

**立法會**  
**Legislative Council**

LC Paper No. CB(4)1175/14-15  
(These minutes have been seen  
by the Administration)

Ref : CB4/BC/6/13

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

**Minutes of the 14<sup>th</sup> meeting**  
**held on Monday, 4 May 2015, at 2:30 pm**  
**in Conference Room 1 of the Legislative Council Complex**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)  
Hon Vincent FANG Kang, SBS, JP  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon WONG Ting-kwong, SBS, 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 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 Emily LAU Wai-hing, JP  
Hon Abraham SHEK Lai-him, GBS, JP  
Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon Cyd HO Sau-lan, JP  
Hon WONG Yuk-man  
Hon Alice MAK Mei-kuen, JP  
Hon Dennis KWOK  
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) 871/14-15 -- Minutes of meeting held on 25 October 2014

The minutes of the meeting held on 25 October 2014 were confirmed.

**II. Meeting with the Administration**

Clause-by-clause examination of the Bill

*Starting from clause 50*

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

LC Paper No. CB(4)829/14-15(01) -- 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)829/14-15(02) -- Draft Code of Practice on copyright protection in the digital environment (March 2012 version)

LC Paper No. CB(4)870/14-15(01) -- List of follow-up actions arising from the discussion at the meeting on 21 April 2015

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 make an undertaking that it was its intention not to use section 161 of the Crimes Ordinance (Cap. 200) regarding access to computer with criminal or dishonest intent for the prosecution of copyright-related offences.

Date of next meeting

4. The Chairman reminded members that the 15<sup>th</sup> meeting would be held on 7 May 2015 at 8:30 am to continue clause-by-clause examination of the Bill.

**III. Any other business**

5. The Bills Committee noted that Ms CHAN Yuen-han had given written notice to withdraw her membership.
6. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 4  
Legislative Council Secretariat  
16 June 2015

**Proceedings of the 14<sup>th</sup> meeting of  
Bills Committee on Copyright (Amendment) Bill 2014  
on Monday, 4 May 2015, at 2:30 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>			
000500 – 000510	Chairman	Confirmation of minutes of meeting on 25 October 2014 (LC Paper No. CB(4) 871/14-15).	
<b>Agenda item II – Meeting with the Administration</b>			
000631 – 001208	Chairman Administration	<p><b>Clause-by-clause examination of the Bill</b></p> <p><u>Clause 50</u></p> <p><i>Proposed new section 88B</i></p>	
001209 – 001900	Chairman Administration Mr MA Fung-kwok Mr CHAN Chi-chuen	<p><i>Proposed new section 88C</i></p> <p>Mr MA Fung-kwok's enquiry and the Administration's response on the form of the notice of alleged infringement of the copyright in a work that occurred on the service provider's service platform.</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response on the service providers' responsibilities under the proposed new section 88C, where the infringement had once occurred but was no longer occurring.</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response on the time limit to file a notice of alleged infringement.</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response on whether the service provider's liabilities would be different with respect to an alleged infringement that "had occurred" and that "was occurring".</p>	
001901 – 001950	Chairman Administration	<i>Proposed new section 88D</i>	
001951 – 002050	Chairman Administration	<i>Proposed new section 88E</i>	

Time marker	Speaker	Subject(s)	Action required
002051 – 002440	Chairman Mr CHAN Chi-chuen Mr SIN Chung-kai Administration	<p><i>Proposed new section 88F</i></p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response on whether it would conduct regular or random checks to review the notices of alleged infringement or counter notices.</p> <p>The Administration advised that, generally, the Customs and Excise Department ("C&amp;ED") would investigate the relevant notices upon receipt of a complaint that a person had made false statements in the notices. C&amp;ED might also commence investigations on its own initiative if relevant circumstances came to their attention. In view of the potentially large volume of notices of alleged infringement and counter notices, it would be more effective for parties who were aware of the false statements to make complaints.</p> <p>Mr SIN Chung-kai's enquiry and the Administration's response on the penalty for making false statements under the proposed new section 88F(2) as compared to other similar criminal offences for making false statements.</p> <p>The Administration advised that the liability of this offence was on par with other similar criminal offences.</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response on the responsibility for service providers to keep records of the notices of alleged infringement and counter notices.</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response on whether the notices made could be revoked or amended. The Administration advised in the affirmative.</p>	
002441 – 002506	Chairman Administration	<i>Proposed new section 88G</i>	
002507 – 002620	Chairman Administration	<i>Proposed new section 88H</i>	
002621 – 002726	Chairman Administration	<i>Proposed new section 88I</i>	

Time marker	Speaker	Subject(s)	Action required
002727 – 003300	Chairman Administration Mr Charles Peter MOK	<p><i>Proposed new section 88J</i></p> <p>Mr Charles Peter MOK said that the stakeholders, including copyright owners, users and service providers all welcomed the introduction of the safe harbour and the proposed code of practice ("CoP"). They would be given better protection in the digital environment and hoped that the CoP would be implemented as soon as possible. He commented that the Administration should update the stakeholders on the progress of the drafting of the CoP.</p> <p>The Administration advised that two rounds of consultation had been conducted for the drafting of CoP and the latest version had been provided to Members for reference. Consultation with stakeholders would be conducted should there be further amendments to the CoP in future.</p>	
003301 – 004350	Chairman Mr Christopher CHUNG Mr CHAN Chi-chuen Administration	<p><u>Clause 51</u></p> <p>Mr Christopher CHUNG's enquiry and the Administration's response on the meaning of "communicated to the public" in the proposed amendments to section 89.</p> <p>The Administration advised that "communicated to the public" related to communication to the public by electronic means in the proposed new section 28A. "Public" usually referred to an indefinite number of members of the public, outside of the person's family or social circle. Using the example of using a copyright video from the Internet in conducting a seminar in a university, the Administration said this use was generally not communication of the copyright work to the public, but amounted to playing or showing of the copyright work in public. Section 89 of the Copyright Ordinance (Cap. 528) ("CO") was related to a type of moral rights, i.e. the right to be identified as author. Other types of exclusive rights were governed by other provisions in the Copyright Ordinance.</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response on the relationship between "right to be identified as author or director" in section 89 and other copyright exceptions in the CO.</p>	

Time marker	Speaker	Subject(s)	Action required
004351 – 004610	Chairman Mr Christopher CHUNG Administration	<u>Clause 52</u>  Mr Christopher CHUNG's enquiry and the Administration's response on the meaning of pastiche in the proposed amendments to section 91(4).	
004611 – 005100	Chairman Mr CHAN Chi-chuen Administration	<u>Clause 53</u>  Mr CHAN Chi-chuen's enquiry and the Administration's response on whether the right to object to derogatory treatment of work under section 92 would be in conflict with the fair dealing exceptions for the purpose of parody, satire, caricature and pastiche in the proposed new section 39A.  The Administration advised that the right to object to derogatory treatment of work under section 92 was an independent moral right. If the author could prove that his work had been subject to derogatory treatment, notwithstanding the exceptions for the purpose of parody, satire, caricature and pastiche, he could have civil recourses against the person who had treated his work derogatorily. However, the threshold for proving derogatory treatment was relatively high as a complainant had to prove that his honour or reputation had been prejudiced on an objective standard. There had been no precedent cases in Hong Kong so far.	
005101 – 005144	Chairman Administration	<u>Clause 54</u>	
005145 – 005313	Chairman Administration	<u>Clause 55</u>	
005314 – 005359	Chairman Administration	<u>Clause 56</u>	
005400 – 010710	Chairman Mr SIN Chung-kai Mr CHAN Chi-chuen Administration	<u>Clause 57</u>  Mr CHAN Chi-chuen's enquiry and the Administration's response on whether section 161 of the Crimes Ordinance (Cap. 200) (regarding access to computer with criminal or dishonest intent) would be applied as an alternative to section 118 (regarding the offences in relation to making or dealing with infringing articles, etc.) to deal with offences relating to copyright infringements.	The Administration to follow up as per paragraph 3 of the minutes.



Time marker	Speaker	Subject(s)	Action required
010711 – 011610	Chairman Mr SIN Chung-kai Mr Charles Peter MOK Administration	<p>Noting the concern expressed by a local broadcaster regarding set-top boxes, Mr SIN Chung-kai queried how and whether section 118 could deal with the sale of set-top boxes, which could provide access to infringing copies of copyright works via streaming.</p> <p>Mr Charles Peter MOK opined that this was a complex issue as the line to determine the criminal liability based on the type of devices was difficult to draw. It would set a bad precedent to ban the sale of hardware as it was only one of those many devices that could provide access to infringing contents. He cautioned that the idea of site blocking would have far reaching consequences on freedom of information and urged that the Administration should maintain the copyright law technology-neutral.</p> <p>The Administration advised that it would take into account members' views and provide a written response to address the local broadcaster's concern.</p>	
011611 – 011700	Chairman Administration	<u>Clause 58</u>	
011701 – 011815	Chairman Administration	<u>Clause 59</u>	
011816 – 011850	Chairman Administration	<u>Clause 60</u>	
011851 – 011920	Chairman Administration	<u>Clause 61</u>	
011921 – 012050	Chairman Administration	<u>Clause 62</u>	
012051 – 012125	Chairman Administration	<u>Clause 63</u>	
012126 – 012217	Chairman Administration	<u>Clause 64</u>	
012218 – 012519	Chairman Administration Mr CHAN Chi-chuen Mr Charles Peter MOK	<u>Clause 65</u>  Mr CHAN Chi-chuen's enquiry and the Administration's response on the meaning of "making a copy that is transient or is incidental to some other use of the fixation".	

Time marker	Speaker	Subject(s)	Action required
012520 – 012630	Chairman Administration	<p><u>Clause 66</u></p> <p>Discussion on application of the proposed amendments to section 205 (regarding consent required for making available of fixations to public).</p>	
012631 – 014600	Chairman Assistant Legal Adviser 4 Ms Claudia MO Mr CHAN Chi-chuen Administration	<p><u>Clause 67</u></p> <p>Discussion on the Chinese version of "a performer" under section 206(1) as "某合資格表演的表演者" in relation to a qualifying performance.</p> <p>The Administration advised that the term "qualifying performance" was defined at section 201.</p> <p>ALA said that she would follow up the drafting of the Chinese version of section 206(1) with the Administration after the meeting.</p> <p>Ms Claudia MO's enquiry and the Administration's response on the meaning of "has reason to believe" in section 206(1).</p> <p>Ms Claudia MO's enquiry and the Administration's response on the reasons for the proposed deletion of section 206(2).</p>	
014601 – 014930	Chairman Mr CHAN Chi-chuen Mr SIN Chung-kai Mr Charles Peter MOK Administration	<p>Mr CHAN Chi-chuen's enquiry and the Administration's response on whether section 206 (regarding infringement of performer's rights by use of fixation made without consent) would apply to the live streaming of a performance via the Internet, e.g. a person captured a performance on his mobile device and streamed the fixation to his friends using popular mobile applications such as FaceTime.</p>	
014931 – 015100	Chairman Administration	<p><u>Clause 68</u></p>	
015101 – 015200	Chairman Ms Claudia MO Administration	<p><u>Clause 69</u></p> <p>Ms Claudia MO's enquiry and the Administration's response on the reasons for the proposed deletion of section 210(2) (regarding the fixation rights of a person).</p>	
015201 – 015220	Chairman Administration	<p><u>Clause 70</u></p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
015221 – 015530	Chairman Ms Claudia MO Administration	<u>Clause 71</u>  Ms Claudia MO's enquiry and the Administration's response on the proposed new section 221(2)(d) (regarding the new factor for considering awarding additional damages, i.e. the unreasonable conduct of the defendant after the act constituting the infringement occurred).	
015531 – 020030	Chairman Mr SIN Chung-kai Mr Charles Peter MOK Ms Claudia MO Administration	<u>Clause 72</u>  Mr SIN Chung-kai's enquiry and the Administration's response on the difference between "private" and "domestic" uses.  The Administration advised that "private use" means for personal use and "domestic use" covered family members.  Ms Claudia MO's enquiry and the Administration's response on the impracticability of enforcement when a person lent a copyright work that he had purchased to others.	
020031 – 020057	Chairman Administration	Date of next meeting	