

**立法會**  
**Legislative Council**

LC Paper No. CB(4)1054/14-15  
(These minutes have been seen  
by the Administration)

Ref : CB4/BC/6/13

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

**Minutes of the 13<sup>th</sup> meeting**  
**held on Tuesday, 21 April 2015, at 4:30 pm**  
**in Conference Room 1 of the Legislative Council Complex**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)  
Hon Abraham SHEK Lai-him, GBS, JP  
Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon WONG Ting-kwong, SBS, JP  
Hon Paul TSE Wai-chun, 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 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 Emily LAU Wai-hing, JP  
Hon Vincent FANG Kang, SBS, JP  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon Cyd HO Sau-lan, JP  
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

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)791/14-15 -- Minutes of meeting held on 24 February 2015

The minutes of the meeting held on 24 February 2015 were confirmed.

**II. Meeting with the Administration**

Clause-by-clause examination of the Bill

Starting from clause 37

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)797/14-15(01) -- List of follow-up actions arising from the discussion at the meeting on 9 April 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)
- LC Paper No. CB(4)755/14-15(01) -- Submission from Television Broadcasts Limited dated 31 March 2015 (Chinese 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) reviewing the different Chinese versions of the expressions "dealt with" in section 54A(2)(c) and (3) and the proposed section 54A(4) (regarding fair dealing for purposes of public administration), and "dealing in" (as seen in the various sections such as 31(2), 32(3), 95(1A), 96(6A), 109(1A), 118(10), 120(2A), 198(2), 207(1A), 211(1A), 228(1A), 238(1A) and 273C(2)), including "被用以進行交易", "經營" and "經銷", to avoid confusion;
- (b) reviewing the ordering of sections 54A (regarding fair dealing for purposes of public administration) and 54B (regarding Legislative Council) which appeared before section 54 (regarding judicial proceedings), contrary to the normal law drafting practice, as seen in the ordering of sections 40A to 40F which appeared after section 40;
- (c) enlarging the scope of the information about matters of general scientific, technical, commercial or economic interest referred to in section 56(3) (regarding material open to public inspection or on official register) to cover other matters, including those of general educational, religious and social interest;
- (d) whether it is necessary to include a reference to a document in electronic form when the term "document" is used in section 57(1) in the light of the drafting of "document" in section 52(1)(a);
- (e) reviewing the Chinese version of "access" ("接達") in the proposed section 65A and other relevant proposed sections, for example, by using the more commonly used term such as "連接" or "存取"; and
- (f) reviewing the drafting of the phrase "則如第(2)款所述條件獲符合" in the Chinese text of section 67(1), for example, in the light of the Chinese text of the proposed section 76A(1) in a similar context, to make it more readable.

Date of next meeting

4. The Chairman reminded members that the 14<sup>th</sup> meeting would be held on 4 May 2015 at 2:30 pm to continue clause-by-clause examination of the Bill.

**III. Any other business**

5. There being no other business, the meeting ended at 6:26 pm.

Council Business Division 4  
Legislative Council Secretariat  
26 May 2015

**Proceedings of the 13<sup>th</sup> meeting of  
Bills Committee on Copyright (Amendment) Bill 2014  
on Tuesday, 21 April 2014, 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>			
000840 – 001100	Chairman	Confirmation of minutes of meeting on 24 February 2015 (LC Paper No. CB(4)791/14-15)	
<b>Agenda item II – Meeting with the Administration</b>			
001101 – 003549	Chairman Mr WONG Yuk-man Ms Alice MAK Mr CHAN Chi-chuen Administration	<p><b>Clause-by-clause examination of the Bill</b></p> <p><u>Clause 37</u></p> <p>Discussion on the different Chinese versions of the expressions for "dealt with" in sections 54A(2)(c) and (3) and the proposed section 54A(4) (regarding fair dealing for purposes of public administration), and "dealing in" (as seen in the various sections such as sections 31(2), 32(3), 95(1A), 96(6A), 109(1A), 118(10), 120(2A), 198(2), 207(1A), 211(1A), 228(1A), 238(1A) and 273C(2)), including "被用以進行交易", "經營" and "經銷". The Administration advised that a similar question had been answered in its letter to the Assistant Legal Adviser (LC Paper No. CB(4)364/14-15(02)). Given that the terms "dealt with" and "dealing in" were used in different sections with specific meanings in different contexts in relation to civil and criminal provisions, their equivalent Chinese terms were therefore rendered differently to denote specific legal meanings.</p> <p>Discussion on the ordering of sections 54A, 54B and 54.</p>	<p>The Administration to follow up as per paragraph 3(a) of the minutes.</p> <p>The Administration to follow up as per paragraph 3(b) of the minutes.</p>
003550 – 005119	Chairman Mr WONG Yuk-man Mr CHAN Chi-chuen Mr Dennis KWOK Administration	<p><u>Clause 38</u></p> <p>Discussion on the application of the proposed section 39 (regarding criticism, review, quotation, and reporting and commenting on current events) in relation to section 55 (regarding statutory inquiries).</p> <p>Mr Dennis KWOK's enquiry and the Administration's response on whether statutory inquiries under section 55 included ad hoc and non-statutory inquiries.</p>	



Time marker	Speaker	Subject(s)	Action required
		<p>The Administration advised that only those inquiries held or investigations conducted in pursuance of the Commissions of Inquiry Ordinance (Cap. 86) or a duty imposed or power conferred by or under an Ordinance would be covered by section 55.</p>	
005120 – 010826	<p>Chairman Ms Claudia MO Administration</p>	<p><u>Clause 39</u></p> <p>Ms Claudia MO's enquiry and the Administration's response on whether the material which was open to public inspection pursuant to a statutory requirement referred to in section 56 (regarding material open to public inspection or on official register) included those covered by the Code on Access to Information ("the Code").</p> <p>The Administration advised that the Code was of an administrative instead of statutory nature and was unrelated to the subject matter under section 56.</p> <p>Mr WONG Yuk-man's enquiry and the Administration's response on the meaning of "matters of general scientific, technical, commercial or economic interest" in section 56(3).</p>	<p>The Administration to follow up as per paragraph 3(c) of the minutes.</p>
010827 – 012110	<p>Chairman Mr WONG Yuk-man Mr SIN Chung-kai ALA Administration</p>	<p><u>Clause 40</u></p> <p>Mr WONG Yuk-man's enquiry and the Administration's response on the meaning of "any purpose" and "public business" in section 57(1) (regarding material provided to the Government in the course of public business).</p> <p>Mr WONG Yuk-man's enquiry and the Administration's response on the effect of section 57(5) (regarding any agreement to the contrary of section 57 between the Government and the copyright owner) on the interest of the copyright owners. The Administration advised that section 57 had been in force since 1997. No unreasonable circumstances had arisen. Section 57 would apply when there was no agreement between the Government and the copyright owner. If there was such an agreement between the parties, their intention under the agreement should be followed.</p> <p>Mr SIN Chung-kai's enquiry and the Administration's response on whether "the Government" in section 57 covered statutory bodies such as the Hospital Authority.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration advised that statutory bodies such as the Hospital Authority were separate legal entities from the Government.</p> <p>ALA's enquiry and the Administration's response on whether "document" in section 57(1) included documents in electronic form.</p> <p>The Administration advised that a work in electronic form would be recorded or embodied in a document or other material thing. There was no need to add the proposed phrase of "including in electronic form" in parentheses.</p>	<p>The Administration to follow up as per paragraph 3(d) of the minutes.</p>
012111 – 012511	Chairman Administration	<u>Clause 41</u>	
012512 – 013535	Chairman Mr WONG Yuk-man Mr SIN Chung-kai Mr CHAN Chi-chuen Administration	<p><u>Clause 42</u></p> <p>Discussion on the Chinese version of "access" ("接達") in the proposed new section 65A (regarding temporary reproduction by service providers) and relevant proposed sections.</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response on the meaning of "temporary" and "reasonable industry practice" in the proposed new section 65A(1)(c) and (d) respectively.</p>	<p>The Administration to follow up as per paragraph 3(e) of the minutes.</p>
013536 – 013838	Chairman Mr WONG Yuk-man Administration	<p><u>Clause 43</u></p> <p>Discussion on the drafting of the phrase "則如第(2)款所述條件獲符合" in the Chinese text of section 67(1) in the light of the Chinese text of the proposed section 76A(1) in a similar context.</p>	<p>The Administration to follow up as per paragraph 3(f) of the minutes.</p>
013839 – 014200	Chairman Administration	<u>Clause 44</u>	
014201 – 014250 –	Chairman Administration	<u>Clause 45</u>	
	Chairman Administration	<u>Clause 46</u>	

Time marker	Speaker	Subject(s)	Action required
014251 – 014326	Chairman Administration	<u>Clause 47</u>	
014327 – 014849	Chairman Mr CHAN Chi-chuen Administration	<p><u>Clause 48</u></p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response on the proposed new section 76A (regarding copying sound recordings for private and domestic use).</p> <p>The Administration advised that under this proposed section, not more than one private copy of the original copy should be made and stored in each device owned by the owner, and that the owner should retain the ownership of both the original copy and the private copy made from the original copy.</p>	
014850 – 014900	Chairman Administration	<u>Clause 49</u>	
014900 – 015720	Chairman Mr SIN Chung-kai Mr Charles Peter MOK Administration	<p><u>Clause 50</u></p> <p>Discussion on the difference between "online service" in the proposed new section 88A (regarding definitions) and Internet service.</p> <p>The Administration advised that according to the proposed section 65A(2), online service included (a) the transmission, routing, or provision of connections for digital online communications, between or among points specified by a user, of material of the user's choosing; (b) the hosting of information or material that can be accessed by a user; (c) the storing of information or material on a system or network that can be accessed by a user; (d) the linking or referral of users to an online location by the use of information location tools; and (e) the provision of online social networking services to users. The scope of online service might be wider than that of Internet service which commonly referred to connection service to the Internet.</p>	
015721 – 015823	Chairman Administration	<p>Date of next meeting</p> <p>Revised schedule of additional meetings from May to July 2015.</p>	