

立法會
Legislative Council

LC Paper No. CB(1)839/06-07
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/05/1

Bills Committee on Copyright (Amendment) Bill 2006

**Minutes of the seventeen meeting
held on Thursday, 11 January 2007, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, JP (Chairman)
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon LI Kwok-ying, MH, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : Hon Bernard CHAN, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Dr Hon YEUNG Sum
Hon CHIM Pui-chung
Hon Albert Jinghan CHENG
- Public officers attending** : Mr Christopher K B WONG
Deputy Secretary for Commerce,
Industry and Technology
(Commerce and Industry)

Ms Priscilla TO
Principal Assistant Secretary for
Commerce, Industry and Technology
(Commerce and Industry)

Miss Eugenia CHUNG
Assistant Secretary for Commerce,
Industry and Technology
(Commerce and Industry)

Ms Maria NG
Acting Assistant Director of Intellectual Property
Intellectual Property Department

Mr Michael LAM
Senior Government Counsel
Department of Justice

Ms Rayne CHAI
Senior Government Counsel
Department of Justice

Mr Ben HO
Senior Superintendent
Intellectual Property Investigation Bureau
Customs and Excise Department

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (1)3

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Ms YUE Tin-po
Senior Council Secretary (1)5

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I Confirmation of minutes and matters arising

LC Paper No. CB(1)673/06-07 -- Minutes of meeting held on
15 December 2006

The Bills Committee deliberated (Index of proceedings attached at
Appendix).

2. The minutes of the meeting held on 15 December 2006 were confirmed.

II Papers issued since last meeting

- LC Paper No. CB(1)678/06-07(01) -- Submission dated 9 January 2007 from Hong Kong and International Publishers' Alliance (English version only)
- LC Paper No. CB(1)678/06-07(02) -- Submission dated 9 January 2007 from Hong Kong Reprographic Rights Licensing Society (English version only)
- LC Paper No. CB(1)685/06-07(01) -- Submission dated 9 January 2007 from Enrich Publishing (English version only)
- LC Paper No. CB(1)685/06-07(02) -- Submission dated 9 January 2007 from Precise Publications Ltd (English version only)
- LC Paper No. CB(1)685/06-07(03) -- Submission dated 9 January 2007 from Hong Kong Publishing Federation Limited (English version only)
- LC Paper No. CB(1)685/06-07(04) -- Submission dated 9 January 2007 from the Anglo-Chinese Textbook Publishers Organisation (English version only)
- LC Paper No. CB(1)685/06-07(05) -- Submission dated 9 January 2007 from Happy Mind Ltd (English version only)
- LC Paper No. CB(1)685/06-07(06) -- Submission dated 9 January 2007 from Modern Educational Research Society Ltd (English version only)
- LC Paper No. CB(1)685/06-07(07) -- Submission dated 9 January 2007 from Modern Education Network Limited (English version only)

- LC Paper No. CB(1)685/06-07(08) -- Submission dated 9 January 2007 from Jing Kung Educational Press (English version only)
- LC Paper No. CB(1)685/06-07(09) -- Submission dated 9 January 2007 from Chung Tai Educational Press (English version only)
- LC Paper No. CB(1)699/06-07(01) -- Submission dated 8 January 2007 from Federation of Hong Kong Industries (English version only)

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3. Members noted that the above submissions had been issued for the Bills Committee's information. To facilitate more systematic discussion, the Chairman requested the Administration to provide in due course a detailed response to the submissions from the deputations; together with the revised CSAs in one batch for members' consideration after the Bills Committee had completed clause-by-clause examination of the Bill. The Administration was also asked to take into consideration the concerns raised in the submissions when preparing the revised CSAs, and to inform the Bills Committee whether and how the concerns were addressed in the revised CSAs.

III Meeting with the Administration

- LC Paper No. CB(1)630/06-07(01) -- **Revised** marked-up version of the Administration's proposed Committee Stage Amendments (from clause 12 to 24)
- LC Paper No. CB(3)433/05-06 -- The Bill
- LC Paper No. CB(1)1323/05-06(02) -- Marked-up copy of the Bill prepared by the Legal Service Division

(A list of other relevant papers previously issued is available on the Legislative Council website at http://www.legco.gov.hk/yr05-06/english/bc/bc01/papers/bc01_ppr.htm)

Clause 18 - Section added (i.e. 81A on playing of sound broadcasts inside vehicles)

4. The Administration advised that the playing of copyright works in public required the copyright owners' prior authorization. In response to the suggestions that drivers' access to news, traffic or weather information through radio broadcasts should not be hampered, the Administration proposed to introduce a new permitted

act provision so that it was not an infringement to play a sound broadcast inside a vehicle for the purpose of affording the driver of the vehicle access to public information. The proposed permitted act under section 81A of the Bill was formulated in the light of the views collected in the public consultation exercise conducted in 2001 and was carefully drafted not to apply to playing of radio broadcast for the enjoyment of passengers which was currently subject to royalty payment. The Administration considered that it had struck a reasonable balance between the interest of copyright owners and drivers' legitimate use of the copyright works for the purpose of accessing public information.

Playing of a sound broadcast inside a vehicle for the purpose of affording the driver of the vehicle access to public information

5. Mrs Selina CHOW and Mr Ronny TONG agreed with the Administration's policy intent in introducing the permitted act under proposed section 81A but expressed concern about the current drafting of the section.

6. Mrs Selina CHOW pointed out that there were often other passengers on board the vehicle and there might be practical enforcement difficulty in determining whether the playing of the sound broadcast in question was for the purpose of affording the driver of the vehicle access to public information, or for entertaining the passengers on board. As such, Mrs CHOW suggested that the proposed provision should be drafted in such a way as to reflect that the playing of a sound broadcast inside the vehicle was primarily for the purpose of affording the driver of the vehicle access to public information.

Admin 7. Mr Ronny TONG suggested that the drafting of proposed section 81A should clearly define the scope of copyright exemption in order not to deviate from the Administration's original policy intent. The Administration noted members' views and suggestions and would consider if amendments should be made to proposed section 81A(1) to address members' concern.

Meaning of "vehicle" in proposed section 81A(2)

8. On the drafting of proposed section 81A(2), Mr Ronny TONG noted that "vehicle", as stated in proposed section 81A(1), included any private or public vehicle which was constructed or adapted for use on roads. He sought the reasons for highlighting "private" or "public" vehicles. The Administration stated that the policy intent was to provide exemption for public playing of sound broadcast inside a vehicle for the purpose of affording the driver of the vehicle access to public information. Both "public" and "private" vehicles were covered in the provisions because the use of some "private vehicles" (e.g. a school bus, or a coach) might involve situations of public playing of sounding recording inside a vehicle. Mr Ronny TONG said that the reference to "private vehicles" might cause confusion that the playing of sound broadcast in a private context (such as for family members or friends inside a private car) would constitute public playing

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and hence would require exemption under the Copyright Ordinance. He also questioned whether the drafting of proposed section 81A(2) could reflect the policy intent. The Administration would consider Mr TONG's view and the draft provision in question.

Clause 22 – Criminal liability for making or dealing with infringing articles, etc.

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9. Noting that exemption from business end-user criminal liability would apply to any person who possessed an infringing copy of a copyright work for the purpose of giving legal advice in relation to the infringing copy as a lawyer (whether or not he was qualified in Hong Kong to practise as a barrister or solicitor) as provided in proposed section 118(2E)(a), Mr Ronny TONG queried whether the currently proposed CSAs would have the effect of exempting from the criminal offence provision under proposed section 118(2A) those lawyers who were not permitted by the Legal Practitioners Ordinance (Cap 159) to give legal advice in Hong Kong. In this connection, the Chairman requested the Administration to look into Mr TONG's query in the light of its policy intent and clarify this point at the next meeting.

Arrangements for the next meeting

10. Members agreed that the 18th meeting would be held on Thursday, 18 January 2006 at 2:30 pm.

IV Any other business

11. There being no other business, the meeting ended at 10:27 am.

**Proceedings of the seventeen meeting of the
Bills Committee on Copyright (Amendment) Bill 2006
on Thursday, 11 January 2007, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 001002	Chairman Administration	(a) Confirmation of the minutes of the 15 th meeting on 15 December 2006 (LC Paper No. CB(1) 673/06-07) (b) Members noted the 12 submissions (issued on 9 and 10 January 2007 vide LC Paper Nos. CB(1)678/06-07(01) and (02), CB(1)685/06-07(01) to (09) and CB(1)699/06-07(01)) listed on the agenda	The Administration to follow up as stated in paragraph 3 of the minutes
001003 – 011229	Administration Chairman Mr Ronny TONG Mrs Selina CHOW Prof Patrick LAU ALA5 Mr Vincent FANG Mr CHAN Kam-lam	<u>Clause 18 - Section added (i.e. 81A on playing of sound broadcasts inside vehicles)</u> (a) The Administration's advice that: (i) the Administration proposed to introduce a new permitted act provision so that it would not be an infringement to play a sound broadcast inside a vehicle for the purpose of affording the driver of the vehicle access to public information; and (ii) the proposed permitted act was carefully drafted not to apply to playing of radio broadcast for the enjoyment of passengers which was currently subject to royalty payment. (b) Discussion of the operation of proposed section 81A including the possible difficulty in enforcing the provision (c) The Administration's advice that it was held in previous court cases that the playing of work in a domestic or quasi-domestic environment did not	The Administration to note members' views for consideration and follow up as stated in paragraphs 7 and 8 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		<p>constitute public performance</p> <p>(d) Members' concern on possible uncertainties and litigation if the proposed provisions were enacted</p> <p>(e) Mrs Selina CHOW and Mr Ronny TONG agreed with the Administration's policy intent in introducing the permitted act under proposed section 81A but expressed concern about the current drafting of the section</p> <p>(f) Mrs Selina CHOW's suggestion that the proposed provision should be drafted in such a way as to reflect that the playing of a sound broadcast inside the vehicle was primarily for the purpose of affording the driver of the vehicle access to public information</p> <p>(g) Mr Ronny TONG's suggestion that the drafting of proposed section 81A should be improved so as to clearly define scope of copyright exemption in order not to deviate from the Administration's original policy intent</p> <p>(h) Mr Ronny TONG sought the reasons for highlighting "private" or "public" vehicles and asked whether the drafting of proposed section 81A(2) could adequately exclude circumstances that did not constitute public performance and reflect the policy intent</p>	
011230 - 011343	Administration Chairman	<p><u>Clause 18A – Right to be identified as author or director</u></p> <p>Members raised no query</p> <p><u>Clause 18B – Requirement that right be asserted</u></p> <p>Members raised no query</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Clause 18C – Right to object to derogatory treatment of work</u></p> <p>Members raised no query</p>	
011344 – 011646	Administration Chairman Mr Ronny TONG	<p><u>Clause 19 – Infringement of right by possessing or dealing with infringing article</u></p> <p>(a) Mr Ronny TONG's enquiry about the reason of deleting the phrase "in connection with" from the expression "for the purpose of, in the course of, or in connection with, any trade or business" in CO.</p> <p>(b) The Administration's explanation that the Bill sought to, amongst other things, incorporate into CO the related amendments in the Copyright (Suspension of Amendments) Ordinance 2001 (Cap. 568) so as to make permanent the deletion of the phrase from the relevant criminal provisions in CO. The Administration also took the opportunity of the Bill to delete the phrase from the concerned civil provisions including section 95 of CO to which clause 19 related. The effect was that activities incidental to business would fall outside the scope of the civil provisions as well.</p>	
011647 – 011741	Administration Chairman	<p><u>Clause 20 – False attribution of work</u></p> <p>Members raised no query</p> <p><u>Clause 20A – Application of provisions to joint works</u></p> <p>Members raised no query</p> <p><u>Clause 20B – Transmission of moral rights on death</u></p> <p>Members raised no query</p>	

Time Marker	Speaker	Subject(s)	Action Required
011742 – 011749	Administration Chairman	<u>Clause 21 – Order for delivery up</u> Members raised no query	
011750 – 015534	Administration Mr Ronny TONG Chairman	<u>Clause 22 – Criminal liability for making or dealing with infringing articles, etc.</u> (a) Discussion of possible scenarios in which proposed section 118(2D) might or might not apply (b) Mr Ronny TONG's query whether the currently proposed CSAs would have the effect of exempting from the criminal offence provision under proposed section 118(2A) those lawyers who were not permitted by the Legal Practitioners Ordinance (Cap 159) to give legal advice in Hong Kong	
015535 – 015722	Chairman Mr Ronny TONG Administration	(a) Mr Ronny TONG's enquiry whether proposed section 41A would apply for the purposes of a public examination (b) The Administration's advice that copyright was not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to the candidates or answering the questions in accordance with the existing section 41(3) of CO.	
015723 – 015806	Chairman	Arrangements for the next meeting	