

立法會
Legislative Council

LC Paper No. CB(1)36/09-10
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/08

Bills Committee on Copyright (Amendment) Bill 2009

Minutes of the fifth meeting
held on Monday, 28 September 2009, at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Dr Hon Samson TAM Wai-ho, JP (Chairman)
Hon Albert HO Chun-yan
Dr Hon Margaret NG
Hon CHAN Kam-lam, SBS, JP
Hon LEUNG Yiu-chung
Hon Miriam LAU Kin-ye, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, 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 Audrey EU Yuet-mee, SC, 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

Ms Rayne CHAI
Acting Senior Assistant Law Draftsman

Ms Karmen KWOK
Government Counsel

Customs and Excise Department

Mr Thomas S Y LIN
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

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- I. Confirmation of minutes of meetings**
- | | | |
|-------------------------------|----|---|
| (LC Paper No. CB(1)2216/08-09 | -- | Minutes of meeting held on 22 June 2009 |
| LC Paper No. CB(1)2384/08-09 | -- | Minutes of meeting held on 7 July 2009) |

The minutes of the meetings held on 22 June and 7 July 2009 were confirmed.

II. Paper issued since last meeting

(LC Paper No. CB(1)2276/08-09(01) -- Submission dated 13 July 2009 from the Law Society of Hong Kong)

2. Members noted that the above submission had been issued for the Bills Committee's information.

III. Meeting with the Administration

(LC Paper No. CB(1)2635/08-09(01) -- Administration's paper on defendant's knowledge in relation to the numeric limits and penalty level for the copying and distribution offence

LC Paper No. CB(1)2635/08-09(02) -- Administration's response to the written representations of the Law Society of Hong Kong

LC Paper No. CB(1)2635/08-09(03) -- Summary table on "Issues requiring follow-up action/consideration by the Administration" prepared by the Legislative Council Secretariat

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)

Clause-by-clause examination of the Bill

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

4. The Bills Committee completed the scrutiny of the Chinese version of the Copyright (Amendment) Bill 2009 (the Bill).

ALA 5. The Assistant Legal Adviser was requested to examine the legal and drafting aspects of the English version of the Bill and to report irregularity, if any, to the Bills Committee.

Admin 6. The Administration undertook to:

(a) consider how best to define the term "infringing page" in section 1(1) of the new Schedule 1AA in clause 4 of the Bill, taking into account the views of Dr Margaret NG and the Law Society (paragraph 13 of LC Paper No. CB(1)2276/08-09(01)); and

(b) provide all proposed Committee Stage amendments to the Bill for members' consideration.

(Post-meeting note: The information provided by the Administration in respect of (a) and (b) were circulated to members vide LC Paper Nos. CB(1)2754/08-09(01) and CB(1)2754/08-09(02) on 8 and 9 October 2009 respectively.)

IV. Any other business

Dates of next meeting

7. Members agreed that the next meeting be held on 12 October 2009 at 2:30 pm in Conference Room A of the Legislative Council Building.

8. There being no other business, the meeting ended at 4:36 pm.

Council Business Division 1
Legislative Council Secretariat
15 October 2009

**Proceedings of the fifth meeting of
Bills Committee on Copyright (Amendment) Bill 2009
on Monday, 28 September 2009, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000120-000314	Chairman Administration	<p>Opening remarks by the Chairman</p> <p>Confirmation of minutes of meetings held on 22 June and 7 July 2009</p> <p>Submission from the Law Society of Hong Kong (LC Paper No. CB(1)2276/08-09(01))</p>	
000315-001615	Chairman Administration Mr WONG Ting-kwong	<p>Briefing by the Administration (LC Paper No. CB(1)2635/08-09(01)) on concerns raised by members at the meeting held on 7 July 2009.</p> <p>In response to members' enquiry on penalty level, the Administration advised that:</p> <p>(a) a person who committed the copying and distribution offence under section 119B(1) of the Copyright Ordinance (the Ordinance) was liable on conviction on indictment to a fine at level 5, (i.e. HK\$50,000) in respect of <u>each infringing copy</u> and to imprisonment for 4 years;</p> <p>(b) the penalty provisions under section 119B(17) reflected the serious view that had been taken by the Government and society at large about the need to rigorously combat copyright piracy;</p> <p>(c) the penalty level was the maximum penalty that might be imposed against an offender and was in line with that of the majority of offences under the Ordinance;</p> <p>(d) a fine ranging from \$1,000 to \$235,000 had been imposed so far for the majority of cases of convictions for the business end-user "possession" offence;</p> <p>(e) as regards those convicted cases in which defendants had been sentenced to imprisonment, the longest term that had been imposed so far was 5 months; and</p> <p>(f) it might not be appropriate to directly compare the penalty level for "white collar crimes" with that for the copying and distribution offence under section 119B.</p>	

Time marker	Speaker	Subject(s)	Action required
001616-002238	Chairman Administration	Briefing by the Administration on its response to the submission from the Law Society of Hong Kong (LC Paper No. CB(1)2635/08-09(02))	
002239-011131	Chairman Administration Mr LEUNG Yiu-chung Mr Paul TSE	<p>Discussion on the Law Society's view that when determining whether there was copyright infringement, one should not only make reference to the quantity but also to the quality of what had been copied.</p> <p>The Administration advised that:</p> <ul style="list-style-type: none"> (a) "infringing copy" within the meaning of section 35 remained to be a key element of the offence, and section 119B(1) (which prescribed the copying and distribution offence) did not depart from the fundamental principle underlying copyright infringement; (b) section 22(3) of the Ordinance made it clear that the doing of any act restricted by copyright, including an act of copying, referred to such act done in relation to the whole or any <u>substantial</u> part of a copyright work. The word "substantial" encompassed both the quality and quantity of what had been copied in relation to a copyright work; (c) similar to other offences involving distribution or possession of infringing copies, the copying and distribution offence would not apply unless infringing copies had been made for distribution or distributed in the circumstances prescribed; and (d) it would be eventually for the court to decide, based on all evidence available, whether there existed an "infringing copy" within the meaning of section 35 of the Ordinance. <p>Mr Paul TSE opined that the approach of the Copyright (Amendment) Bill 2009 (the Bill) had put too much focus on quantitative calculation, and raised concern about enforcement difficulty.</p> <p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) 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; (b) when section 119B was enacted in 2007, the Legislative Council, having heard the views of the stakeholders, 	

Time marker	Speaker	Subject(s)	Action required
		<p>consciously decided to adopt the approach for the Administration to draw up a set of detailed numeric limits within which the copying and distribution offence did not apply, so as to provide certainty to the business sector and to ease their concerns about inadvertent breaches. In drawing up the numeric limits, efforts had been made to make the limits easy to understand, and reasonably clear and certain for enforcement purposes; and</p> <p>(c) after passage of the Bill, the Administration would roll out suitable publicity and public education programmes for an appropriate period (about four to six months) before bringing the business end-user copying and distribution offence into operation.</p>	
011132-011234	Chairman Administration	<p>Clause-by-clause examination of the Bill (Chinese version)</p> <p><u>Clause 1 – Short title</u></p> <p>Members raised no query.</p>	ALA to follow up as stated in paragraph 5 of the minutes
011235-011334	Chairman Administration	<p><u>Clause 2 – Commencement</u></p> <p>Members raised no query.</p>	
011335-011555	Chairman Administration	<p><u>Clause 3 – Offence in relation to making for distribution or distributing on a regular or frequent basis infringing copies of copyright works in printed form contained in books, etc.</u></p> <p>Members raised no query.</p>	
011556-020408	Chairman Administration Mr Paul TSE Ms Cyd HO Sau-lan Ms Miriam LAU Mr WONG Ting-kwong Dr Margaret NG	<p><u>Clause 4 – Schedules 1AA and 1AB added</u></p> <p><u>Schedule 1AA</u></p> <ol style="list-style-type: none"> 1. Interpretation 2. Magazines, periodicals (other than specified journals) and newspapers 3. Books and specified journals 4. Calculation of total number of infringing pages 5. Determination of value of qualifying copies made from books 6. Determination of value of qualifying copies made from specified journals (general provisions) 7. Determination of value of qualifying copies made from specified journals (issues) 8. Determination of value of qualifying copies made from specified journals (articles) 	

Time marker	Speaker	Subject(s)	Action required
		<p>Members raised no query.</p> <p><u>Schedules 1AB</u></p> <ol style="list-style-type: none"> 1. Interpretation 2. Manner of distribution of infringing copies <p>Members raised no query.</p> <p>In response to members' enquiry, the Administration advised that:</p> <ol style="list-style-type: none"> (a) while the copying and distribution offence covered distribution by email, e-fax etc, the new Schedule 1AB provided that section 119B(1) of the Ordinance did not apply in circumstances where infringing copies were distributed through an intranet, pending the availability of suitable licensing schemes covering intranet distribution; (b) the value of qualifying copies made from an "antique" book would be determined on the basis of the marked retail price (if any) as printed in or on the book by the publisher, regardless of its current market value; (c) the Administration would consider how best to define the term "infringing page" in section 1(1) of the new Schedule 1AA in clause 4 of the Bill, taking into account the views of Dr Margaret NG and the Law Society (paragraph 13 of LC Paper No. CB(1)2276/08-09(01)); and (d) in respect of books or specified journals with prices denominated in foreign currencies, the Administration would propose a Committee Stage amendment to the Bill on prescribing a reference exchange rate in order to give a greater degree of certainty to both business end-users and enforcement agencies. 	<p>The Administration to follow up as stated in paragraph 6 of the minutes</p>
020409-020430	Chairman	Meeting arrangement	