

立法會
Legislative Council

LC Paper No. CB(4)400/14-15
(These minutes have been seen
by the Administration)

Ref : CB4/BC/6/13

Bills Committee on Copyright (Amendment) Bill 2014

Minutes of the Eighth meeting
held on Tuesday, 6 January 2015, at 4:30 pm
in Conference Room 3 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 Vincent FANG Kang, SBS, 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 MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chun
Hon CHAN Yuen-han, SBS, JP
Hon Alice MAK Mei-kuen, JP
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 Ronny TONG Ka-wah, SC

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 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

Action

I. Confirmation of minutes of meeting

LC Paper No. CB(4)308/14-15 -- Minutes of meeting held on 8 December 2014)

The minutes of the meeting held on 8 December 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)292/14-15(01) -- Administration's response to Assistant Legal Adviser's letter dated 7 November 2014

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)

Action

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 consider:
- (a) reviewing the drafting of the proposed section 39(2)(c) in view of the difficulty in defining the extent of quotation from a work which was no more than was required by the specific purpose for which it was used;
 - (b) reviewing the drafting of the proposed section 39(5)(b) to specify who determined whether a work had been released or communicated to the public; and
 - (c) replacing the Chinese character "導" with "道" in the Chinese term "報導" under the proposed section 39(3) and relevant proposed sections.
4. The Administration was also requested to explain:
- (a) the difference between "communication of a work to the public" under the proposed section 28A and "the performance, exhibition, playing or showing of the work to the public" under the proposed section 39(5)(a)(iii); and

- (b) the difference between "release", "issue" and "communicate" to the public under the proposed section 39(5).

III. Any other business

Date of next meeting

- 5. The Chairman reminded members that the ninth meeting would be held on 20 January 2015 at 10:45 am to continue clause-by-clause examination of the Bill.
- 6. There being no other business, the meeting ended at 6:19 pm.

Council Business Division 4
Legislative Council Secretariat
26 January 2015

**Proceedings of the Eighth meeting of
Bills Committee on Copyright (Amendment) Bill 2014
on Tuesday, 6 January 2015, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action required
Agenda item I – Confirmation of minutes			
000330 – 000410	Chairman	Confirmation of minutes of meeting on 8 December 2014 (LC Paper No. CB(1)308/14-15)	
Agenda item II – Meeting with the Administration			
000411 – 014800	Chairman Mr Gary FAN Mr MA Fung-kwok Mr SIN Chung-kai Mr CHAN Chi-chuen Mr WONG Yuk-man Ms Cyd HO Assistant Legal Adviser ("ALA") Administration	<p>Clause-by-clause examination of the Bill</p> <p><u>Clause 18</u></p> <p>Mr Gary FAN's enquiry and the Administration's response regarding circumstances under which quotations for the purpose of reporting or commenting on current events would qualify for fair dealing exception.</p> <p>Mr MA Fung-kwok's enquiry and the Administration's response regarding the meaning of "or otherwise" under section 39(2). Noting that copyright exception for quotation for the purpose of commenting on current events was not provided in the United Kingdom ("UK") copyright legislation, Mr MA enquired whether the quotation exception proposed in the Bill was necessary.</p> <p>The Administration advised that "or otherwise" under section 39(2) referred to purposes other than criticism and review, including academic and social discussion as well as provision of information relating to copyright works. Such a provision was in line with the fair dealing exception in UK copyright legislation. The Administration considered that there were good public policy grounds justifying the exception for quotation for purposes such as academic citation or providing information to facilitate discussions. As to the exception for commenting on current events, the Administration shared the view of the Hong Kong Bar Association that it was analogous to reporting on current events and should have similar treatment to further safeguard freedom of expression and public interest.</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response regarding the requirement for sufficient acknowledgement for the use of</p>	

Time Marker	Speaker	Subject(s)	Action required
		<p>quotation under section 39(1)(b).</p> <p>The Administration advised that under section 198 of the Copyright Ordinance, sufficient acknowledgement meant an acknowledgement indentifying the work in question by its title or other description, and identifying the author unless (a) in the case of a published work, it was published anonymously; or (b) in the case of an unpublished work, it was not possible for a person to ascertain the identity of the author by reasonable inquiry.</p> <p>The Administration added that the general guidance was the identification of the source under possible circumstances. In the case of quotation of a newspaper clipping, it would meet the requirement for acknowledgement if the source, i.e. the name of the newspaper, could be identified. In the case of quotation of a movie, the same requirement would apply, and it would be best if the title of the movie and its director were given.</p> <p>Ms Cyd HO considered that exception should be provided for such quotations as the potential market of the original work would not be affected. Moreover, it might not be practicable to identify the source of the work if it was created long ago.</p> <p>Mr MA Fung-kwok expressed concern that copyright exception for the purpose of commenting on current events might create a loophole for online piracy and might not be in line with the Berne Convention.</p> <p>The Administration advised that in order to qualify for exception, any dealing with a work must be regarded as fair dealing and the court must take into account all the circumstances including the purpose and nature of the dealing, the nature of the work, the amount and substantiality of the portion of the work dealt with, and the effect of the dealing on the potential market of the work. This would balance the interest of the copyright owners and the users of copyright works, and ensure compliance with the requirements of the three-step test under the Berne Convention.</p> <p>Mr WONG Yuk-man's enquiry and the Administration's response regarding the requirement that the extent of the quotation from a copyright work should be no more than was required by the specific</p>	<p>The Administration to follow up as per paragraph</p>

Time Marker	Speaker	Subject(s)	Action required
		<p>purpose for which it was used under the proposed section 39(2)(c).</p> <p>Mr WONG Yuk-man's enquiry and the Administration's response regarding the drafting of the proposed sections 39(3) and 39(5)(b).</p> <p>Discussion on the difference between "communication of a work to the public" under the proposed section 28A and "the performance, exhibition, playing or showing of the work to the public" under the proposed section 39(5)(a)(iii).</p> <p>Discussion on the difference between "release", "issue" and "communicate" to the public under the proposed section 39(5).</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response regarding the meaning of "making available to the public". The Administration advised that under the existing provision, "making available of copies of a work to the public" was an exclusive right which was specifically defined in section 26 of the Copyright Ordinance (Cap. 528).</p> <p>In response to ALA's enquiry, the Administration advised that it would provide a written response to issues raised in paragraphs 6, 7, 8, 9, 10, 12 and 13 of ALA's letter dated 7 November 2014 before the next meeting to facilitate discussion by the Bills Committee.</p> <p>Discussion on the merits of codification of fairness factors in fair dealing exceptions in the Bill vis-à-vis the UK model relying mainly on case law. The Administration advised that relevant information had been provided to members vide LC Paper No. CB(4)11/14-15(02).</p>	<p>3(a) to (c) of the minutes.</p> <p>The Administration to follow up as per paragraph 4(a) and (b) of the minutes.</p>
014801 – 014844	Chairman Administration	Date of next meeting	