

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1232/13-14  
(These minutes have been seen  
by the Administration)

Ref : CB1/PL/CI/1

**Panel on Commerce and Industry**

**Minutes of special meeting**  
**held on Thursday, 4 November 2013, at 9:00 am**  
**in Conference Room 1 of the Legislative Council Complex**

- Members present** : Hon Vincent FANG Kang, SBS, JP (Chairman)  
Dr Hon CHIANG Lai-wan, JP (Deputy Chairman)  
Hon Emily LAU Wai-hing, JP  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Dr Hon LAM Tai-fai, SBS, JP  
Hon MA Fung-kwok, SBS, JP  
Hon Charles Peter MOK  
Hon Dennis KWOK  
Hon SIN Chung-kai, SBS, JP  
Hon Martin LIAO Cheung-kong, JP
- Members attending** : Hon Ronny TONG Ka-wah, SC  
Hon Claudia MO  
Hon CHAN Chi-chuen
- Members absent** : Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon WONG Ting-kwong, SBS, JP  
Ir Dr Hon LO Wai-kwok, BBS, MH, JP  
Hon CHUNG Kwok-pan

**Public officers  
attending**

: Agenda item I

Mr David WONG, JP  
Deputy Secretary for Commerce and Economic  
Development (Commerce and Industry) 2

Miss Patricia SO  
Principal Assistant Secretary for Commerce and  
Economic Development (Commerce and  
Industry) 3

Ms Ada LEUNG  
Deputy Director of Intellectual Property

Ms Michelle CHONG  
Assistant Director of Intellectual Property  
(Copyright)

**Attendance by  
invitation**

: Agenda Item I

Session 1

Individual

Mr TAM Kwok-sun

Society of Sosad Cantonese Lyrics

Ms Shuang Shi (Frosted Time)  
Secretary

Hong Kong In-media

Ms FONG Yuk-kwan  
Advocacy Officer

International Federation Against Copyright Theft  
(Greater China) Limited

Mr Sam HO  
Managing Director

Democratic Alliance for the Betterment and  
Progress of Hong Kong

Mr Holden CHOW  
Deputy Spokesperson

Amnesty International Hong Kong

Ms Debbie TSUI  
Campaigner

Individual

Mr LEUNG Shu-tai

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai  
Director

Hong Kong and International Publishers' Alliance

Mr Derek LEE Wai-wing  
Member of Steering Committee

Hong Kong Reprographic Rights Licensing  
Society

Ms Dillys YU Ka-po  
General Manager

International Federation of the Phonographic  
Industry (Hong Kong Group) Limited

Mr Ricky FUNG Tim-chee, BBS  
CEO

Phonographic Performance (South East Asia)  
Limited

Dr Frank WAN  
Consultant

Deltamac (Hong Kong) Company Limited

Ms Clera CHU  
Managing Director

IFPI Asian Regional Office

Mr ANG Kwee-tiang  
Regional Director

Movie Producers and Distributors Association of  
Hong Kong Limited

Mr Tony SHU  
Executive Secretary

Hong Kong Comics and Animation Federation  
Limited

Mr TANG Wing-hung  
Director

Civic Party

Mr Jacky YAU Chi-kin  
Representative

Hong Kong Motion Picture Industry Association  
Limited

Miss Jan LAM  
Chief Executive

The Law Society of Hong Kong

Mr Kenny WONG  
Member of Intellectual Property Committee

Hong Kong Recording Industry Alliance Limited

Miss Grace CHUI  
Legal Officer

People Power

Mr YU Fei  
Policy Researcher

New People's Party

Mr KAM Man-fung  
Chairperson of Youth Committee

Advance on the Fear

Mr The Attacking Alan  
Spokesman

Individual

Mr AU Nok-hin  
District Councillor of Southern District Council

Online Service Providers Alliance

Mr Joe LAM  
Chairman

Alliance for Open Government Licensing

Mr Lynn TSE

Individual

Mr TO Cho-ki

90sfoto

Mr Kaiser  
Photographer

HKdoujin

Mr Jason KONG  
Convenor

Keyboard Frontline

Mr Kafka LUK  
Spokesperson

Mouse Frontline

Ms Glacier C KWONG  
Spokesperson

The Melancholy of Creative Freedom

Miss Thirdrei  
Spokesperson

Session 2

Copyright and Derivative Works Alliance

Mr CHOY Ki  
Legal Advisor

Terminal Service Sodality Office of the Republic  
of Vanuatu in Hong Kong

Mr Segoo DUFF  
Director

Power of Golden Forum

Ms LEUNG Hoi-yan  
Convocator

League in Defense of Hong Kong's Freedoms

Mr James HON Lin-shan  
Spokesman

International Federation of Creativity and  
Technology Limited

Mr FUNG Tak-chung  
Deputy President – Technology

Individual

Ms LEUNG Yuen-ting

Individual

Mr CHAN Kwok-wai

Lagative Council, Be Represented for Sports,  
Performing Arts, Culture and Publication

Mr Funking MA  
Be Represented

Junior Chamber International Hong Kong

Mr Stanley NG  
2012 National President

I. B. LLC.

Miss Chiyuki SHI  
Ideas Director

Voice of Screen Shot Captures

Mr David CHU  
F5 Button Maintenance Supervisor

Composers of Hongkong Expressing Creations  
under the Underbudgeted Environment

Mr Mouse  
Director (Music Creation)

Hongkong Keysound Re-creating in Public

Ms NAKAWA  
Music Production Crew

Concern Group of Rights of Derivative Works

Mr Chiaki WOO  
Convenor

Motion Picture Association

Mr Henry WHEARE  
Partner, Hogan Lovells

CU Doujin Self-resecure before Promotion Society

Mr LI Pui-yuet  
Committee Member

Music Publishers Association Hong Kong Limited

Mr Jonathan HO Chi-yan  
Chairman

Individual

Dr Hagen SO Hau-heng

Labour Party

Mr MOK Hiu-fung  
Community Officer

Individual

Mr Devin SIO

Internet Professional Association

Dr Witman HUNG  
President

Old Mac and His Friends

Mr MAK Tin-ho  
Lonely Old Mac

Popularization Committee for VOCALOID  
Culture

Mr Kosaku Ikeda  
Onion Holder



Exile in Translation

Mr FAM Fan-fan  
Poet

Tragic Boy Club

Mr LAI Chi-keung  
Son of White Li

**Clerk in attendance** : Ms Annette LAM  
Chief Council Secretary (1)3

**Staff in attendance** : Ms Connie HO  
Senior Council Secretary (1)3

Miss Rita YUNG  
Council Secretary (1)3

Ms May LEUNG  
Legislative Assistant (1)3

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Action

- I. To receive views on the treatment of parody under the copyright regime**  
(LC Paper No. CB(1)179/13-14(01) -- Administration's paper on public consultation on treatment of parody under the copyright regime
- LC Paper No. CB(1)179/13-14(02) -- Paper on public consultation on treatment of parody under the copyright regime prepared by the Legislative Council Secretariat (updated background brief))

Submissions from deputations/individuals not attending the meeting

- (LC Paper No. CB(1) 179/13-14(26) -- Submissions from Dfsad  
(*Chinese version only*) Dfsa, kin ko and Keat
- LC Paper No. CB(1) 179/13-14(27) -- Submission from  
(*English version only*) Composers and Authors  
Society of Hong Kong
- LC Paper No. CB(1) 179/13-14(28) -- Submission from Steve  
(*Chinese version only*) CHAN
- LC Paper No. CB(1) 179/13-14(29) -- Submission from Dr YANG  
(*Chinese version only*) MO, District Councillor of  
Southern District
- LC Paper No. CB(1) 179/13-14(30) -- Submission from Hong  
(*Chinese version only*) Kong Publishing Federation  
Limited
- LC Paper No. CB(1) 317/13-14(01) -- Submission from Hong  
(*English version only*) Kong Bar Association
- LC Paper No. CB(1) 339/13-14(02) -- Submission from a member  
(*Chinese version only*) of the public (林兆彬)

Welcoming remarks by the Chairman

The Chairman welcomed representatives of the deputations and the Administration to the meeting. He said that written submissions from deputations received before the meeting had been circulated to members and uploaded onto the Legislative Council's webpage. Deputations that had not provided written submission were welcomed to do so as soon as possible after the meeting. He reminded the deputations that when addressing the Panel during the meeting, they were not covered by the protection and immunity under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

2. The Chairman then invited deputations to express their views on the treatment of parody under the copyright regime. The summary of deputations' views was in the **Appendix**.

The Administration's response

3. Deputy Secretary for Commerce and Economic Development (Commerce and Industry) 2 ("DSCED(C&I)2") provided a consolidated response to the views and concerns raised by deputations. He said that in considering any changes to the current copyright regime, the Administration had to take into account a number of guiding principles that Hong Kong needed to observe, namely:

(a) a fair balance should be maintained between protecting the legitimate interests of copyright owners and other public interests, such as reasonable use of copyright works and freedom of expression;

(b) any criminal exemption or copyright exception to be introduced must be fully compliant with Hong Kong's international obligations such as Article 61 of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") of the World Trade Organization ("WTO") and the "three-step test" requirement under Article 13 of the TRIPS Agreement respectively; and

(c) any proposed amendment to the Copyright Ordinance ("the Ordinance") must be sufficiently clear and certain so as to afford a reasonable degree of legal certainty.

4. In response to some deputations' views that the Ordinance and the copyright regime were tilted to the favour of copyright owners, DSCED(C&I)2 clarified that the copyright regime sought to strike a fair balance between the legitimate interests of copyright owners, irrespective of whether they were individuals or companies, and the rights of copyright users to freedom of expression.

5. With regard to some deputations' views that the concept of "more than trivial economic prejudice" introduced under Options 1 & 2 of the Consultation Paper was vague and unclear, DSCED(C&I)2 explained that when considering whether an infringing act had caused "more than trivial economic prejudice" to the copyright owners for the purpose of determining whether the relevant act should be subject to criminal liability under Option 1 or be exempted from such a liability under Option 2, relevant factors such as the nature of the original work, including its commercial value; the mode and scale of distribution/communication; and whether the infringing copy so distributed/communicated amounted to a substitution for the original work, would be taken into account by the court in determining the magnitude of economic prejudice.

6. On whether the provision of a hyperlink to copyright infringing materials would attract criminal liability, DSCED(C&I)2 advised that it would be subject to specific provisions of different ordinances. But for the copyright law, it had all along been the Administration's policy intent not to cast the criminal net too wide to cover the mere provision of hyperlinks. This approach had been embodied in the communication right proposed in the Copyright (Amendment) Bill 2011 ('the Bill'), under which a new section of 28A(5) was proposed to provide that "a person does not communicate a work to the public if the person does not determine the content of the communication".

### Discussion

#### *The concept of "secondary creation"*

7. Pointing out that "secondary creation" championed by some copyright users was not a term commonly used in copyright jurisprudence, Mr Martin LIAO sought clarification from deputations supporting special treatment of "secondary creation" on the differences between "secondary creation" and "derivative work" under the copyright law. He asked whether, in their view, all secondary creations should be provided with blanket exemption from liability or only those works that had a certain degree of originality should be accorded special treatment. Due to insufficient time for discussion, Mr LIAO requested the deputations concerned to provide a written response to his questions after the meeting.

8. Mr MA Fung-kwok asked deputations in favour of secondary creations whether they were pursuing "room" for secondary creations or advocating a "right" to secondary creations under the copyright regime. He said that while he would agree that adequate room should be provided for secondary creations, he had great reservation over users' request for the right to secondary creations.

#### *The scope of special treatment and the User-generated Content Option ("the UGC Option")*

9. Ms Claudia MO noted that while the mere provision of hyperlinks would not constitute offences under the Ordinance as clarified by the Administration, the uploading of copyright infringing materials onto the Internet might attract criminal or civil liabilities. She opined that netizens were concerned that this would prejudice the freedom of creativity. Ms MO asked if the Administration would actively consider the 4<sup>th</sup> Option (i.e. the UGC Option) put forward by netizens which sought to provide copyright exception for non-profit making UGC or UGC not in the course of trade, as

well as merging Options 2 and 3 to introduce both criminal and civil exemptions for parody. She further enquired about the Administration's timetable on the updating of the Ordinance.

10. Ms Emily LAU pointed out that some deputations were opposed to the various options put forward by the Administration on treatment of parody due to their distrust of the Government. She said that netizens and users were afraid that freedom of expression and free flow of information in society would be undermined by the Administration's proposals. Noting the diverse views expressed by deputations regarding the scope of special copyright treatment, Ms LAU enquired whether there was any consensus among relevant stakeholders over the subject during the consultation exercise. Pointing out that the subject under consultation was highly controversial, Ms LAU urged the Administration to continue engaging the stakeholders to strive for the greatest extent of consensus in taking forward the relevant legislative proposals.

11. Mr Martin LIAO said that same as other intellectual property rights, copyright provided exclusive rights for copyright owners over their works to encourage innovation and creativity. The objective of the consultation was to carve out a proposal that could strike a fair balance between the protection of the right to property and freedom of expression. Referring to the wide array of views received on the subject matter, he remarked that while some views were very constructive, some were expressed from a particular stance or perspective. Mr LIAO asked deputations in support of copyright exception for "secondary creation" how in their views the 4<sup>th</sup> Option (i.e. the UGC Option) could strike a fair balance between copyright protection and freedom of expression.

12. Mr SIN Chung-kai enquired whether the UGC Option proposed by netizens would be in compliance with Hong Kong's international obligations such as Article 61 and the "three-step test" requirement under Article 13 of the TRIPS Agreement respectively. The Administration agreed to provide a written response in this regard. Pointing out that one of the qualifying conditions for exemption under the 4<sup>th</sup> Option proposed by netizens was that the work in question should not have a substantial adverse financial effect on the exploitation or market of the existing work, Mr SIN asked the deputations from which perspective (i.e. the users, the copyright owner or the court) should the judgment be made on whether a particular act had amounted to substantial adverse financial effect on the underlying work. Mr Chiaki WOO (Convenor, Concern Group of Rights of Derivative Works) opined that on the principle of rule of law, the court should be the authority to make a judgment. Mr James HON (Spokesman, League in Defense of Hong Kong's Freedoms) shared his view that the relevant judgment should be made by the

court. Mr Chiaki WOO further said that users should be free from fear of prosecution and their rights to freedom of expression should not be hampered by copyright owners' right to sue. He also questioned whether the concept of "more than trivial economic prejudice" proposed by the Administration would comply with international obligations.

*(Post-meeting note: Pursuant to Mr SIN Chung-kai's request, the Administration had provided a preliminary assessment on the UGC Option with reference to the Canadian UGC exemption and three-step test enshrined in the TRIPS Agreement in the discussion paper on "Public Consultation on Treatment of Parody under the Copyright Regime" issued vide LC Paper No. CB(1)516/13-14(03) on 11 December 2013.)*

13. Mr Charles MOK said that netizens held the view that "secondary creation" was by itself a piece of creation as it had incorporated certain new elements with the use of information and technology. Due to the advancement of information and technology and rapid development of the Internet, the production and dissemination of secondary creations were much easier than before. Given that the use of "secondary creation" by users to express their views on the Internet platform had become a common trend, such a behavior should be appropriately accommodated under the legal framework. He concurred with Mr Martin LIAO that the core issue to be addressed in the consultation exercise was how to strike a fair balance between copyright protection to nurture innovation and creativity and freedom of expression on the Internet. In his views, the scope of special treatment under the copyright law should be as wide as possible to give netizens peace of mind from "white terror" without undermining the legitimate interests of copyright owners. Pointing out that each of the three options proposed by the Administration and the 4<sup>th</sup> Option proposed by Internet users had their own merits, Mr MOK enquired if it would be technically feasible for the Administration to draw up a proposal comprising the merits of individual options. He appealed to the stakeholders concerned to also take the opportunity of this consultation exercise to express their views on other relevant issues, such as the safe harbour provision and the Code of Practice for online service providers, to the Administration. Mr MOK also urged the stakeholders in the copyright industry to submit their proposals to the Administration as early as possible to make available time for netizens to respond to their proposals prior to the close of the consultation exercise.

14. Noting that the Administration had pointed out the problems associated with the 4<sup>th</sup> Option proposed by Internet users to some political parties earlier on, and raised concern over its compatibility with international obligations, Mr CHAN Chi-chuen queried the Administration's claim of maintaining an open mind towards 4<sup>th</sup> Option. Mr CHAN asked whether the Canadian UGC exception, which the 4<sup>th</sup> Option was largely modeled on, would be considered acceptable by the Administration. He added that the Administration should be more innovative and pioneering when amending the Ordinance, and should not reject "secondary creations" on grounds that such concept could not meet Hong Kong's international obligations and there was no such precedent cases in other common law jurisdictions. Mr MA (Be Represented for Sports, Performing Arts, Culture and Publication, Lagative Council) opined that the Administration should openly state the problems of the 4<sup>th</sup> Option instead of merely expressing its reservation over this Option to some political parties. Mr Sego DUFF (Director, Terminal Service Sodality Office of the Republic of Vanuatu in Hong Kong) expressed concern that UGC such as image capture etc was not covered by the three Options proposed by the Administration. He urged the Administration to come up with a counter proposal to provide exception for UGC should the 4<sup>th</sup> Option put forward by Internet users was considered to be incompatible with the three-step test under the TRIPS Agreement.

15. On the compliance of the 4<sup>th</sup> Option and the UGC exception of the Canadian model with international copyright treaties, DSCED(C&I)2 said that there were some controversies as to whether the Canadian model was compatible with the three-step test under the Berne Convention and the TRIPS Agreement. Given that the Canadian UGC exception, which already had more stringent qualifying conditions than the 4<sup>th</sup> Option proposed by netizens, had raised controversies, the question of whether the proposed 4<sup>th</sup> Option with its much wider scope would comply with international standards was still subject to further study and discussion. He added that the Administration had pioneered and taken the lead to incorporate the term "Internet" into Hong Kong's copyright law while no other countries had ever attempted to do so.

16. DSCED(C&I)2 said that the three Options proposed in the Consultation Paper were not necessarily mutually exclusive. He stressed that the Administration maintained an open mind towards individual options or a combination of options as well as any other options put forward by stakeholders. He further highlighted that one of the guiding principles to be taken into account during the consideration of these proposals was their compliance with Hong Kong's international obligations in respect of copyright protection, such as the Berne Convention and the TRIPS Agreement. To comply with the three-step test under the Berne Convention

and the TRIPS Agreement, any copyright exception must (a) be confined to certain special cases, (b) not conflict with a normal exploitation of the work, and (c) not unreasonably prejudice the legitimate interests of the author/copyright owner. DSCED(C&I)2 said that the Administration had not yet formally received the proposed 4<sup>th</sup> Option from Internet users and the so called 5<sup>th</sup> Option from copyright owners. He urged the stakeholders concerned to submit their proposals to the Administration before the end of the consultation period, which had been extended for one month up to the mid-November 2013.

17. In response to Ms Emily LAU's question on whether a common ground could be reached among various stakeholders to take forward the legislative exercise, DSCED(C&I)2 said that although rather polarized views were expressed in the exercise, there also appeared to be a common belief among the stakeholders of copyright owners and users that what one side championed should not hurt the legitimate interests of the other. While parodists and users engaged in "secondary creations" believed that their personal, not-for-profit works should not conflict with the commercial interests of copyright owners; copyright owners believed that their push for legislative efforts to curb online copyright piracy were not targeting daily non-commercial activities of users. This common position was reflected in a general agreement with the guiding principles set out in the exercise that underlined the need for striking a fair balance between different interests and complying with the international obligations of Hong Kong. The question for the Administration was how to draw a proper line in legislative language.

18. DSCED(C&I)2 said that the Administration would study in detail the proposals received during the consultation exercise. He assured members that the Administration would continue to engage and maintain close communication with relevant stakeholders in the process of drawing up a proposal that would serve the best interests of Hong Kong.

### *Summing up*

19. The Chairman called on the Administration to continue to engage the relevant industry stakeholders and users to build up consensus and exchange thoughts on how best to craft a proposal that could strike a right balance between the interests of copyright owners and users so as to take forward the legislative exercise to update Hong Kong's copyright regime. He also urged the stakeholders to submit their proposals and views to the Administration as soon as possible before the end of the consultation period.



**VI. Any other business**

20. There being no other business, the meeting ended at 12:46 pm.

Council Business Division 1  
Legislative Council Secretariat  
11 April 2014

**Panel on Commerce and Industry**

Special meeting on Monday, 4 November 2013 at 9:00 am

To receive views on the treatment of parody under the copyright regime

Summary of views and concerns expressed by deputations/individuals

No.	Name of deputation/individual	Major views and concerns
<b>Session 1</b>		
1.	Mr TAM Kwok-sun	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(03)) (Chinese version only)</li> </ul>
2.	Society of Sosad Cantonese Lyrics	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(04)) (Chinese version only)</li> </ul>
3.	Hong Kong In-media	<ul style="list-style-type: none"> <li>• the concept of copyright law was usually applied in the business context to protect the business interests of copyright owners. However, apart from the economic aspects, the social and cultural dimensions to copyright should also be taken into account in considering any amendments to the Copyright Ordinance ("the Ordinance");</li> <li>• the creator of a piece of work with an element of imitation, irrespective of how it might be called ( e.g. "parody", "spoofing/kuso" or "secondary creation"), should be exempted from civil and criminal liabilities as long as the work in question was non-profit-making. This was the underlying principle of the User-generated Content (UGC) Option proposed by users; and</li> <li>• online service providers (OSPs) should not be vested with the responsibility of taking down a piece of suspected copyright infringing work on their network or service platform. It should be the court to determine whether the work in question was a copyright infringement and OSPs were not in the position to make the related judgment.</li> </ul>
4.	International Federation Against Copyright Theft (Greater China) Limited	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(05)) (English version only)</li> </ul>

No.	Name of deputation/individual	Major views and concerns
5.	Democratic Alliance for the Betterment and Progress of Hong Kong	<ul style="list-style-type: none"> <li>• tended to support Option 3 which sought to introduce a fair dealing exception for parody. Under this Option, distribution and communication of parody would not attract any civil nor criminal liability for copyright infringement if the qualifying conditions of the exception were met. This Option could better allay the concerns of netizens over the criminal and civil liabilities as compared with Options 1 and 2 which focused on clarifying the potential criminal liability only; and</li> <li>• the proposed qualifying conditions for reference by the court to determine whether a particular dealing was fair should include (i) the purpose and nature of the dealing, including whether the dealing was for a profit-making purpose and whether the dealing was of a commercial nature; (ii) whether the dealing had displaced the market of the underlying copyright work ; (iii) whether the dealing had caused "more than trivial" economic prejudice to the copyright owner of the underlying copyright work. The introduction of other qualifying conditions should be subject to consensus in the community.</li> </ul>
6.	Amnesty International Hong Kong	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)273/13-14(03)) (Chinese version only)</li> </ul>
7.	Mr LEUNG Shu-tai	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(06)) (Chinese version only)</li> </ul>
8.	Hong Kong Human Rights Monitor	<ul style="list-style-type: none"> <li>• the Administration should provide in the consultation document information regarding the judgments on a number of cases in relation to fair dealing with non-commercial UGC in Canada. Members of the public were unable to keep abreast with the latest development regarding the application of UGC in Canada without the aforesaid information;</li> <li>• while the Administration had emphasized verbally that the amendments to the Ordinance was targeted at combating piracy on a commercial scale, the use of "not more than trivial economic prejudice" in the consultation document as the qualifying condition for exemption from criminal liability did not reflect such a policy intention and had caused confusion among members of the public; and</li> <li>• the Administration should not rush the legislative proposals for amending the Ordinance through Legislative Council prior to thorough discussions on the subject in the community.</li> </ul>
9.	Hong Kong and International Publishers' Alliance	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(07)) (Chinese version only)</li> </ul>
10.	Hong Kong Reprographic Rights Licensing Society	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(08)) (Chinese version only)</li> </ul>

No.	Name of deputation/individual	Major views and concerns
11.	International Federation of the Phonographic Industry (Hong Kong Group) Limited	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)339/13-14(01)) (English version only)</li> </ul>
12.	Phonographic Performance (South East Asia) Limited	<ul style="list-style-type: none"> <li>• considered that no criminal exemption should be granted to parodies as the existing Ordinance had provided for exceptions or permitted acts to accommodate true parodies;</li> <li>• the granting of any exceptions should be in compliance with Hong Kong's international obligations such as the three-step test under the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS");</li> <li>• agreed to the views expressed by the Intellectual Property scholars of the World Intellectual Property Organization that the Canadian model, which provided copyright exception for UGC, might not be compatible with the three-step test of the TRIPS as the details of its operation and application remained unclear; hence, it would be more appropriate to consider the issue in the next round of consultation.</li> </ul>
13.	Deltamac (Hong Kong) Company Limited	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)273/13-14(02)) (Chinese version only)</li> </ul>
14.	IFPI Asian Regional Office	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(09)) (English version only)</li> </ul>
15.	Movie Producers and Distributors Association of Hong Kong Limited	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(10)) (Chinese version only)</li> </ul>
16.	Hong Kong Comics and Animation Federation Limited	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(11)) (Chinese version only)</li> </ul>
17.	Civic Party	<ul style="list-style-type: none"> <li>• secondary creation was an effective tool for members of the public to express their opinions on social and political issues; and the protection of freedom of expression was of paramount importance in the light of the prevailing political environment;</li> <li>• agreed that the granting of any copyright exceptions should be in compliance with Hong Kong's international obligations, such as Article 61 and the three-step test under Article 13 of the TRIPS;</li> <li>• in addition to "parody", the subject of exemption in the legislations should also include "satire", "caricature" and "pastiche"; and</li> <li>• supported the adoption of a combination of Option 2 and 3 to provide criminal exception for parody, as well as to introduce a fair dealing exception to exempt parodists from both criminal and civil liabilities.</li> </ul>

No.	Name of deputation/individual	Major views and concerns
18.	Hong Kong Motion Picture Industry Association Limited	<ul style="list-style-type: none"> <li>• copyright owners in the film industry had all along been accommodating regarding the use of popular copyright works for spoofing by some users without proper authorization from the copyright owners concerned to express their views on social and political issues. No users had been prosecuted for their spoofing works so far;</li> <li>• considered the use of copyright works in genuine parodies for commenting on social events acceptable. The key problem was the users' pursuit for the "right" to secondary creations without any restrictions as well as the ownership of the copyrights associated with these works, which were actually produced by making certain alterations to existing copyright works.</li> </ul>
19.	The Law Society of Hong Kong	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(12)) (English version only)</li> </ul>
20.	Hong Kong Recording Industry Alliance Limited	<ul style="list-style-type: none"> <li>• considered that Hong Kong's copyright law had lagged behind other countries and a more robust copyright regime was required to tackle on-line music piracy;</li> <li>• the provision of any criminal exception should be in compliance with Hong Kong's international obligations, including Article 61 and the three-step test under Article 13 of the TRIPS;</li> <li>• a statutory definition should be provided for the term "parody" to provide legal certainty as well as useful guidance for users, copyright owners and the court; and</li> <li>• authors' moral right should be maintained notwithstanding any special treatments for parody under the copyright regime.</li> </ul>
21.	People Power	<ul style="list-style-type: none"> <li>• suspected that the Administration's intention behind the amending of the Ordinance was to provide a legal basis for prosecuting users engaged in secondary creations who might generate great profit from their work, as the prosecution of such cases was rather difficult under the existing Ordinance; and</li> <li>• while the international copyright treaties such as the TRIPS and Berne Convention were meant to curb commercial-scale copyright infringement only, internet users were concerned whether the Administration would, as in the case of the Mainland, regulate the user-generated content of individual users in the name of complying with international obligations under the TRIPS and the Berne Convention.</li> </ul>
22.	New People's Party	<ul style="list-style-type: none"> <li>• agreed that special treatments should be provided for non-commercial parodies to protect the freedom of expression;</li> <li>• supported the implementation of Option 3 for the introduction of a fair dealing exception for non-commercial parodies; and</li> <li>• advised the Administration to step up publicity to arouse public awareness on the importance of</li> </ul>

No.	Name of deputation/individual	Major views and concerns
		copyright protection; to encourage copyright owners to license their copyright work for use by other users on the Internet through Creative Commons licence; to consult local and overseas scholars on copyright laws with a view to drawing up an appropriate legal framework for the implementation of Option 3; to take forward the necessary legislative amendments as soon as possible to bring Hong Kong's copyright regime in line with international standards while giving due regard to the protection of the freedom of expression.
23.	Advance on the Fear	<ul style="list-style-type: none"> <li>• UGC for non-commercial purpose, which would not prejudice the underlying copyright work, should be duly protected;</li> <li>• advised that apart from parody, special treatment should also be given to works of satire, caricature and pastiche, as well as some specific acts on the Internet such as rewriting lyrics for a song, cut-ups and mash-ups etc; and</li> <li>• recommended the implementation of Option 3 ( i.e. the introduction of a fair dealing exception for parody) and Option 4 (i.e. the UGC Option) in parallel as these two options could render the needed protection for secondary creations by providing them with exemptions from both criminal and civil liabilities.</li> </ul>
24.	Mr AU Nok-hin, District Councillor of Southern District Council	<ul style="list-style-type: none"> <li>• commented that the term "more than trivial economic prejudice" should be given a clearer definition;</li> <li>• citing the court case of KTCC 3075/07 and sought clarification from the Administration on whether sharing and re-posting of hyperlinks containing possible copyright infringing materials would attract any criminal liability; and</li> <li>• suggested that the Administration should make reference to court cases in Australia and Canada in drawing up the scope of copyright exemption.</li> </ul>
25.	Online Service Providers Alliance	<ul style="list-style-type: none"> <li>• secondary creation was a common tool deployed by users to express their views on social issues;</li> <li>• users were of the view that non-commercial copyright infringing behaviors should not be subject to criminal liability and that non-commercial secondary creations should be exempted from both criminal and civil liabilities. Whether a certain act on the Internet was subject to criminal liability should be determined by its nature (i.e. commercial or non-commercial ) rather than its consequences ( i.e. whether it had prejudiced the rights of copyright owners) ; and</li> <li>• expressed worry that the proposed amendments to the Ordinance might stifle creativity on the internet platform as users might refrain from producing secondary creations to avoid being inadvertently caught by the criminal net.</li> </ul>
26.	Alliance for Open Government Licensing	<ul style="list-style-type: none"> <li>• to demonstrate the Administration's commitment that it would not prosecute any individuals who made use of Government's copyright works for their secondary creations, the Administration should,</li> </ul>

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		<p>making reference to the practices of the Governments of the United Kingdom and the United States ("the US"), open all Government's copyright works for public use; and</p> <ul style="list-style-type: none"> <li>supported the implementation of Option 3 (the introduction of a fair dealing exception for parody) and Option 4 (the UGC Option) in parallel as these two Options could complement each other.</li> </ul>
27.	Mr TO Cho-ki	<ul style="list-style-type: none"> <li>agreed that the term "parody" instead of "secondary creation" should be used as the subject of exemption in view that the latter might be commercial in nature; and</li> <li>supported the implementation of Option 3 (the introduction of a fair dealing exception for parody) which, in his view, could strike a right balance between the protection of copyright and freedom of expression.</li> </ul>
28.	90sfoto	<ul style="list-style-type: none"> <li>netizens engaged in secondary creations aimed at expressing views on some specific social and economic issues as well as to gain the public's appreciations for their works. Hence, from netizens' point of view, the room for secondary creations was far more important than monetary rewards; and</li> <li>supported the implementation of Option 3 ( the introduction of a fair dealing exception for parody) and Option 4 ( the UGC Option) in parallel as these two Options could complement each other, as well as strike a right balance between the interests of copyright owners and users.</li> </ul>
29.	HKdoujin	<ul style="list-style-type: none"> <li>presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(13)) (Chinese version only)</li> </ul>
30.	Keyboard Frontline	<ul style="list-style-type: none"> <li>welcomed Option 3 proposed by the Administration and suggested that apart from "parody", "satire", "caricature" and "pastiche" should also be included as the subjects of exemption under the said Option. No statutory definitions should be given to those terms.</li> <li>considered that the proposed Option 4 ( i.e. the UGC Option) could offer the greatest protection for users as under this proposed option, non-commercial secondary creations and some common behaviours on the Internet involving the use of copyright works, such as image capturing, would not attract any criminal and civil liabilities;</li> <li>according to Professor Peter YU from the US, the Canadian UGC exception provided a much more limited exception than the fair use provision in the US, which allowed for the transformative use of copyright works for commercial purposes. If the US "fair use" provision passed the three-step test, a narrow form of the US fair use provision, such as the Canadian UGC exception, would not fail that same test. Hence, it was believed that Option 4, which was largely modelled on the Canadian UGC exception, could also pass the three-step test; and</li> <li>expressed opposition to Options 1 &amp; 2 as the threshold of "more than trivial economic prejudice" for assessing the economic magnitude of prejudice caused to copyright owners under the two options</li> </ul>

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		was too low, thereby creating "white terrors" among users. These options were also not compatible with the TRIPS which targeted at criminalizing wilful trademark counterfeiting or copyright piracy on a commercial scale only and not individual users' activities on the Internet.
31.	Mouse Frontline	<ul style="list-style-type: none"> <li>• confining the subject of exemption to parody only was a step to pave way for easy criminal sanction of secondary creations and to facilitate the subsequent civil claims lodged by copyright owners. The acts of capturing TV/Movie frames and captioning movies, which were commonly used in secondary creations, would be subject to a high risk of being criminalized under such a proposal;</li> <li>• questioned that the real intention behind the amendments to the Ordinance was to safeguard the interests of copyright owners rather than to relax the treatment of parodies/secondary creations under the copyright regime; and</li> <li>• challenged whether the brand new concept of "more than trivial economic prejudice" introduced under the Administration's proposal was in compliance with international copyright treaties.</li> </ul>
32.	The Melancholy of Creative Freedom	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(14)) (Chinese version only)</li> </ul>
<b>Session 2</b>		
33.	Copyright and Derivative Works Alliance	<ul style="list-style-type: none"> <li>• expressed support for Option 3 (i.e. the introduction of a fair dealing exception for parody) and suggested that apart from "parody", the subject of exemption should also include "satire", "caricature" and "pastiche"; and</li> <li>• Option 4 (i.e. the UGC Option) was proposed to provide the widest scope of protection for users. Given that Option 4 had more stringent requirements than the "fair use" doctrine adopted by the US, it was confident that this Option was in compliance with Hong Kong's international obligations in respect of copyright protection.</li> </ul>
34.	Terminal Service Sodality Office of the Republic of Vanuatu in Hong Kong	<ul style="list-style-type: none"> <li>• secondary/derivative creations could help promote the underlying copyright works to different strata in society and enhance their popularity;</li> <li>• considered that the three Options proposed by the Administration would suppress secondary creations by different magnitudes; and</li> <li>• expressed support for the UGC Option proposed by users as it offered the greatest protection for secondary creations as well as certain common Internet activities that used copyright works, (e.g. image capture and sharing for social use, real-time streaming of video game playing, the online posting of private song singing, etc) which were not necessarily covered by "secondary creations".</li> </ul>



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35.	Power of Golden Forum	<ul style="list-style-type: none"> <li>• opposed to Options 1 and 2 and supported the implementation of Option 3 ( i.e. the introduction of a fair dealing exception for parody) and Option 4 ( i.e. the UGC Option) in parallel;</li> <li>• secondary creations could help stimulate creativity in the community and thus any restrictions imposed would curtail creations; and</li> <li>• opined that copyright works were in fact part of our culture and thus public resources. However, copyright was nowadays being used as a tool to protect the interests of copyright owners who were trying to monopolize the use of these public resources and suppress freedom of expression.</li> </ul>
36.	League in Defense of Hong Kong's Freedoms	<ul style="list-style-type: none"> <li>• the three Options proposed by the Administration could not protect secondary creations and netizens' interests. These Options would also threaten freedom of creation. Netizens engaged in secondary creations and members of the general public in Hong Kong might inadvertently be caught by the criminal net should these options be incorporated into the Ordinance.</li> <li>• considered the UGC Option proposed by users a valuable reference in mapping out the exceptions under the copyright law. The copyright exceptions for UGC could offer the greatest protection to secondary creations as well as freedom of expression; and</li> <li>• expressed strong opposition to any attempts of the Administration that might restrict freedom of expression.</li> </ul>
37.	International Federation of Creativity and Technology Limited	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(15)) (English version only)</li> </ul>
38.	Ms LEUNG Yuen-ting	<ul style="list-style-type: none"> <li>• pointed out that Hong Kong's copyright regime was lagging behind other countries and was unable to provide adequate protection for copyright works in the digital environment;</li> <li>• supported the implementation of Option 1 (i.e. clarifying the relevant existing provisions in the Ordinance) considering that the existing Ordinance had already provided adequate room for parody and that no parodists had been prosecuted so far; and</li> <li>• advised that the Administration should focus on updating Hong Kong's copyright law to bring it on a par with international standards. Time should not be wasted on the discussion on the treatment of parody.</li> </ul>
39.	Mr CHAN Kwok-wai	<ul style="list-style-type: none"> <li>• young people nowadays used to express their views and feelings on the internet platform through various activities (such as image capturing) which might involve the use of copyright work. The freedom of expression on the Internet platform should be duly preserved; and</li> <li>• supported the provision of special treatment for parody and advised that the Administration should strike a fair balance between the protection of copyright and freedom of expression in taking forward the legislative amendments.</li> </ul>

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40.	Lagative Council, Be Represented for Sports, Performing Arts, Culture and Publication	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(16)) (Chinese version only)</li> </ul>
41.	Junior Chamber International Hong Kong	<ul style="list-style-type: none"> <li>• expressed support for legislative amendments based on Option 3 and the provision of criminal exception for parody;</li> <li>• advised that apart from "parody", the subjects of exemption should include "satire", "caricature" and "pastiche", as well as "spoofing/kuso" and other terms deemed appropriate by the public to provide adequate room for these genres on the internet platform as far as possible. No statutory definition should be given to those terms; and</li> <li>• expressed reservation over Option 4 (the UGC Option).</li> </ul>
42.	I. B. LLC.	<ul style="list-style-type: none"> <li>• it was unfair that while secondary creations were accused of copyright infringement by copyright owners, the same accusation was not directed to local TV dramas and pop songs which had also incorporated certain elements of other copyright works.</li> </ul>
43.	Voice of Screen Shot Captures	<ul style="list-style-type: none"> <li>• expressed opposition to the three Options proposed by the Administration and considered that these Options would suppress the freedom of expression; and</li> <li>• supported the implementation of Option 4 (i.e. the UGC Option) for it could offer the greatest protection for secondary creations and other common activities on the internet platform, such as image capturing, which was non-commercial in nature and would not prejudice the original work.</li> </ul>
44.	Composers of Hongkong Expressing Creations under the Underbudgeted Environment	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(17)) (Chinese version only)</li> </ul>
45.	Hongkong Keysound Re-creating in Public	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(18)) (Chinese version only)</li> </ul>
46.	Concern Group of Rights of Derivative Works	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(19)) (Chinese version only)</li> </ul>
47.	Motion Picture Association	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(20)) (English version only)</li> </ul>
48.	CU Doujin Self-resecure before Promotion Society	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1) 273/13-14(01)) (Chinese version only)</li> </ul>
49.	Music Publishers Association Hong Kong Limited	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)317/13-14(02)) (English version only)</li> </ul>

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50.	Dr Haggen SO Hau-heng	<ul style="list-style-type: none"> <li>• a copyright regime that balanced the interests of copyright owners and users could provide an enabling environment conducive to creativity. Imposing too many restrictions on the use of copyright works under the copyright regime would stifle creativity; and</li> <li>• advised that the Administration should make reference to Canada, the first country that had incorporated copyright exception for UGC into its copyright law. According to the views of some scholars, the Canadian model was in compliance with the three-step test under the TRIPS.</li> </ul>
51.	Labour Party	<ul style="list-style-type: none"> <li>• the various options proposed by the Administration were not mutually exclusive to each other, and the Administration should carve out a separate proposal incorporating the merits of individual options to offer the greatest protection to freedom of expression on the Internet platform. The Administration should also take into consideration the option proposed by users (i.e. the UGC Option) in determining the scope of the special treatment under the copyright regime.</li> </ul>
52.	Mr Devin SIO	<ul style="list-style-type: none"> <li>• supported the implementation of Option 3 (i.e. the introduction of a fair dealing exception for parody) as this option, which provided exemptions for parodists from both civil and criminal liabilities, could strike a fair balance between the protection of copyright and freedom of expression; and</li> <li>• expressed reservation over Option 4 (i.e. the UGC Option) as the scope of copyright exemptions proposed under this Option was too wide.</li> </ul>
53.	Internet Professional Association	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(21)) (English version only)</li> </ul>
54.	Old Mac and His Friends	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(22)) (Chinese version only)</li> </ul>
55.	Popularization Committee for VOCALOID Culture	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(23)) (Chinese version only)</li> </ul>
56.	Exile in Translation	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(24)) (Revised)) (Chinese version only)</li> </ul>
57.	Tragic Boy Club	<ul style="list-style-type: none"> <li>• presentation of views as set out in submission (LC Paper No. CB(1)179/13-14(25)) (Chinese version only)</li> </ul>