

立法會
Legislative Council

LC Paper No. CB(1)2057/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/10

Bills Committee on Copyright (Amendment) Bill 2011

**Minutes of the eleventh meeting
held on Tuesday, 27 March 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 Cyd HO Sau-lan
Hon Paul TSE Wai-chun, JP

Members absent : Hon Timothy FOK Tsun-ting, GBS, JP
Hon Ronny TONG Ka-wah, SC
Dr Hon Samson TAM Wai-ho, JP

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 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)1304/11-12 -- Minutes of meeting held on
17 February 2012)

The minutes of the meeting held on 17 February 2012 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1)1395/11-12(01) -- List of follow-up actions
arising from the discussion
at the meeting on 15 March
2012

LC Paper No. CB(1)1395/11-12(02) -- Administration's response
to issues raised at the
meeting on 15 March 2012

LC Paper No. CB(1)1395/11-12(03) -- Administration's paper on
further proposed Committee
Stage amendments (CSAs)
(with the full set of
proposed CSAs and an
updated marked-up version

of the Bill)

- LC Paper No. CB(1)1395/11-12(04) -- Latest version of the Code of Practice for Online Service Providers issued by the Administration in March 2012
- LC Paper No. CB(1)1395/11-12(05) -- Summary table on "Issues requiring follow-up action/consideration by the Administration (position as at 27 March 2012)" prepared by the Legislative Council Secretariat
- 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)1315/11-12(02) -- Administration's paper dated 15 March 2012 in response to letter from Assistant Legal Adviser as

set out in LC Paper No.
CB(1)983/11-12(04)

- 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**).

Legislative timetable

3. The Bills Committee completed scrutiny of the Bill. The Chairman requested the Legal Service Division of the Secretariat to examine the finalized version of the Administration's proposed Committee Stage amendments (CSAs), including consistency between the Chinese and English versions of the proposed amendments. The Chairman added that subject to confirmation that the CSAs were in order, the Bills Committee would report to the House Committee on 20 April 2012 recommending resumption of the Second Reading debate on the Bill at the Council meeting on 9 May 2012. He also reminded the Administration that the deadline for giving notice of CSAs would be 27 April 2012.

(Post-meeting note: The Administration's revised CSAs were issued to members vide LC Paper No. CB(1)1458/11-12(02) on 29 March 2012.)

III. Any other business

4. The Chairman reminded members that if there was a need for further discussion, the twelfth meeting might be held on 13 April 2012 at 10:45 am.

(Post-meeting note: The twelfth meeting was subsequently cancelled as the Bills Committee had completed scrutiny of the Bill.)

5. There being no other business, the meeting ended at 11:23 am.

Council Business Division 1
Legislative Council Secretariat
31 May 2012

**Proceedings of the eleventh meeting of
Bills Committee on Copyright (Amendment) Bill 2011
on Tuesday, 27 March 2012, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 - 000223	Chairman	Opening remarks by the Chairman.	
000224 - 000410	Chairman Administration	<u>Briefing by the Administration on further proposed Committee Stage amendments (CSAs) to the Bill (LC Paper No. CB(1)1395/11-12(03))</u>	
000411 - 000650	Chairman Administration	<u>Clause 45 – Section 88A. Definitions</u> Members raised no query.	
000651 - 000733	Chairman Administration	<u>Clause 45 – Section 88F. Civil liability for making false statements</u> Members raised no query.	
000734 - 000845	Chairman Administration	<u>Clause 45 – Section 88D. Counter notice</u> Members raised no query.	
000846 - 000912	Chairman Administration	<u>Briefing by the Administration on its response to issues raised at the meeting on 15 March 2012 (LC Paper No. CB(1)1395/11-12(02))</u>	
000913 - 001000	Chairman Administration	<u>Clause 45 - New section 88C(4). Notice of alleged infringement</u> Members raised no query.	
001001 - 001232	Chairman Administration	<u>Clause 45 - New section 88D(6). Counter notice</u> Members raised no query.	
001233 - 001408	Chairman Administration	<u>Clause 51 - New section 118(2AA) and (8C). Offences in relation to making or dealing with infringing articles, etc.</u> Members raised no query.	
001409 - 002607	Chairman Administration Ms Audrey EU Ms Emily LAU Ms Cyd HO	<u>Remaining issues</u> In response to the comments of Ms Emily LAU and Ms Cyd HO, the Administration reiterated that the existing line demarcating the boundary between criminal and civil liabilities for copyright infringement remained unchanged	

Time marker	Speaker	Subject(s)	Action required
		under the Bill. The making of parodies that did not fall into the criminal net under the existing provisions would remain so following enactment of the Bill. The Administration reaffirmed its commitment to conduct, after the passage of the Bill, a public consultation on whether to provide for a new copyright exception for parody.	
002608 - 002815	Chairman Administration	<u>Briefing by the Administration on the latest version of the Code of Practice for Online Service Providers (OSPs) ("the Code") (LC Paper No. CB(1)1395/11-12(04))</u>	
002816 - 003020	Chairman Administration Ms Emily LAU	<p>In response to Ms Emily LAU's enquiry, the Administration advised that it had prepared the latest version of the Code after taking into account the views expressed by the stakeholders on the second draft of the Code. In the run up to bringing the safe harbour provisions into operation, the Administration would further engage the stakeholders and launch suitable publicity programmes to educate stakeholders on their respective roles and responsibilities under the Code.</p> <p>In response to the Chairman's enquiry, the Administration advised that in specifying their own notice of alleged infringement and counter notice, OSPs should incorporate all the mandatory data fields as stated in the templates provided in Forms A and B in Annex to the Code.</p>	
003021 - 003125	Chairman ALA	The Chairman advised that the Administration had provided all the proposed CSAs for members' scrutiny, and no members had indicated intention to propose their own CSAs so far.	ALA to follow up as stated in paragraph 3 of the minutes.
003126 - 003900	Chairman Administration Ms Emily LAU Ms Cyd HO	<p><u>Implementation plan</u></p> <p>In response to Ms Emily LAU's enquiry, the Administration advised that the commencement of various provisions in the Bill would take two stages. The first batch would cover certain more straight-forward provisions, e.g. copyright exceptions related to caching; media shifting involving sound recordings for private and domestic use, and reproduction by educational establishments, etc. Assuming that the Bill could be enacted in May/June 2012, the Administration anticipated that the operation of these provisions could commence shortly thereafter i.e. in the summer of 2012. The second batch of provisions were those relating to the safe harbour and the right of communication to the public (including the relevant copyright exceptions and criminal sanctions). Allowing time for conducting a comprehensive publicity programme, the Administration initially planned to bring</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>the relevant provisions into operation about nine months after enactment of the Bill. Nearer the time, the Administration would engage the Panel on Commerce and Industry before bringing the second batch of provisions into effect.</p> <p>In response to Ms Emily LAU, the Administration advised that for each batch of the provisions, the relevant commencement notice would be gazetted by the Secretary for Commerce and Economic Development, and the notice was subject to the negative vetting by LegCo. Members reminded the Administration that sufficient time should be allowed for LegCo to scrutinize the subsidiary legislation.</p>	
003901 - 003934	Chairman	Meeting arrangement	