

立法會
Legislative Council

LC Paper No. CB(1)2833/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/10

Bills Committee on Copyright (Amendment) Bill 2011

**Minutes of the first meeting
held on Tuesday, 5 July 2011, at 10:45 am
in the Chamber of the Legislative Council Building**

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Ting-kwong, BBS, JP
Hon Cyd HO Sau-lan
Hon Paul TSE Wai-chun, JP
Dr Hon Samson TAM Wai-ho, JP

Members absent : Hon Timothy FOK Tsun-ting, GBS, JP
Hon Ronny TONG Ka-wah, SC

**Public officers
attending** : Agenda Item II

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

Mr Paul WONG
Acting Principal Assistant Secretary for Commerce
and Economic Development (Commerce and
Industry)

Ms Ada LEUNG
Acting Deputy Director of Intellectual Property

Mr Thomas TSANG
Acting Assistant Director of Intellectual Property
(Copyright)

Mr Michael LAM
Senior Assistant Law Draftsman
Department of Justice

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

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mr Joey LO
Senior Council Secretary (1)3

Action

I. Election of Chairman

Mr CHAN Kam-lam was elected Chairman of the Bills Committee.

II. Meeting with the Administration

(LC Paper No. CB(3)842/10-11 -- The Bill

LC Paper No. CB(1)2622/10-11(01) -- Marked-up copy of the Bill
prepared by the Legal
Service Division

File Ref: CITB 07/09/17 -- Legislative Council Brief
issued by the Commerce and
Economic Development
Bureau

LC Paper No. LS80/10-11 -- Legal Service Division
Report

LC Paper No. CB(1)2623/10-11(01) -- Paper on Copyright (Amendment) Bill 2011 prepared by the Legislative Council Secretariat (background brief))

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

Admin 3. The Administration was requested to:

- (a) provide a summary table showing the comparison of the Bill with the copyright laws in overseas jurisdictions in relation to communication rights for copyright owners, "safe harbour" for online service providers (OSPs), copyright exception for temporary reproduction of copyrighted work by OSPs, copyright exception for media shifting, and award of additional damages;
- (b) advise under what circumstances that a parody might be regarded as infringing the copyright of a work, and whether the communication of such parody on the Internet without the authorization of the copyright owner of that work would constitute an offence, and elaborate the relevant provisions on "permitted acts/exceptions" and "fair dealing" under the existing Copyright Ordinance (Cap. 528) and the Bill as well as the concept of "implied licence";
- (c) advise the legal basis of how the relevant provisions in the Bill were considered in conformity with the relevant human rights provisions governing freedom of expression;
- (d) provide case law, other than "the Big Crook" case, on how the court considered the issue of "prejudicial effect"; and
- (e) provide a summary of major concerns on the refined proposals for strengthening copyright protection in the digital environment raised by stakeholders and members of the public at the meeting of the Panel on Commerce and Industry on 19 January 2010, and the Administration's responses.

Invitation of views for the next meeting

4. Members agreed to invite relevant stakeholders and members of the public to give views on the Bill at the next meeting scheduled for 23 July 2011 at 9:00 am.

(Post-meeting note: With the concurrence of the Chairman, the Bills Committee met with deputations and the Administration on 23 July 2011 from 9:00 am to 12:45 pm. A proposed list of organizations to be invited to give views at the meeting was circulated to members vide LC Paper No. CB(1)2668/10-11 issued on 6 July 2011.)

III. Any other business

5. There being no other business, the meeting ended at 12:02 pm.

Council Business Division 1
Legislative Council Secretariat
28 July 2011

**Proceedings of the first meeting of
Bills Committee on Copyright (Amendment) Bill 2011
on Tuesday, 5 July 2011, at 10:45 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000222 - 000428	Mr CHAN Kam-lam Mr WONG Ting-kwong Dr Samson TAM Ms Audrey EU	Election of Chairman.	
000429 - 000639	Chairman Ms Emily LAU	Invitation of views for the next meeting.	
000640 - 001858	Chairman Administration	Briefing by the Administration on the Copyright (Amendment) Bill 2011 (the Bill).	
001915 - 003350	Chairman Ms Audrey EU Administration Assistant Legal Adviser (ALA) Ms Cyd HO	<p>Discussion on comparison of the Bill with the copyright laws in overseas jurisdictions in relation to communication rights for copyright owners, "safe harbour" for online service providers (OSPs), copyright exception for temporary reproduction of copyrighted work by OSPs, copyright exception for media shifting, and award of additional damages. ALA was requested to study the above information to be provided by the Administration.</p> <p>Discussion on the circumstances under which a parody might be regarded as infringing the copyright of a work, and whether the communication of such parody on the Internet without the authorization of the copyright owner of that work would constitute an offence under the Bill.</p>	The Administration to follow up as stated in paragraphs 3(a) and (b) of the minutes.
003351 - 005250	Chairman Ms Cyd HO Administration	<p>Discussion on human rights implications of the Bill.</p> <p>Discussion on what amounted to "distributing an infringing copy of the work to such an extent as to affect prejudicially the copyright owners" and the relevant precedent cases; what constituted "permitted act/exception" and "fair dealing" under the existing Copyright Ordinance and the Bill; and the concept of "implied licence".</p>	The Administration to follow up as stated in paragraphs 3(c) and (d) of the minutes.
005251 - 010052	Chairman Ms Emily LAU Administration	Discussion on major concerns on the refined proposals for strengthening copyright protection in the digital environment raised by stakeholders and members of the public at the meeting of the Panel on Commerce and Industry on 19 January 2010, and the Administration's responses.	The Administration to follow up as stated in paragraph 3(e) of the minutes.

Time marker	Speaker	Subject(s)	Action required
010053 - 011220	Chairman Ms Audrey EU Administration	<p>Discussion on whether the sharing of a work accompanied by one's comments or otherwise on the Internet without the authorization of the copyright owner would constitute copyright infringement under the Bill.</p> <p>The Administration explained that the sharing of a work on the Internet would not constitute copyright infringement provided that such act constituted fair dealing for criticism, review or news reporting in compliance with Section 39 of the Copyright Ordinance. Neither would the provision of a hyperlink to the work on the Internet (as long as a person did not determine the content of the material to which the hyperlink was directed) nor the sharing of a work with implied licence constitute copyright infringement.</p>	The Administration to follow up as stated in paragraph 3(b) of the minutes.
011250 - 011656	Chairman Mr Paul TSE Administration	Mr Paul TSE observed that the introduction of a technology-neutral communication right was made in view of advances in technology, and that the Bill attempted to codify the relevant case law without changing the line demarcating the civil and criminal liability. In response, the Administration agreed to step up efforts to explain clearly to the public about the aims of the Bill, which were to update the copyright law, to fight online infringement and to facilitate new modes of uses such as e-learning.	
011657 - 011715	Chairman	Meeting arrangement.	