

立法會
Legislative Council

LC Paper No. CB(1)1009/06-07
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/05/1

Bills Committee on Copyright (Amendment) Bill 2006

**Minutes of the nineteen meeting
held on Thursday, 25 January 2007, at 2:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, JP (Chairman)
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Kam-lam, SBS, JP
Dr Hon YEUNG Sum
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Ting-kwong, BBS
Hon Patrick LAU Sau-shing, SBS, JP
Hon Albert Jinghan CHENG
- Members absent** : Hon Margaret NG
Hon Bernard CHAN, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Timothy FOK Tsun-ting, GBS, 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 Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
- 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 Ada LEUNG
Assistant Director of Intellectual Property
Intellectual Property Department

Ms Maria NG
Senior Solicitor
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

Mr KWOK Kai-chiu, Jim
Superintendent
Intellectual Property Investigation
(Administration and Support) Group
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

Action

I Confirmation of minutes and matters arising

LC Paper No. CB(1)789/06-07 -- Minutes of meeting held on
4 January 2007

2. The minutes of the meeting held on 4 January 2007 were confirmed.

II Papers issued since last meeting

3. Members noted that no paper had been issued for the Bills Committee's information.

III Meeting with the Administration

LC Paper No. CB(1)769/06-07(01) -- Marked-up version of the
Administration's proposed
Committee Stage Amendments
(from clause 25 to 53)

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

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

Clause 27 – Affidavit evidence

4. The Chairman recapped the discussion at the last meeting about the proposed formulation of "the person named in the affidavit has not been granted with a licence of the owner" in lieu of "the owner has not granted a person named in the affidavit a licence" in proposed sections 121(2A), (2B), (2C) and (2D), and asked whether the Administration would revise the formulation in response to members' concern.

5. In response, the Administration advised that the wording "the licence of the copyright owner" was also found in various provisions of the Copyright Ordinance (CO). The context in which the expression was used referred to the lack of

permission to do an act restricted by copyright or the absence of a licence or authorization, as one of the elements constituting an act of copyright infringement. The same expression was also used in existing section 198(1) of CO where the word "unauthorized" was defined to mean, as regards anything done in relation to a work, anything done otherwise than by or with the licence of the copyright owner. It was the Administration's view that a "licence of the copyright owner" would, in the above context, include a "sub-licence" granted by a licensee authorized by the copyright owner. However, it would not be appropriate to define the term "licence" to invariably include a "sub-licence" throughout CO as the term was also used in other context to refer only to licences granted by copyright owners e.g. licences granted under licensing schemes. The expression was used in the U.K. Copyright, Designs and Patents Act 1988 without a definition. There was support from authoritative legal textbooks that the expression should be interpreted as covering sub-licences. The Administration therefore took the view that the proposed formulation should be retained. Noting the Administration's advice, Ms Audrey EU and the Chairman raised no further objection to the proposed formulation.

Clause 35 - Minor definitions

Admin

6. Mrs Selina CHOW and Ms Audrey EU noted that the expression "a trade or profession" was removed from the revised definition of "business" in proposed section 198(1). However, the expression "any trade or business" was retained in various criminal and civil provisions of CO. Members asked the Administration to consider whether the reference to the term "trade" should be retained in the revised definition of "business" whereas the references to "trade" in the relevant criminal and civil provisions should be deleted. The Administration agreed to revert to the Bills Committee on this point. It was noted that deletion of the reference to "trade" in the criminal and civil provisions might have wide implications and hence would need to be considered with great care.

Admin

7. The amendments to section 198(1) included the insertion of a definition for "specified course of study", which made reference to curriculum guidelines issued by the Curriculum Development Council. Noting that the Council was not a statutory body, the Chairman reminded the Administration to consider the need or otherwise of any consequential amendment to the provision, if enacted, if the Curriculum Development Council changed its name in future. The Administration took note of the Chairman's point and would see how it could best be addressed.

Part III – Rights in performances

Admin

8. As the proposed provisions relating to parallel importation of copyright works, fair dealing for purposes of giving or receiving instruction, fair dealing for purposes of public administration and the playing of sound broadcasts inside vehicles in Part III mirrored the wordings used under relevant proposed provisions in Part II of the Bill, the Administration would pay attention to the need or otherwise of any consequential amendments should it decide to revise the

provisions in Part II.

Arrangements for the next meeting

9. Members agreed that the 20th meeting would be held on Friday, 2 February 2007 at 10:45 am.

IV Any other business

10. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
26 February 2007

**Proceedings of the nineteen meeting of the
Bills Committee on Copyright (Amendment) Bill 2006
on Thursday, 25 January 2007, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000957	Chairman	Confirmation of the minutes of the 16 th meeting on 4 January 2007 (LC Paper No. CB(1)789/06-07)	
000958 – 002529	Chairman Administration Ms Audrey EU	<p><u>Clause 27 – Affidavit evidence</u></p> <p>(a) The Administration's advice that the wording “the licence of the copyright owner” was also found in various provisions of the Copyright Ordinance (CO). The context in which the expression was used referred to the lack of permission to do an act restricted by copyright or the absence of a licence or authorization, as one of the elements constituting an act of copyright infringement. The same expression was also used in existing section 198(1) of CO where the word "unauthorized" was defined to mean, as regards anything done in relation to a work, anything done otherwise than by or with the licence of the copyright owner. It was the Administration's view that a "licence of the copyright owner" would, in the above context, include a "sub-licence" granted by a licensee authorized by the copyright owner. However, it would not be appropriate to define the term “licence” to invariably include a “sub-licence” throughout CO as the term was also used, in other context, to refer only to licences granted by copyright owners e.g. licences granted under licensing schemes. Furthermore, the expression was used in the U.K. Copyright, Designs and Patents Act 1988 without a definition. There was support from authoritative legal textbooks that the expression should be interpreted as covering sub-licences. The</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Administration therefore took the view that the proposed formulation should be retained.</p> <p>(b) Discussion of the operation of proposed section 121(8A)(b)(i) and the expression "genuinely in issue" which mirrored the expression used under existing section 121(8)(b) of CO</p>	
002530 – 002614	Chairman Administration	<p><u>Clause 28 – Seized articles, etc. liable to forfeiture</u></p> <p><u>Clause 29 – Disposal of articles, etc. where a person is charged</u></p> <p><u>Clause 30 – Determination of application for forfeiture</u></p> <p>Members raised no query</p>	
002615 – 002814	Chairman Administration	<p><u>Clause 31 – Licensing schemes to which sections 155 to 160 apply</u></p> <p><u>Clause 32 – Licences to which sections 162 to 166 apply</u></p> <p>The Administration's advice that "rental right " was defined as the right of the copyright owner to rent to the public copies of (i) a computer program; (ii) a sound recording; (iii) a film; (iv) a literary, dramatic or musical work included in a sound recording; (v) a literary or artistic work included in a comic book; or (vi) the typographical arrangement of a published edition of a comic book in accordance with proposed section 25(1) of the Bill.</p>	
002815 – 003031	Chairman Administration	<p><u>Clause 33 – Constitution for purposes of proceedings</u></p> <p>Members raised no query</p>	
003032 – 003157	Chairman Administration	<p><u>Clause 34 – Groundless threat of proceedings in relation to parallel import</u></p> <p>Members raised no query</p>	

Time Marker	Speaker	Subject(s)	Action Required
003158 – 003307	Chairman Administration	<p><u>Clause 34A – Folklore, etc.: anonymous unpublished works</u></p> <p><u>Clause 34B – Meaning of "publication" and "commercial publication"</u></p> <p><u>Clause 34C – Requirement of signature : application in relation to body corporate</u></p> <p>Members raised no query</p>	
003308 – 005436	Chairman Administration Ms Audrey EU Ms Selina CHOW Dr YEUNG Sum	<p><u>Clause 35 – Minor definitions</u></p> <p>(a) Members noted that the expression "a trade or profession" was removed from the revised definition of "business" in proposed section 198(1). However, the expression "any trade or business" was retained in various criminal and civil provisions of CO. <u>Members</u> asked the Administration to consider whether the reference to “trade” should be retained in the revised definition of “business” whereas the references to “trade” in the relevant criminal and civil provisions should be deleted.</p> <p>(b) The Chairman's view that noting section 198(1) would be amended by adding the definition of "specified course of study", the Administration should consider the need or otherwise of any consequential amendment to the provision, if enacted, if the Curriculum Development Council changed its name in future.</p>	The Administration to follow up as stated in paragraph 6 of the minutes and took note of the Chairman's concern as stated in paragraph 7 of the minutes
005437 – 005454	Chairman Administration	<p><u>Clause 36 – Index of defined expressions</u></p> <p>Members raised no query</p>	
005455 – 005720	Chairman Administration	<p>Part III – Rights in performances</p> <p><u>Clause 37 – Rights conferred on performers and persons having fixation rights</u></p> <p>The Administration's advice that it would prepare some further textual amendments to clause 37 in relation to the reference to “artistic</p>	

Time Marker	Speaker	Subject(s)	Action Required
		work” in paragraph (ca) of the revised definition of “performance” in section 200(2) of CO.	
005721 – 005734	Chairman Administration	<u>Clause 38 – Infringement of performer's rights by importing, exporting, possessing or dealing with infringing fixation</u> Members raised no query	
005735– 005946	Chairman Administration	<u>Clause 39 – Section added (i.e. 207A on infringement of performers' rights by renting copies to the public without consent)</u> Members raised no query	
005947 – 010001	Chairman Administration	<u>Clause 40 – Infringement of fixation rights by importing, exporting, possessing or dealing with infringing fixation</u> Members raised no query	
010002 – 010123	Chairman Administration	<u>Clause 41 – Section added (i.e. 213A on power of Tribunal to give consent on behalf of owners of performers' rental right in certain cases)</u> Members raised no query	
010124 – 010154	Chairman Administration	<u>Clause 42 – Performers' economic rights</u> Members raised no query	
010155 – 010134	Chairman Administration	<u>Clause 43 – Order for delivery up</u> Members raised no query	
010135 – 010604	Chairman Administration	<u>Clause 44 – Meaning of "infringing fixation"</u> Members raised no query	
010605 – 010709	Chairman Administration	<u>Clause 45 – Section added (i.e. 229A on imported fixation not an "infringing fixation" for the purposes of section 229(4))</u> The Administration's advice that as proposed	

Time Marker	Speaker	Subject(s)	Action Required
		<p>section 229A mirrored the wordings used under proposed section 35B, it would consult the Law Society of Hong Kong (the Law Society) as to whether they had any concern about the draft provision in question so as to address the issue raised in the previous meeting on proposed section 35B. The Administration would also consult the Law Society on the proposed definition of “lawfully made”.</p>	
010710 – 010742	Chairman Administration	<p><u>Clause 46 – Jurisdiction of Copyright Tribunal</u></p> <p>Members raised no query</p>	
010743 – 010747	Chairman Administration	<p><u>Clause 47 – Index of defined expressions</u></p> <p>Members raised no query</p>	
010748 – 011052	Chairman Administration	<p><u>Clause 48 – Section added (i.e. 242A on fair dealing for purposes of giving or receiving instruction)</u></p> <p>Members raised no query</p>	
011053 – 011157	Chairman Administration	<p><u>Clause 49 – Playing or showing sound recording, film, broadcast or cable programme at educational establishment</u></p> <p>Members raised no query</p>	
011158 – 012110	Chairman Administration Ms Audrey EU	<p><u>Clause 50 – Recording of broadcasts and cable programmes by educational establishments</u></p> <p>The Administration's proposal to delete clause 50 (i.e. section 245(2) would remain) to tie in with the proposed deletion of clause 14 from the Bill (i.e. section 44(2) would remain)</p> <p>(Note: As agreed at the meeting on 4 January 2007, the Administration would provide its views in writing on whether “broadcast and cable programmes” covered programmes which were broadcast simultaneously over the Internet.)</p>	

Time Marker	Speaker	Subject(s)	Action Required
012111 – 012224	Chairman Administration	<p><u>Clause 51 – Sections added (i.e. 246A on fair dealing for purposes of public administration)</u></p> <p>Members raised no query</p>	
012225 – 012251	Chairman Administration	<p><u>Clause 51B – Legislative Council and judicial proceedings</u></p> <p>Members raised no query</p>	
012252 – 012326	Chairman Administration	<p><u>Clause 52 – Section added (i.e. 246A on playing of sound broadcasts inside vehicles)</u></p> <p>Members raised no query</p>	
012327– 015644	Chairman Administration Ms Audrey EU Dr YEUNG Sum	<p>Part IIIA – Performers' moral rights</p> <p><u>Clause 53 – Part IIIA added (i.e. 272A to 272O)</u></p> <p>(a) The Administration's advice that it was not aware of any major controversial issues over Part IIIA which sought to incorporate the requirements of the WIPO Performances and Phonograms Treaty</p> <p>(b) The Administration's advice that the definition of "sound recording" as stated in proposed section 272A(4) had the same meaning as in Part II (existing section 6 of CO) but did not include a film sound-track which was to be treated as part of the film for the purposes of Part II.</p> <p>(c) The Administration's view that proposed section 272B(1)(a) would also cover programmes which were broadcast over the Internet. (See Note inserted under the discussion of clause 50 on page 5)</p> <p>(d) Discussion of possible scenarios in which proposed section 272E(3)(b) might or might not apply</p> <p>(e) The Administration's advice that the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>definition of "performance" fixed in a sound recording as stated in proposed section 272E(3)(b) meant (i) a dramatic performance (which included dance and mime); (ii) a musical performance; (iii) a reading or recitation of literary works; (iv) a performance of an artistic work (which included every production in the artistic domain, whatever might be the mode or form of its expression); (v) an expression of folklore; or (vi) a performance of a variety act or any similar presentation, which was, or so far as it was, an unfixed performance given by one or more individuals in accordance with proposed section 200(2).</p> <p>(f) The Administration's advice that the proposed provisions in Part IIIA were in conformity with the provisions on human rights</p>	
015645 – 015733	Chairman	Arrangements for the next meeting	