

立法會
Legislative Council

LC Paper No. CB(1)2216/08-09
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/08

Bills Committee on Copyright (Amendment) Bill 2009

**Minutes of the third meeting on
Monday, 22 June 2009, at 8:30 am
in Conference Room A 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 Audrey EU Yuet-mee, SC, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
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 Timothy FOK Tsun-ting, GBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
- 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 Edmond CHENG
Acting Head of Intellectual Property Investigation Bureau

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

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)1975/08-09 -- Minutes of meeting held on 21 May
2009)

The minutes of the meeting held on 21 May 2009 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1)1974/08-09(01) -- Administration's response to views submitted by organizations on the Copyright (Amendment) Bill 2009

LC Paper No. CB(1)1974/08-09(02) -- Administration's paper on operation of the numeric limits and other related matters

Other relevant papers

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)

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

Admin 3. The Administration was requested to:

- (a) consider replacing the words "a side of a page" with "a side of a leaf/sheet" in the definition of "infringing page" in section 1(1) of the new Schedule 1AA in clause 4 of the Copyright (Amendment) Bill 2009 (the Bill);
- (b) set out the elements that constitute the copying and distribution offence under section 119B of the Copyright Ordinance (Cap. 528) and explain the circumstances under which the offence would or would not apply;
- (c) provide information on whether operators of a copying service business and student unions/groups making copies of a copyright work in a printed form in excess of the prescribed numeric limits without authorization of the copyright owners would commit the copying and distribution offence under section 119B of the Copyright Ordinance and/or any other provisions; and

- (d) explain the meaning of the terms "qualifying copy" in section 1(1) of the new Schedule 1AA in clause 4 of the Bill, especially when it related to specified journals, and "comparable copy" in sections 5(2), 7(2) and 8(2) of the new Schedule 1AA in clause 4 of the Bill, and consider if it was appropriate to use the term "qualifying copy" in the Bill.

(Post-meeting note: The information provided by the Administration in respect of (b), (c) and (d) was circulated to members vide LC Paper No. CB(1)2156/08-09(01) on 3 July 2009.)

III. Any other business

Dates of next meeting

4. Members noted that the fourth meeting would be held on Tuesday, 7 July 2009 at 10:45 am to meet with the Administration.
5. There being no other business, the meeting ended at 10:34 am.

Council Business Division 1
Legislative Council Secretariat
9 July 2009

**Proceedings of the third meeting of
Bills Committee on Copyright (Amendment) Bill 2009
on Monday, 22 June 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

| Time marker | Speaker | Subject(s) | Action required |
|---------------|---|---|---|
| 000000-001047 | Chairman Administration | Opening remarks by the Chairman Confirmation of minutes of meeting held on 21 May 2009 | |
| 001048-020317 | Chairman Administration Assistant Legal Adviser (ALA) Dr Margaret NG Mr CHAN Kam-lam Ms Audrey EU Mr WONG Ting-kwong Mr Ronny TONG Ms Cyd HO Sau-lan Mr Paul TSE | <p>Briefing by the Administration on the following-</p> <p>(a) Administration's response to views submitted by organizations on the Bill (LC Paper No. CB(1)1974/08-09(01)); and</p> <p>(b) the operation of the numeric limits and other related matters (LC Paper No. CB(1)1974/08-09(02)).</p> <p>Discussion on the distribution of an infringing copy via e-mail.</p> <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>Dr Margaret NG sought clarification on the elements constituting a copying and distribution offence under section 119B of the Copyright Ordinance (Cap. 528), the determination of the value of a qualifying copy made or distributed in relation to books, and whether the prosecution was required to prove that at the time of the commission of the infringing act, the user knew or had reason to believe that the prescribed numeric limits had been exceeded.</p> <p>The Administration advised that the value of a qualifying copy at the time of the commission of the offence/infringing act would be determined pursuant to sections 5, 6, 7 and 8 of the new Schedule 1AA in clause 4 of the Bill.</p> <p>Mr Ronny TONG and Mr WONG Ting-kwong sought clarification on the method used to adjust the number of infringing pages if the infringing pages were smaller or larger than A4 size, and if the infringing pages embodied an enlarged/a reduced image of an infringing copy, e.g. a news article.</p> | <p>The Administration to follow up as stated in paragraph 3(a) of the minutes.</p> <p>The Administration to follow up as stated in paragraph 3(b) of the minutes.</p> |

| Time marker | Speaker | Subject(s) | Action required |
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| | | <p>The Administration explained that to simplify and make the numeric limits easily understood by end-users, a counting method based on a readily quantifiable unit (i.e. A4 size pages) rather than the number of "copyright work" would be used. If the infringing pages were smaller or larger than A4 size, the number of such infringing pages would be adjusted downward or upward, as the case might be, in proportion to the difference in size between each infringing page and a page of A4 size. So long as a page embodied, whether in whole or in part, an infringing copy of any copyright work in a magazine, periodical (except specified journal) or newspaper, it would be counted as one infringing page regardless of the number of infringing copies of copyright works, be it literary works or artistic works (graphs, pictures etc), therein. In the case of infringing pages with an enlarged/a reduced image of the original copyright work, the original size of the copyright work would be used as the basis for adjusting/calculating the number of infringing pages (details and case illustration were set out in paragraphs 3 and 4 of LC Paper No. CB(1)1974/08-09(02)). The Administration reiterated that where substantial copying or distribution of copies of copyright works in printed form on a regular or frequent basis was required in the course of business, business end-users were encouraged to obtain authorization from copyright owners under the relevant licensing scheme in advance. If not, for avoidance of criminal liability under section 119B, business end-users should take steps to ascertain whether the prescribed numeric limits (i.e. the total value of qualifying copies or the total number of infringing pages, as the case might be) would be exceeded before the making or distribution of infringing copies of copyright works.</p> <p>Discussion on the use of monetary numeric limits in the copyright law of other jurisdictions</p> <p>Noting that so far the Administration's research indicated that only the United States and Taiwan had adopted or once adopted monetary numeric limits in their copyright laws and the use of such numeric limits in Taiwan was thereafter repealed in September 2004, Mr Paul TSE raised concern about enforcement difficulty. As infringement would attract criminal liability, the legislation should be sufficiently clear to provide certainty on all relevant issues. He was of the view that consideration should be given as to whether the approach proposed by the Administration would best serve the purpose.</p> <p>The Administration's response was that the offence, as contained in the Copyright (Amendment) Ordinance 2007, had already been passed by the Legislative Council in June 2007. To avoid inadvertent breaches, the offence was qualified by a set of numeric limits within which the offence would not apply.</p> | |

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| | | <p>Unlike the US and Taiwan cases where there was no detailed provision governing how the monetary numeric limits would operate in practice, the Bill had provided clear and detailed provisions to govern how the proposed numeric limits were to operate. While enforcement of the offence would not be free from difficulties, there was a fair chance of successful enforcement.</p> <p>In response to Mr Paul TSE's enquiry, the Administration advised that-</p> <p>(a) while there was no provision for compulsory licensing under the Copyright Ordinance, a person who had taken adequate and reasonable steps but failed to obtain a licence on reasonable commercial terms could rely on the statutory defence under section 119B(14); and</p> <p>(b) the onus of proof was on the prosecution to prove beyond reasonable doubt all elements of the offence.</p> <p>Ms Cyd HO sought clarification on whether the criminal offence under section 119B of the Copyright Ordinance would apply to operators of photocopying shops and student unions making copies of a copyright work in a printed form in excess of the prescribed numeric limits without authorization of the copyright owners. She noted that copying of infringing copies of a printed copyright work might take place in public libraries.</p> <p>The Administration advised that section 119B would not apply to non-profit-making educational establishments and students making copies for self-use. Offence in relation to possession of infringing copies for the purpose of or in the course of a copying service business was governed by section 119A of the Copyright Ordinance.</p> <p>Ms Audrey EU sought clarification on:-</p> <p>(a) whether an "exercise book" (練習簿) was classified as a "book", and if so, whether it should be made clear in the definition of a "book" in the Bill;</p> <p>(b) as regards the two limbs in the definition of a "qualifying copy" in relation to a specified journal in section 1(1) of the new Schedule 1AA in clause 4 of the Bill, whether the use of the term "qualifying copy" which might carry a positive connotation was appropriate and whether the Administration should instead explore other alternative term such as "excessive copying";</p> | <p>The Administration to follow up as stated in paragraph 3(c) of the minutes.</p> <p>The Administration to follow up as stated in paragraph 3(d) of the minutes.</p> |

| Time marker | Speaker | Subject(s) | Action required |
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| | | <p>(c) whether the making for distribution or distribution of infringing copies not more than 25% (say 24%) of a book and specified journal in large quantities would amount to an offence under section 119B; and</p> <p>(d) the use of the term "a comparable copy" in section 5(2) of the new Schedule 1AA in clause 4 of the Bill.</p> <p>The Administration's response as follows-</p> <p>(a) an "exercise book" was generally considered/understood as a "book";</p> <p>(b) in respect of a specified journal, when the user made for distribution or distributed infringing copies of (i) more than 25% of the number of the printed pages of an issue of a specified journal, or (ii) a complete copy of an article in an issue of a specified journal (even though the article was not more than 25% of the printed pages of that issue) within any 180-day period, the value of the "qualifying copy" would be counted towards the maximum total value of \$6,000;</p> <p>(c) whilst infringing copies comprising not more than 25% (say 24%) of a book and an issue of a specified journal (except the infringing copies containing a complete article in an issue of a specified journal) would not be qualifying copies and therefore would not be counted towards the numeric limit for the purpose of determining criminal liability under section 119B, distribution of such infringing copies in large quantities to such an extent as to affect prejudicially the copyright owner might be caught under section 118 of the Copyright Ordinance which was a criminal provision already; and</p> <p>(d) section 5(2) of the new Schedule 1AA stipulated that a qualifying copy was taken to have the same value as a comparable copy that was not an infringing copy, and that contained the copyright work being the subject of the qualifying copy. The term "a comparable copy" was used to take into account some cases in which the source of the copying (source book) might be an infringing copy/photocopy of a copyright work.</p> | |
| 020318-020344 | Chairman Administration | Meeting arrangement | |