

**立法會**  
***Legislative Council***

LC Paper No. CB(1)981/11-12  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/10/10

**Bills Committee on Copyright (Amendment) Bill 2011**

**Minutes of the seventh meeting  
held on Thursday, 12 January 2012, at 2:30 pm  
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)  
  
Ms Ada LEUNG  
Acting Deputy Director of Intellectual Property

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

Ms Jasmine KUN  
Acting Senior Solicitor (Copyright)<sup>3</sup>  
Intellectual Property Department

Mr Michael LAM  
Senior Assistant Law Draftsman  
Department of Justice

Mr Henry CHAN  
Government Counsel  
Department of Justice

**Clerk in attendance** : Ms YUE Tin-po  
Chief Council Secretary (1)<sup>3</sup>

**Staff in attendance** : Miss Kitty CHENG  
Assistant Legal Adviser 5

Mr Joey LO  
Senior Council Secretary (1)<sup>3</sup>

---

Action

**I. Confirmation of minutes of meeting**

(LC Paper No. CB(1)748/11-12 -- Minutes of meeting held on  
15 December 2011)

The minutes of the meeting held on 15 December 2011 were confirmed.

**II. Papers issued since last meeting**

(LC Paper No. CB(1)838/11-12(01) -- Submission on parody  
(*English version only*) exception from IFPI Asian  
Regional Office dated  
January 2012)

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

**III. Meeting with the Administration**

- (LC Paper No. CB(1)750/11-12(01) -- Administration's paper on comments by the public on the Code of Practice and the Administration's response
- LC Paper No. CB(1)750/11-12(02) -- Draft Code of Practice for service providers issued by the Administration

Clause-by-clause examination of the Bill

*Starting from clause 42*

- LC Paper No. CB(1)618/11-12(01) -- Letter from Assistant Legal Adviser to the Administration dated 12 December 2011
- LC Paper No. CB(1)750/11-12(03) -- Letter from Assistant Legal Adviser to the Administration dated 6 January 2012
- LC Paper No. CB(1)844/11-12(01) -- Administration's paper dated 11 January 2012 in response to letter from Assistant Legal Adviser as set out in LC Paper No. CB(1)750/11-12(03)
- 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 provide further information, if any, on comparison of the proposed safe harbour provisions under the Bill with copyright laws in overseas jurisdictions, in respect of the frequency and instances of invoking the notice and takedown mechanism, and whether there were any measures to prevent abuse of the mechanism for the purpose of political censorship.

**IV. Any other business**

5. The Chairman reminded members that the eighth meeting would be held on 17 February 2012 at 10:45 am.

6. There being no other business, the meeting ended at 4:07 pm.

Council Business Division 1  
Legislative Council Secretariat  
7 February 2012

**Proceedings of the seventh meeting of  
Bills Committee on Copyright (Amendment) Bill 2011  
on Thursday, 12 January 2012, at 2:30 pm  
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000120 – 000257	Chairman	(a) Opening remarks by the Chairman.  (b) Confirmation of minutes of meeting on 15 December 2011 (LC Paper No. CB(1)748/11-12).	
000258 - 002500	Chairman Administration Assistant Legal Adviser (ALA) Ms Emily LAU Mr WONG Ting-kwong	<p><b>Clause by clause examination</b></p> <p><u>Clause 42 – Section 71 amended (Representation of certain artistic works on public display)</u></p> <p>Members raised no query.</p> <p><u>Clause 43 – Section 72 amended (Advertisement of sale of artistic work)</u></p> <p>Members raised no query.</p> <p><u>Clause 44 – Section 76A added (Copying sound recordings for private and domestic use)</u></p> <p>Discussion on copying sound recordings for private and domestic use, and the definition of "household" and "member of the household", as well as application of the term "household" to certain premises such as "sub-divided units" (劏房) and hostels.</p> <p>Ms Emily LAU enquired whether persons living in "sub-divided units" of the same flat and students living in the same hostel would be regarded as members of the same household under the Bill. The Administration explained that unrelated persons living under the same roof in different and independent sub-divided units would not be regarded as members of the same household. Likewise, students living in different and independent rooms of the same hostel would not be regarded as members of the same household.</p> <p>Ms Emily LAU enquired whether "mini-halls" in which several college students shared a flat would be regarded as "households" under the Bill. The Administration advised that a "mini-hall" in which several college students shared the same living room, kitchen and other common facilities of a flat akin to living as a family unit would be regarded as members of the same household.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration advised that it would provide a written response to the relevant issues raised by ALA in her letter dated 11 January 2012.</p> <p>In response to Ms Emily LAU's enquiry, the Administration explained that in order to ensure that the proposed copyright exception complied with the "three-step test" requirement under the Trade-Related Aspects of Intellectual Property Rights Agreement of the World Trade Organization, the Administration proposed to prescribe conditions for the exception. One of the proposed conditions sought to confine the scope of the exception to private and domestic use. The "three-step test" required that the exceptions should (a) be confined to "special cases", (b) not conflict with a normal exploitation of the work concerned, and (c) not unreasonably prejudice the legitimate interests of the copyright owner. The proposal had already struck a reasonable balance between the respective interests of the copyright owners and the users.</p>	
002501 - 005400	Chairman Administration Ms Emily LAU	<p><u>Clause 45 – Part II, Division IIIA added (Division IIIA – Limitations on Liability of Service Providers Relating to Online Materials) (also known as "safe harbour provisions")</u></p> <p>Briefing by the Administration on the policy intent of the safe harbour provisions and the public response towards the first draft of the code of practice which provided practical guidance for online service providers to follow after being notified of infringing activities on their service platform.</p> <p><u>New section 88A. Definitions</u></p> <p>The Administration advised that it would provide a written response to the question on the definition of "standard technical measures" raised by ALA in her letter dated 11 January 2012.</p> <p>The Administration advised that it would propose Committee Stage Amendment to new section 88A regarding the definition of "online service".</p>	
005401 - 013740	Chairman Administration Ms Audrey EU Ms Emily LAU Assistant Legal	<p><u>New section 88B. Limitations on liability of service providers</u></p> <p>Discussion on damages or any other pecuniary remedy for infringement of the copyright in a work that occurred on</p>	

Time marker	Speaker	Subject(s)	Action required
	Adviser (ALA)	<p>the service provider's service platform.</p> <p>Ms Audrey EU expressed concern that the notice and takedown system might be abused for the purpose of political censorship. The Administration advised that such system had already been adopted for a period of time by several overseas jurisdictions, notably Australia, Singapore and the USA. To prevent abuse of the system, the safe harbour provisions strictly required that the notice of alleged infringement must contain sufficient information in support of a take-down request, and that the complainant must verify the truthfulness of the notice content. The giving of any false statement in the notice would not only amount to commission of an offence but would also give rise to a civil liability for paying damages to any person who had suffered loss or damage as a result of the false statement.</p> <p>Discussion on "industry practice" and "financial benefits directly attributable to the infringement".</p> <p>The Administration advised that it would provide a written response to the relevant issues raised by ALA in her letter dated 11 January 2012.</p> <p>The Administration further advised that it would provide the second draft of the code of practice for the next meeting.</p>	The Administration to follow up as stated in paragraph 4 of the minutes.
013741 - 013802	Chairman Ms Emily LAU Administration	Meeting arrangement	