exchange rate published by a defined organization (e.g. the opening indicative counter exchange selling rate published by the Hong Kong Association of Banks) in the Bill would give a greater degree of certainty to both the business end-users and the enforcement agency. The Administration would consider introducing appropriate amendments to the Bill to prescribe the reference exchange rate; and</p> <p>(b) since the infringing acts constituting the offence might take place over a period of time rather than being one-off in nature, the prosecution would, in determining whether the numeric limit had been exceeded in a case involving books or specified journals with prices denominated in foreign currencies, consider all the evidence available, including the timing during which the infringing acts were committed and the exchange rates prevailing during the same material period. Where the enforcement agency could only determine, by circumstantial evidence, the period of time during which the infringing acts were committed (as opposed to the exact time/day at/on which the infringing act was committed), the exchange rate that was most favourable to the defendant would likely be used so as to give the benefit of doubt to the defendant.</p>	<p>of the minutes.</p> <p>The Administration to follow up as stated in paragraph 2(b) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>Discussion on the determination of value of qualifying copies made from books.</p> <p>The Administration's advice that:</p> <ul style="list-style-type: none"> (a) sections 5, 6, 7 and 8 of the new Schedule 1AA in clause 4 provided for the determination of the value of qualifying copies made or distributed in relation to books and specified journals; (b) section 5(3) of the new Schedule 1AA in clause 4 specified that the value of a comparable copy was taken to be (a) the marked retail price of the comparable copy; (b) if the comparable copy had no marked retail price, the recommended retail price recommended by the publisher before any discount was given to traders or consumers; or (c) if the comparable copy had neither a marked retail price nor a recommended retail price, the market value of the comparable copy in so far as it was readily ascertainable; (c) the recommended retail price (often known as “list price”) of most books that were put on sale in the market could be ascertained from the major book-selling websites e.g. the Amazon.com; and (d) protection for copyright works in books and specified journals in general expired at the end of 50 years after the death of the authors. <p>Discussion about enforcement difficulty in adducing sufficient evidence to prove the commission of the offence beyond reasonable doubt.</p> <p>Members' concern about inadvertent breaches by a member of the public in the conduct of his daily life. As infringement would attract criminal liability, the legislation should be sufficiently clear to provide certainty on all relevant issues such as determining the exchange rate of a foreign currency should the prices of a book or specified journal be denominated in foreign currencies, the calculation of the total number of infringing pages in relation to magazines, periodicals and newspapers, the determination of the value of qualifying copies in relation to books and specified journals which involved different editions and reprints, as well as how the 50-year copyright protection period was to be determined.</p> <p>The Administration's advice that:</p> <ul style="list-style-type: none"> (a) the new criminal offence provision would help deter business-end users from making infringing copies of 	<p>The Administration to follow up as stated in paragraph 2(c) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>copyright works for distribution or distributing infringing copies on a regular or frequent basis. While enforcement of the offence would not be free from difficulties, it was considered that there would be cases where successful prosecution could be brought;</p> <p>(b) the proposed numeric limits were drawn up after extensive discussion with the relevant stakeholders having regard to the need to maintain a reasonable balance between the respective interests of copyright owners and business-end users;</p> <p>(c) to simplify and make the numeric limits easily understood by end-users, the originally proposed two-tier system for calculation of the total retail value of a book/specified journal was replaced by a single tier;</p> <p>(d) the numeric limits were considered sufficiently clear and certain for compliance by business-end users and enforcement by enforcement agency; and</p> <p>(e) to avoid inadvertent breaches, the business end-user copying and distribution offence would come into operation only after the Administration had rolled out suitable publicity and public education programmes about the offence and the related directors/partners' liability .</p> <p>Members' enquiry about the experience in other relevant jurisdictions on prescribing a dollar value as numeric limits/thresholds in determining whether a criminal offence for copyright infringement had been committed.</p>	<p>The Administration to follow up as stated in paragraph 2(d) of the minutes.</p>
014232 - 014414	Chairman	Meeting arrangements	