

立法會
Legislative Council

LC Paper No. CB(4)308/14-15
(These minutes have been seen
by the Administration)

Ref : CB4/BC/6/13

Bills Committee on Copyright (Amendment) Bill 2014

Minutes of the Sixth meeting
held on Monday, 8 December 2014, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex

- Members present** : Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, GBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
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 Charles Peter MOK, JP
Hon CHAN Chi-chun
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
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 Vincent FANG Kang, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon MA Fung-kwok, SBS, JP
Hon CHAN Yuen-han, SBS, JP
Hon Alice MAK Mei-kuen, JP

Public officers attending

: Agenda item II

Commerce and Economic Development Bureau

Mr David 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 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

I. Confirmation of minutes of meeting

(LC Paper No. CB(4)228/14-15 -- Minutes of meeting held on 4 November 2014)

The minutes of the meeting held on 4 November 2014 were confirmed.

II. Meeting with the Administration

Clause-by-clause examination of the Bill

(LC Paper No. CB(3)719/13-14 -- The Bill

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)153/14-15(01) -- Assistant Legal Adviser's letter dated 7 November 2014 to the Administration)

Other relevant papers

(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)977/13-14(01) -- Paper on Copyright (Amendment) Bill 2014 prepared by the Legislative Council Secretariat (Background brief)

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)100/14-15(01) -- Administration's paper on user-generated content
- LC Paper No. CB(4)153/14-15(02) -- Administration's paper on application of fair dealing provisions)

Discussion

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

Follow-up actions to be taken by the Administration

3. The Administration was requested to:
- (a) consider amending the conjunction between subparagraphs (a)(i) and (ii), and subparagraphs (b)(ii) and (iii), of the proposed section 17(5), as well as paragraphs (a) and (b) of the proposed section 19(6) by replacing "and" with "or" to better reflect the legislative intent that the circumstances specified therein were not meant to be cumulative; and
 - (b) provide information on the application of section 19 of the Copyright Ordinance (Cap. 528), in particular the legal liabilities of users who uploaded copyright Cantonese films produced in Hong Kong in the mid-20th century on video sharing websites such as YouTube.

III. Any other business

Date of next meeting

4. The Chairman reminded members that the seventh meeting would be held on 16 December 2014 at 4:30 pm to continue clause-by-clause examination of the Bill.
5. The Chairman said that the Secretariat had uploaded in batches the 8 365 submissions received from deputations/individual members of the public to the LegCo website. The submissions had also been forwarded to

members and the Administration via email. The Administration would provide a written response to the submissions in due course.

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

Council Business Division 4
Legislative Council Secretariat
2 January 2015

**Proceedings of the Sixth meeting of
Bills Committee on Copyright (Amendment) Bill 2014
on Monday, 8 December 2014, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Confirmation of minutes			
000630 – 000659	Chairman	Confirmation of minutes of meeting on 4 November 2014 (LC Paper No. CB(1)228/14-15)	
Agenda item II – Meeting with the Administration			
000700 – 000800	Chairman Administration	<p>Clause-by-clause examination of the Bill</p> <p><u>Clause 1</u></p> <p>Chairman's enquiry and the Administration's response regarding the anticipated commencement date of the Bill to be enacted.</p> <p>The Administration advised that it was preparing a written reply to ALA's letter dated 7 November 2014 (LC Paper No. CB(4)153/14-15(01) which had raised various legal and drafting issues, including the commencement date. The Ordinance would come into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette. Following good practices, the Government might launch educational and promotional activities about the amendments to the copyright law before bringing the Ordinance into operation. The commencement notice would be treated as a piece of subsidiary legislation subject to negative vetting by the Legislative Council.</p>	
000801 – 001110	Chairman Administration	<u>Clause 2</u>	
001111 – 002900	Chairman Administration Ms Claudia MO Mr CHAN Chi-chuen Mr YIU Si-wing	<p><u>Clause 3</u></p> <p>Members' enquiries and the Administration's responses on what constituted copyright subsisting in a film sound-track as a sound recording.</p>	
002901 – 005400	Chairman Mr CHAN Chi-chuen Ms Cyd HO Administration	<p><u>Clauses 4 and 5</u></p> <p>Mr CHAN Chi-chuen noted that amendments were made to section 8(1) and other similar sections to delete the reference to "copies of" in the expression "making available to the public copies of works". He expressed concern that such amendments would in</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>effect enlarge the scope of section 8 and other relevant sections to cover acts which did not involve the making of copies of work, such as by means of electronic communication.</p> <p>Ms Cyd HO shared a similar view. She asked if Hong Kong was under any pressure from the international community to tighten up its copyright regime to enlarge the scope of section 8 and other relevant sections.</p> <p>The Administration advised that given that a work might be made available to the public in different forms and no formal copy was required, the reference to "copies" was unnecessary. At present, the Copyright Ordinance (Cap. 528) gave copyright owners certain exclusive rights, including the right to make a copyright work available to the public on the Internet, to broadcast a work or to include a work in a cable programme service. With advances in technology, new modes of electronic transmission such as streaming had been emerging. The current scope of statutory protection might not be adequate to cope with such rapid changes, allowing an infringer to evade liability and sanctions on technicality. The World Intellectual Property Organization's ("WIPO") Copyright Treaty and the WIPO Performances and Phonograms Treaty, commonly known as the "Internet treaties", were adopted in 1996 to address the challenges of the new digital technologies. In response, and given rapid changes in user behaviours, many overseas jurisdictions had updated their copyright regimes, including the introduction of a communication right to enhance copyright protection in the digital environment. The introduction of a technology-neutral communication right was the mainstay of the current round of legislative update to bring Hong Kong's copyright regime on par with international developments and follow a long line of overseas jurisdictions.</p>	
005401 – 012100	Chairman ALA Mr Christopher CHUNG Mr CHAN Chi-chuen Ms Cyd HO Mr SIN Chung-kai Mr Martin LIAO	<p><u>Clause 6</u></p> <p>Chairman's enquiry and the Administration's response regarding whether the equivalent Chinese term of "making available to the public" in the proposed sections 17(5) and 19(6), i.e. "向公眾提供", should be added to the corresponding English text as proposed by ALA.</p>	

Time marker	Speaker	Subject(s)	Action required
	Administration	<p>Discussion on the difference in meaning between the use of the conjunctions "and" and "or" in the proposed amendments to sections 17(5) and 19(6); and the lack of a conjunction of "and" or "or" in the proposed section 22(1).</p> <p>ALA's enquiry and the Administration's response on the difference in meaning between the performance of the work "to the public" and the performance of the work "in public" under the proposed amendments to sections 17(5)(a). Similar enquiry was raised on the proposed section 39(5)(a)(iii).</p> <p>Mr Martin LIAO's enquiry and the Administration's response on the meaning of the word "communication".</p>	The Administration to follow up as per paragraph 3(a) of the minutes.
012101 – 012858	Chairman Administration	<u>Clause 7</u>	
012859 – 014900	Chairman Ms Cyd HO Mr Christopher CHUNG Administration	<u>Clause 8</u> Ms Cyd HO's enquiry and the Administration's response on the duration of copyright in films and the legal liabilities of users who uploaded copyright Cantonese films produced in Hong Kong on the mid-20th century on video sharing websites such as the YouTube.	The Administration to follow up as per paragraph 3(b) of the minutes.
014901 – 020240	Chairman ALA Mr SIN Chung-kai Mr CHAN Chi-chuen Ms Claudia MO Ms Cyd HO Administration	<u>Clause 9</u> ALA's enquiry and the Administration's response on whether amendments should be made to references made to "acts restricted by the copyright in a work" and "an act restricted by the copyright in the work" in the English text of the proposed sections 22(2A), 25(1), 28A(1) and 199 respectively for the sake of consistency with the definition of "acts restricted by the copyright" under section 22(1). Similar enquiry was made to the Chinese text of the proposed sections 22(2A) and (3), 25(1), 28A(1) and 29(2). Discussion on the meaning of "authorizing another person to do any of the acts restricted by the copyright in a work".	
020241 – 020250	Chairman Administration	Date of next meeting	

Council Business Division 4
Legislative Council Secretariat
2 January 2015