

**立法會**  
**Legislative Council**

LC Paper No. CB(1)464/06-07  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/1/05/1

**Bills Committee on Copyright (Amendment) Bill 2006**

**Minutes of the thirteen meeting  
held on Monday, 20 November 2006, at 8:30 am  
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 Bernard CHAN, GBS, JP  
Hon CHAN Kam-lam, SBS, JP  
Dr Hon YEUNG Sum  
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
- Members absent** : Hon Margaret NG  
Dr Hon Philip WONG Yu-hong, GBS  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon CHIM Pui-chung  
Prof Hon Patrick LAU Sau-shing, SBS, JP  
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 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

**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)204/06-07 -- Minutes of meeting held on 4 October 2006

LC Paper No. CB(1)290/06-07 -- Minutes of meeting held on 23 October 2006

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

2. The minutes of the meetings held on 4 October 2006 and 23 October 2006 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**

### Proposed amendments to the Bill

LC Paper No. CB(1)283/06-07(01) -- Information paper provided by the Administration

LC Paper No. CB(1)283/06-07(02) -- Updated list of "Issues requiring follow-up action/consideration by the Administration" for meetings of the Bills Committee held from April to October 2006

*Directors'/partners' liability (Item 1 of Part I at Annex A of LC Paper CB(1)283/06-07(01))*

4. The Administration noted the Bills Committee's concern that more certainty should be given to small and medium enterprises (SMEs) as to what their directors/partners should do in order to discharge their evidential burden. In this connection, the Administration proposed to delete the proposed section 118(2H)(b) and section 119B(8)(b), and add new provisions to provide that, for the purposes of the proposed section 118(2G)(a) or section 119B(7)(a), if the court was satisfied that the defendant had set aside financial resources or incurred expenditure for

acquisition of sufficient number of –

- (a) copies of the copyright work concerned (i.e. the copyright work that was the subject matter of the proceedings) which were not infringing copies for the use of the body corporate/partnership in question; or
- (b) appropriate licences to make or distribute copies of the copyright work concerned (i.e. the copyright work that was the subject matter of the proceedings), or for acquisition of sufficient copies which were not infringing copies of the copyright work concerned to meet the needs of the body corporate/partnership in question,

the defendant should be regarded as having adduced sufficient evidence to raise an issue that he did not authorize the act in question.

5. Mrs Selina CHOW commented that the proposed amendments still lacked certainty as to what would constitute a "sufficient" number of genuine copies of the copyright work concerned or appropriate licences to make or distribute copies of the copyright work concerned. For example, out of 100 computers in the office, the management of a company might only need to install a certain computer program (such as a software specially designed for the garment industry) in 50 of the computers for business use. She questioned what would count as sufficient evidence to demonstrate that the management had acquired a sufficient number of genuine software in such a case. Mr WONG Ting-kwong pointed out that in actual practice, it was possible that infringing copies of software were installed in computers at the workplace without the knowledge of the management. In this connection, Mrs CHOW suggested that accounting/acquisition records such as receipts of purchase kept by the management or results of software asset auditing should also be considered as the relevant evidence for the purpose of discharging the evidential burden placed on the directors/partners concerned.

6. In response, the Administration advised that whether the defendant could adduce sufficient evidence to discharge his/her evidential burden would need to be determined by the court in the light of the circumstances of the case concerned, having regard to the factors stated in the proposed section 118(2H) or section 119B(8) (whichever was appropriate in the case), and other relevant factors as determined by the court. If the court was satisfied that the defendant had set aside financial resources or incurred expenditure for acquisition of a sufficient number of genuine copies of the copyright work concerned or appropriate licences to make or distribute copies of the copyright work concerned, the defendant should be regarded as having discharged the evidential burden. The Administration undertook to further consider Mrs Selina CHOW's view, but pointed out that it might not be appropriate to further specify in law what constituted a "sufficient number of genuine copies" or "appropriate licences" as this would depend on the needs and operation of individual enterprises.

7. The Administration explained that the proposed provisions on directors'/partners' liability aimed to promote corporate accountability and responsible governance by instilling a culture of respect for intellectual property rights in business. The Administration would encourage SMEs to put in place proper management measures to ensure that infringing copies would not be used in their business and to adopt a software asset management policy. In this connection, the Administration had earlier launched a pilot scheme under which an IT company was commissioned to provide free on-site consultancy services to the business community, especially SMEs, for better management of their software assets. The Administration would intensify publicity on this and other public education programmes in the hope that SMEs could put their house in order before the new liability provision came into force.

*Fair dealing for education (Item 12 of Part I at Annex A of LC Paper CB(1)283/06-07(01))*

8. Members noted that the Administration, having considered the copyright owners' concern and their suggestion on the application of the proposed fair dealing provision for education in the digital environment, now proposed to amend existing section 41A (fair dealing with a copyright work for educational purpose) to require that the applicability of this fair dealing provision should be subject to two conditions, namely, (i) the adoption of technological measures (e.g. use of password) to restrict access to the copies of copyright works maintained on the school network system, and (ii) that the copies so maintained should not be retained for any period longer than was necessary for the purpose of giving or receiving instruction for the specified course of study in question. Dr YEUNG Sum considered the Administration's proposal acceptable. He nevertheless urged the Administration to continue communication with the education sector with a view to finalizing a proposal acceptable to both sides.

*Section 44(2) (Item 13 of Part I at Annex A of LC Paper CB(1)283/06-07(01))*

9. On the proposed removal of existing section 44(2) from the Copyright Ordinance (CO), the Administration advised that the copyright owners were concerned that, without section 44(2), the permitted act at section 44 (which allowed the recording of a full cable or broadcast programme rather than copying of a reasonable portion as in other permitted acts for educational purposes) might be abused. On the other hand, the Administration was not aware of any significant problem on the part of the education sector in making use of the permitted act. Having carefully considered the views received, the Administration proposed to delete clause 14 from the Bill. In other words, section 44(2) would remain.

10. Noting that the permitted act of recording under existing section 44(2) would not be allowed if a licensing scheme was available to authorize the recording or copying in question, members asked whether the availability or otherwise of a licensing scheme was readily known to a person making the recording or copies.

In response, the Administration advised that, as far as it was aware, a licensing scheme authorizing the recording of a cable or broadcast programme for educational purposes was not available at present. As regards the possibility for copyright owners to set up enquiry service on information relating to licensing schemes, the Administration responded that, if necessary, this could be further explored with copyright owners. According to the Intellectual Property Department (IPD), three licensing bodies had registered on a voluntary basis with the Copyright Licensing Bodies Registry. Relevant details of the registered licensing bodies were provided in IPD's website for public reference.

*Section 45(2) (Item 14 of Part I at Annex A of LC Paper CB(1)283/06-07(01))*

11. On the proposed removal of existing section 45(2) of CO, the Administration advised that having carefully considered the views made by the publishing industry and the education sector, it had proposed to make amendments along the following line -

- (a) to delete clause 15(3) (i.e., section 45(2) would remain); and
- (b) to include a subsection in section 41A (the fair dealing provision) to expressly state that notwithstanding the generality of section 37(5), making of reprographic copies which did not fall within section 45 did not mean that it was not covered under section 41A and subsection (2) applied in determining whether the making of copies was fair dealing under subsection (1).

12. Mrs Selina CHOW and Dr YEUNG Sum considered the Administration's above proposal acceptable. They urged the Administration to maintain dialogue with the publishing industry and the education sector on the proposed amendments.

*Fair dealing for public administration (Item 15 of LC Paper CB(1)283/06-07(01))*

13. On fair dealing for public administration, the Administration reported that after consulting the LegCo Commission at its meeting on 31 October 2006, the Administration was inclined to provide for a general exemption to LegCo, subject to further consultation with the copyright owners. The general exemption would cover all business done by LegCo for the purpose of exercising its powers and functions under Article 73 of the Basic Law of the Hong Kong Special Administrative Region. So far, copyright owners from the comic book industry had expressed no objection to the proposed general exemption. The Administration would continue consultation with copyright owners of other sectors and report the outcome to the Bills Committee in due course. Dr YEUNG Sum and the Chairman expressed their support in principle for the Administration's proposed amendment to widen the scope of copyright exemption available to LegCo.

*Consultation with stakeholders*

14. The Administration confirmed that it would meet with the stakeholder groups to brief them on the latest proposed amendments to the Bill (as detailed in the paper) and continue to engage them in dialogue in refining the drafting of the concerned CSAs.

Arrangements for the next meeting

15. Members agreed that the next meeting should be held on Friday, 1 December 2006 at 10:45 am in which the Administration would continue to brief members on its proposed amendments to the Bill. The Chairman advised that subject to the progress of subsequent discussion, the Bills Committee might proceed to commence clause-by-clause examination of the Bill at the meeting thereafter. He urged the Administration to submit the CSAs to the Bills Committee for members' consideration as soon as practicable.

**IV Any other business**

16. There being no other business, the meeting ended at 10:25 am.

Council Business Division 1  
Legislative Council Secretariat  
8 December 2006

**Proceedings of the thirteen meeting of the  
Bills Committee on Copyright (Amendment) Bill 2006  
on Monday, 20 November 2006, at 8:30 am  
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000415	Chairman	(a) Confirmation of the minutes of the eleventh and twelfth meetings on 4 October 2006 (LC Paper No. CB(1) 204/06-07) and 23 October 2006 (LC Paper No. CB(1) 290/06-07)  (b) Updated list of "Issues requiring follow-up action/consideration by the Administration" for meetings of the Bills Committee held from April to October 2006 tabled at the meeting (subsequently issued vide LC Paper No. CB(1)316/06-07 on 20 November 2006)	
000416 – 000730	Chairman Administration	The Administration's briefing on its proposed amendments to the Bill in the light of the views put forward by the stakeholder groups and proposed technical amendments to improve the drafting of the Bill (LC Paper No. CB(1)283/06-07(01))	
000731 – 003719	Mrs Selina CHOW Administration Chairman Ms Audrey YU Mr WONG Ting-kwong	(a) Discussion on the proposed directors'/partners' criminal liability (Item 1 of Part I at Annex A of LC Paper CB(1)283/06-07(01))  (b) What constitute "sufficient" number of copies of the copyright work concerned or appropriate licences to make or distribute copies of the copyright work concerned	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(c) The Administration's advice that whether the defendant could adduce sufficient evidence to discharge the evidential burden would need to be determined by the court in the light of the circumstances of the case concerned having regard to the factors as stated in the proposed section 118 (2H) and , other relevant factors as determined by the court. If the court was satisfied that the condition in paragraph 4 (a) or (b) above had been met, the defendant would be regarded as having discharged the evidential burden.</p>	
003720 –010319	Administration Chairman Dr YEUNG Sum	<p><u>Circumvention of technological measures for copyright protection</u></p> <p>(a) Knowledge of copyright infringement under the proposed sections 273A and 273B (item 2 of Part I at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p> <p>(b) Liability of exhibiting in public and distributing circumvention device for non-business or trade purposes (item 3 of Part I at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p> <p>(c) Definition of "circumvention device" (item 4 of Part I at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p> <p>(d) Clause 55/section 273 (item 5 of Part I at Annex A of LC Paper</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>CB(1)283/06-07(01)) - members raised no query</p> <p>(e) Exception to section 273A for achieving interoperability (item 6 of Part I at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p> <p>(f) Exception to section 273A for research into cryptography (item 7 of Part I at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p> <p>(g) Exception to section 273A for parallel imports (item 8 of Part I at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p> <p>(h) Exception to section 273B and 273C for parallel imports (item 9 of Part I at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p> <p>(i) Exception to section 273C for time-shifting purpose (item 10 of Part I at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p> <p><u>Rental rights</u></p> <p>(j) Rental rights for comic books (item 11 of Part I at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p>	
010320 – 010520	Chairman Administration Dr YEUNG Sum	<p><u>Copyright exemption</u></p> <p>(a) Fair dealing for education (item 12 of Part I at Annex A of LC Paper</p>	

Time Marker	Speaker	Subject(s)	Action Required
		CB(1)283/06-07(01))  (b) Dr YEUNG Sum considered the Administration's proposal acceptable and urged the Administration to continue communication with the education sector	
010521 – 012049	Chairman Administration Dr YEUNG Sum Mrs Selina CHOW Ms Audrey EU Mr LI Kwok-ying	(a) Discussion on the Administration's proposed amendments to the proposed removal of the existing section 44(2) of CO (item 13 of Part I at Annex A of LC Paper CB(1)283/06-07(01))  (b) The Administration's advice that the acts of recording or copying of broadcast and cable programmes by an educational establishment for the educational purposes of that establishment would be permitted under existing section 44(1)(a) and (b) if no licensing scheme was available to authorize the recording or copying in question  (c) Members' query whether the availability or otherwise of a licensing scheme was readily known to a person  (d) The Administration's advice that, as far as it was aware , a licensing scheme authorizing the recording of a cable or broadcast programme for educational purposes was not available at present.	
012050 – 014609	Administration Chairman Dr YEUNG Sum Mrs Selina CHOW	(a) Discussion on the Administration's proposed amendments to the proposed removal of the existing section 45(2) of CO (item 14 of	

Time Marker	Speaker	Subject(s)	Action Required
	Mr Ronny TONG	<p>Part I at Annex A of LC Paper CB(1)283/06-07(01))</p> <p>(b) Mrs Selina CHOW considered the Administration's proposal acceptable</p> <p>(c) Members urged the Administration to maintain dialogue with the publishing industry and the education sector on the proposed amendments</p> <p>(d) Mr Ronny TONG's view that more flexibility should be introduced into the copyright exemption regime to cope with the needs of the education sector</p> <p>(e) The Administration's advice that the primary objective of the Bill sought to implement proposals to enhance copyright protection in Hong Kong. The Bill, however, also contained proposals to make the copyright exemption regime more flexible, in particular, by introducing fair dealing provisions for educational purposes and improving the existing permitted acts for education.</p> <p>(f) Mrs Selina CHOW pointed out that intellectual property was private property and should be respected and protected. Effective copyright protection could facilitate the development of creative industries in Hong Kong. She observed that the copyright owners were concerned about the fair dealing provisions for fear of abuse. On copyright exemption regime in respect of fair dealing</p>	

Time Marker	Speaker	Subject(s)	Action Required
		for educational purposes, she considered that a proper balance between the copyright owners and users had to be struck.	
014610 – 015129	Dr YEUNG Sum Chairman Administration	<p>(a) The Administration's report on its consultation with the LegCo Commission on the proposal on fair dealing for public administration (item 15 of Part I at Annex A of LC Paper CB(1)283/06-07(01))</p> <p>(b) Members' support in principle for the Administration's proposed amendment to widen the scope of copyright exemption available to LegCo.</p>	
015130 - 015511	Chairman	Arrangements for the next meeting	