

立法會
Legislative Council

LC Paper No. CB(1)1508/12-13(04)

Ref. : CB1/PL/CI

Panel on Commerce and Industry

Meeting on 16 July 2013

**Background brief on public consultation on
treatment of parody under the copyright regime**

Purpose

This paper provides background information on the public consultation on treatment of parody¹ under the copyright regime. It also provides a summary of views and concerns expressed by Members on the subject in previous discussions.

Background

2. With advances in information technology and the prevalence of high-speed Internet connectivity, new modes of content uses and transmissions have emerged which give copyright owners a wider choice of avenues to disseminate their copyright works. To make the copyright protection regime more forward-looking to keep pace with technological developments, the Administration issued a consultation document in December 2006 to seek public views on how best to strengthen copyright protection in the digital environment. Having regard to the views received, the Administration released in April 2008 a package of preliminary proposals for further public engagement.

¹ The Oxford Advanced Learners' Dictionary defines "parody" as "a piece of writing, music, acting, etc. that deliberately copies the style of somebody/something in order to be amusing". Webster's Dictionary defines parody as "a literary or musical work in which the style of an author or work is closely imitated for comic effect or in ridicule". Most recently, parody, among such terms as re-mix, mash-up works and derivative works, are loosely and collectively referred to by the society to describe certain materials that sometimes adapt existing copyright works for amusement, criticism or satire.

3. Taking into account the views that had been received, and the latest developments in overseas jurisdictions, the Administration issued the refined proposals in November 2009 for further consultation. The Administration subsequently introduced the Copyright (Amendment) Bill 2011 (the Bill) into the Legislative Council (LegCo) on 15 June 2011. The Bill sought to introduce, among other things, a technology-neutral communication right to better protect copyright works in the digital environment. The Bill also sought to foster cooperation between copyright owners and online service providers to combat online copyright infringement, and facilitate new modes of uses of copyright works such as e-learning and media shifting.

Discussion by the Panel on Commerce and Industry

4. The Panel was briefed on the Administration's preliminary proposals and the refined proposals at its meetings held on 15 April 2008 and 17 November 2009 respectively. While Panel members in general welcomed the Administration's refined proposals for enhancing copyright protection in the digital environment, some members opined that over-regulation would stifle creativity and innovation, and that public education was equally important for the prevention of internet piracy. Some other members considered that without specifying the kind of technologies used in the infringement activity, the proposal on recognizing copyright owners' right to communicate their works through any mode of electronic transmission, with criminal sanctions against infringement, might increase the risk of inadvertent breaches by members of the public.

5. The Panel also received views on the Administration's refined proposals from members of the public and stakeholders, including copyright owners association and copyright users at its meeting on 19 January 2010. While some copyright owners were of the view that the refined proposals had lagged behind global practices and was still insufficient for tackling online infringement, some copyright users called for a careful consideration of the refined proposals as these proposals would curtail the free flow of ideas and information. Panel members called on the Administration to strike a reasonable balance between the interests of the copyright holders and the users before finalizing the legislative proposals.

Deliberations of the Bills Committee on Copyright (Amendment) Bill 2011

6. At the House Committee (HC) meeting held on 17 June 2011, Members agreed to form a Bills Committee to study the Bill. The Bills Committee had held 11 meetings with the Administration, and also received views from the stakeholders, including copyright owners and users.

7. The Bills Committee generally supported the legislative intent of the Bill to update the Copyright Ordinance (Cap. 528) so as to ensure that the copyright protection regime would keep pace with the rapid development of the knowledge-based economy and endure the test of rapid advances in technology.

8. In the course of deliberation, members of the Bills Committee had raised concerns about, among other things, the making of parody for dissemination on the Internet. Whilst members noted that the Bill contained no provisions targeting parody, some members considered that parodies not involving large scale copyright piracy and profit-making should be exempted from the criminal liability, so as to protect the freedom of expression. There was a view that the Administration should consider granting exemption to parodies making use of Government publicity and promotion materials. The issue of parody had also drawn widespread concern in the community. Some copyright users and netizens considered that the proposed communication right would adversely affect freedom of expression and non-profit-making parody might inadvertently amount to a copyright infringement or constitute a criminal offence caught by the criminal net.

9. The Administration advised that where the making of parody for dissemination on the Internet was not for profit and did not prejudicially affect the copyright owners, such conduct would not constitute a criminal offence under the existing Copyright Ordinance and would remain so under the Bill. The suggestion of providing a specific copyright exemption for parody was not covered in the public consultations for the formulation of the Bill. The Administration was of the view that any legislative proposal to introduce a new exception for parody was liable to substantially change the existing balance of interests between copyright owners and users, thus requiring thorough consideration and extensive public consultation. At the Bills Committee's request, the Administration undertook to conduct a public consultation on copyright exception for parody after the passage of the Bill.

10. At the HC meeting on 20 April 2012, the Bills Committee submitted its report to HC, supporting the resumption of the Second Reading debate on the Bill on 9 May 2012. At the HC meeting on 27 April 2012, Members noted that it was anticipated that over 1 000 Committee Stage amendments (CSAs) would be proposed to the Bill. Members agreed that the Administration should be requested to defer the resumption of the Second Reading debate on the Bill by three to four weeks, to allow time for the Secretariat to complete the processing of the CSAs. The HC Chairman wrote to the Administration on 27 April 2012 conveying Members' request, and the Administration subsequently withdrew its notice for resuming the Second Reading debate on the Bill at the Council meeting of 9 May 2012. The Bill did not resume Second Reading debate and lapsed following the end of the previous term of LegCo.

Latest position

11. On 11 July 2013, the Administration launched a three-month public consultation exercise on the treatment of parody under Hong Kong's copyright regime. The Administration will brief the Panel on 16 July 2013 on the consultation issues and arrangements.

Relevant papers

12. A list of relevant papers is in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
15 July 2013

Appendix

Public consultation on treatment of parody under the copyright regime

List of relevant papers

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
15/4/2008	Panel on Commerce and Industry	Administration's paper	CB(1)1211/07-08(03) http://www.legco.gov.hk/yr07-08/english/panels/ci/papers/ci0415cb1-1211-3-e.pdf
		Background brief	CB(1)1211/07-08(04) http://www.legco.gov.hk/yr07-08/english/panels/ci/papers/ci0415cb1-1211-4-e.pdf
		Minutes of meeting	CB(1)1534/07-08 http://www.legco.gov.hk/yr07-08/english/panels/ci/minutes/ci080415.pdf
17/11/2009	Panel on Commerce and Industry	Administration's paper	CB(1)341/09-10(08) http://www.legco.gov.hk/yr09-10/english/panels/ci/papers/ci1117cb1-341-8-e.pdf
		Updated background brief	CB(1)341/09-10(09) http://www.legco.gov.hk/yr09-10/english/panels/ci/papers/ci1117cb1-341-9-e.pdf
		Minutes of meeting	CB(1)781/09-10 http://www.legco.gov.hk/yr09-10/english/panels/ci/minutes/ci20091117.pdf

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
19/1/2010	Panel on Commerce and Industry	Updated background brief Minutes meeting of	CB(1)865/09-10(29) http://www.legco.gov.hk/yr09-10/english/panels/ci/papers/ci0119cb1-865-29-e.pdf CB(1)1570/09-10 http://www.legco.gov.hk/yr09-10/english/panels/ci/minutes/ci20100119.pdf
20/4/2012	House Committee	Report of the Bills Committee on Copyright (Amendment) Bill 2011 Minutes meeting of	CB(1)1610/11-12 http://www.legco.gov.hk/yr11-12/english/hc/papers/hc0420cb1-1610-e.pdf CB(2) 1810/11-12 http://www.legco.gov.hk/yr11-12/english/hc/minutes/hc20120420.pdf
27/4/2012	House Committee	Minutes meeting of	CB(2) 1860/11-12 http://www.legco.gov.hk/yr11-12/english/hc/minutes/hc20120427.pdf