

**立法會**  
**Legislative Council**

LC Paper No. CB(4)156/14-15  
(These minutes have been seen  
by the Administration)

Ref : CB4/BC/6/13

**Bills Committee on Copyright (Amendment) Bill 2014**

**Minutes of the second meeting**  
**held on Tuesday, 14 October 2014, at 10:45 am**  
**in Conference Room 1 of the Legislative Council Complex**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)  
Hon Emily LAU Wai-hing, JP  
Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon WONG Ting-kwong, SBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon Cyd HO Sau-lan, JP  
Hon Paul TSE Wai-chun, JP  
Hon WONG Yuk-man  
Hon Claudia MO  
Hon YIU Si-wing  
Hon Gary FAN Kwok-wai  
Hon MA Fung-kwok, SBS, JP  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Hon Dennis KWOK  
Dr Hon Elizabeth QUAT, JP  
Hon Martin LIAO Cheung-kong, SBS, JP  
Hon CHUNG Kwok-pan  
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Members absent** : Hon Abraham SHEK Lai-him, GBS, JP  
Hon Vincent FANG Kang, SBS, JP  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon CHAN Yuen-han, SBS, JP

Hon Alice MAK Mei-kuen, JP  
Hon SIN Chung-kai, SBS, JP

**Public officers attending** : Agenda item I

Commerce and Economic Development Bureau

Mr David WONG, JP  
Deputy Secretary for Commerce and Economic  
Development  
(Commerce and Industry)<sup>2</sup>

Miss Fabia TAM  
Acting Principal Assistant Secretary for  
Commerce and Economic Development  
(Commerce and Industry)<sup>3</sup>

Intellectual Property Department

Ms Michelle CHONG  
Assistant Director of Intellectual Property  
(Copyright)

Department of Justice

Mr LAM Siu-chung, Michael  
Senior Assistant Law Draftsman

**Clerk in attendance** : Ms YUE Tin-po  
Chief Council Secretary (4)<sup>3</sup>

**Staff in attendance** : Miss Carrie WONG  
Assistant Legal Adviser 4

Mr Joey LO  
Senior Council Secretary (4)<sup>3</sup>

Ms Anki NG  
Council Secretary (4)<sup>3</sup>

Action

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**I. Meeting with the Administration**

- (LC Paper No. CB(4)11/14-15(01) -- Administration's paper on criminal cases in copyright infringement
- LC Paper No. CB(4)11/14-15(02) -- Administration's paper on copyright cases illustrating fairness assessment
- LC Paper No. CB(4)1077/13-14(01) -- Submission from Hong Kong Copyright Alliance dated 5 September 2014
- LC Paper No. CB(3)719/13-14 -- The Bill
- File Ref.: CITB 07/09/17 -- Legislative Council Brief issued by the Commerce and Economic Development Bureau on 11 June 2014
- LC Paper No. LS63/13-14 -- Legal Service Division Report
- LC Paper No. CB(4)871/13-14(01) -- Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(4)960/13-14(01) -- Paper on Copyright (Amendment) Bill 2014 prepared by the Legislative Council Secretariat (Background brief)
- LC Paper No. CB(4)923/13-14(01) -- Submission from The American Chamber of Commerce in Hong Kong dated 17 June 2014 (English version only)

LC Paper No. CB(4)923/13-14(02) -- Submission from Hong Kong Copyright Concern Group dated 18 June 2014 (English version only)

Discussion

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

Follow-up actions to be taken by the Administration

2. The Administration was requested to provide information on the following:

- (a) the rationale behind the adoption or otherwise of the copyright exception for user-generated content ("UGC") in legislation in overseas jurisdictions;
- (b) the experience of the adoption of the copyright exception for non-commercial UGC in Canada; and
- (c) the rationale behind the Administration's decision for not adopting the copyright exception for non-commercial UGC in the Bill.

3. The Administration was also requested to explain the application of the proposed fair dealing exceptions in relation to non-commercial re-posting of video clips of outdated news on the Internet in the Bill.

Date of next meeting

4. The Chairman reminded members that the third meeting would be held on 25 October 2014 to receive views on the Bill from deputations and members of the public, and that the fourth meeting would be held on 4 November 2014 to discuss the Administration's papers on criminal cases in copyright infringement and on copyright cases illustrating fairness assessment (LC Paper No. CB(4)11/14-15(01) and (02)). Members also agreed to the proposed schedule of meetings from November 2014 to February 2015 of the Bills Committee tabled at the meeting.

*(Post-meeting note: The schedule of meetings was issued to members vide LC Paper No. CB(4)40/14-15 on 15 October 2014.)*

**II. Any other business**

5. There being no other business, the meeting ended at 12:50 pm.

Council Business Division 4  
Legislative Council Secretariat  
17 November 2014

**Proceedings of the second meeting of  
Bills Committee on Copyright (Amendment) Bill 2014  
on Tuesday, 14 October 2014, at 10:45 pm  
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda item I – Meeting with the Administration</b>			
000345 – 002815	Chairman Administration	Briefing by the Administration	
002816 – 003429	Chairman Mr Charles Peter MOK Administration	<p>Noting precedent cases where netizens had been prosecuted under the Control of Obscene and Indecent Articles Ordinance ("COIAO") (Cap. 390) for sharing of a hyperlink to obscene and indecent articles, Mr Charles Peter MOK sought clarification on whether the sharing of a hyperlink would constitute the offence of infringement by communicating to public.</p> <p>The Administration advised that under the new section 28A(5) in clause 13, a person did not communicate a work to the public if the person did not determine the content of the communication. Hence, the mere sharing of a hyperlink would not constitute the offence of infringement by communicating to public. Also, it should be noted that the meaning of communicating a work under the Bill might be different from the meaning of publishing a work relating to obscene or indecent content under the COIAO.</p>	
003430 – 004650	Chairman Ms Claudia MO Administration	<p>Ms Claudia MO's enquiry and the Administration's response on its efforts in allaying the public concern about the perceived effect of the Bill on restriction of freedom of expression on the Internet.</p> <p>Ms Claudia MO's enquiry and the Administration's response on whether the Administration would consider retracting the Bill in view of the perceived effect of the Bill on freedom of expression, as in the case of the proposed anti-stalking legislation.</p> <p>The Administration advised that many overseas countries such as the United States, Australia, the United Kingdom and Canada had already changed their copyright laws since the late 1990s to respond to rapid technological developments. Hong Kong's copyright regime needed to be updated to keep pace with technological and overseas</p>	

Time marker	Speaker	Subject(s)	Action required
		developments as soon as possible.	
004651 – 005050	Chairman Mr YIU Si-wing Administration	<p>Mr YIU Si-wing enquired whether internal staff training programme for a business organization would be covered by the proposed copyright exceptions for the education sector under the Bill.</p> <p>The Administration replied in the negative unless the organization met the requirements of an education establishment provided in Schedule 1 to the Copyright Ordinance (Cap. 528).</p>	
005051 – 010925	Chairman Ms Cyd HO Administration	<p>Discussion on the experience of adoption or otherwise of the copyright exception for user-generated content ("UGC") in legislation in overseas jurisdictions, and the rationale behind the Administration's decision for not adopting the copyright exception for non-commercial UGC in the Bill.</p> <p>Discussion on fair dealing with a work for the purpose of reporting or commenting on current affairs, and prosecution policy regarding copyright infringements.</p> <p>Ms Cyd HO's suggested including a provision in the Bill stating that any prosecution should not be initiated without the consent of the Secretary for Justice.</p> <p>The Administration advised that according to the Basic Law, the Department of Justice shall control all criminal prosecutions, free from any interference. The Department of Justice had issued the Prosecution Code to guide prosecutors in conducting prosecutions.</p> <p>Ms Cyd HO requested the Administration to explain the application of the proposed fair dealing exception in the Bill for non-commercial re-posting of video clips of outdated news on the Internet.</p>	<p>The Administration to follow up as per paragraph 2 (a) to (b) of the minutes.</p> <p>The Administration to follow up as per paragraph 3 of the minutes.</p>
010926– 011443	Chairman Mr Ronny TONG Administration	Noting that there had not been a single prosecution case on parody, Mr Ronny TONG opined that the Administration might consider maintaining the status quo by refraining from the introduction of the new fair dealing exceptions in the Bill on the use for the purpose of parody, which had caused grave	

Time marker	Speaker	Subject(s)	Action required
		<p>concern from users.</p> <p>The Administration advised that the fair dealing exceptions were introduced in line with the international copyright developments, with a view to balancing the protection of the rights of the copyright owners and the users of copyright works.</p>	
011444 – 015120	<p>Chairman Mr WONG Yuk-man Mr Gary FAN Mr CHAN Chi-chuen Mr MA Fung-kwok Administration</p>	<p>Discussion on the meaning of "prejudice" and the possibility to adopt the copyright exception for non-commercial UGC.</p> <p>Discussion on international copyright regimes, and what constituted "substitution for the original work" and "non-commercial" UGC.</p> <p><i>(Remark: The above issues would be followed up at the next meeting to be held on 4 November 2014 when discussing the Administration's papers on criminal cases in copyright infringement and on copyright cases illustrating fairness assessment (LC Paper No. CB(4)11/14-15(01) and (02)).</i></p>	<p>The Administration to follow up as per paragraph 2 (c) of the minutes.</p>
015121 – 020600	<p>Chairman Mr MA Fung-kwok Mr Martin LIAO Administration</p>	<p>Mr MA Fung-kwok's enquiry and the Administration's response on whether amendments would be introduced in the Bill to protect the interest of copyright owners and legitimate television ("TV") broadcasters against online copyright infringements involving the use of streaming TV boxes.</p> <p>The Administration advised that apart from expanding the scope of copyright exception under the existing law, the Bill would introduce an exclusive right for copyright owners to communicate copyright works to the public. This right of communication to the public was technology-neutral which would address the issue of online copyright infringement, including introducing appropriate criminal sanctions. Online copyright infringements involving the use of streaming TV boxes were a complex issue to be further addressed after recognition of the pre-requisite communication right as now proposed in the Bill. Mr Martin LIAO suggested that the Administration should explain to the public more clearly the policy intent for introducing the various amendments.</p>	



<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
020601 – 020648	Chairman Administration	Date of next meeting	

Council Business Division 4  
Legislative Council Secretariat  
17 November 2014