

立法會
Legislative Council

LC Paper No. CB(1)2623/10-11(01)

Ref. : CB1/BC/10/10

Bills Committee on Copyright (Amendment) Bill 2011

Background brief

Purpose

This paper provides a summary of views and concerns expressed by the Panel on Commerce and Industry (the Panel) on the Administration's proposals to strengthen copyright protection in the digital environment.

Background

2. With advances in information technology and the prevalence of high-speed Internet connectivity, new modes of content uses and transmissions have emerged which give copyright owners a wider choice of avenues to disseminate their copyright works. To make the copyright protection regime more forward-looking to keep pace with technological developments, the Administration issued a consultation document in December 2006 to seek public views on how best to strengthen copyright protection in the digital environment. Having regard to the views received, the Administration released in April 2008 a package of preliminary proposals for further public engagement.

3. The Administration further refined its proposals to strengthen copyright protection in the digital environment, taking into account the views that had been received regarding its preliminary proposals, and the latest developments in overseas jurisdictions. The refined proposals were summarized below:

- (a) recognizing copyright owners' right to communicate their works through any mode of electronic transmission, with criminal sanctions against infringement;

- (b) introducing a statutory limitation of liability regime for online service providers (OSPs) in dealing with online piracy;
- (c) introducing a copyright exception for temporary reproduction of copyright works by OSPs;
- (d) prescribing additional factors for considering the award of additional damages; and
- (e) introducing a media shifting exception for sound recordings.

The Administration subsequently introduced the Copyright (Amendment) Bill 2011 (the Bill) into the Legislative Council on 15 June 2011.

The Bill

4. The Bill seeks to -

- (a) provide for the rights of the owner of the copyright in a work, and the rights of a performer in a performance, relating to the communication of the work or performance to the public;
- (b) provide for limitations on the liability of an OSP relating to online materials;
- (c) make further provision with respect to the acts that may be done without infringing copyright or performers' rights; and
- (d) provide for additional factors to which the court may have regard in considering whether additional damages should be awarded in an action for infringement of copyright or performers' rights.

Discussion by the Panel on Commerce and Industry

5. At the Panel meeting on 15 April 2008, the Administration consulted members on its preliminary proposals for strengthening copyright protection in the digital environment. The Panel considered that it was incumbent upon the Administration to ensure that the copyright protection regime would facilitate the free flow of information in the digital environment while not compromising the protection of personal data privacy.

6. At the Panel meeting on 17 November 2009, the Administration briefed members on its refined proposals. While Panel members in general welcomed the Administration's refined proposal for enhancing copyright protection in the digital environment, some members opined that over-regulation would stifle creativity and innovation, and that public education was equally important for the prevention of internet piracy. Some other members considered that without specifying the kinds of technology used in the infringement activity, the proposal on recognizing copyright owners' right to communicate their works through any mode of electronic transmission, with criminal sanctions against infringement, might increase the risk of inadvertent breaches by members of the public. The Administration was also requested to liaise with the Mainland and overseas authorities with a view to developing possible cooperative mechanism in combating online copyright piracy. As regards the Administration's proposal to introduce a media shifting exception limited to sound recordings, some members considered that the exception should be extended to other types of works such as films or publications provided that it was limited to personal use.

7. At the meeting on 19 January 2010, the Panel received views from members of the public and stakeholders, including copyright owners association and copyright users, on the Administration's refined proposals to strengthen copyright protection in the digital environment. While some copyright owners were of the view that the refined proposals had lagged behind global practices and was still insufficient for tackling online infringement, some copyright users called for a careful consideration of the refined proposals as these proposals would curtail the free flow of ideas and information. Panel members called on the Administration to strike a reasonable balance between the interests of the copyright holders and the users before finalizing the legislative proposals. Members also called on the Administration to further engage the relevant stakeholders, especially the users and the young generation to discuss the refined proposals.

Recent development

8. At the House Committee meeting on 17 June 2011, a Bills Committee was formed to scrutinize the Bill.

Relevant papers

Administration's paper for the Commerce and Industry Panel meeting on 16 January 2007

<http://www.legco.gov.hk/yr06-07/english/panels/ci/papers/ci0116cb1-694-3-e.pdf>

Minutes of the Commerce and Industry Panel meeting on 16 January 2007

<http://www.legco.gov.hk/yr06-07/english/panels/ci/minutes/ci070116.pdf>

Administration's paper for the Commerce and Industry Panel meeting on 15 April 2008

<http://www.legco.gov.hk/yr07-08/english/panels/ci/papers/ci0415cb1-1211-3-e.pdf>

Background brief prepared by the Legislative Council Secretariat for the Commerce and Industry Panel meeting on 15 April 2008

<http://www.legco.gov.hk/yr07-08/english/panels/ci/papers/ci0415cb1-1211-4-e.pdf>

Minutes of the Commerce and Industry Panel meeting on 15 April 2008

<http://www.legco.gov.hk/yr07-08/english/panels/ci/minutes/ci080415.pdf>

Administration's paper for the Commerce and Industry Panel meeting on 17 November 2009

<http://www.legco.gov.hk/yr09-10/english/panels/ci/papers/ci1117cb1-341-8-e.pdf>

Updated background brief prepared by the Legislative Council Secretariat for the Commerce and Industry Panel meeting on 17 November 2009

<http://www.legco.gov.hk/yr09-10/english/panels/ci/papers/ci1117cb1-341-9-e.pdf>

Minutes of the Commerce and Industry Panel meeting on 17 November 2009

<http://www.legco.gov.hk/yr09-10/english/panels/ci/minutes/ci20091117.pdf>

Updated background brief prepared by the Legislative Council Secretariat for the Commerce and Industry Panel meeting on 19 January 2010

<http://www.legco.gov.hk/yr09-10/english/panels/ci/papers/ci0119cb1-865-29-e.pdf>

Submissions for the Commerce and Industry Panel meeting on 19 January 2010

<http://www.legco.gov.hk/yr09-10/english/panels/ci/agenda/ci20100119.htm>

Minutes of the Commerce and Industry Panel meeting on 19 January 2010
<http://www.legco.gov.hk/yr09-10/english/panels/ci/minutes/ci20100119.pdf>

Council Business Division 1
Legislative Council Secretariat
4 July 2011