

Bills Committee on Copyright (Amendment) Bill 2011

**Issues requiring follow-up action/consideration by the Administration
(position as at 27 March 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>

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	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>

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	<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 was circulated to members vide LC Paper Nos. CB(1)385/11-12(05) and CB(1)1310/11-12(03) on 18 November 2011 and 14 March 2012 respectively.</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</p>	<p>The information provided by the Administration in respect of (a) was circulated to</p>

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	<p>after the passage of the Bill;</p> <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>	<p>members vide LC Paper No. CB(1) 1395/11-12(02) on 23 March 2012.</p> <p>The information provided by the Administration in respect of (b) and (c) was circulated to members vide LC Paper No. CB(1)1180/11-12(01) on 27 February 2012.</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 information provided by the Administration was circulated to members vide LC Paper No. CB(1)1150/11-12(01) on 27 February 2012.
17 February 2012	<p>The Administration was requested to:</p> <p>(a) consider, from the law drafting aspect, deleting subsections 88D(1) and (2) from</p>	The information provided by the Administration in

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	<p>new section 88D dealing with counter notice, and placing the subsections under new section 88C dealing with notice of alleged infringement;</p> <p>(b) consider whether the expression "in good faith" should be removed from new section 88G(1) and other relevant provisions of the Bill, so as to avoid putting too onerous a burden on the online service provider when acting to remove or disable access to any material pursuant to a notice of alleged infringement, or reinstate the material or cease disabling access pursuant to a counter notice; and</p> <p>(c) provide examples of local legislation which was underpinned by a non-statutory code of practice rather than a code that was prescribed by way of subsidiary legislation.</p>	<p>respect of (a) and (b) was circulated to members vide LC Paper No. CB(1)1310/11-12(01) on 15 March 2012.</p> <p>The information provided by the Administration in respect of (c) was circulated to members vide LC Paper No. CB(1)1307/11-12(03) on 14 March 2012.</p>
28 February 2012	<p>The Administration was requested to:</p> <p>(a) consider 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, with a view to providing certainty and guidelines to the court in deciding whether to award such additional damages as the justice of the case might require; ;</p> <p>(b) consider deleting the expression "一且" from the Chinese version of new section 252A(1)(f) in clause 72 of the Bill as it does not appear in the English version of</p>	<p>The information provided by the Administration in respect of (a) and (b) was circulated to members vide LC Paper No. CB(1)1310/11-12(01) on 15 March 2012.</p> <p>In respect of (c), the full set of CSAs and</p>

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	<p>the provision; and</p> <p>(c) provide a full set of Committee Stage amendments (CSAs) to be moved by the Administration, 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 the most up-to-date version of the Code.</p>	<p>the summary of views on the second draft of the Code together with the Administration's response were circulated to members vide LC Paper Nos. 1310/11-12(01) and (02) on 15 March 2012. The Administration's response on the most up-to-date version of the Code was circulated to members vide LC Paper No. 1395/11-12(04) on 27 March 2012.</p>
15 March 2012	<p>1. The Administration was requested to consider:</p> <p>(a) amending new section 88C(4) in clause 45 of the Bill to state clearly that a notice of alleged infringement that did not comply with subsections (2) and (3) was of no effect for the purposes of section 88B(2)(a), irrespective of whether the service provider became aware that the infringement had occurred, or became aware of facts or circumstances that would lead inevitably to the conclusion that the</p>	<p>The information provided by the Administration was circulated to members vide LC Paper No. CB(1) 1395/11-12(02) on 23</p>

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	<p>infringement had occurred; and</p> <p>(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.</p> <p>2. The Administration was also requested to provide information on the legal definition, Chinese translation and use in existing laws of Hong Kong of the term "trivial" under new subsection 118(2AA) and 118(8C) in clause 51 of the Bill, as compared with the term "minimal".</p>	March 2012.

Council Business Division 1
Legislative Council Secretariat
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