

立法會
Legislative Council

LC Paper No. CB(4)853/14-15
(These minutes have been seen
by the Administration)

Ref : CB4/BC/6/13

Bills Committee on Copyright (Amendment) Bill 2014

Minutes of the 12th meeting
held on Thursday, 9 April 2015, at 4:30 pm
in Conference Room 2B 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 WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan, JP
Hon Paul TSE Wai-chun, JP
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 Alice MAK Mei-kuen, 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 Ronny TONG Ka-wah, SC
Hon WONG Yuk-man
Dr Hon Elizabeth QUAT, 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 Fabia TAM
Principal Assistant Secretary for Commerce and Economic Development
(Commerce and Industry)3

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

I. Confirmation of minutes of meeting

LC Paper No. CB(4)635/14-15 -- Minutes of meeting held on 20 January 2015

LC Paper No. CB(4)699/14-15 -- Minutes of meeting held on 3 February 2015

The minutes of the meetings held on 20 January 2015 and 3 February 2015 were confirmed.

II. Meeting with the Administration

Clause-by-clause examination of the Bill

Starting from Clause 28

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
- 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)669/14-15(01) -- List of follow-up actions arising from the discussion at the meeting on 24 February 2015
- LC Paper No. CB(4)669/14-15(02) -- Administration's response to issues raised at the meeting on 6 January 2015
- LC Paper No. CB(4)551/14-15(01) -- Submission from Hong Kong Copyright Alliance dated 18 February 2015 (English version only)
- LC Paper No. CB(4)578/14-15(01) -- Submission from International Federation of the Photographic Industry (Hong Kong Group) Limited dated 18 February 2015 (English version only)

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) relaxing the condition in the proposed section 51A(2)(a) to allow not only one user of the library, museum or archive to access through the use of a computer terminal at any one time the copy

of an item made under the proposed amendments to section 51 (regarding copying by librarians, curators or archivists: preservation or replacement copies of works), so as to facilitate the free flow of information; and

- (b) the drafting of the Chinese version of the proposed section 52A(3) (regarding playing or showing by librarians, curators or archivists: sound recordings or films) to enhance its readability.

4. The Administration was also requested to provide information on whether it would constitute copyright infringement if a librarian, curator or archivist made a copy of an article of cultural or historical importance or interest which was subsequently lost to Hong Kong through sale or export to a country which did not provide copyright exception similar to that provided under section 53, or if there was a provision in the relevant sale and purchase agreement of the article which prohibited the making of such a copy.

Date of next meeting

5. The Chairman reminded members that the 13th meeting would be held on 21 April 2015 at 4:30 pm to continue clause-by-clause examination of the Bill.

III. Any other business

6. There being no other business, the meeting ended at 6:21 pm.

Council Business Division 4
Legislative Council Secretariat
15 May 2015

**Proceedings of the 12th meeting of
Bills Committee on Copyright (Amendment) Bill 2014
on Thursday 9 April 2015, 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			
000235 – 000300	Chairman	Confirmation of minutes of meetings on 20 January 2015 and 3 February 2015 (LC Paper No. CB(4)635/14-15 and CB(4)698/14-15)	
Agenda item II – Meeting with the Administration			
000301 – 001000	Chairman Administration	Clause-by-clause examination of the Bill <u>Clause 28</u>	
001001 – 001900	Chairman Mr SIN Chung-kai Ms Claudia MO Ms Cyd HO Administration	<u>Clause 29</u> Mr SIN Chung-kai's enquiry and the Administration's reply on the meaning of specified libraries, museums or archives. Ms Claudia MO's enquiry and the Administration's reply on whether the archives of online media would be included. Ms Cyd HO was of the view that non-profit making private museums which were open to the public such as the Hong Kong Museum of Medical Sciences should also be covered by the copyright exceptions provided to "specified museums" under the proposed amendments to section 46 of the Copyright Ordinance (Cap. 528) ("Ordinance"). The Administration advised that specified libraries would cover public libraries, museums and archives under the Leisure and Cultural Services Department, universities and other organizations for non-profit making purpose as appropriate. Under section 46(1)(b) of the Ordinance, the Secretary for Commerce and Economic Development might by notice in the Gazette specify libraries, museums or archives for the purposes of any provision in sections 47 to 53 of the Ordinance.	

Time marker	Speaker	Subject(s)	Action required
001901 – 002600	Chairman Ms Cyd HO Ms Claudia MO Administration	<p><u>Clause 30</u></p> <p>Ms Claudia MO's enquiry and the Administration's reply on the rationale behind the prescribed condition that no person would be furnished with more than one copy of the same material, and the meaning of reasonable proportion of any work under the existing section 48(2)(b).</p> <p>The Administration advised that the prescribed condition aimed at ensuring the use of the copyright works would be fair and to prevent abuse of the exception provided. According to regulation 6(2)(a) of the Copyright (Libraries) Regulations (Cap. 528B), a reasonable proportion of a work meant: (i) in the case of a single extract, not more than 4000 words; (ii) in the case of a series of extracts, not more than 3000 words per extract, with a total of not more than 8000 words; and (iii) in any case, not more than 10 per cent of the work.</p>	
002601 – 003630	Chairman Mr SIN Chung-kai Ms Claudia MO Mr CHAN Chi-chuen Administration	<p><u>Clause 31</u></p> <p>Mr SIN Chung-kai's enquiry and the Administration's reply on whether the making and supplying to another specified library a copy of software by the librarian of a specified library would be covered by the copyright exception provided under section 50.</p> <p>The Administration advised that software was classified as literary work under the Ordinance and would be covered by the exception. Nevertheless, section 50(2) already provided that the exception would not apply if the person entitled to authorize the making of the copy was known or could be ascertained by reasonable enquiry by the librarian making the copy, and if there was an existing copyright authorization mechanism, in which case the use of the work would be subject to the licensing conditions of the software.</p> <p>Ms Claudia MO's enquiry and the Administration's reply on the meaning of copying an artistic work.</p>	
003631 – 004210	Chairman Ms Claudia MO Administration	<p><u>Clause 32</u></p> <p>Ms Claudia MO's enquiry and the Administration's reply on the meaning of musical work and sound recording.</p>	

Time marker	Speaker	Subject(s)	Action required
004211 – 013547	Chairman Ms Cyd HO Ms Claudia MO Mr CHAN Chi-chuen Mr Christopher CHUNG Mr Charles Peter MOK Mr Paul TSE Mr SIN Chung-kai Administration	<p><u>Clause 33</u></p> <p>Discussion on the need to relax the condition under the proposed section 51A(2)(a) to allow not only one user of the library, museum or archive to access through the use of a computer terminal at any one time the copy of an item made under the proposed amendments to section 51 (regarding copying by librarians, curators or archivists: preservation or replacement copies of works).</p> <p>Some members expressed that the relevant condition under the proposed section 51A(2)(a) could be relaxed to facilitate users.</p> <p>Noting that under the Books Registration Ordinance (Cap. 142), the publisher of a new book should, within a month after the book was published in Hong Kong, deliver several copies of the book free of charge to the Books Registration Office, Hong Kong Public Libraries of the Leisure and Cultural Services Department, Ms Cyd HO considered that the condition in the proposed section 51A(2)(a) should be relaxed to allow not only one user of the library, museum or archive to access through the use of a computer terminal at any one time the copy of an item. She was of the view that any impact on the interest of the copyright owner resulting from such a relaxation would be minimal.</p> <p>The Administration clarified that this section concerned the communication of preservation copies held in the permanent collections of specified libraries, museums and archives. It did not concern copyright works in the general collections of those institutions. If there were more than one original copy of the works in the permanent collection, more than one user could have access to the work through the use of a computer terminal at any one time. The Administration explained that there was a need to strike a balance between the legitimate interest of copyright owners and users of copyright works. Moreover, access to the preservation copy of a work by multiple users at any one time would be permissible by obtaining a relevant licence from the copyright owner by the specified libraries, museums and archives.</p>	<p>The Administration to follow up as per paragraph 3(a) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>Ms Cyd HO's enquiry and the Administration's reply on whether the photographs of exhibits in printed catalogues of museums constituted copies of works.</p> <p>The Administration advised that while photographs of exhibits in printed catalogues of museums constituted copies of works, the making of such copies could be covered by the copyright exception for the purpose of quotation under the proposed section 39(2) . The Administration further advised that the making of such copies could be covered by licensing arrangements between copyright owners and individual museums.</p>	
013548 – 013900	<p>Chairman Ms Cyd HO Mr CHAN Chi-chuen Administration</p>	<p><u>Clause 34</u></p> <p>Discussion on the different treatment of published and unpublished works under sections 50 and 52 respectively.</p>	
013901 – 014550	<p>Chairman Ms Cyd HO Mr CHAN Chi-chuen Administration</p>	<p><u>Clause 35</u></p> <p>The Chairman was of the view that the Administration should consider reviewing the drafting of the Chinese version of the proposed section 52A(3) regarding playing or showing by librarians, curators or archivists: sound recordings or films to enhance its readability.</p>	<p>The Administration to follow up as per paragraph 3(b) of the minutes.</p>
014551 – 015010	<p>Chairman Ms Cyd HO Administration</p>	<p><u>Clause 36</u></p> <p>Discussion on whether it would constitute copyright infringement if a librarian, curator or archivist made a copy of an article of cultural or historical importance or interest which was subsequently lost to Hong Kong through sale or export to a country which did not provide copyright exception similar to that provided under section 53, or if there was a provision in the relevant sale and purchase agreement of the article which prohibited the making of such a copy.</p>	<p>The Administration to follow up as per paragraph 4 of the minutes.</p>
015011 – 015228	<p>Chairman Administration</p>	<p><u>Date of next meeting</u></p>	