

立法會
Legislative Council

LC Paper No. CB(1)188/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/10

Bills Committee on Copyright (Amendment) Bill 2011

**Minutes of the third meeting
held on Tuesday, 11 October 2011, at 11:30 am
in Conference Room 3 of the Legislative Council Complex**

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
Dr Hon Samson TAM Wai-ho, JP

Member absent : Hon Paul TSE Wai-chun, JP

**Public officers
attending** : Agenda Item I

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

Miss Patricia SO
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)

Ms Ada LEUNG
Acting Deputy Director of Intellectual Property

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

Mr Michael LAM
Senior Assistant Law Draftsman
Department of Justice

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

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mr Joey LO
Senior Council Secretary (1)3

Ms May LEUNG
Legislative Assistant (1)3

Action

I. Meeting with the Administration

(LC Paper No. CB(1)3061/10-11(01) -- List of follow-up actions arising from the discussion at the meetings on 5 and 23 July 2011

LC Paper No. CB(1)3061/10-11(02) -- Administration's paper on comparison of copyright laws in Hong Kong and overseas jurisdictions

LC Paper No. CB(1)3061/10-11(03) -- Administration's paper on parody

LC Paper No. CB(1)3061/10-11(04) -- Administration's paper on implied licence

- LC Paper No. CB(1)3061/10-11(05) -- Administration's paper on copyright and freedom of expression
- LC Paper No. CB(1)3061/10-11(06) -- Administration's paper on "prejudice" in criminal copyright infringement cases in Hong Kong and overseas jurisdictions
- LC Paper No. CB(1)3061/10-11(07) -- Administration's paper on derogatory treatment
- LC Paper No. CB(1)3061/10-11(08) -- Administration's responses to issues raised by stakeholders and members of the public at the meeting of the Panel on Commerce and Industry on 19 January 2010
- LC Paper No. CB(1)3061/10-11(09) -- Administration's response to views expressed by organizations on the Copyright (Amendment) Bill 2011

Other relevant papers

- LC Paper No. CB(3)842/10-11 -- The Bill
- LC Paper No. CB(1)2622/10-11(01) -- Marked-up copy of the Bill prepared by the Legal Service Division
- File Ref: CITB 07/09/17 -- Legislative Council Brief issued by the Commerce and Economic Development Bureau)

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

- Admin 2. The Administration was requested to:
- (a) advise under what circumstances a parody might be regarded as infringing the copyright of a work and falling into the criminal net, with reference to the following examples: (a) the parody of a T-shirt logo based on the logo of the Democratic Party for the Betterment and Progress of Hong Kong, (b) the parody based on the Government's "Act Now" campaign slogan, (c) the parody of the appointment of the new Chief Secretary for Administration Mr Stephen LAM based on the poster of the movie "Johnny English Reborn" and (d) the parody of the former Chief Secretary for Administration Mr Henry TANG based on the poster of the movie "A Simple Life";
 - (b) consider the proposal raised by the deputations at the meeting with the Administration on 22 September 2011 that parodies not involving large scale copyright piracy and profit making should be exempted from the criminal liability;
 - (c) consider including in the Bill provisions specifying that only those who engaged in the communication of copyright works which caused direct and concrete economic prejudice to the copyright owners would attract criminal liability; and
 - (d) advise whether the communication of a copyright work to the public without the authorization of the copyright owner, through online social network channels (such as Facebook) which might generate minimal indirect revenue, would constitute a criminal offence.

II. Any other business

3. There being no other business, the meeting ended at 12:55 pm.

**Proceedings of the third meeting of
Bills Committee on Copyright (Amendment) Bill 2011
on Tuesday, 11 October 2011, at 11:30 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000221 – 000402	Chairman	Opening remarks by the Chairman.	
000403 - 001559	Chairman Administration	<p>Briefing by the Administration on its papers on parody, copyright and freedom of expression, and "prejudice" in criminal copyright infringement cases in Hong Kong and overseas jurisdictions (LC Paper No. CB(1)3061/10-11(03), (05) and (06)). Members noted the following observations made by the Administration –</p> <p>(a) the Bill had struck a reasonable balance between protecting copyright in the digital environment and the freedom of expression;</p> <p>(b) the existing line demarcating the boundary between criminal and civil liability arising from copyright infringement remained unchanged. In brief, the dissemination of parodies on the Internet that was not caught by the existing criminal provisions would remain outside the criminal net under the Bill;</p> <p>(c) the Bill contained no provisions targeting parody; and</p> <p>(d) overseas experience showed that there was neither an undisputed legal definition for parody nor a widely accepted approach in dealing with parody.</p>	
001600 - 002400	Chairman Ms Emily LAU Administration	Discussion on whether the Administration had been able to allay the concerns over the criminal liability related to parody expressed by the deputations.	
002401 - 012100	Chairman Dr Samson TAM Ms Cyd HO Mr Ronny TONG Ms Audrey EU Ms Emily LAU Administration	<p>Discussion on the thresholds for parody to attract liability for copyright infringement.</p> <p>Dr Samson TAM urged the Administration to consider the proposal raised by the deputations at the meeting with the Administration on 22 September 2011 that parodies not involving large scale copyright piracy and profit making should be exempted from the criminal liability, in order to protect the freedom of expression. He proposed that the Administration should consider granting such an exemption to parodies making use of Government publicity and promotion materials.</p>	The Administration to follow up as stated in paragraph 3(a) and (b) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>Mr Ronny TONG, Ms Audrey EU and Ms Emily LAU echoed Dr TAM's view that exemption from criminal liability should be granted for parody. These members considered it an opportune time to consider introducing such an exemption to address the concerns of the netizens.</p> <p>The Administration noted Dr TAM's proposal and advised that the suggestion on providing a copyright exemption for parody was not covered in the public consultations that led to formulation of the Bill. Any proposal to introduce a new exception for parody required thorough consideration and extensive public consultation as it was liable to substantially change the existing balance of interests between copyright owners and users.</p> <p>Discussion on the criminal threshold and the circumstances under which a parody might be regarded as infringing the copyright of a work and falling into the criminal net, based on a number of examples of parodies.</p> <p>Ms Emily LAU considered that the Administration should make it clear in the Bill that the policy objective of the criminal sanctions was to target large-scale and profit-making copyright piracy. The Administration should also consider whether added provisions could be brought in to give greater clarity to what constituted "to such an extent as to affect prejudicially the copyright owner".</p> <p>The Administration noted Ms LAU's views and advised that the Magistrate's court had examined what constituted "to such an extent as to affect prejudicially the copyright owner" in the so-called "Big Crook" case. In considering the meaning of "prejudice", the presiding magistrate considered that it was not necessarily restricted to economic prejudice but it would definitely be the major factor to look into. The Administration had taken into account the magistrate's verdict and other relevant cases in formulating the non-exhaustive list of factors currently incorporated in the Bill for the purpose of giving greater certainty to what amounted to "prejudice".</p>	
012101 - 012510	Chairman Ms Cyd HO Administration	Discussion on the distinction between the prejudicial communication offence which caused direct and concrete economic prejudice to copyright owners, and the communication of a copyright work to the public without the authorization of the copyright owner for the purpose of a parody or satire through online social network channels.	The Administration to follow up as stated in paragraph 3(c) and (d) of the minutes.

Time marker	Speaker	Subject(s)	Action required
012511 - 012553	Chairman	Meeting arrangement	

Council Business Division 1
Legislative Council Secretariat
31 October 2011