

立法會
Legislative Council

LC Paper No. CB(1)605/06-07
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/05/1

Bills Committee on Copyright (Amendment) Bill 2006

**Minutes of the fourteen meeting
held on Friday, 1 December 2006, at 10:45 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 Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon LI Kwok-ying, MH, JP
Hon Andrew LEUNG Kwan-yuen, SBS, 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
Hon CHAN Kam-lam, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Dr Hon YEUNG Sum
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Jeffrey LAM Kin-fung, 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

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 Meeting with the Administration

- 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 prepared by the Secretariat
- 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**).

Parallel importation - new proposal for facilitating enforcement
(item 17 of part I at Annex A of LC Paper CB(1)283/06-07(01))

2. The Administration advised that the presumptions under its new proposal for facilitating enforcement against the commercial dealing of parallel imported copyright works were broadly in line with the approach adopted by Australia relating to the proof of copyright subsistence and ownership in a work. However, the Administration was not aware of similar measures targeted at facilitating proof of parallel imports in the copyright legislation of other countries, including the United States, the United Kingdom, Canada, New Zealand and Singapore. There were also no decided court cases on this subject in these jurisdictions. The Administration had proposed to create presumptions whereby (a) any optical disc which did not bear a licensed manufacturer's code would be presumed to be an imported copy; and (b) a copy containing a description of restriction of sales in areas other than Hong Kong or a description of the place of manufacture other than Hong Kong, would be presumed to be an imported copy. The Administration had also proposed to allow the copyright owner or any person acting on his behalf to make an affidavit in court proceedings stating that the copy in question was made by his overseas licensee, whose right did not cover the making of it in Hong Kong. If the proposed amendments were enacted, Hong Kong would be the first jurisdiction in the world to have such facilitation measures. In this regard, Ms Audrey EU considered that the Administration should actively seek the views of the Law Society of Hong Kong (the Law Society) on the new proposal.

3. The Administration advised that the Law Society had noted the latest proposed amendments to the Bill as detailed in the LC Paper CB(1)283/06-07(01), including the new proposal for facilitating enforcement. The Administration would continue to engage them in dialogue in refining the drafting of the CSAs.

Business end-user possession offence - Clause 22/section 118(2E)
(item 2 of part II at Annex A of LC Paper CB(1)283/06-07(01))

4. Members noted that the policy intention of the proposed section 118(2E) in clause 22 was that lawyers who were professionally qualified or permitted under Hong Kong law to give legal advice on local and overseas laws in Hong Kong should be exempted from business end-user criminal liability for possession of infringing copies of copyright works for the purpose of providing legal advice pertaining to the copies. In response to Mr WONG Ting-kwong's earlier enquiry as to whether proposed section 118(2E) would apply to Government lawyers, in-house lawyers, trainee solicitors and barristers in pupillage, the Administration would propose to amend proposed section 118(2E) to clarify that the exemption should apply to any person who possessed an infringing copy of a copyright work for the purpose of giving legal advice in his professional capacity in relation to the infringing copy to his client i.e. the exemption would cover barristers and solicitors qualified to practise in Hong Kong, as well as foreign lawyers permitted to practise, irrespective of whether they are working in the public or private sector in Hong Kong.

5. In response to Mr LI Kwok-ying's further enquiry about the scope of exemption under proposed section 118(2E), the Administration observed that employees such as legal executives of law firms who were not professionally qualified as lawyers but who might be required to possess/use infringing copies of the work for the purpose of or in the course of any trade or business as requested by their employers would be covered by the proposed employee's defence under proposed sections 118(3A) and (3B) and 119B(10) and (11). The Bill did not specify a time limit for the person to possess such copies. The exception would continue to apply for as long as they were kept for purposes that fell within the ambit of proposed section 118(2E).

Updated list of "Issues requiring follow-up action/consideration by the Administration" for meetings of the Bills Committee held from April to October 2006 prepared by the Secretariat

6. In reply to the Chairman, the Clerk informed members that the list had been compiled to update members on the action taken by the Administration to follow up outstanding issues raised at past meetings. In principle, the Administration had provided its responses to these issues. Where members considered necessary, they could follow-up with the Administration at subsequent meetings on the substantive content and progress of the follow-up actions.

Meeting Arrangements

7. Members agreed that the 15th meeting would be held on Friday, 15 December 2006 at 10:45 am. The Chairman advised that the Bills Committee would proceed to commence clause-by-clause examination of the Bill at the next meeting. He urged the Administration to submit the proposed CSAs to the Bills Committee for members' consideration as soon as practicable.

8. The Chairman informed members that he would ask the Secretariat to arrange additional meetings to facilitate clause-by-clause examination with a view to completing scrutiny and enactment of the Bill before the end of the current legislative session.

(Post-meeting note: The notice of the meeting arrangements was issued to members on 5 December 2006 vide LC Paper No. CB(1)427/06-07.)

II Any other business

9. There being no other business, the meeting ended at 11:42 am.

Council Business Division 1
Legislative Council Secretariat
29 December 2006

**Proceedings of the fourteen meeting of the
Bills Committee on Copyright (Amendment) Bill 2006
on Friday, 1 December 2006, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 001146	Chairman Administration	<p>The Administration's briefing on its proposed amendments to the Bill in the light of the views put forward by stakeholder groups, and proposed technical amendments to improve the drafting of the Bill (LC Paper No. CB(1)283/06-07(01))</p> <p><u>Parallel importation</u></p> <p>(a) Shortening of the criminal sanction period (item 16 of part I at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p>	
001147 – 001851	Ms Audrey YU Administration	<p>(a) Discussion on new proposal for facilitating enforcement (item 17 of part I at Annex A of LC Paper CB(1)283/06-07(01))</p> <p>(b) Ms Audrey YU's enquiry on whether the Administration had made reference to overseas practice on facilitating enforcement against commercial dealing of parallel imported copyright works</p> <p>(c) The Administration's advice that:</p> <p>(i) the proposed approach was broadly in line with the one adopted by Australia relating to the proof of copyright subsistence and ownership in a work; and</p> <p>(ii) the Administration was not aware of similar measures targeted at facilitating proof of parallel imports in the copyright legislation of other countries, including the United States, the United Kingdom, Canada, New Zealand and Singapore.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		There were also no decided court cases on this subject in these jurisdictions.	
001852 – 002239	Chairman Administration	<u>Business end-user possession offence</u> (a) Clause 22/section 118(2D) (item 1 of part II at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query	
002240 – 003831	Mr LI Kwok-ying Administration Chairman	(a) Discussion on clause 22/section 118B(2E) (item 2 of part II at Annex A of LC Paper CB(1)283/06-07(01)) (b) The Administration's advice that: (i) the Administration proposed to amend proposed section 118(2E) to clarify that the exemption should apply to any person who possessed an infringing copy of a copyright work for the purpose of giving legal advice in his professional capacity in relation to the infringing copy to his client; (ii) employees such as legal executives of law firms who were not professionally qualified as lawyers but who might be required to possess/use infringing copies of copyright works for the purpose of or in the course of any trade or business as requested by their employers would be covered by the proposed employees' defence under proposed sections 118(3A) and (3B) and 119B(10) and (11). (iii) there was no specified time limit for the possession of such copies. The exception would continue to apply for as long as they were kept for purposes that fell within the ambit of proposed section 118(2E);	

Time Marker	Speaker	Subject(s)	Action Required
		(c) Discussion of possible scenarios in which proposed section 118B(2E) might or might not apply.	
003832 – 005339	Chairman Administration	<p><u>Business end-user copying/distribution offence</u></p> <p>(a) Clause 24/section 119B(1) (item 3 of part II at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p> <p>(b) Clause 24/section 119B (item 4 of part II at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p> <p><u>Directors'/partners' liability</u></p> <p>(c) Clauses 22 and 24/sections 118(2F) and 119B(6) (item 5 of part II at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p> <p><u>Circumvention of technological measures for copyright protection</u></p> <p>(d) Clause 56/sections 273A(2) (c) and 273B(3)(c) (item 6 of part II at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p> <p><u>WIPO Internet Treaties</u></p> <p>(e) Clause 37/section 200(2) (item 7 of part II at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p> <p><u>Copyright exemption</u></p> <p>(f) Clause 11/section 40B(1) (item 8 of part II at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(g) Clause 12/section 41A (item 9 of part II at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p> <p><u>Parallel importation</u></p> <p>(h) Clause 7/section 35(3) (item 10 of part II at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p> <p><u>Improving enforcement efficiency</u></p> <p>(i) Clause 27(4) and (5)/section 121(2A), (2B) and (2C) (item 11 of part II at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p> <p><u>Amendments to Chinese text</u></p> <p>(j) Improvement of certain Chinese text for greater clarity (item 12 of part II at Annex A of LC Paper CB(1)283/06-07(01)) - members raised no query</p> <p><u>The Administration's response to certain suggestions on anti-circumvention of technological measures for copyright protection, copyright exemption and parallel importation</u></p> <p>(k) Exception to section 273A for protection of privacy (item 1 at Annex B of LC Paper CB(1)283/06-07(01)) - members raised no query</p> <p>(l) Fair dealing for public administration (item 2 at Annex B of LC Paper CB(1)283/06-07(01)) - members raised no query</p> <p>(m) On-the-spot reference of parallel imported comic books (item 3 at Annex B of LC Paper CB(1)283/06-07(01)) - members raised no query</p>	

Time Marker	Speaker	Subject(s)	Action Required
005340 – 005546	Chairman Clerk	(a) Update of the list of "Issues requiring follow-up action/consideration by the Administration" for meetings of the Bills Committee held from April to October 2006 prepared by the Secretariat (b) Arrangements for the next meeting and additional meetings	

Council Business Division 1
Legislative Council Secretariat
29 December 2006