

Bills Committee on Copyright (Amendment) Bill 2011

**Issues requiring follow-up action/consideration by the Administration
(position as at 15 February 2012)**

Date of meeting	Issues	Outcome
5 July 2011	<p>The Administration was requested to:</p> <ul style="list-style-type: none"> (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 	<p>The information provided by the Administration was circulated to members vide LC Paper Nos. CB(1)3061/10-11(02) to (06) and (08) on 4 October 2011.</p>

Date of meeting	Issues	Outcome
	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.	
23 July 2011	<p>The Administration was requested to:</p> <p>(a) provide its response to the views expressed by the deputations and the written submissions received by the Bills Committee; and</p> <p>(b) elaborate on the definition of "derogatory treatment of work" under section 92 of the Copyright Ordinance (Cap. 528).</p>	<p>The information provided by the Administration was circulated to members vide LC Paper Nos. CB(1)3061/10-11(09) and (07) on 7 and 4 October 2011 respectively.</p>
11 October 2011	<p>The Administration was requested to:</p> <p>(a) advise under what circumstances a parody might be regarded as infringing the copyright of a work and falling into the criminal net, with reference to the following examples: (a) the parody of a T-shirt logo based on the logo of the Democratic Party for the Betterment and Progress of Hong Kong, (b) the parody based on the Government's "Act Now" campaign slogan, (c) the parody of the appointment of the new Chief Secretary for Administration Mr Stephen LAM based on the poster of the movie "Johnny English Reborn" and (d) the parody of the former Chief Secretary for Administration Mr Henry TANG based on the poster of the movie "A Simple Life";</p> <p>(b) consider the proposal raised by the deputations at the meeting with the Administration on 22 September 2011 that parodies not involving large scale</p>	<p>The information provided by the Administration was circulated to members vide LC Paper Nos. CB(1)385/11-12(03) and (04) on 18 November 2011.</p>

Date of meeting	Issues	Outcome
	<p>copyright piracy and profit making should be exempted from the criminal liability;</p> <p>(c) consider including in the Bill provisions specifying that only those who engaged in the communication of copyright works which caused direct and concrete economic prejudice to the copyright owners would attract criminal liability; and</p> <p>(d) advise whether the communication of a copyright work to the public without the authorization of the copyright owner, through online social network channels (such as Facebook) which might generate minimal indirect revenue, would constitute a criminal offence.</p>	
1 November 2011	<p>The Administration was requested to provide:</p> <p>(a) a summary table of deputations' views on the main provisions of the Bill and the Administration's responses; and</p> <p>(b) a summary of the experience gathered by the Administration in respect of the suspension of the operation of certain amendments to the Copyright Ordinance (Cap. 528) effected by the Intellectual Property (Miscellaneous Amendments) Ordinance 2000.</p>	<p>The information provided by the Administration in respect of (a) was circulated to members vide LC Paper No. CB(1)385/11-12(05) on 18 November 2011.</p>
22 November 2011	<p>The Administration was requested to:</p> <p>(a) include in the speech to be delivered by the Secretary for Commerce and Economic Development during the resumption of Second Reading debate on the Bill its commitment to conducting a public consultation on copyright exception for parody after the passage of the Bill;</p>	<p>The Administration's response is being awaited.</p>

Date of meeting	Issues	Outcome
	<p>(b) consider amending the existing section 31(1)(d) and other similar sections of the Bill (including making consequential amendments to the sections on criminal liability) to the effect that unauthorized distribution of an infringing copy of a work would attract criminal liability only if such distribution amounts to affecting prejudicially the owner of the copyright to a "considerable" (相當), "serious" (嚴重) or "important" (重要) extent so as to make it clear that the policy intent of the Bill was to combat large-scale copyright piracy; and</p> <p>(c) consider amending the new section 118(2AA) and other sections related to the offences of prejudicial distribution and communication to the effect that the relevant criminal liability might be imposed on infringements resulting in economic prejudice to the copyright owners, but not on those causing only non-economic prejudice, so as to clearly reflect the policy intent of combating large-scale copyright piracy rather than parody.</p>	
12 January 2012	The Administration was requested to provide further information, if any, on comparison of the proposed safe harbour provisions under the Bill with copyright laws in overseas jurisdictions, in respect of the frequency and instances of invoking the notice and takedown mechanism, and whether there were any measures to prevent abuse of the mechanism for the purpose of political censorship.	The Administration's response is being awaited.