

立法會
Legislative Council

LC Paper No. CB(1)1917/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/10

Bills Committee on Copyright (Amendment) Bill 2011

**Minutes of the ninth meeting
held on Tuesday, 28 February 2012, at 10:45 am
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 Paul TSE Wai-chun, JP
Dr Hon Samson TAM Wai-ho, JP

Members absent : Hon Timothy FOK Tsun-ting, GBS, JP
Hon Cyd HO Sau-lan

**Public officers
attending** : Agenda Item I

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

Miss Patricia SO
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)

Ms Ada LEUNG
Deputy Director of Intellectual Property

Mr Thomas TSANG
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. Meeting with the Administration

Clause-by-clause examination of the Bill

Starting from Clause 46

(LC Paper No. CB(1)1180/11-12(01) -- Administration's paper on amendments to Clause 51 of the Bill

LC Paper No. CB(1)1150/11-12(01) -- Administration's paper on the safe harbour provision

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(1)983/11-12(03) -- Administration's paper dated 13 January 2012 in

response to letter from Assistant Legal Adviser as set out in LC Paper No. CB(1)618/11-12(01)

LC Paper No. CB(1)1150/11-12(02) -- Administration's paper dated 17 February 2012 in response to letter from Assistant Legal Adviser as set out in LC Paper No. CB(1)618/11-12(01)

LC Paper No. CB(1)983/11-12(04) -- Letter from Assistant Legal Adviser to the Administration dated 11 January 2012

LC Paper No. CB(1)750/11-12(03) -- Letter from Assistant Legal Adviser to the Administration dated 6 January 2012

LC Paper No. CB(1)844/11-12(01) -- Administration's paper dated 11 January 2012 in response to letter from Assistant Legal Adviser as set out in LC Paper No. CB(1)750/11-12(03)

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)

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

2. The Administration was requested to consider:
 - (a) amending new section 108(2)(d) in clause 49 of the Bill by providing concrete examples of unreasonable or unlawful conduct of the defendant after the act constituting the infringement occurred, such as destruction of evidence of infringement, attempting to conceal or disguise the infringement and persisting in the infringement in the face of a warning, in with the view to providing certainty and providing guidelines to the court in deciding whether to award such additional damages as the justice of the case might require; and
 - (b) deleting the expression "一且" from the Chinese version of new section 252A(1)(f) in clause 72 of the Bill in order to tally with the English version which did not contain an equivalent of the expression.

3. The Administration was also requested to provide the following for members' consideration:

- (a) a full set of the Committee Stage Amendments (CSAs) to be moved by the Administration;
- (b) a summary of the views gathered in the public consultation on the second draft of the Code of Practice for Online Service Providers (the Code) together with the Administration's response; and
- (c) the most up-to-date version of the Code.

(Post-meeting note: The information provided by the Administration in respect of paragraphs 2 and 3(a) and (b) were issued to members vide LC Paper Nos. CB(1)1310/11-12(01) and (02) on 15 March 2012. The information provided by the Administration in respect of paragraph 3(c) was issued to members vide LC Paper No. CB(1)1458/11-12(01) on 29 March 2012.)

II. Any other business

4. The Chairman reminded members that the tenth meeting would be held on 15 March 2012 at 2:30 pm.

5. There being no other business, the meeting ended at 12:06 pm.

Council Business Division 1
Legislative Council Secretariat
18 May 2012

**Proceedings of the ninth meeting of
Bills Committee on Copyright (Amendment) Bill 2011
on Tuesday, 28 February 2012, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000136 - 000236	Chairman	Opening remarks by the Chairman.	
000237 - 001115	Chairman Mr Ronny TONG Ms Emily LAU Administration	<p><u>Briefing by the Administration on proposed amendments to section 118(2AA) and 118(8C) under Clause 51 of the Bill as set out in the Annex to the Administration's paper (LC Paper No. CB(1)1180/11-12(01))</u></p> <p>Mr Ronny TONG and Ms Emily LAU expressed support for the proposed amendments which had addressed the netizens' concerns about possible inadvertent breaches of the law.</p> <p>In response to Ms Emily LAU's enquiry, the Administration advised that it had sounded out some stakeholders and so far, no substantive comments had been received. Ms Emily LAU hoped that members of the public would present their views, if any, on the proposed amendments to the Administration or the Bills Committee for consideration.</p> <p>The Administration would introduce CSAs to bring in the proposed amendments.</p>	
001116 - 001619	Chairman Administration Ms Emily LAU	<p><u>Briefing by the Administration on the safe harbour provision (LC Paper No. CB(1)1150/11-12(01))</u></p> <p>In response to Ms Emily LAU's enquiry, the Administration advised that the public consultation on the second draft of the Code was scheduled to close on 2 March 2012, and so far only a few stakeholders had written in.</p> <p>Ms Emily LAU hoped that members of the public would present their views, if any, on the safe harbour provision and the Code to the Administration or the Bills Committee for consideration.</p>	
001620 - 001753	Chairman Administration	<p>Clause by clause examination</p> <p><u>Clause 46 – Section 89 amended (Right to be identified as author or director)</u></p> <p>Members raised no query.</p>	

Time marker	Speaker	Subject(s)	Action required
001754 - 002059	Chairman Administration Ms Emily LAU	<p><u>Clause 47 – Section 92 amended (Right to object to derogatory treatment of work)</u></p> <p>In response to Ms Emily LAU's enquiry, the Administration advised that no comment on the proposed amendments from members of the public had been received.</p>	
002100 - 002131	Chairman Administration	<p><u>Clause 48 – Section 96 amended (False attribution of work)</u></p> <p>Members raised no query.</p>	
002132 - 005406	Chairman Administration Ms Emily LAU Assistant Legal Advisor (ALA) Mr Ronny TONG	<p><u>Clause 49 – Section 108 amended (Provisions as to damages in infringement action)</u></p> <p>Discussion on the effect of new section 108(d), and the conduct of the defendant after the act constituting the infringement occurred in the context of awarding additional damages in civil proceedings.</p> <p>Relevant questions raised by ALA and the Administration's response were provided in LC Paper Nos. CB(1)750/11-12(03) and CB(1)844/11-12(01) respectively.</p>	The Administration to follow up as stated in paragraph 2(a) of the minutes.
005407 - 005450	Chairman Administration	<p><u>Clause 50 – Section 116 amended (Presumptions relevant to sound recordings, films and computer programs)</u></p> <p>Members raised no query.</p>	
005451 - 010006	Chairman Administration	<p><u>Clause 51 – Section 118 amended (Offences in relation to making or dealing with infringing articles, etc.)</u></p> <p>In response to the Chairman's enquiry, the Administration advised that it would propose CSAs to clarify that the existing statutory exemption for the possession offence under sections 118(2E) and (2F) would be expanded to cover all libraries, museums or archives owned by the Government. The CSAs would also empower the Secretary for Commerce and Economic Development to specify any other library, museum or archive by way of subsidiary legislation should there be merits to expand the statutory exemption to any such institution.</p>	
010007 - 010140	Chairman Administration	<p><u>Clause 52 – Section 119 amended (Penalties for offences under section 118)</u></p> <p>The Administration explained that the penalty proposed by the Bill for the new communication offence adopted the formulation already used in the existing section 119(1) of</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>the Copyright Ordinance, i.e. the penalty was imposed in respect of each infringing copy. Taking into account the fact that technically an infringing copy might not necessarily exist in cases of unauthorized communication, the Administration would propose a CSA to prescribe an appropriate penalty level by reference to the copyright work being infringed.</p> <p>Members raised no query.</p>	
010141-010306	Chairman Administration	<p><u>Clause 53 – Section 121 amended (Affidavit evidence)</u></p> <p>Members raised no query.</p>	
010307 - 010353	Chairman Administration	<p><u>Clause 54 – Section 154 amended (Licensing schemes to which sections 155 to 166 apply)</u></p> <p>Members raised no query.</p>	
010354 - 010432	Chairman Administration	<p><u>Clause 55 – Section 161 amended (Licences to which sections 162 to 166 apply)</u></p> <p>Members raised no query.</p>	
010433 - 010608	Chairman Administration	<p><u>Clause 56 – Section 199 amended (Index of defined expressions)</u></p> <p>Members raised no query.</p>	
010609 - 010633	Chairman Administration	<p><u>Clause 57 – Section 200 amended (Rights conferred on performers and persons having fixation rights)</u></p> <p>Members raised no query.</p>	
010634 - 010646	Chairman Administration	<p><u>Clause 58 – Section 202 amended (Consent required for fixation, etc. of unfixed performance)</u></p> <p>Members raised no query.</p>	
010647 - 010759	Chairman Administration	<p><u>Clause 59 – Section 203 amended (Consent required for copying of fixation)</u></p> <p>Members raised no query.</p>	
010800 - 010849	Chairman Administration	<p><u>Clause 60 – Section 205 amended (Consent required for making available of copies to public)</u></p> <p>Members raised no query.</p>	

Time marker	Speaker	Subject(s)	Action required
010850 - 010904	Chairman Administration	<u>Clause 61 – Section 206 amended (Infringement of performer's rights by use of fixation made without consent)</u> Members raised no query.	
010905 - 010918	Chairman Administration	<u>Clause 62 – Section 207A amended (Infringement of performers' rights by renting copies to the public without consent)</u> Members raised no query.	
010919 - 010932	Chairman Administration	<u>Clause 63 – Section 210 amended (Infringement of fixation rights by use of fixation made without consent)</u> Members raised no query.	
010933 - 010949	Chairman Administration	<u>Clause 64 – Section 214 amended (Duration of rights)</u> Members raised no query.	
010950 - 011014	Chairman Administration	<u>Clause 65 – Section 221 amended (Provisions as to damages in infringement action)</u> Members raised no query.	
011015 - 011212	Chairman Administration	<u>Clause 66 – Section 229 amended (Meaning of "infringing fixation")</u> Members raised no query.	
011213 - 011256	Chairman Administration	<u>Clause 67 – Section 238 amended (Expressions having same meaning as in copyright provisions)</u> Members raised no query.	
011257 - 011307	Chairman Administration	<u>Clause 68 – Section 239 amended (Index of defined expressions)</u> Members raised no query.	
011308 - 011356	Chairman Administration	<u>Clause 69 – Section 243 amended (Things done for purposes of instruction or examination)</u> Members raised no query.	

Time marker	Speaker	Subject(s)	Action required
011357 - 011434	Chairman Administration	<p><u>Clause 70 – Section 245 amended (Recording of broadcasts and cable programmes by educational establishments)</u></p> <p>Members raised no query.</p>	
011435 - 011543	Chairman Administration	<p><u>Clause 71 – Sections 245A and 245B added (245A. Copying or communication by educational establishments: sound recordings or films) and (245B. Communication, playing or showing by librarians, curators or archivists: sound recordings or films)</u></p> <p>Members raised no query.</p>	
011544 - 011810	Chairman Administration ALA	<p><u>Clause 72 – Section 252A added (Temporary reproduction by service providers)</u></p> <p>Discussion on the difference between the Chinese version and English version of new section 252A(1)(f).</p>	The Administration to follow up as stated in paragraph 2(b) of the minutes.
011811 - 011839	Chairman Administration	<p><u>Clause 73 – Section 272A amended (Moral rights conferred on certain performers)</u></p> <p>Members raised no query.</p>	
011840 - 011855	Chairman Administration	<p><u>Clause 74 – Section 272B amended (Right to be identified as performer)</u></p> <p>Members raised no query.</p>	
011856 - 011907	Chairman Administration	<p><u>Clause 75 – Section 272E amended (Right to object to derogatory treatment)</u></p> <p>Members raised no query.</p>	
011908 - 011939	Chairman Administration	<p><u>Clause 76 – Section 273 amended (Interpretation of sections 273 to 273H)</u></p> <p>Members raised no query.</p>	
011940 - 011946	Chairman Administration	<p><u>Clause 77 – Section 273A amended (Rights and remedies in respect of circumvention of effective technological measures)</u></p> <p>Members raised no query.</p>	

Time marker	Speaker	Subject(s)	Action required
011947 - 011953	Chairman Administration	<u>Clause 78 – Section 273B amended (Rights and remedies in respect of devices and services designed to circumvent effective technological measures)</u> Members raised no query.	
011954 - 012042	Chairman Administration	<u>Clause 79 – Section 273D amended (Exceptions to section 273A)</u> Members raised no query.	
012043 - 012124	Chairman Administration	<u>Clause 80 – Section 274 amended (Rights and remedies in respect of unlawful acts to interfere with rights management information)</u> Members raised no query.	
012125 - 012233	Chairman	Meeting arrangement	

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18 May 2012