

**立法會**  
**Legislative Council**

LC Paper No. CB(4)698/14-15  
(These minutes have been seen  
by the Administration)

Ref : CB4/BC/6/13

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

**Minutes of the 10<sup>th</sup> meeting**  
**held on Tuesday, 3 February 2015, 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 Jeffrey LAM Kin-fung, GBS, JP  
Hon Andrew LEUNG Kwan-yuen, GBS, 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 Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
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 Christopher CHUNG Shu-kun, BBS, MH, JP

**Members absent** : Hon Abraham SHEK Lai-him, GBS, JP  
Hon Vincent FANG Kang, SBS, JP  
Hon WONG Ting-kwong, SBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon MA Fung-kwok, SBS, JP  
Hon CHUNG Kwok-pan

**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)400/14-15 -- Minutes of meeting held on 6 January 2015)

The minutes of the meeting held on 6 January 2015 were confirmed.

**II. Information paper issued since the last meeting**

LC Paper No. CB(4)417/14-15(01) -- Hon Gary FAN Kwok-wai's letter dated 28 January 2015 on withdrawal of membership

2. Members noted Hon Gary FAN Kwok-wai's letter issued since the last meeting.

**III. Meeting with the Administration**

Clause-by-clause examination of the Bill

*Starting from Clause 19*

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)

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
- LC Paper No. CB(4)364/14-15(01) -- Administration's paper on legal liability of uploading copyright Cantonese films made in Hong Kong in the mid-20th century
- LC Paper No. CB(4)442/14-15(01) -- Summary of Administration's response to views expressed by deputations and members of the public on the Copyright (Amendment) Bill 2014 at the meeting on 25 October 2014
- LC Paper No. CB(4)364/14-15(02) -- Administration's response to the Assistant Legal Adviser dated 15 January 2015
- 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
- LC Paper No. CB(4)375/14-15(01) -- List of follow-up actions arising from the discussion at the meeting on 8 December 2014
- LC Paper No. CB(4)375/14-15(02) -- List of follow-up actions arising from the discussion at the meeting on 6 January 2015
- LC Paper No. CB(4)431/14-15(01) -- List of follow-up actions arising from the discussion at the meeting on 20 January 2015

Discussion

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

Follow-up actions to be taken by the Administration

4. The Administration was requested to consider the drafting of the Chinese version of section 41A(4)(a) and (b) in respect of fair dealing for the purposes of giving or receiving instruction under the Copyright Ordinance (Cap. 528) by using simpler sentence structures and language to enhance readability.

Date of next meeting

5. The Chairman reminded members that the eleventh meeting would be held on 24 February 2015 at 10:45 am to continue clause-by-clause examination of the Bill.

**IV. Any other business**

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

**Proceedings of the 10<sup>th</sup> meeting of  
Bills Committee on Copyright (Amendment) Bill 2014  
on Tuesday, 3 February 2015, at 4:30 pm  
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda item I – Confirmation of minutes</b>			
000745 – 000815	Chairman	Confirmation of minutes of meeting on 6 January 2015 (LC Paper No. CB(4)400/14-15).	
<b>Agenda item II – Information paper issued since the last meeting</b>			
000816 – 000831	Chairman	Hon Gary FAN Kwok-wai's letter dated 28 January 2015 on withdrawal of membership (LC Paper No. CB(4)417/14-15(01)).	
<b>Agenda item III – Meeting with the Administration</b>			
000832 – 001140	Chairman Administration	<p>Briefing on the summary of Administration's response to views expressed by deputations and members of the public on the Copyright (Amendment) Bill 2014 at the meeting on 25 October 2014 (LC Paper No. CB(4)442/14-15(01)).</p> <p>The Administration advised that the above paper mainly dealt with issues relating to communication right, criminal liability and copyright exceptions. The remaining issues on safe harbour, civil liability and other related issues would be dealt with in a separate paper in due course.</p>	
001141 – 002950	Chairman Mr SIN Chung-kai Mr Charles Peter MOK Administration	<p><b>Clause-by-clause examination of the Bill</b></p> <p><u>Clause 19</u></p> <p>Mr SIN Chung-kai's enquiry and the Administration's response on the definitions of parody, satire, caricature and pastiche in overseas jurisdictions.</p> <p>The Administration advised that the copyright legislation in the UK provided for fair dealing exceptions for the purpose of parody, caricature and pastiche, but did not provide for the statutory definitions of these terms. Among other common law jurisdictions, Australia and Canada provided copyright exceptions for the purpose of parody and satire, which were crafted within the ambit of fair dealing with no statutory definitions of such terms. The US adopted a general fair use doctrine and did not provide specific copyright exceptions as such in law. The Administration explained that not</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>providing statutory definitions for terms which encompassed sophisticated concepts such as parody would allow flexibility in interpretation, and indeed was the established practice found in common law jurisdictions. The majority of respondents indicated support for the current drafting approach during the public consultation exercise conducted in 2013.</p> <p>Mr Charles Peter MOK's enquiry and the Administration's response on the application of the fair dealing exceptions.</p> <p>Mr Charles Peter MOK said users of copyright works were concerned about possible abuse of civil action by copyright owners and the resulting chilling effect in cases of unauthorized use of copyright works by parodists.</p> <p>The Administration advised that it was not aware of any past local incidents of copyright owners taking any legal actions against parodists. Moreover, copyright owners might have difficulty in proving the loss suffered by them as a result of technical infringement of their works caused by parodists. In any case, the court would not entertain any frivolous or vexatious claims.</p>	
002951 – 003125	Chairman Mr Charles Peter MOK Administration	<p><u>Clause 20</u></p> <p>Mr Charles Peter MOK's enquiry and the Administration's response on the meaning of "incidental inclusion".</p>	
003126 – 003330	Chairman Administration	<p><u>Clause 21</u></p>	
003331 – 003435	Chairman Administration	<p><u>Clause 22</u></p>	
003436 – 003800	Chairman Mr Charles Peter MOK Administration	<p><u>Clause 23</u></p> <p>Mr Charles Peter MOK's enquiry and the Administration's response on the meaning of "intermediate copies".</p>	

<p>003801 – 012600</p>	<p>Chairman Mr Charles Peter MOK Ms Claudia MO Mr SIN Chung-kai Mr WONG Yuk-man Mr CHAN Chi-chuen ALA Ms Cyd HO Administration</p>	<p><u>Clause 24</u></p> <p>Mr Charles Peter MOK's enquiry and the Administration's response on the meaning of "educational establishments".</p> <p>The Administration advised that the meaning of "educational establishments" was provided in Schedule 1 of the Copyright Ordinance (Cap. 528). An "educational establishment" referred to any school, within the meaning of section 3 of the Education Ordinance (Cap 279), entirely maintained and controlled by the Government, and any school which was registered or provisionally registered under the Education Ordinance, as well as any post secondary college registered under the Post Secondary Colleges Ordinance (Cap 320).</p> <p>Mr SIN Chung-kai's enquiry and the Administration's response on the meaning of "wire or wireless network".</p> <p>Mr WONG Yuk man's enquiry and the Administration's response on the nature of the dealing and the nature of the work.</p> <p>Mr WONG Yuk man's enquiry and the Administration's response on the meaning of "sufficient acknowledgement".</p> <p>The Administration advised that under section 198 of the Copyright Ordinance, "sufficient acknowledgement" meant an acknowledgement identifying the work in question by its title or other description, and identifying the author unless, in the case of a published work, it was published anonymously, and 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>Mr WONG Yuk man's enquiry and the Administration's response on the Chinese version of "other creative effort".</p> <p>Mr WONG Yuk man's enquiry and the Administration's response on "authorship" and the rationale behind the deletion of the phrase "copies of the work" in section 41A(5)(a)(i).</p>	<p>The Administration to follow up as per paragraph 4 of the minutes.</p>
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Mr WONG Yuk man's enquiry and the Administration's response on the use of different conjunctions for the proposed amendments to section 41A(5)(a)(i) and (ii), and section 41A(5)(b)(i) and (ii).

Mr WONG Yuk man's enquiry and the Administration's response on the policy intent of the proposed section 41A(8)(a) and (b).

Mr CHAN Chi-chuen's enquiry and the Administration's response on the policy intent of setting a time limit of 12 consecutive months for storage of a work in network under section 41A(5)(a) (ii).

The Administration advised that the 12 months' time limit was incorporated in the Copyright Ordinance in 2007 to ensure that the work concerned would not be stored for an unduly long period exceeding the purpose of giving or receiving instruction to protect the interest of the copyright owner.

Ms Claudia MO's enquiry and the Administration's response on the Chinese version and meaning of "other creative effort".

ALA's enquiry and the Administration's response on the Chinese version of "dealt with" (被用以進行交易) in section 41A(8) and other similar sections.

The Administration advised that the rationale for the use of the Chinese version of "dealt with" was set out in the Administration's response dated 15 January 2015 to the Assistant Legal Adviser's letter (LC Paper CB(4)364/14-15(02)).

Ms Cyd HO opined that the Administration should consult the educational sector on the need to review the 12 month's time limit.

The Administration advised that the 12 month's time limit was incorporated in the Copyright Ordinance after deliberation by another Bills Committee in 2007. It struck a balance between the need of the educational establishments and the interest of the copyright owners. To date, the Administration was not aware of any problem about the time limit from the educational sector.

012601 – 014130	Chairman Ms Claudia MO Mr CHAN Chi-chuen Administration	<p><u>Clause 25</u></p> <p>Ms Claudia MO's enquiry and the Administration's response on the meaning of reprographic copy.</p> <p>The Administration advised that under section 198 of the existing Copyright Ordinance, "reprographic copy" referred to a copy made by means of a reprographic process which meant a process for making facsimile copies, or involving the use of an appliance for making multiple copies, and included, in relation to a work held in electronic form, any copying by electronic means, but did not include the making of a sound recording or film.</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response on the policy intent of section 41(5) and the proposed section 41(6).</p>	
014131 – 020047	Chairman Ms Claudia MO Mr CHAN Chi-chuen Ms Cyd HO Administration	<p><u>Clause 26</u></p> <p>Ms Claudia MO's enquiry and the Administration's response on the meaning of "authorized recipients".</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response on the meaning of "takes all reasonable steps".</p> <p>Ms Cyd HO expressed concern whether a parent who recorded a video of his/her children taking a dancing examination or ice-skating competition conducted with background music of a copyright work and shared the video on Internet might infringe copyright inadvertently.</p> <p>The Administration advised that whether the act of the parent concerned had constituted infringement depended on actual circumstances. For example, the existing Copyright Ordinance had already provided for an exception for incidental inclusion of copyright material. While one could not rule out the possibility of copyright infringement in the specific case mentioned by Hon Cyd HO, in practice, in a great many trivial cases in which copyright might have been infringed technically, the economic or other interest involved might not be sufficient for a copyright owner to bring civil proceedings, given the merit considerations, legal uncertainties, litigation costs and time, etc. In any case, frivolous or vexatious civil claims would not be entertained by the court.</p>	

		The Chairman opined that the Administration should educate the public about the risk and legal liability of committing such incidental copyright infringement.	
020048 – 020110	Chairman Administration	Date of next meeting	

Council Business Division 4  
Legislative Council Secretariat  
26 March 2015