

立法會
Legislative Council

LC Paper No. CB(1)748/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/10

Bills Committee on Copyright (Amendment) Bill 2011

**Minutes of the sixth meeting
held on Thursday, 15 December 2011, at 2:30 pm
in Conference Room 2B of the Legislative Council Complex**

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 Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Paul TSE Wai-chun, JP
Dr Hon Samson TAM Wai-ho, JP

Member absent : Hon Timothy FOK Tsun-ting, GBS, JP

**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

Mr Henry CHAN
Government Counsel
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. Confirmation of minutes of meeting**
(LC Paper No. CB(1)594/11-12 -- Minutes of meeting held on
22 November 2011)

The minutes of the meeting held on 22 November 2011 were confirmed.

II. Meeting with the Administration

Clause-by-clause examination of the Bill

Starting from clause 18

(LC Paper No. CB(1)618/11-12(01) -- Letter from Assistant Legal
Adviser to the
Administration dated
12 December 2011

- 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)

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

III. Any other business

3. The Chairman reminded members that the seventh meeting would be held on 12 January 2012 at 2:30 pm.
4. There being no other business, the meeting ended at 4:24 pm.

Council Business Division 1
Legislative Council Secretariat
11 January 2012

**Proceedings of the sixth meeting of
Bills Committee on Copyright (Amendment) Bill 2011
on Thursday, 15 December 2011, at 2:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000144 – 000255	Chairman	(a) Opening remarks by the Chairman. (b) Confirmation of minutes of meeting on 22 November 2011 (LC Paper No. CB(1)594/11-12)	
000256 - 000550	Chairman Administration Dr Samson TAM	<p>The Chairman advised that the Administration had requested more time for preparation of the written response to the issues raised by the Bills Committee at the meeting on 22 November 2011, and to the questions raised by the Assistant Legal Advisor (ALA) relating to the legal and drafting aspects of the Bill in her letter dated 12 December 2011.</p> <p>The Administration advised that it was actively considering members' suggestions for amending the relevant provisions of the Bill concerning the criminal sanctions against unauthorized distribution/communication which was prejudicial to the copyright owner so as to clearly reflect the policy intent of combating large-scale copyright piracy. The Administration required more time to consider the proposed amendments, and would report to the Bills Committee as soon as possible. The Administration also reiterated its commitment to conducting a public consultation on a possible copyright exception for parody after the passage of the Bill.</p> <p>Dr Samson TAM requested the Administration to provide its written response in good time so as to allow time for members to consult the stakeholders.</p>	
000551 - 001057	Chairman Administration Ms Emily LAU	<p>Clause-by-clause examination</p> <p><u>Clause 18 – Section 37 amended (Introductory provisions)</u></p> <p>Discussion on the meaning of "dealt with".</p> <p>The Administration advised that it would propose certain Committee Stage Amendments to clause 18 to clarify the provisions in relation to possession, exhibition in public or distribution by a third party.</p>	

Time marker	Speaker	Subject(s)	Action required
001058 - 001741	Chairman Administration Ms Emily LAU	<p><u>Clause 19 – Section 39 amended (Criticism, review and news reporting)</u></p> <p>Members noted the deputations' views and the Administration's response thereto in relation to the proposed copyright exception for non-commercial derivative works as set out in the Administration's paper (LC Paper No. CB(1)385/11-12(05).</p>	
001742 - 001834	Chairman Administration	<p><u>Clause 20 – Section 40 amended (Incidental inclusion of copyright material)</u></p> <p>Members raised no query.</p>	
001835 - 001902	Chairman Administration	<p><u>Clause 21 – Section 40B amended (Making a single accessible copy for a person with a print disability)</u></p> <p>Members raised no query.</p> <p><u>Clause 22 – Section 40C amended (Making multiple accessible copies by specified bodies for person with a print disability)</u></p> <p>Members raised no query.</p> <p><u>Clause 23 – Section 40D amended (Intermediate copies)</u></p> <p>Members raised no query.</p>	
001903 - 001931	Chairman Administration	<p><u>Clause 24 – Section 41A amended (Fair dealing for purposes of giving or receiving instruction)</u></p> <p>Members raised no query.</p>	
001932 - 002046	Chairman Administration	<p><u>Clause 25 – Section 41 amended (Things done for purposes of instruction or examination)</u></p> <p>Members raised no query.</p>	
002047 - 002836	Chairman Administration Ms Emily LAU	<p><u>Clause 26 – Section 44 amended (Recording by educational establishments of broadcasts and cable programmes)</u></p> <p>Members noted the deputations' views and the Administration's response thereto in relation to the Bill's proposal about expanding the permitted acts for educational establishments as set out in the Administration's paper (LC Paper No. CB(1)385/11-12(05).</p>	

Time marker	Speaker	Subject(s)	Action required
002837 - 005215	Chairman Administration Ms Emily LAU Mr WONG Ting-kwong	<p><u>Clause 27 – Section 45 amended (Reprographic copying made by educational establishments or pupils of passages from published works)</u></p> <p>Discussion on the proposed definition of "authorized recipient", particularly whether the sharing of a copy of a copyright work with a teacher or pupil of another school who was not an "authorized recipient" would be treated as an act of "communication for educational purpose".</p> <p>In response to members' concern about the need to facilitate sharing of reference materials amongst teachers and pupils, the Administration advised that in addition to section 45 of the Copyright Ordinance (Cap. 528) proposed to be amended by the Bill, other existing provisions in the Copyright Ordinance, such as section 38 on fair dealing with a work for the purposes of research or private study, section 39 on fair dealing with a work for criticism or review, section 41 on things done for purposes of instruction or examination and section 41A on fair dealing with a work for purposes of giving or receiving instructions, were also applicable to fulfill different educational purposes as specified by the provisions.</p>	
005216 - 005256	Chairman Administration	<p><u>Clause 28 – Cross-heading before section 46 substituted</u></p> <p>Members raised no query.</p>	
005257 - 005320	Chairman Administration	<p><u>Clause 29 – Section 46 amended (Libraries and archives: introductory)</u></p> <p>Members raised no query.</p>	
005321- 005345	Chairman Administration	<p><u>Clause 30 – Section 48 amended (Copying by librarians: parts of published works)</u></p> <p>Members raised no query.</p>	
005346 - 005440	Chairman Administration	<p><u>Clause 31 – Section 50 amended (Copying by librarians: supply of copies to other libraries)</u></p> <p>Members raised no query.</p>	
005441 - 010006	Chairman Administration Ms Emily LAU Mr Paul TSE Mr WONG Ting-kwong	<p><u>Clause 32 – Section 51 amended (Copying by librarians or archivists: replacement copies of works)</u></p> <p>Discussion on the maximum number of copies allowed to be made from an item in the permanent collection of a specified library, museum or archive, and kept by the same library, museum or archive. The Administration</p>	

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		<p>explained that the maximum number of three proposed by the Bill had taken into account the stakeholders' views and the corresponding overseas practice.</p> <p>Discussion on copying by librarians, curators or archivists for preservation or replacement of works. The Administration explained that a specified library, archive or museum would, subject to prescribed conditions, be allowed to (i) make and keep not more than three preservation or replacement copies for itself pursuant to section 51(1)(a) and (1A), and (ii) make a preservation or replacement copy pursuant to section 51(1)(b) for another specified library, archive or museum which used to keep the same item that were subsequently lost, destroyed or damaged. One prescribed condition under section 51(2) was that it was not reasonably practicable to purchase a copy of the item in question to fulfill the preservation or replacement purpose.</p> <p>Discussion on the definition of "library", "museum" and "archive".</p>	
010007 - 013245	<p>Chairman Administration Mr WONG Ting-kwong Ms Emily LAU Mr Paul TSE Ms Audrey EU Ms Cyd HO</p>	<p><u>Clause 33 – Section 51A added (Communication by librarians, curators or archivists: copies of works)</u></p> <p>Discussion on the number of users who may access one copy at any one time.</p> <p>The Administration explained that a specified library, archive or museum would be allowed to make and keep three preservation or replacement copies of an item. Where the institution in question elected to communicate a copy to its users, the Bill proposed that only one user could access the copy at any one time. The restriction was to preserve the status quo, namely but for the preservation or replacement copies, the original item would have been accessible to only one user at any time.</p>	
013246 - 013333	<p>Chairman Administration</p>	<p><u>Clause 34 – Section 52 amended (Copying by librarians or archivists: certain unpublished works)</u></p> <p>Members raised no query.</p>	
013334 - 014925	<p>Chairman Administration Mr Ronny TONG Ms Emily LAU Ms Cyd HO Mr WONG Ting-kwong</p>	<p><u>Clause 35 – Section 52A added (Playing or showing by librarians, curators or archivists: sound recordings or films)</u></p> <p>In reply to members' enquiries, the Administration advised that the proposed amendments to section 46(1)(b) would enable the Secretary for Commerce and Economic Development to specify by notice in the Gazette the</p>	

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		<p>eligible libraries, museums and archives. In drawing up the subsidiary legislation for specifying the eligible libraries, museums and archives, the Administration would consult the stakeholders' views and make reference to the corresponding overseas practice.</p> <p>Discussion on the level of payment required to be paid by the audience for the playing or showing of sound recordings or films. The Administration confirmed that the specified libraries, archives and museums would be entitled to decide whether or not the audience should be charged for the playing or showing of sound recordings or films. But if a fee was charged, this should be no more than a reasonable contribution towards the maintenance of the library, archive or museum in question.</p>	
014926 - 014933	Chairman Administration	<p><u>Clause 36 – Section 53 amended (Copying by librarians or archivists: articles of cultural or historical importance)</u></p> <p>Members raised no query.</p>	
014934 - 014949	Chairman Administration	<p><u>Clause 37 – Section 54A amended (Fair dealing for purpose of public administration)</u></p> <p>Members raised no query.</p>	
014950 - 015029	Chairman Administration	<p><u>Clause 38 – Section 55 amended (Statutory inquiries)</u></p> <p>Members raised no query.</p>	
015030 - 015103	Chairman Administration	<p><u>Clause 39 – Section 56 amended (Material open to public inspection or on official register)</u></p> <p>Members raised no query.</p>	
015104 - 015128	Chairman Administration	<p><u>Clause 40 – Section 57 amended (Material communicated to the Government in the course of public business)</u></p> <p>Members raised no query.</p>	
015129 - 015403	Chairman Administration Ms Emily LAU	<p><u>Clause 41 – Section 65A added (Temporary reproduction by service provider)</u></p> <p>Members raised no query.</p>	
015404 - 015514	Chairman Ms Emily LAU	Meeting arrangement	

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