

立法會
Legislative Council

LC Paper No. CB(1)1304/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/10

Bills Committee on Copyright (Amendment) Bill 2011

**Minutes of the eighth meeting
held on Friday, 17 February 2012, at 10:45 am
in Conference Room 2B 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
Deputy Director of Intellectual Property

Mr Thomas TSANG
Assistant Director of Intellectual Property
(Copyright)

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)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)981/11-12 -- Minutes of meeting held on
12 January 2012)

The minutes of the meeting held on 12 January 2012 were confirmed.

II. Meeting with the Administration

Clause-by-clause examination of the Bill

Starting from Clause 45 – New section 88C

(LC Paper No. CB(1)983/11-12(01) -- Second draft of Code of
Practice for Online Service
Providers issued by the
Administration on 31
January 2012

LC Paper No. CB(1)983/11-12(02) -- Press release on second

draft of Code of Practice for Online Service Providers issued on 31 January 2012

- LC Paper No. CB(1)750/11-12(02) -- First draft of Code of Practice for Online Service Providers issued by the Administration in August 2011
- LC Paper No. CB(1)750/11-12(01) -- Administration's paper on comments by the public on the first draft of Code of Practice and the Administration's response
- 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)983/11-12(03) -- Administration's paper dated 13 January 2012 in response to letter from Assistant Legal Adviser as set out in LC Paper No. CB(1)618/11-12(01)
- LC Paper No. CB(1)983/11-12(04) -- Letter from Assistant Legal Adviser to the Administration dated 11 January 2012
- 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(1)1030/11-12(01) -- Summary table on "Issues requiring follow-up action/consideration by the Administration (position as at 15 February 2012)" prepared by the Legislative Council Secretariat
- 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:
- (a) consider, from the law drafting aspect, deleting subsections 88D(1) and (2) from new section 88D dealing with counter notice, and placing the subsections under new section 88C dealing with notice of alleged infringement;
 - (b) consider whether the expression "in good faith" should be removed from new section 88G(1) and other relevant provisions of the Bill, so as to avoid putting too onerous a burden on the online service provider when acting to remove or disable access to any material pursuant to a notice of alleged infringement, or reinstate the material or cease disabling access pursuant to a counter notice; and
 - (c) provide examples of local legislation which was underpinned by a non-statutory code of practice rather than a code that was prescribed by way of subsidiary legislation.

(Post-meeting note: The information provided by the Administration in respect of (a) and (b) was circulated to members vide LC Paper No. CB(1)1310/11-12(01) on 15 March 2012. The information provided by the Administration in respect of (c) was circulated to

members vide LC Paper No. CB(1)1307/11-12(03)on 14 March 2012.)

- Admin 4. The Bills Committee requested that the LegCo Panel on Commerce and Industry should be consulted on any future amendments to the Code of Practice for Online Service Providers (the Code) after its implementation.

III. Any other business

5. The Chairman reminded members that the ninth meeting would be held on 28 February 2012 at 10:45 am.

6. There being no other business, the meeting ended at 12:30 pm.

Council Business Division 1
Legislative Council Secretariat
19 March 2012

**Proceedings of the eighth meeting of
Bills Committee on Copyright (Amendment) Bill 2011
on Friday, 17 February 2012, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 - 000450	Chairman	(a) Opening remarks by the Chairman. (b) Confirmation of minutes of meeting on 12 January 2012 (LC Paper No. CB(1)981/11-12)	
000451 - 001118	Chairman Administration Assistant Legal Advisor (ALA)	Clause by clause examination <u>Clause 45 – Part II, Division IIIA added – Limitations on Liability of Service Providers Relating to Online Materials</u> <u>New section 88C. Notice of alleged infringement</u> Members raised no query.	
001119 - 002030	Chairman Administration	<u>New section 88D. Counter notice</u> Members noted that on receiving a notice of alleged infringement from a complainant, a service provider might send a copy of the notice to the service provider's subscriber whose account for online services had been used or involved in the alleged infringement pursuant to new section 88D(1)(a). Under new section 88D(1)(b), the service provider would notify the subscriber that the latter might contact the complainant direct. The Chairman asked whether any concern had been expressed about possible disclosure of the identity and personal data of the complainant to the subscriber. The Administration advised that no such concern had been expressed. The Administration further advised that according to new section 88C, a notice of alleged infringement must contain the name and address of the complainant and any other information that was reasonably sufficient for identifying the complainant, and substantiating the infringement complaint. The Code of Practice would make it clear that such information would be disclosed to the subscriber who might choose to contact the complainant direct. Accordingly, there should be no question of the complainant not knowing that his personal data would be disclosed to the subscriber. On the other hand, some netizens had expressed concern about disclosure of personal data of a subscriber who elected to file a counter notice. Having taken into account inputs from the Office of the Privacy Commissioner, the Administration would	The Administration to follow up as stated in paragraph 3(a) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		propose Committee Stage amendments (CSAs) to enable a subscriber to opt for or against disclosure of his personal data contained in the counter notice sent to the complainant.	
002031 - 002200	Chairman Administration	<u>New section 88E. Offence of making false statements</u> Members raised no query.	
002201 - 002940	Chairman Administration Ms Cyd HO	<u>New section 88F. Civil liability for making false statements</u> Members raised no query.	
002941 - 011050	Chairman Administration Ms Emily LAU Mr Paul TSE Ms Audrey EU ALA	<u>New section 88G. Exemption of service providers from liability for removal of material etc.</u> Discussion on the implications of the expression "in good faith" in new section 88G(1) and the relevant sections of the Bill, and whether the expression should be deleted. The Administration advised that the service provider was not required under the safe harbour provision and the Code to verify the authenticity of the particulars given in a notice of alleged infringement and a counter notice. Under the Bill, new section 88E imposed criminal liability on a person who knowingly or recklessly made any false statement in a notice of alleged infringement or counter notice, whereas new section 88F provided for civil liability against a person who made any false statement in a notice of alleged infringement or counter notice. The Administration would consider the comments raised by Members about the expression "in good faith" when reviewing the new section 88G.	The Administration to follow up as stated in paragraph 3(b) of the minutes.
011051 - 011058	Chairman Administration Mr Paul TSE	<u>New section 88H. Evidence of compliance with conditions</u> Members raised no query.	
011059- 014200	Chairman Administration Ms Emily LAU Mr Paul TSE	<u>New section 88I. Code of practice</u> Mr Paul TSE noted that implementation of the safe harbour provision was underpinned by a non-statutory Code rather than a Code prescribed by way of subsidiary legislation. He asked whether it would undermine LegCo's scrutiny power. The Administration advised that the aim of underpinning the safe harbour provision by the non-statutory Code was to provide flexibility in implementation. The policy intent of the safe harbour provision was embodied in new	

Time marker	Speaker	Subject(s)	Action required
		<p>section 88B, which provided that subject to fulfillment of the specified conditions, a service provider was not liable for damages or any other pecuniary remedy in respect of copyright infringement that occurred on his service platform. To tie in with the introduction of the safe harbour provision, the non-statutory Code would set out practical guidelines and procedures for service providers to follow when notified of infringing activities on their network or service platform. This arrangement was to flexibly allow for any necessary future amendments to the Code which were within the scope of the Copyright Ordinance (Cap. 528).</p> <p>At the Chairman's request, the Administration undertook to :</p> <ul style="list-style-type: none"> (a) finalize the draft Code in consultation with stakeholders as soon as possible, and report to the Bills Committee on the finalized draft by the end of March 2012; and (b) consult the LegCo Panel on Commerce and Industry on any future amendments to the Code after its implementation. <p><u>Briefing by the Administration on the second draft of the Code (LC Paper No. CB(1)983/11-12(01))</u></p> <p>Key amendments to the first draft were set out in the Government's press release issued on 31 January 2012 (LC Paper No. CB(1)983/11-12(02).</p> <p>Noting that individual copyright owners and service providers would have to bear their own costs in implementing the safe harbour provision, Ms Emily LAU urged the Administration to step up business facilitation efforts to help lower the costs of compliance to be incurred by copyright owners and service providers, so as to maintain Hong Kong's favourable business environment.</p> <p>The Administration advised that the corresponding statutory safe harbour provision in Australia, Singapore and the United States did not prescribe any cost-sharing mechanism, i.e. copyright owners and service providers would have to bear their own costs. The Administration considered it reasonable to require the parties concerned to share out the costs in implementing the system. The guidance provided by the Code, e.g. provision of standard forms for notice of alleged infringement and counter notice, served to lower the parties' costs of compliance</p>	<p>The Administration to follow up as stated in paragraph 3(c) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		with the safe harbour provision.	
014201 - 014220	Chairman Administration	<p>The Administration advised that it would propose CSAs to the relevant sections in Division IIIA, and provide written response to the questions previously raised by ALA.</p> <p>In response to Ms Cyd HO's enquiry, the Administration advised that it was considering introducing CSAs to the provisions governing the respective offences of prejudicial distribution and communication so as to address the suggestions raised by the Bills Committee at an earlier meeting.</p>	
014221- 014230	Chairman	Meeting arrangement	

Council Business Division 1
Legislative Council Secretariat
19 March 2012