

立法會
Legislative Council

LC Paper No. CB(4)228/14-15
(These minutes have been seen
by the Administration)

Ref : CB4/BC/6/13

Bills Committee on Copyright (Amendment) Bill 2014

Minutes of the fourth meeting
held on Tuesday, 4 November 2014, at 4:30 pm
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 Abraham SHEK Lai-him, GBS, 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
Hon SIN Chung-kai, SBS, JP
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Members absent** : 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 CHUNG Kwok-pan

**Public officers
attending**

: Agenda item I

Commerce and Economic Development Bureau

Mr David F L WONG, JP
Deputy Secretary for Commerce and Economic
Development
(Commerce and Industry)2

Miss Patricia SO
Principal Assistant Secretary for Commerce and
Economic Development
(Commerce and Industry)3

Intellectual Property Department

Ms Michelle CHONG
Assistant Director of Intellectual Property
(Copyright)

Ms Jasmine KUN
Senior Solicitor (Copyright) 3

Department of Justice

Mr Michael LAM
Senior Assistant Law Draftsman (I)1

Mr Henry CHAN
Senior Government Counsel (Acting)

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (4)3

Staff in attendance : Miss Carrie WONG
Assistant Legal Adviser 4

Mr Joey LO
Senior Council Secretary (4)3

Ms Anki NG
Council Secretary (4)3

Action

I. Meeting with the Administration

(4:30 pm - 6:30 pm)

- LC Paper No. CB(4)93/14-15(01) -- List of follow-up actions arising from the discussion at the meeting on 14 October 2014
- LC Paper No. CB(4)100/14-15(01) -- Administration's paper on user-generated content
- 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

Other relevant papers

- 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)

Action

LC Paper No. CB(4)977/13-14(01) -- Paper on Copyright
(Amendment) Bill 2014
prepared by the Legislative
Council Secretariat
(Background brief)

Discussion

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

Date of next meeting

2. The Chairman reminded members that the fifth meeting would be held on 18 November 2014 at 4:30 pm to continue discussion with the Administration.

II. Any other business

3. There being no other business, the meeting ended at 6:20 pm.

Council Business Division 4
Legislative Council Secretariat
5 December 2014

**Proceedings of the fourth meeting of
Bills Committee on Copyright (Amendment) Bill 2014
on Tuesday, 4 November 2014, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Meeting with the Administration			
000700– 002910	Chairman Administration	Briefing by the Administration on its response to the issues raised at the meeting on 14 October 2014 (LC Paper No. CB(4)100/14-15(01)).	
002911 – 004700	Chairman Mr WONG Yuk-man Administration	<p>Mr WONG Yuk-man expressed disappointment with the Administration's decision not to adopt the copyright exception for non-commercial user-generated content ("UGC") in the Bill. He considered that non-profit making UGC or UGC not disseminated in the course of trade would not have a substantial adverse effect on the exploitation of the existing work or on an existing or potential market. He added that the absence of precedent should not be an excuse for not adopting the UGC exception which would facilitate freedom of expression.</p> <p>The Administration advised that it had reservations about whether the UGC exception proposed by the netizens, notably the Copyright and Derivative Works Alliance ("the Alliance"), would comply with the three-step test under the Berne Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") of the World Trade Organization. To comply with the three-step test, the Government had to ensure that the copyright exception (a) was confined to special cases, (b) did not conflict with normal exploitation of the work, and (c) did not unreasonably prejudice the legitimate interests of the author/copyright owner. The Administration noted that the subject of UGC remained unsettled in the international community and there were conflicting views as to whether the UGC exception would fail the three-step test among academics (such as Dr Mihaly Ficsor, the former Assistant Director General of World Intellectual Property Organization and Professor Peter Yu, Kern Family Chair in Intellectual Property Law, Drake University Law School of the United States).</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Mr WONG Yuk-man opined that the fair dealing exception for the purpose of commenting on current events should cover the re-posting of video clips of news or soccer matches which was very popular amongst Internet users.</p> <p>The Administration advised that as commenting on current events was analogous to "reporting current events", the fair dealing exception for "commenting on current events" had been introduced in the Bill. In addition, the Bill proposed a new fair dealing exception for the use of quotation which would cover reasonable uses of copyright works such as films, sound recordings, broadcasts and photographs as well as traditional text without any alterations or parodic elements. The re-posting of video clips of news might rely on this new copyright exception if the dealing was assessed to be fair.</p>	
004701–005809	Chairman Mr CHAN Chi-chuen Administration	Mr CHAN Chi-chuen's enquiry and the Administration's response on whether Hong Kong would follow the copyright law of the United Kingdom to introduce Committee Stage amendments in the Bill prohibiting copyright owners from including contractual terms in licenses to override copyright exceptions.	
005810 – 010200	Chairman Mr Martin LIAO Administration	Mr Martin LIAO's enquiry and the Administration's response on the effect of the proposed copyright exception on protection of moral rights of copyright owners, authors of literary, dramatic, musical or artistic works or directors of films.	
010201 – 012030	Chairman Mr WONG Yuk-man Mr CHAN Chi-chuen Administration	<p>Mr WONG Yuk-man urged the Administration to introduce copyright exception for non-commercial UGC in the Bill. Sharing a similar view, Mr CHAN Chi-chuen quoted the view of Professor Peter YU that the UGC exception complied with the three-step test, and that the different views on the application of the three-step test should not preclude the introduction of the UGC exception in Hong Kong.</p> <p>The Administration explained that the new copyright exceptions proposed in the Bill and the existing ones would cover many daily activities on the Internet. The proposal represented a balance between copyright protection and reasonable use of copyright works. Noting that the question of</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>whether UGC exception would comply with the three-step tests under the Berne Convention and the TRIPS was still subject to debate, the Administration considered it prudent not to legislate with reference to the concept of UGC in the current exercise. The Administration would continue to monitor international copyright developments, notably regarding the UGC concept, for reference in future reviews of the copyright regime.</p>	
012031 – 013634	Chairman Administration	Briefing by the Administration on its response to the issues raised at the meeting on 17 July 2014 (LC Paper Nos. CB(4)11/14-15(01) and (02)).	
013635– 014950	Chairman Mr MA Fung-kwok Mr CHAN Chi-chuen Administration	<p>Mr MA Fung-kwok's enquiry and the Administration's response on whether in determining whether an act constituted a fair dealing, the court would have sufficient information and precedent to rely on.</p> <p>Mr CHAN Chi-chuen expressed concern about whether the inclusion of a non-exhaustive list of relevant factors in the new fair dealing exception would restrict the court's discretion in its determination.</p> <p>The Administration advised that the existing Copyright Ordinance (Cap. 528) already provided for a number of copyright exceptions in respect of fair dealing of copyright works for purposes including research and private study (section 38(3)), education (section 41A) and public administration (section 54A) as well as the respective non-exhaustive list of relevant factors. The list served as a reference to the court which would always take into account all the circumstances of the case in arriving at a fair decision.</p>	
014951 – 015050	Chairman Administration	Date of next meeting	