

立法會
Legislative Council

LC Paper No. CB(1)3033/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/10

Bills Committee on Copyright (Amendment) Bill 2011

**Minutes of the second meeting
held on Saturday, 23 July 2011, at 9:00 am
in the Chamber of the Legislative Council Building**

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Paul TSE Wai-chun, JP
Dr Hon Samson TAM Wai-ho, JP

**Public officers
attending** : Agenda item I

Mr Christopher K B WONG, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)

Mr Paul WONG
Acting Principal Assistant Secretary for Commerce
and Economic Development (Commerce and
Industry)

Mr Thomas TSANG
Acting Assistant Director of Intellectual Property
(Copyright)

Ms Michelle CHONG
Senior Solicitor (Copyright)1
Intellectual Property Department

Attendance by invitation : Agenda item I

Session 1

IFPI Asian Regional Office

Mr Benjamin NG
Regional Counsel

International Federation of the Phonographic Industry (Hong Kong Group) Limited

Mr Ricky FUNG
Chief Executive Officer

Internet Society Hong Kong

Mr Charles MOK
Chairman

Asia Internet Coalition

Mr John URE
Executive Director

The Professional Commons

Mr Kelvin SIT
Research Officer

Impoverished Friends of Future Feeling Expression

Mr POON Tsz-yeung
Spokesperson

Online Service Providers Alliance

Mr Joe LAM
Chairman

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Hong Kong and International Publishers' Alliance

Mr Derek LEE
Representative

Hong Kong Reprographic Rights Licensing Society

Ms Dillys YU
General Manager

Hong Kong Information Technology Federation

Mr Francis FONG
President

Inmediahk.net

Mr IP Iam-chong
Editor

Hong Kong In-media

Mr WONG Chun-pong
Manager

Individual

Mr Jacki Dominic LEE

Doujin Organisation and Working Network of Hong Kong

Mr Raymond KO
Representative

Internet Freedom Concern Group

Mr LAM Tsz-kin
Spokesman

Green Radio

Mr IU Chung-hong
Production Assistant

The Melancholy of Creative Freedom

Miss Anny CHENG
Spokesperson

Concern Group of Rights of Derivative Works

Mr Chiaki WOO
Convenor

Individuals

Mr Timothy CHENG

Mr Ricky CHAN

Mr WONG Yeung-tat

Mr CHAN Ching-tao

Open Radio Hong Kong

Mr TAM Kwok-leung
Executive Director

Business Software Alliance

Mr Kenny CHEUNG
Legal Counsel

Motion Picture Association – International

Mr Frank RITTMAN
Deputy Managing Director & Vice President

International Federation Against Copyright Theft
(Greater China) Limited

Mr Sam HO
Executive Director & General Manager

Movie Producers and Distributors Association of
Hong Kong Ltd

Mr Tony SHU
Executive Secretary

Session 2

Individuals

Mr LEE Siu-cheong

Mr WONG Ka-lok

Entertainment Software Association

Mrs Gabriela KENNEDY
Legal Representative

Peanut Fans Club

Mr Leslie CHAN
Founder

Pirate Party Hong Kong

Mr Johnny CHEUNG
Founder

全球改圖苦主大聯盟香港分部

Mr Rocky YUNG
Convenor

Individuals

Professor Alice LEE
Associate Dean, Faculty of Law, The University of
Hong Kong

Mr NG Yui-hang

Civil Disobedience Against Impotent Government
Council

Mr Duff Tarcissus LI
Member

Keyboard Frontline

Ms Cindy NG
Committee Member

Individual

Mr AU Wai-kong

Flying Public Will Creative Training Conference

Mr WONG Sze-chun
Initiator

The Frontier

Mr YUEN Chiu-tat
Member

The Full Monty

Mr YAM Wing-keung
Vice-captain

Citiety Visual Media College

Mr Clarence LI
Founder

Individual

Ms LEE Wai-yee
Part-time Lecturer, Gender Studies, The Chinese
University of Hong Kong

Feeding Bald Eagle Focus Group

Mr LAI Ming-fai
Convenor

Proletariat People Force

Mr Everest KWOK
Captain

The Law Society of Hong Kong

Mr Anthony EVANS
Chairman of the Intellectual Property Committee

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Mr Joey LO
Senior Council Secretary (1)3

Ms May LEUNG
Legislative Assistant (1)3

Miss Emily LAU
Clerical Assistant (1)3

Action

I. Meeting with deputations and the Administration

Session 1 (9:00 am - 11:00 am)

1. IFPI Asian Regional Office
(LC Paper Nos. CB(1)2780/10-11(01) (Restricted to Members)
and (02) – submissions)

2. International Federation of the Phonographic Industry (Hong Kong Group) Limited
(LC Paper No. CB(1)2776/10-11(01) – submission)
3. Internet Society Hong Kong
(LC Paper No. CB(1)2839/10-11(01) – submission)
(subsequently issued via email on 8 August 2011)
4. Asia Internet Coalition
(LC Paper No. CB(1)2780/10-11(03) – submission)
5. The Professional Commons
6. Impoverished Friends of Future Feeling Expression
7. Online Service Providers Alliance
(LC Paper No. CB(1)2787/10-11(01) – submission)
8. Hong Kong Human Rights Monitor
9. Hong Kong and International Publishers' Alliance
(LC Paper No. CB(1)2839/10-11(02) – submission)
(subsequently issued via email on 8 August 2011)
10. Hong Kong Reprographic Rights Licensing Society
(LC Paper No. CB(1)2839/10-11(03) – submission)
(subsequently issued via email on 8 August 2011)
11. Hong Kong Information Technology Federation
(LC Paper No. CB(1)2839/10-11(04) – submission)
(subsequently issued via email on 8 August 2011)
12. Inmediahk.net
(LC Paper No. CB(1)2776/10-11(02) – submission)
13. Hong Kong In-media
(LC Paper No. CB(1)2776/10-11(03) – submission)
14. Mr Jacki Dominic LEE
(LC Paper No. CB(1)2776/10-11(04) – submission)
15. Doujin Organisation and Working Network of Hong Kong
16. Internet Freedom Concern Group
(LC Paper No. CB(1)2776/10-11(05) – submission)

17. Green Radio
18. The Melancholy of Creative Freedom
19. Concern Group of Rights of Derivative Works
(LC Paper No. CB(1)2780/10-11(04) – submission)
20. Mr Timothy CHENG
(LC Paper No. CB(1)2776/10-11(06) – submission)
21. Mr Ricky CHAN
22. Mr WONG Yeung-tat
23. Mr CHAN Ching-tao
24. Open Radio Hong Kong
(LC Paper No. CB(1)2780/10-11(05) – submission)
25. Business Software Alliance
(LC Paper No. CB(1)2776/10-11(07) – submission)
26. Motion Picture Association – International
(LC Paper No. CB(1)2780/10-11(06) – submission)
27. International Federation Against Copyright Theft (Greater China)
Limited
(LC Paper No. CB(1)2780/10-11(07) – submission)
28. Movie Producers and Distributors Association of Hong Kong Ltd
(LC Paper No. CB(1)2839/10-11(05) – submission)
(*subsequently issued via email on 8 August 2011*)

Break (11:00 am - 11:10 am)

Session 2 (11:10 am - 1:00 pm)

29. Mr LEE Siu-cheong
30. Mr WONG Ka-lok
31. Entertainment Software Association
(LC Paper No. CB(1)2776/10-11(08) – submission)

32. Peanut Fans Club
33. Pirate Party Hong Kong
34. 全球改圖苦主大聯盟香港分部
(LC Paper No. CB(1)2794/10-11(01) – submission)
35. Professor Alice LEE, Associate Dean, Faculty of Law, The University of Hong Kong
(LC Paper No. CB(1)2825/10-11(01) – submission)
(subsequently issued on 27 July 2011)
36. Mr NG Yui-hang
37. Civil Disobedience Against Impotent Government Council
38. Keyboard Frontline
(LC Paper No. CB(1)2776/10-11(09) – submission)
39. Mr AU Wai-kong
(LC Paper No. CB(1)2808/10-11(02) – submission)
(subsequently issued via email on 25 July 2011)
40. Flying Public Will Creative Training Conference
41. The Frontier
(LC Paper No. CB(1)2839/10-11(06) – submission)
(subsequently issued via email on 8 August 2011)
42. The Full Monty
43. Citiety Visual Media College
(LC Paper No. CB(1)2839/10-11(07) – submission)
(subsequently issued via email on 8 August 2011)
44. Ms LEE Wai-yee
Part-time Lecturer, Gender Studies, The Chinese University of Hong Kong
45. Feeding Bald Eagle Focus Group
46. Proletariat People Force

47. The Law Society of Hong Kong
(LC Paper No. CB(1)2808/10-11(01) – submission)
*(tabled at the meeting and subsequently issued via email on
25 July 2011)*

Submission from deputations/individuals not attending the meeting

1. tvRhk
(LC Paper No. CB(1)2776/10-11(10) – submission)
2. Miss Anny CHENG
(LC Paper No. CB(1)2776/10-11(11) – submission)
3. Consumer Council
(LC Paper No. CB(1)2776/10-11(12) – submission)
4. The Hong Kong Bar Association
(LC Paper No. CB(1)2776/10-11(13) – submission)
5. Mr Ramona CHEUNG
(LC Paper No. CB(1)2776/10-11(14) – submission)
6. Time Warner Inc.
(LC Paper No. CB(1)2776/10-11(15) – submission)
7. Hong Kong Motion Picture Industry Association
(LC Paper No. CB(1)2776/10-11(16) – submission)
8. Dr Haggen SO
(LC Paper No. CB(1)2776/10-11(17) – submission)
9. Luvi LEUNG
(LC Paper No. CB(1)2776/10-11(18) – submission)
10. Rocky LO, K B TSE, Stephen LAU Chi-Kin, 藍輝田
(LC Paper No. CB(1)2776/10-11(19) – submission)
11. Mr Hin LEUNG
(LC Paper No. CB(1)2776/10-11(20) – submission)
12. Fung, a member of the public
(LC Paper No. CB(1)2776/10-11(21) – submission)

13. A member of the public
(LC Paper No. CB(1)2776/10-11(22) – submission)
14. Mr CHEUNG Shek-kan
(LC Paper No. CB(1)2776/10-11(23) – submission)
15. The Chinese Manufacturers' Association of Hong Kong
(LC Paper No. CB(1)2776/10-11(24) – submission)
16. 小郎(自由撰稿人)
(LC Paper No. CB(1)2776/10-11(25) – submission)
17. 水君(學生)
(LC Paper No. CB(1)2776/10-11(26) – submission)
18. Pang nick
(LC Paper No. CB(1)2776/10-11(27) – submission)
19. Free Creation Alliance 23th Special Force
(LC Paper No. CB(1)2780/10-11(08) – submission)
20. Cable and Satellite Broadcasting Association of Asia
(LC Paper No. CB(1)2780/10-11(09) – submission)

At the invitation of the Chairman, 47 deputations/individuals as listed in the appendix presented their views.

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

- Admin 3. The Administration was requested to –
- (a) provide its response to the views expressed by the deputations and the written submissions received by the Bills Committee; and
 - (b) elaborate on the definition of "derogatory treatment of work" under section 92 of the Copyright Ordinance (Cap. 528).

II. Any other business

4. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
23 September 2011

**Proceedings of the second meeting of
Bills Committee on Copyright (Amendment) Bill 2011
on Saturday, 23 July 2011, at 9:00 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
00300 – 00700	Chairman	Opening remarks by the Chairman	
00701 – 01000	IFPI Asian Regional Office	Presentation of views (LC Paper No. CB(1)2780/10-11(01) (Restricted to Members) and (02))	
001001 – 001333	International Federation of the Phonographic Industry (Hong Kong Group) Limited	Presentation of views (LC Paper No. CB(1)2776/10-11(01))	
001334 – 001700	Internet Society Hong Kong	Presentation of views (LC Paper No. CB(1)2839/10-11(01))	
001701 – 001933	Asia Internet Coalition	Presentation of views (LC Paper No. CB(1)2780/10-11(03))	
001934 – 002207	The Professional Commons	Presentation of views	
002208 – 002529	Impoverished Friends of Future Feeling Expression	Presentation of views	
002530 – 002850	Online Service Providers Alliance	Presentation of views (LC Paper No. CB(1)2787/10-11(01))	
002851 – 003200	Hong Kong Human Rights Monitor	Presentation of views	
003201 – 003500	Hong Kong and International Publishers' Alliance	Presentation of views (LC Paper No. CB(1)2839/10-11(02))	
003501 – 003630	Hong Kong Reprographic Rights Licensing Society	Presentation of views (LC Paper No. CB(1)2839/10-11(03))	

Time marker	Speaker	Subject(s)	Action required
003631 – 003840	Hong Kong Information Technology Federation	Presentation of views (LC Paper No. CB(1)2839/10-11(04))	
003841 – 004200	Inmediahk.net	Presentation of views (LC Paper No. CB(1)2776/10-11(02))	
004201 – 004450	Hong Kong In-media	Presentation of views (LC Paper Nos. CB(1)2776/10-11(03))	
004451 – 004800	Mr Jacki Dominic LEE	Presentation of views (LC Paper No. CB(1)2776/10-11(04))	
004801 – 005140	Doujin Organisation and Working Network of Hong Kong	Presentation of views	
005141 – 005450	Internet Freedom Concern Group	Presentation of views (LC Paper No. CB(1)2776/10-11(05))	
005451 – 005830	Green Radio	Presentation of views	
005831 – 010300	The Melancholy of Creative Freedom	Presentation of views	
010301 – 010623	Concern Group of Rights of Derivative Works	Presentation of views (LC Paper No. CB(1)2780/10-11(04))	
010624 – 010940	Mr Timothy CHENG	Presentation of views (LC Paper No. CB(1)2776/10-11(06))	
010941 – 011230	Mr Ricky CHAN	Presentation of views	
011231 – 011531	Mr WONG Yeung-tat	Presentation of views	
011532 – 011900	Mr CHAN Ching-tao	Presentation of views	
011901 – 012200	Open Radio Hong Kong	Presentation of views (LC Paper No. CB(1)2780/10-11(05))	
012201 – 012518	Business Software Alliance	Presentation of views (LC Paper No. CB(1)2776/10-11(07))	

Time marker	Speaker	Subject(s)	Action required
012519 – 012800	Motion Picture Association – International	Presentation of views (LC Paper No. CB(1)2780/10-11(06))	
012801 – 013108	International Federation Against Copyright Theft (Greater China) Limited	Presentation of views (LC Paper No. CB(1)2780/10-11(07))	
013109 – 013459	Movie Producers and Distributors Association of Hong Kong Ltd	Presentation of views (LC Paper No. CB(1)2839/10-11(05))	
013500 – 020450	<p>Chairman Administration Ms Emily LAU Ms Audrey EU Ms Cyd HO Dr Samson TAM International Federation of the Phonographic Industry (Hong Kong Group) Limited Concern Group of Rights of Derivative Works</p>	<p>The Administration explained the objective and scope of the Bill. The Administration stressed that it had conducted several rounds of public consultation before introducing the Bill. It was aware of the public concern over the possible impact of the proposed criminal liability on the free flow of information over the Internet, and the Administration had prepared its proposals carefully with a view to maintaining a reasonable balance. Neither did the Bill seek to alter the existing criminal threshold nor was the proposed criminal sanction meant to target derivative work and parody. The proposed criminal liability in the Bill basically adopted the same criminal threshold currently applicable in the Copyright Ordinance. Similar criminal sanction with the same threshold applied in overseas jurisdictions (including the UK and Australia) against acts of unauthorized communication of copyright works to the public which were made to such extent as to prejudicially affect the copyright owner.</p> <p>Ms Emily LAU was of the view that freedom of expression and creation over the Internet should be protected. She urged the Administration to consult all stakeholder organizations on the non-statutory Code of Practice for the online service providers.</p> <p>Ms Audrey EU agreed that the law should be updated to keep up with technological development, but protection must be provided for those who engaged in parody and derivative work. Apart from the stakeholder organizations, she considered it necessary to consult the public at large on the non-statutory Code of Practice for the online service providers, and requested the Administration to elaborate on the definition of "derogatory treatment of work".</p>	<p>The Administration to follow up as stated in paragraph 3(a) and (b) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>Ms Cyd HO's view was that a balance between freedom of expression and copyright protection must be struck in the Bill. Over-restriction of freedom of expression would stifle creativity. This would run counter to the Administration's policy on encouraging creativity.</p> <p>Dr Samson TAM held the view that not-for-profit infringing acts involving derivative work and parody should preferably not be criminalized.</p> <p>In response to Dr Samson TAM's question, International Federation of the Phonographic Industry (Hong Kong Group) Limited submitted that the essence of copyright laws worldwide was to protect the expression rather than the idea. While the idea of a copyright work was allowed to be adapted, the work itself should not be adapted without authorization.</p> <p>Concern Group of Rights of Derivative Works considered that the "fair use" of copyright works should be allowed as in other overseas jurisdictions such as the United States.</p>	
020451 – 021604	--	Break	
021605 – 022040	Mr LEE Siu-cheong	Presentation of views	
022041 – 022333	Mr WONG Ka-lok	Presentation of views	
022334 – 022620	Entertainment Software Association	Presentation of views (LC Paper No. CB(1)2776/10-11(08))	
022621 – 022850	Peanut Fans Club	Presentation of views	
022851 – 023200	Pirate Party Hong Kong	Presentation of views	
023201 – 023512	全球改圖苦主大聯盟香港分部	Presentation of views (LC Paper No. CB(1)2794/10-11(01))	
023513 – 023828	Professor Alice LEE, Associate Dean, Faculty of Law, The	Presentation of views (LC Paper No. CB(1)2825/10-11(01))	

Time marker	Speaker	Subject(s)	Action required
	University of Hong Kong		
023829 – 024129	Mr NG Yui-hang	Presentation of views	
024130 – 024524	Civil Disobedience Against Impotent Government Council	Presentation of views	
024525 – 024850	Keyboard Frontline	Presentation of views (LC Paper No. CB(1)2776/10-11(09))	
024851 – 025209	Mr AU Wai-kong	Presentation of views (LC Paper No. CB(1)2808/10-11(02))	
025210 – 025525	Flying Public Will Creative Training Conference	Presentation of views	
025526 – 025800	The Frontier	Presentation of views (LC Paper No. CB(1)2839/10-11(06))	
025801 – 030100	The Full Monty	Presentation of views	
030101 – 030420	Citiety Visual Media College	Presentation of views (LC Paper No. CB(1)2839/10-11(07))	
030421 – 030740	Ms LEE Wai-yee, Part-time Lecturer, Gender Studies, The Chinese University of Hong Kong	Presentation of views	
030741 – 031050	Feeding Bald Eagle Focus Group	Presentation of views	
031051 – 031409	Proletariat People Force	Presentation of views	
031410 – 031729	The Law Society of Hong Kong	Presentation of views (LC Paper No. CB(1)2808/10-11(01))	
031730 – 034625	Chairman Administration Ms Audrey EU	Discussion on the aim and scope of the Bill and its effect on derivative work and parody.	

Time marker	Speaker	Subject(s)	Action required
	<p>Ms Cyd HO Associate Dean, Faculty of Law, The University of Hong Kong Ms Emily LAU 全球改圖苦主大聯 盟香港分部 Peanut Fans Club Feeding Bald Eagle Focus Group</p>	<p>Discussion on the definition of "communicating works to the public to such an extent as to affect prejudicially the copyright owner" under the proposed section 118(8B)(b) in clause 51 of the Bill, "derogatory treatment of work" under Section 92 of the Copyright Ordinance, and whether the "fair use" clause adopted in certain overseas jurisdictions such as the United States should be adopted in the context of Hong Kong. Professor Alice LEE, Associate Dean, Faculty of Law, The University of Hong Kong, pointed out that the threshold of "to such an extent as to affect prejudicially the copyright owner" existed in the current Copyright Ordinance. Hence, the proposed criminal sanction was not to create a new standard to target derivative work and parody. The same standard had been applied in the Big Crook case. Since the threshold remained the same, acts of netizens that did not fall into the criminal net today would remain so after the Bill was passed. At the suggestion of the Chairman, she would put forward another written submission to the Bills Committee to elaborate her views.</p> <p><i>(Post-meeting note: The information provided by Professor Alice LEE, Associate Dean, Faculty of Law, The University of Hong Kong was issued to members vide LC Paper No. CB(1)2825/10-11(01) on 27 July 2011.)</i></p>	