

**立法會**  
**Legislative Council**

LC Paper No. CB(4)791/14-15  
(These minutes have been seen  
by the Administration)

Ref : CB4/BC/6/13

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

**Minutes of the 11<sup>th</sup> meeting**  
**held on Tuesday, 24 February 2015, at 10:45 am**  
**in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)  
Hon Emily LAU Wai-hing, JP  
Hon Ronny TONG Ka-wah, SC  
Hon Cyd HO Sau-lan, JP  
Hon WONG Yuk-man  
Hon Claudia MO  
Hon YIU Si-wing  
Hon MA Fung-kwok, SBS, JP  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Hon CHAN Yuen-han, SBS, JP  
Hon Dennis KWOK  
Hon SIN Chung-kai, SBS, 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 Jeffrey LAM Kin-fung, GBS, JP  
Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon WONG Ting-kwong, SBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Alice MAK Mei-kuen, JP  
Dr Hon Elizabeth QUAT, JP  
Hon CHUNG Kwok-pan

**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)2

Miss Fabia TAM  
Principal Assistant Secretary for Commerce and Economic Development (Commerce and Industry)3

Mr Ian CHIN  
Assistant Secretary for Commerce and Economic Development (Commerce and Industry)3A

Intellectual Property Department

Ms Michelle CHONG  
Assistant Director of Intellectual Property (Copyright)

Miss Emily WONG  
Senior Solicitor (Copyright)1

Ms Jasmine KUN  
Senior Solicitor (Copyright) 3

Department of Justice

Mr Michael LAM  
Senior Assistant Law Draftsman (I)1

**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

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Action

**I. Meeting with the Administration**

Clause-by-clause examination of the Bill

*Starting from Clause 27*

(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 copyrighted 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  
(Chinese version issued on 2 February 2015, English version to follow)
- LC Paper No. CB(4)364/14-15(02) -- Administration's response to the Assistant Legal Adviser's letter dated 15 January 2015
- LC Paper No. CB(4)292/14-15(01) -- Administration's response to the 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

- LC Paper No. CB(4)541/14-15(01) -- List of follow-up actions arising from the discussion at the meeting on 3 February 2015
- LC Paper No. CB(4)551/14-15(01) -- Submission from Hong Kong Copyright Alliance dated 18 February 2015 (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 supplementary information on its verbal response made at the meeting on the following issues:

- (a) whether "authorized recipients" as defined in the proposed amendments to section 45 (regarding the copyright exceptions on copying or communication by educational establishments or pupils: passages or extracts from published works) included teachers, school staff members with no teaching responsibilities, parents and siblings of young students who shared reference materials and homework containing passages or extracts from published works, and private tutors using such materials and homework in conducting private tutorials;
- (b) whether the possession or communication of passages or extracts from published works by educational establishments for illustration purposes on school open days or admission seminars would be covered by the exceptions provided under section 45;
- (c) the meaning of "takes all reasonable steps" under the proposed section 45(1A)(b); and
- (d) the legal liability for contravention of the proposed section 45(4)(a).

Date of next meeting

3. The Chairman reminded members that the 12<sup>th</sup> meeting would be held on 17 March 2015 at 4:30 pm to continue clause-by-clause examination of the Bill.

*(Post-meeting note: With the concurrence of the Chairman, the 12<sup>th</sup> meeting rescheduled for Friday, 27 March 2015 at 8:30 am was cancelled to avoid clashing with the continuation of the Council meeting on the same day. The 12<sup>th</sup> meeting was subsequently held on 9 April 2015 at 4:30 pm.)*

**II. Any other business**

4. There being no other business, the meeting ended at 12:35 pm.

Council Business Division 4  
Legislative Council Secretariat  
16 April 2015

**Proceedings of the 11<sup>th</sup> meeting of  
Bills Committee on Copyright (Amendment) Bill 2014  
on Tuesday, 24 February 2015, at 10:45 am  
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda item I – Meeting with the Administration</b>			
000640 – 013840	Chairman Mr SIN Chung-kai Ms Cyd HO Ms Claudia MO Mr WONG Yuk-man Mr YIU Si-wing Mr CHAN Chi-chuen Mr Christopher CHUNG Ms CHAN Yuen-han ALA Administration	<p><b>Clause-by-clause examination of the Bill</b></p> <p><u>Clause 27</u></p> <p>Mr SIN Chung-kai's enquiry and the Administration's response on the meaning of "authorized recipients" in the proposed amendments to section 45 (regarding the copyright exceptions on copying or communication by educational establishments or pupils: passages or extracts from published works) and whether "authorized recipients" included teaching assistants.</p> <p>The Administration advised that the meaning of "authorized recipients" included teachers, teaching staff and pupils authorized by or on behalf of the educational establishment to receive the copying or communication.</p> <p>Ms Cyd HO enquired whether "authorized recipients" included parents of young students who needed to supervise the students' homework, and whether the copyright exceptions provided for under section 45 would cover the possession or communication of passages or extracts from published works by educational establishments for illustration purposes on school open days or admission seminars.</p> <p>The Administration advised that parents and guardians of young students might receive the communication on behalf of pupils. In the case of illustrations on school open days or in admission seminars, in practice, the copyright exceptions provided for under section 45 might not necessary, as it was unlikely that a substantial part of published works would have to be copied or communicated. Also, the Intellectual Property Department had continued to maintain close collaborations with educational establishments in organizing seminars on copyright exceptions in relation to education every year to familiarize teachers and students with the copyright exceptions provided under the Copyright</p>	<p>The Administration to follow up as per paragraph 2(a) of the minutes.</p> <p>The Administration to follow up as per paragraph 2(b) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>Ordinance (Cap. 528). The Education Bureau's website also provided detailed information and questions and answers on copyright exceptions in relation to education..</p> <p>The Chairman and Ms Cyd HO urged the Administration to clearly explain the application of the copyright exceptions with regard to school open days to the education sector.</p> <p>Ms Claudia MO's enquiry and the Administration's response on whether the wordings of the proposed section 45(4)(c) provided adequate protection for parents as an innocent party from legal liabilities resulting from inadvertent infringements.</p> <p>The Administration advised that this section had built in safeguards to prevent any inadvertent infringements by requiring the educational establishments to take all reasonable steps to ensure that only authorized recipients would receive the communication and no copying or further transmission of the communication could be made. The drafting of the section reflected the policy intent of the Bill in balancing the legitimate interests of the owners of copyright works with those of the users. After the passage of the Bill, the Administration would continue its promotion campaign to educate members of the public, including stakeholders in the education sector, on the copyright exceptions.</p> <p>Mr WONG Yuk-man's enquiry and the Administration's response on the treatment of private study under section 45.</p> <p>The Administration advised that the existing section 38 of the Copyright Ordinance already provided an exception for fair dealing with a work for the purpose of research or private study.</p> <p>Mr WONG Yuk-man's and Mr CHAN Chi-chuen's enquiry and the Administration's response on the meaning of "takes all reasonable steps" under the proposed section 45(1A)(b).</p> <p>The Administration advised that educational establishments were required to take suitable and reasonable technical measures to prevent the copying or further communication of the published works by</p>	<p>The Administration to follow up as per paragraph 2(c) of the minutes.</p>



Time marker	Speaker	Subject(s)	Action required
		<p>an unauthorized third party. As in common in common law jurisdictions, no legal definition of "reasonable steps" was provided in the legislation. The court, if a dispute was put before it, would be allowed flexibility to define the term with reference to the prevailing circumstances. In response to members' enquiries, the Administration opined that adopting technical protection measures which, such as those prohibiting the printing or saving of the contents, were common measures found on the internet and they could be considered as "reasonable steps".</p> <p>Mr WONG Yuk-man's and Mr CHAN Chi-chuen's enquiry and the Administration's response on the drafting of the Chinese version of the proposed section 45(2).</p> <p>The Administration noted that users who from time to time used copyright work would understand the meaning of the term "licensing schemes" and advised that it would launch promotion and education campaigns after the passage of the Bill to familiarize educational establishments and members of the public with the new statutory requirements by using simple language.</p> <p>Mr WONG Yuk-man's enquiry and the Administration's response on the Chinese version of "dealt with" (被用以進行交易) under section 45(3) and the proposed section 45(4). He suggested that "dealt with" should be translated according to the usual meaning of the expression, such as "處理". He would consider proposing Committee Stage amendments to the section if the Administration failed to do so.</p> <p>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)).</p> <p>Mr YIU Si-wing's enquiry and the Administration's response on what would amount to communication of a substantial part of the published work under the proposed section 45(4)(c), and whether the intention to communicate would be a factor for consideration by the court.</p>	<p>The Administration to follow up as per paragraph 2(d) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration advised that there were precedent cases providing reference for the determination of what constituted a "substantial part" of the published work. Whether there was an intention to communicate the copyright works would be considered by the court.</p> <p>Ms Cyd HO suggested deleting the proposed section 45(4)(a) as subsections (b) and (c) already covered the scope of subsection (a) regarding the dealing with a copy for profit making purpose.</p> <p>The Administration advised that the proposed section 45(4)(a) should not be deleted as the policy intention was to cover all purposes other than educational purpose, not only profit making purpose.</p> <p>Ms Cyd HO's enquiry and the Administration's response on the legal liability for contravention of section 45(4)(a).</p> <p>Mr Christopher CHUNG's enquiry and the Administration's response on the meaning of "exhibited" under section 45(4).</p> <p>ALA's enquiry and the Administration's response on the difference in meaning (if any) between "knew or ought to have been aware" in the English text and "已知道或應已知道" in the Chinese text. ALA considered that there was a difference in the degree of knowledge between "know" and "aware" in the English text which could not be reflected in the Chinese text. For consistency's sake, ALA suggested either amending the English text from "ought to have been aware" to "ought to have known" which was widely used in the Laws of Hong Kong, or amending the Chinese text from "已知道或應已知道" to "已知道或應已知悉".</p> <p>The Administration advised that the wordings was modelled on the Copyright Act of the United Kingdom. There was no significant difference in the meaning between "know" and "aware", and there was also no problem in the application of the relevant provisions. From the drafting point of view, it was not necessary to use different Chinese terms for different English terms (and vice versa) so</p>	<p>The Administration to follow up as per paragraph 2(a) of the minutes.</p>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		<p>long as there was legal clarity. The two expressions of "know" and "aware" were treated as equal in case law in Canada.</p> <p>ALA's enquiry and the Administration's response on whether "authorized recipients" under section 45 would include siblings who shared reference materials and homework containing passages or extracts from published works, private tutors who used such materials in conducting private tutorials, parents, and teaching assistants who have no teaching responsibilities.</p> <p>The Administration advised that the use of published works for private study would be covered by the exceptions for fair dealing for purposes of giving or receiving instruction under the proposed amendments to section 41A, and fair dealing with a work for the purposes of research or private study under the existing section 38 of the Copyright Ordinance.</p>	
013841 – 013851	Chairman Ms CHAN Yuen-han Administration	Date of next meeting	