

**立法會**  
*Legislative Council*

LC Paper No. CB(1)1883/11-12  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/10/10

**Bills Committee on Copyright (Amendment) Bill 2011**

**Minutes of the tenth meeting  
held on Thursday, 15 March 2012, 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 Timothy FOK Tsun-ting, GBS, 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

**Member absent** : 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)

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

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Action

- I. Paper issued since last meeting**  
(LC Paper No. CB(1)1265/11-12(01) -- Submission from a member  
(*English version only*) of the public dated 2 March  
2012)

Members noted that the above paper had been issued since the last meeting.

- II. Meeting with the Administration**  
(LC Paper No. CB(1)1310/11-12(01) -- Draft Committee Stage  
amendments to be moved  
by the Administration

LC Paper No. CB(1)1310/11-12(02) -- Administration's paper on  
public consultation on the  
second draft of the Code of  
Practice

- LC Paper No. CB(1)1310/11-12(03) -- Administration's paper on lessons learnt from the suspension of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000
- LC Paper No. CB(1)1307/11-12(01) -- List of follow-up actions arising from the discussion at the meeting on 17 February 2012
- LC Paper No. CB(1)1307/11-12(02) -- List of follow-up actions arising from the discussion at the meeting on 28 February 2012
- LC Paper No. CB(1)1307/11-12(03) -- Administration's response to issues raised at the meeting on 17 February 2012
- 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)

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

3. The Administration was requested to consider:

- (a) amending new section 88C(4) in clause 45 of the Bill to clarify its legal effect in respect of a notice of alleged infringement that did not comply with subsections (2) and (3), particularly in the light of section 88B(2)(a)(ii) and (iii); and
- (b) amending new section 88D(6) in clause 45 of the Bill in view of the deletion of the provision of subsection (3)(b) in the proposed Committee Stage amendments.

4. The Administration was also requested to provide information on the legal definition and the usage in existing legislation of Hong Kong of the term "trivial", which was provided in new subsection 118(2AA) and 118(8C) in clause 51 of the Bill, as compared with the term "minimal".

*(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(1)1395/11-12(02) on 23 March 2012.)*

### **III. Any other business**

5. The Chairman reminded members that the eleventh meeting would be held on 27 March 2012 at 10:45 am.

6. There being no other business, the meeting ended at 4:22 pm.

Council Business Division 1  
Legislative Council Secretariat  
16 May 2012

**Proceedings of the tenth meeting of  
Bills Committee on Copyright (Amendment) Bill 2011  
on Thursday, 15 March 2012, at 2:30 pm  
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000045 - 000239	Chairman	Opening remarks by the Chairman.	
000240 - 000330	Chairman Administration	<u>Briefing by the Administration on draft Committee Stage amendments (CSAs) to the Bill (LC Paper No. CB(1)1310/11-12(01))</u>	
000331 - 000445	Chairman Administration	<u>Clause 15 – Section 31 amended (Secondary infringement: possessing or dealing with infringing copy)</u>  Members raised no query.	
000446 - 002100	Chairman Administration Ms Emily LAU Assistant Legal Advisor (ALA)	<u>Clause 18 – Section 37 amended (Introductory provisions)</u> The Administration advised that Clause 18 would be deleted, and a provision defining the term "dealt with" would be inserted in each of the following provisions to ensure greater legal certainty under individual provisions: Clauses 21-24, 25(3), 26(6), 27(9), 37, 43, 68A, 69(3), 70(6), 71 and 71B.  In response to Ms Emily LAU's enquiry, ALA advised that the above proposed CSAs would be acceptable from the drafting point of view.	
002100 - 002150	Chairman Administration	<u>Clause 41 – Section 65 added (Temporary reproduction by service providers)</u>  Members raised no query.	
002151 - 002343	Chairman Administration	<u>Clause 45 – Section 88A. Definitions</u>  Members raised no query.	
002344 - 002458	Chairman Administration	<u>Clause 45 – Section 88B. Limitations on liability of service providers</u>  Members raised no query.	
002459 - 005459	Chairman Administration Ms Emily LAU ALA Ms Audrey EU	<u>Clause 45 – Section 88C. Notice of alleged infringement</u>  In response to Ms Emily LAU's enquiry about the effect of the proposed CSAs to Clause 88C(3)(b), the Administration advised that the proposed CSAs were to	

Time marker	Speaker	Subject(s)	Action required
		<p>require the complainants to provide specific information to substantiate their infringement claims.</p> <p>Discussion on whether a service provider who received a notice of alleged infringement which did not fully comply with new sections 88C(2) and (3) would be regarded as becoming "aware that the infringement had occurred" or "aware of facts or circumstances that would lead inevitably to the conclusion that the infringement had occurred" as provided in new sections 88B(2)(a)(ii) and (iii).</p> <p>The Administration advised that the intention was that a notice of alleged infringement which did not fully comply with section 88C(2) or (3) would not be regarded as a valid notice and should not be taken into account in determining whether an online service provider had acquired any actual or constructive knowledge of an infringement under the new section 88B(2)(a)(ii) or (iii) respectively.</p>	<p>The Administration to follow up as stated in paragraph 3(a) of the minutes.</p>
005500 - 010304	Chairman Administration Ms Audrey EU	<p><u>Clause 45 – Section 88D. Counter notice</u></p> <p>Ms Audrey EU suggested amending the new section 88D(6) in clause 45 of the Bill in view of the deletion of subsection (3)(b) in the proposed Committee Stage amendments.</p>	<p>The Administration to follow up as stated in paragraph 3(b) of the minutes.</p>
010305 - 011000	Chairman Administration	<p><u>Clause 45 – Section 88G. Exemption of service providers from liability for removal of material etc.</u></p> <p>Discussion on legal proceedings in relation to the new section 88G(7)(a) if the act of infringement was committed outside Hong Kong or by an overseas resident.</p> <p>The Administration explained that the safe harbour provisions governed the liability of service providers who were under the jurisdiction of Hong Kong. If an infringement occurred on the platform of an overseas service provider, this case should be subject to the relevant overseas jurisdiction.</p>	
011001 - 011050	Chairman Administration	<p><u>Clause 45 – Section 88I. Code of Practice</u></p> <p>Members raised no query.</p>	
011051 - 011209	Chairman Administration	<p><u>Clause 49 – Section 108 amended (Provisions as to damages in infringement action)</u></p> <p>Members raised no query.</p>	

Time marker	Speaker	Subject(s)	Action required
011210 - 011828	Chairman Administration ALA Ms Audrey EU	<u>Clause 51 – Section 118 amended (Offences in relation to making or dealing with infringing articles, etc.)</u>  Discussion on the legal definition and usage in existing legislation of Hong Kong of the term "trivial", which was provided in new subsection 118(2AA) and 118(8C) in clause 51 of the Bill, as compared with the term "minimal".	The Administration to follow up as stated in paragraph 4 of the minutes.
012425 - 012500	Chairman Administration	<u>Clause 52 – Section 119 amended (Penalties for offences under section 118)</u>  Members raised no query.	
012501 - 012520	Chairman Administration	<u>Clause 56 – Section 199 amended (Index of defined expressions)</u>  Members raised no query.	
012521 - 012530	Chairman Administration	<u>Clause 65 – Section 221 amended (Provisions as to damages in infringement action)</u>  Members raised no query.	
012531 - 012550	Chairman Administration	<u>New Clause 68A – Section 242A amended (Fair dealing for purposes of giving or receiving instruction)</u>  Members raised no query.	
012551 - 012630	Chairman Administration	<u>Clause 69 – Section 243 amended (Things done for purposes of instruction or examination)</u>  Members raised no query.	
012631 - 012700	Chairman Administration	<u>Clause 70 – Section 245 amended (Recordings of broadcasts and cable programmes by educational establishments)</u>  Members raised no query.	
012701 - 012730	Chairman Administration	<u>Clause 71 – Section 245A and 245B added</u>  Members raised no query.	



<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
012731 - 012800	Chairman Administration	<u>New Clause 71A – Section 246 amended (Copying by librarians or archivists: articles of cultural or historical importance)</u>  Members raised no query.	
012801 - 012810	Chairman Administration	<u>New Clause 71B – Section 246A amended (Fair dealing for purposes of public administration)</u>  Members raised no query.	
012811 - 012840	Chairman Administration	<u>Clause 72 – Section 252A added</u>  Members raised no query.	
012841 - 013153	Chairman Administration Ms Emily LAU	In response to Ms Emily LAU's enquiry, the Administration advised that no adverse comment from members of the public on the proposed CSAs had been received.	
013154 - 013750	Chairman Administration	Briefing by the Administration on public consultation on the Second Draft of the Code of Practice (LC Paper No. CB(1)1310/11-12(02))  The Administration advised that it would revise the Code of Practice after taking into account the comments received during the second round of public consultation, and that the revised Code would be submitted to the Bills Committee before the end of March 2012.	
013751 - 014951	Chairman Administration	Briefing by the Administration on lessons learnt from the suspension of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (LC Paper No. CB(1)1310/11-12(03))	
014952 - 015200	Chairman Administration	Briefing by the Administration on its response to issues raised at the meeting on 17 February 2012 – provision of examples of local legislation which was underpinned by a non-statutory code of practice (LC Paper No. CB(1)1307/11-12(03))	
015201 - 015253	Chairman	Meeting arrangement	