

立法會
Legislative Council

LC Paper No. CB(1)383/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/10

Bills Committee on Copyright (Amendment) Bill 2011

**Minutes of the fourth meeting
held on Tuesday, 1 November 2011, at 10:45 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 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

Member absent : Hon Timothy FOK Tsun-ting, GBS, JP

**Public officers
attending** : Agenda Item II

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 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 : Mr YICK Wing-kin
Assistant Legal Adviser 8

Mr Joey LO
Senior Council Secretary (1)3

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)188/11-12 -- Minutes of meeting held on
11 October 2011)

The minutes of the meeting held on 11 October 2011 were confirmed.

- II. 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

Clause-by-clause examination of the Bill

- 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)

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

- Admin 3. The Administration was requested to provide:
- (a) a summary table of deputations' views on the main provisions of the Bill and the Administration's responses; and
 - (b) a summary of the experience gathered by the Administration in respect of the suspension of the operation of certain amendments to the Copyright Ordinance (Cap. 528) effected by the Intellectual Property (Miscellaneous Amendments) Ordinance 2000.

III. Any other business

4. There being no other business, the meeting ended at 12:42 pm.

Council Business Division 1
Legislative Council Secretariat
21 November 2011

**Proceedings of the fourth meeting of
Bills Committee on Copyright (Amendment) Bill 2011
on Tuesday, 1 November 2011, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000001 – 000158	Chairman	<p>(a) Opening remarks by the Chairman.</p> <p>(b) Confirmation of minutes of meeting on 11 October 2011 (LC Paper No. CB(1)188/11-12)</p>	
000159 - 001500	Chairman Ms Emily LAU Administration	<p>Briefing by the Administration on its papers on comparison of copyright laws in Hong Kong and overseas jurisdictions (LC Paper No. CB(1)3061/10-11(02)).</p> <p>Ms Emily LAU noted that most copyright laws of overseas jurisdictions required online service providers (OSPs) to act expeditiously to remove or disable access to the allegedly infringing material, whereas the Bill proposed to require OSPs to take reasonable steps to limit or stop the infringement as soon as practicable. She opined that the prescribed condition that OSPs must fulfill in order to qualify for the "Safe Harbour" under the Bill was relatively lenient in comparison with the overseas standard.</p> <p>The Administration explained that the standard proposed by the Bill was tailored to accommodate smaller OSPs in the market who might not have as much resources at their disposal as their larger counterparts, and hence might not be able to act expeditiously in removing or disabling access to the material concerned. As the definition of "service provider" would cover new types of online services that might emerge in the future, the present formulation provided more flexibility to accommodate the operational needs of different types of OSPs. The Administration was conducting a consultation exercise on the Code of Practice which set out practical guidelines and procedures for OSPs to follow when notified of infringing activities on their service platforms. The Administration aimed to report the views gathered and its response to the Bills Committee by the end of 2011.</p>	
001501 – 003550	Chairman Ms Emily LAU Ms Audrey EU Administration	<p>Briefing by the Administration on its paper on implied licence (LC Paper No. CB(1)3061/10-11(04)).</p> <p>Ms Audrey EU proposed that the copyright law should provide a rebuttable presumption that copyright owners had granted an implied licence to Internet users to use or share their copyright works if the copyright owners chose to upload their works onto the Internet without express</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>restrictions or conditions.</p> <p>The Administration advised that there was no precedent in both local and overseas legislation imposing such presumption which involved the shifting of the burden on the copyright owners to prove that they had not granted any licence in respect of their works published or made available in the traditional or digital environment. In addition, the existing copyright laws, both local and overseas, did not mandate the copyright owners to provide any express condition of use for their online materials before these works were entitled to copyright protection. The shifting of the burden to the copyright owners would entail a fundamental change to the copyright laws.</p>	
003551 - 004345	Chairman Ms Emily LAU Administration	In response to Ms Emily LAU's enquiry, the Administration explained that the communication of copyright materials in the education sector when giving instructions, subject to compliance with prescribed conditions, was a permitted act under the Bill.	
004346 - 004740	Chairman Ms Audrey EU Administration	In response to Ms Audrey EU's enquiry, the Administration explained that where a person distributed an infringing copy of a work which had been uploaded by someone else without the licence of the copyright owner, that person would have no legal liability for the act of distribution if he had no knowledge of the infringing nature of the copy of work. For civil cases, section 31(1) of the Copyright Ordinance (Cap. 528) governing certain acts of secondary infringement required that the defendant must know or have reasons to believe that he was distributing an infringing copy of a work. For criminal cases, a defendant being charged with an offence under section 118(1) or (2A) had a statutory defence under section 118(3) if he could prove on balance of probabilities that he did not know and had no reason to believe that the copy in question was an infringing copy of the copyright work.	
004741- 005635	Chairman Ms Cyd HO Administration	Discussion on the copyright exception for criticism and review or news reporting under section 39, and the definition of "sufficient acknowledgment" under section 198(1); the difference between "communication", "sharing" and "reproduction" of a copyright work.	
005636 - 012157	Chairman Ms Emily LAU Ms Cyd HO Administration	<p>Briefing by the Administration on its paper on derogatory treatment (LC Paper No. CB(1)3061/10-11(07)).</p> <p>Discussion on protection of moral rights under the Copyright Ordinance.</p>	

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		<p>Ms Cyd HO urged the Administration to step up public education on the legal liability under the Copyright Ordinance related to Article 6bis(1) of the Berne Convention governing moral rights to avoid inadvertent contravention by members of the public.</p> <p>The Administration reiterated that under the Copyright Ordinance, the legal liability arising from an infringement of moral rights remained to be civil in nature. The Bill did not change the status quo, namely, that an infringement of the moral rights would not attract criminal liability.</p>	
012158 - 012530	Chairman Ms Emily LAU Administration	<p>Briefing by the Administration on its paper on the Administration's responses to issues raised by stakeholders and members of the public during consultation (LC Paper No. CB(1)3061/10-11(08)).</p> <p>In response to Ms Emily LAU's enquiry, the Administration advised that it had consulted stakeholders on the first draft of the Code of Practice for OSPs. It aimed to report to the Bills Committee the consultation findings and the second draft by end 2011, and finalize the Code by the first half of 2012.</p>	
012531 - 012740	Chairman Administration	Briefing by the Administration on its paper on the Administration's responses to views expressed by deputations on the Bill (LC Paper No. CB(1)3061/10-11(09)).	The Administration to follow up as stated in paragraph 3(a) of the minutes.
012741 - 013400	Chairman Ms Emily LAU Administration	<p>Clause-by-clause examination of the Bill (Chinese version)</p> <p><u>Long title</u></p> <p><u>Clause 1 – Short title and commencement</u></p> <p>Members raised no query.</p>	
013401 - 013700	Chairman Ms Emily LAU Administration	<p><u>Clause 2 – Commencement</u></p> <p>In response to Ms Emily LAU's enquiry, the Administration advised that different sections might have different commencement dates to be appointed by the Secretary for Commerce and Economic Development.</p>	
013701 - 013835	Chairman Ms Cyd HO Administration	<p><u>Clause 3 – Section 7 amended (Films)</u></p> <p>Discussion on proposed technical amendment to section 7</p>	

Time marker	Speaker	Subject(s)	Action required
		regarding film soundtracks.	
013836-013900	Chairman Administration	<p><u>Clause 4 – Section 8 amended (Broadcasts)</u></p> <p>Members raised no query.</p>	
013901 - 014019	Chairman Ms Emily LAU Administration	<p><u>Clause 5 – Section 9 amended (Cable programmes)</u></p> <p>Discussion on proposed deletion of "copies of works".</p>	
014020 - 015000	Chairman Administration Ms Cyd HO Ms Emily LAU	<p><u>Clause 6 – Section 17 amended (Duration of copyright in literary, dramatic, musical or artistic works)</u></p> <p>Discussion on the definition of "communication to the public".</p> <p>Ms Cyd HO suggested that the definition of "communication to the public" and definitions of other terminologies which appeared in the Bill should be incorporated into a provision entitled "Interpretation" to obviate the need for cross-referencing.</p> <p>The Administration advised that due to the unique structure of the existing Copyright Ordinance, the definitions of terminologies were not incorporated into an "Interpretation" provision as in the case of some other ordinances. In fact, these definitions were numerous and to facilitate better understanding, they were separately and systematically prescribed in the context of their own applicable provisions. The existing structure of the Ordinance was modeled on the copyright statute of the United Kingdom.</p> <p>Discussion on the usage of conjunction at the end of section 17(5)(a)(i).</p>	
015001 - 015750	Chairman Administration Ms Cyd HO Ms Emily LAU	<p><u>Clause 7 – Section 18 amended (Duration of copyright in sound recordings)</u></p> <p>Discussion on the experience gathered by the Administration in respect of the suspension of the operation of certain amendments to the Copyright Ordinance (Cap. 528) effected by the Intellectual Property (Miscellaneous Amendments) Ordinance 2000.</p> <p>Ms Emily LAU considered that the new provisions should be widely publicized so as to minimize the risk of inadvertent breaches by members of the public. The Administration assured members that after passage of the Bill, the Administration would roll out suitable publicity</p>	The Administration to follow up as stated in paragraph 3(b)

Time marker	Speaker	Subject(s)	Action required
		and public education programmes about the new provisions before bringing the relevant provisions into operation.	of the minutes.
015751-015800	Chairman Administration	<u>Clause 8 – Section 19 amended (Duration of copyright in films)</u> Members raised no query.	
015801 - 015815	Chairman	Meeting arrangement	

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