

立法會
Legislative Council

LC Paper No. CB(1)594/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/10

Bills Committee on Copyright (Amendment) Bill 2011

**Minutes of the fifth meeting
held on Tuesday, 22 November 2011, at 10:45 am
in Conference Room 2A 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
Dr Hon Samson TAM Wai-ho, JP

Members absent : Hon Timothy FOK Tsun-ting, GBS, JP
Hon Cyd HO Sau-lan
Hon Paul TSE Wai-chun, JP

Public officers attending : Agenda Item III

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)

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

Ms Michelle CHONG
Senior Solicitor (Copyright)
Intellectual Property Department

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

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)383/11-12 -- Minutes of meeting held on
1 November 2011)

The minutes of the meeting held on 1 November 2011 were confirmed.

II. Papers issued since last meeting

(LC Paper No. CB(1)271/11-12(01) -- Submission on parody from
(*English version only*) the International Federation
of the Phonographic
Industry (Hong Kong
Group) Limited dated 3
November 2011

LC Paper No. CB(1)392/11-12(01) -- Submission on re-creation
(*English version only*) from the Composers and
Authors Society of Hong
Kong Limited dated 17
November 2011

- LC Paper No. CB(1)410/11-12(01) -- Submission from the
(*English version only*) Motion Picture Association – International dated 21 November 2011
- LC Paper No. CB(1)421/11-12(01) -- Submission on parody
(*English version only*) exception from IFPI Asian Regional Office dated November 2011
- LC Paper No. CB(1)421/11-12(02) -- Submission on right of
(Restricted to Members) and (03) communication to the
(*English version only*) public from IFPI Asian Regional Office dated November 2011)

2. Members noted that the above papers had been issued since the last meeting.

III. Meeting with the Administration

- (LC Paper No. CB(1)385/11-12(01) -- List of follow-up actions arising from the discussion at the meeting on 11 October 2011
- LC Paper No. CB(1)385/11-12(02) -- List of follow-up actions arising from the discussion at the meeting on 1 November 2011
- LC Paper No. CB(1)385/11-12(03) -- Administration's paper on parody and copyright infringement
- LC Paper No. CB(1)385/11-12(04) -- Administration's paper on copyright exception for parody

LC Paper No. CB(1)385/11-12(05) -- Administration's response to views expressed by organizations on the main provisions of Copyright (Amendment) Bill 2011

Clause-by-clause examination of the Bill

Starting from clause 9

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)

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

Admin 4. The Administration was requested to:

- (a) include in the speech to be delivered by the Secretary for Commerce and Economic Development during the resumption of Second Reading debate on the Bill its commitment to conducting a public consultation on copyright exception for parody after the passage of the Bill;
- (b) consider amending the existing section 31(1)(d) and other similar sections of the Bill (including making consequential amendments to the sections on criminal liability) to the effect that unauthorized distribution of an infringing copy of a work would attract criminal liability only if such distribution amounts to affecting prejudicially the owner of the copyright to a "considerable" (相當), "serious" (嚴重) or "important" (重要) extent so as to make it clear that the policy intent of the Bill was to combat large-scale copyright piracy; and
- (c) consider amending the new section 118(2AA) and other sections related to the offences of prejudicial distribution and

communication to the effect that the relevant criminal liability might be imposed on infringements resulting in economic prejudice to the copyright owners, but not on those causing only non-economic prejudice, so as to clearly reflect the policy intent of combating large-scale copyright piracy rather than parody.

IV. Any other business

5. The Chairman reminded members that the sixth meeting would be held on 13 December 2011 at 10:45 am.

(Post-meeting note: With the concurrence of the Chairman, the meeting originally scheduled for 13 December 2011 had subsequently been rescheduled to 15 December 2011 at 2:30 pm.)

6. There being no other business, the meeting ended at 12:33 pm.

Council Business Division 1
Legislative Council Secretariat
12 December 2011

**Proceedings of the fifth meeting of
Bills Committee on Copyright (Amendment) Bill 2011
on Tuesday, 22 November 2011, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

| Time marker | Speaker | Subject(s) | Action required |
|--------------------|--|--|---|
| 000218 – 000415 | Chairman | (a) Opening remarks by the Chairman. (b) Confirmation of minutes of meeting on 1 November 2011 (LC Paper No. CB(1)383/11-12). | |
| 000416 - 002303 | Chairman Administration | Briefing by the Administration on its papers on parody and copyright infringement, and copyright exception for parody (LC Paper Nos. CB(1)385/11-12(03) and (04)). | |
| 002304 - 002902 | Chairman Mr Ronny TONG Ms Emily LAU Administration | <p>Mr Ronny TONG expressed disappointment at the Administration's stance on not considering an exception for parody in the context of the present Bill. He proposed that given the netizens' lingering concern about the possibility of being prosecuted for making parodies or derivative works, the Administration should amend the existing section 31(1)(d) (and related sections of the Bill) to make it clear that the policy intent was to combat large scale copyright piracy rather than parody. The Administration should also make a commitment in public to carrying out a public consultation to deal with the netizens' concern on parody after the passage of the Bill.</p> <p>The Administration agreed to consider Mr TONG's proposals. The Administration explained why it did not favor introducing a copyright exception for parody in the absence of a thorough assessment and public consultation. Such an exception was liable to change substantively the existing balance of interests between copyright owners and the users under the Copyright Ordinance. Meanwhile, early enactment of the Bill would help to enhance copyright protection in the digital environment, as well as allow the Administration to take forward measures that would benefit consumers, online service providers, schools, libraries, archives and museums. The Administration would conduct a separate public consultation on parody after passage of the Bill. Ms Emily LAU agreed that a public consultation on the subject was necessary.</p> | The Administration to follow up as stated in paragraph 3(a) and (b) of the minutes. |
| 002903 - 004948 | Chairman Ms Audrey EU Ms Emily LAU Assistant Legal Adviser (ALA) | <p>Discussion on the effect of the proposed amendments to section 118 of the Copyright Ordinance (Cap. 528) on parody.</p> <p>Ms Audrey EU opined that unless the Administration could</p> | |

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| | Administration | <p>make it clear that the provisions of the Bill would not alter the existing legal principles in determining whether the making of a parody constituted a copyright infringement, the netizens' concern could not be fully addressed.</p> <p>The Administration stressed that the making of a parody which did not amount to copyright infringement under the existing copyright law would remain so under the Bill. The worry that the Bill would tighten the grip on parody was unfounded.</p> <p>In response to Ms Emily LAU's enquiry, ALA advised that having regard to the limited number of court authorities, the Administration's views and the views of the Associate Dean, Faculty of Law of The University of Hong Kong, the proposed criminal sanctions against unauthorized communication of copyright work to the public in the Bill did not alter the sanctions available against unauthorized distribution under the existing law, though the modes of communication were now expressly set out on the Bill.</p> | |
| 004949 - 005019 | Chairman Administration | Briefing by the Administration on its paper on the Administration's responses to comments raised by deputations (LC Paper Nos. CB(1)385/11-12(05)). | |
| 005020 - 010615 | Chairman Administration Ms Audrey EU | <p>Clause by clause examination</p> <p><u>Clause 9 – Section 22 amended (The acts restricted by copyright in a work)</u></p> <p>Discussion on vicarious liability in relation to the acts restricted by copyright in a work under the proposed Section 22(2A).</p> <p>In response to Ms Audrey EU's enquiry, the Administration advised that the proposed non-exhaustive list of factors for determining whether a party had "authorized" an infringing act did not alter the existing common law principles in determining whether an employer should be held vicariously liable for copyright infringement committed by an employee.</p> | |
| 010616 - 010712 | Chairman Administration | <p><u>Clause 10 – Section 25 amended (Infringement by rental of work to the public)</u></p> <p>Members raised no query.</p> | |
| 010713 - 010758 | Chairman Administration | <u>Clause 11 – Section 26 repealed (Infringement by making available of copies to the public)</u> | |

| Time marker | Speaker | Subject(s) | Action required |
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| | | Members raised no query. | |
| 010759 - 010819 | Chairman Administration | <p><u>Clause 12 – Section 28 repealed (Infringement by broadcasting or inclusion in a cable programme service)</u></p> <p>Members raised no query.</p> | |
| 010820 - 011838 | Chairman Administration Ms Emily LAU | <p><u>Clause 13 – Section 28A added</u></p> <p>Discussion on whether the sharing of hyperlink through social networking channels would amount to the communication of copyright work to the public under the proposed section 28A. The Administration reiterated that the mere sharing or forwarding of a hyperlink would not constitute an act of communication of a copyright work to the public as the sender did not determine the content of the communication.</p> <p>Members noted the deputations' views on sharing of hyperlink as set out in the Administration's paper (LC Paper No. CB(1)385/11-12(05)).</p> | |
| 011839 - 011926 | Chairman Administration | <p><u>Clause 14 – Section 29 amended (Infringement by making adaptation or act done in relation to adaptation)</u></p> <p>Members raised no query.</p> | |
| 011927 - 014523 | Chairman Administration Ms Audrey EU | <p><u>Clause 15 – Section 31 amended (Secondary infringement: possessing or dealing with infringing copy)</u></p> <p>Ms Audrey EU opined that the current formulation of the new sections 118(2AA) and 118(8C) concerning "prejudice" was unable to reflect the Administration's stated policy intent of combating large-scale copyright piracy. She proposed that the new sections be amended to reflect the above policy intent so that the making of a parody that caused no economic prejudice to the copyright owner would not fall into the criminal net. On the other hand, Ms EU had no objection that both economic and non-economic prejudice to the copyright owners could be taken into account by the court in adjudicating civil claims made by copyright owners.</p> <p>Discussion on the definition of "possession for the purpose of or in the course of any trade or business" under section 31(1)(a) of the Copyright Ordinance.</p> | The Administration to follow up as stated in paragraph 3(c) of the minutes. |
| 014524 - 014552 | Chairman Administration Ms Audrey EU | <p><u>Clause 16 – Section 32 amended (Secondary infringement: providing means for making infringing copies)</u></p> | |

| Time marker | Speaker | Subject(s) | Action required |
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| | | Members raised no query. | |
| 014553 - 014848 | Chairman Administration | <u>Clause 17 – Section 35 amended (Meaning of "infringing copy")</u> Members raised no query. | |
| 014849 - 014956 | Chairman Ms Emily LAU | Meeting arrangement | |

Council Business Division 1
Legislative Council Secretariat
12 December 2011