

立法會
Legislative Council

LC Paper No. CB(1)2137/05-06
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/05/1

Bills Committee on Copyright (Amendment) Bill 2006

**Minutes of the ninth meeting
held on Wednesday, 19 July 2006, at 2:30 pm
in Conference Room A of the Legislative Council Building**

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

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

I Confirmation of minutes and matters arising

LC Paper No. CB(1)1966/05-06 -- Minutes of meeting held on 8 June
2006

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

2. The minutes of the meeting held on 8 June 2006 were confirmed.

II Paper issued since last meeting

LC Paper No. CB(1)1971/05-06(01) -- Submission dated 11 July 2006 from Hong Kong Video Development Foundation Ltd (English version only)

LC Paper No. CB(1)2015/05-06(01) -- Submission dated 17 July 2006 from Lovells

3. Members noted that the above papers had been issued for the Bills Committee's information.

III Meeting with the Administration

Follow-up to issues raised at the meeting held on 6 July 2006

LC Paper No. LS95/05-06 -- Section 54 of Copyright Ordinance(Cap. 528) and Proposed section 54A of Copyright (Amendment) Bill 2006 prepared by the Legal Service Division

LC Paper No. CB(1)2009/05-06(01) -- Letter dated 11 July 2006 from the Assistant Legal Adviser (ALA) to the Administration

LC Paper No. CB(1)2009/05-06(02) -- Reply dated 17 July 2006 from the Administration to ALA's letter of 11 July 2006

“Fair dealing” for purposes of public administration

4. On the existing section 54(1) and proposed section 54A(1) providing for “fair dealing” for purposes of public administration, members noted the Assistant Legal Adviser's advice on the scope of “the proceedings of the Legislative Council” under section 54(1) of the Copyright Ordinance (CO) and the Administration's advice on some examples of activities or work of the Legislative Council and the Judiciary which were likely to fall outside the scope of “the proceedings of the Legislative Council” and “judicial proceedings” under section 54(1) of CO.

Admin

5. The Chairman recapitulated his query on the need to include the Legislative Council under proposed section 54A(1) given that Legislative Council proceedings were already covered by the copyright provision in existing section 54(1). Given that proposed section 54A(1) sought to extend copyright exemption to some other business activities of the Legislative Council which might not be within the scope of “the proceedings of the Legislative Council”, the Chairman suggested that the Administration should consult the Legislative Council Commission and the Judiciary Administrator on the need to include the Legislative Council and the Judiciary under proposed section 54A and to explain to them the operation of section 54A, especially the intended improvement. Members agreed.

Circumvention and Rights Management Information

LC Paper No. CB(1)1982/05-06(01) -- Administration's response to deputations' views raised at the meeting on 8 May 2006 : Circumvention of technological measures for copyright protection

LC Paper No. CB(1)1982/05-06(02) -- Administration's response to deputations' views raised at the meeting on 8 May 2006 : Issues relating to rights management information

LC Paper No. CB(1)2004/05-06(01) -- Reply dated 14 July 2006 from the Administration to Assistant Legal Adviser (ALA)'s letter of 29 June 2006

LC Paper No. CB(1)1916/05-06(01) -- Letter dated 29 June 2006 from the ALA to the Administration

Circumvention of technological measures for copyright protection

6. The Administration advised that the policy objective of sections 273 to 273H was to protect copyright works in relation to which technological measures (TPMs) had been applied from copyright infringement. The Administration's intention was not to protect TPMs per se, but to protect copyright. The proposed requirement of “knowledge of infringement of copyright” (knowledge requirement) aimed to ensure that users' legitimate interests to use copyright works under the permitted acts in Division III of Part II of CO would not be jeopardized. Without the knowledge requirement, beneficiaries of permitted acts might be subject to civil liability if in doing the permitted acts, they had circumvented the TPM applied by the copyright work owner to protect his work.

7. Members noted that the proposed section 273A(1) provided that “subject to sections 273D and 273H, this section applies where an effective technological measure has been applied in relation to a copyright work, and a person does any act which circumvents the measure, knowing, or having reason to believe (a) that he is doing an act which circumvents the measure; and (b) that the act will induce, enable, facilitate or conceal an infringement of the copyright in the work.” Ms Audrey EU considered that proposed section 273A(1)(a) and (b), as currently drafted, had the effect of subjecting all circumvention acts to civil liability, irrespective of whether knowledge of copyright infringement or permitted acts were involved. This was because (a) a person who committed an act which circumvented the TPM must know that he was doing such an act; and (b) it was a technological consequence that a circumvention act would inevitably lead to the enabling or facilitating of copyright infringement by that person or other parties. As such, Ms EU questioned the need, and indeed some deputations’ concern about the difficulty, for the plaintiff to prove the mental state of the defendant.

8. On the technical aspect of an act to circumvent TPMs, the Administration advised that a common example of circumvention devices was modified game consoles in which “mod chips” were installed to “bypass” or “overcome” the reading of certain coding which was present in genuine computer games but not in pirated copies. As such, modified game consoles could be used for playing pirated computer games. For this particular device and technology, the mere installation of the mod chips would not amount to an act of circumvention of TPMs. The act of circumvention was only committed when the coding was “bypassed” or “overcome”, i.e., when the modified game console was used for playing pirated computer games. The acts of selling a modified game console or providing a service to modify a game console would be caught under section 273B rather than section 273A.

9. The Administration indicated that if a person did an act of circumvention and his intention was not to facilitate or enable himself or another person to commit an infringement, or to conceal an infringement committed by himself or another person, that person should not incur any civil liability in relation to the act of circumvention. Copyright owners were concerned that it would be very difficult for them to adduce sufficient evidence to prove the mental state of the defendant and hence the knowledge requirement would render the protection ineffective. The Administration would consider if the burden of proof could be shifted to the defendant by, say, providing a statutory defence for the defendant to prove that his intention was not to commit an infringement. The Administration further clarified that the policy intent of the knowledge requirement was not to refer to the knowledge of the technological consequence or capability that a circumvention act could enable or facilitate copyright infringement.

Admin 10. The Chairman requested the Administration to take note of Ms EU’s concern and considered whether the drafting of section 273A(1) should be improved to reflect more clearly the policy intent of the Administration.

Exceptions to the civil and criminal liability

11. The Administration explained its response to deputations' views relating to exceptions in general. On the specific exceptions, the Administration advised that the intention of the proposed exception (proposed section 273D) to the civil and criminal liability relating to encryption research was to ensure that the anti-circumvention provisions (proposed sections 273A, 273B and 273C) would not hinder research activities and the advancement of technology. The Chairman and Dr YEUNG Sum considered that the proposed exception should only apply to those acts of circumvention in which no infringing copies of copyright works were used in the course of the activities relating to encryption research. The Administration would examine whether that condition had been adequately reflected in the current proposed provisions.

Admin 12. The Administration would consider if amendments should be made to the relevant proposed provisions to clarify its policy intention and address deputations' concern as stated in paragraphs 1.1, 3.1, 8.3, 8.6 and 8.7 of its tabulated response to deputations' submissions on circumvention of technological measures for copyright protection (LC Paper No. CB(1)1982/05-06(01)) and to revert to the Bills Committee in due course.

Submissions tabled at the meeting (subsequently issued vide LC Paper No. CB(1)2037/05-06 on 20 July 2006)

Admin 13. The Administration undertook to provide its response, where necessary, to the further submissions by updating the written responses previously provided to the Bills Committee.

Arrangements for the next meeting

14. Members agreed that the 10th meeting of the Bills Committee would be held on Thursday, 21 September 2006 at 2:30 pm.

IV Any other business

15. There being no other business, the meeting ended at 4:26 pm.

**Proceedings of the ninth meeting of the
Bills Committee on Copyright (Amendment) Bill 2006
on Wednesday, 19 July 2006, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 001336	Chairman ALA5 Mr Andrew LEUNG Ms Audrey EU Administration	<p>(a) Confirmation of the minutes of the sixth meeting on 8 June 2006 (LC Paper No. CB(1) 1966/05-06)</p> <p>(b) Briefing by ALA5 on existing section 54 of CO and proposed section 54A of the Bill (LC Paper No. LS95/05-06)</p> <p>(c) Discussion on the scope of “the proceedings of the Legislative Council” under existing section 54(1) of CO</p> <p>(d) ALA5’s advice that there was no judicial authority on whether the scope of “proceedings of the Legislative Council” under the Legislative Council (Powers and Privileges) Ordinance (Cap.382) was the same as that provided in existing section 54(1) of CO. The subject of these provisions were different matters. In fact, the former related to the functions of members of the Legislative Council while the latter related to copyright protection.</p>	The Administration to follow up as stated in paragraph 5 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
001337 –010849	Chairman Administration Ms Audrey EU Dr YEUNG Sum	(a) Discussion on knowledge requirement under proposed sections 273A and 273B (b) The Administration's response to deputations' views relating to the meanings of “circumvention”, “effective technological measures” and “persons entitled to seek civil remedies” which were submitted to the Bills Committee (LC Paper No. CB(1)1982/05-06(01))	The Administration to follow up as stated in paragraphs 10 and 12 of the minutes
010850 – 015513	Chairman Dr YEUNG Sum Administration	The Administration’s briefing on: (a) the scope of the criminal liability for commercial dealing of circumvention devices and the commercial provision of circumvention services under proposed section 273C; and (b) the Administration's response to deputations' views relating to exceptions in general and specific exceptions relating to interoperability, security testing, research into cryptography and personally identifying information.	The Administration to follow up as stated in paragraph 12 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
015514 – 015600	Chairman	Arrangements for the next meeting	

Council Business Division 1
Legislative Council Secretariat
21 August 2006