

**立法會**  
**Legislative Council**

LC Paper No. CB(4)1210/14-15

(These minutes have been seen  
by the Administration)

Ref : CB4/BC/6/13

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

**Minutes of the 15<sup>th</sup> meeting**  
**held on Thursday, 7 May 2015, at 8:30 am**  
**in Conference Room 2 of the Legislative Council Complex**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)  
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 WONG Yuk-man  
Hon YIU Si-wing  
Hon MA Fung-kwok, SBS, JP  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
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 Claudia MO  
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

Miss Mandy LAM  
Legislative Assistant (4)3

Action

---

**I. Information papers issued since the last meeting**

LC Paper No. CB(4)921/14-15(01) -- Hon Emily LAU Wai-hing's letter dated 5 May 2015 on withdrawal of membership (Chinese version only)

LC Paper No. CB(4)944/14-15(01) -- Administration's response to issues raised at the meetings on 6 January, 24 February, 9 April and 4 May 2015 (tabled at the meeting and subsequently issued to members on 7 May 2015)

LC Paper No. CB(4)944/14-15(02) -- Letter from Hon Dennis KWOK dated 7 May 2015 on issues relating to the contract override provision (English version only) (tabled at the meeting and subsequently issued to members on 7 May 2015)

The Bills Committee noted that the above papers had been issued since the last meeting. The Bills Committee also noted that Ms Emily LAU had given written notice to withdraw her membership.

**II. Meeting with the Administration**

Clause-by-clause examination of the Bill

*Starting from clause 73*

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)442/14-15(01) -- Summary of Administration's response to views expressed by deputations and members of the public at the meeting on 25 October 2014 (overview, communication right, criminal liability and copyright exceptions)
- LC Paper No. CB(4)829/14-15(01) -- Summary of Administration's response to views expressed by deputations and members of the public at the meeting on 25 October 2014 (safe harbour)
- LC Paper No. CB(4)829/14-15(02) -- Administration's paper on draft Code of Practice on copyright protection in the digital environment (March 2012 version)
- LC Paper No. CB(4)911/14-15(01) -- Summary of Administration's response to views expressed by deputations and members of the public at the meeting on 25 October 2014 (civil liability and other issues)
- 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)292/14-15(01) -- Administration's response to the Assistant Legal Adviser's letter dated 7 November 2014
- LC Paper No. CB(4)364/14-15(02) -- Administration's further response to the Assistant Legal Adviser's letter dated 7 November 2014

- 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)669/14-15(02) -- Administration's response to issues raised 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)912/14-15(01) -- Administration's response to issues raised at the meeting on 20 January 2015 regarding precedent cases illustrating "substantial part" of a copyright work
- 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)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)870/14-15(01) -- List of follow-up actions arising from the discussion at the meeting on 21 April 2015

- LC Paper No. CB(4)914/14-15(01) -- List of follow-up actions arising from the discussion at the meeting on 4 May 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 drafting of the phrase "performance.....to the public" in the proposed new section 241(2)(a) (in relation to fair dealing with a performance or fixation for the purpose of criticism, review, quotation, and reporting and commenting on current events) and other relevant proposed sections, and replacing it with "performance....in public";
  - (b) reviewing the Chinese version of the phrase "other than by communication to the public" i.e. "不包括向公眾傳播" in the proposed sections 241(5)(a) and (b) (in relation to fair dealing with a performance or fixation for the purpose of criticism, review, quotation, and reporting and commenting on current

events), for example, by using "向公眾傳播除外", to avoid ambiguity; and

- (c) reviewing the Chinese version of the phrase "a member of the public", i.e. "公眾中任何人" in the proposed amendments to section 252 (regarding certain copying permitted when performances communicated to the public) and other relevant proposed sections, with reference to the Chinese version of the expression "public", i.e. "公眾" in other similar sections such as the proposed amendments to section 273(1)(c)(ii).

4. The Administration was also requested to provide for members' reference a paper on derogatory treatment.

Date of next meeting

5. The Chairman reminded members that the 16<sup>th</sup> meeting would be held on 19 May 2015 at 2:30 pm to follow up issues arising from previous meetings.

**III. Any other business**

6. There being no other business, the meeting ended at 10:01 am.

Council Business Division 4  
Legislative Council Secretariat  
23 June 2015

**Proceedings of the 15<sup>th</sup> meeting of  
Bills Committee on Copyright (Amendment) Bill 2014  
on Thursday, 7 May 2015, at 8:30 am  
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda item I – Information paper issued since the last meeting</b>			
000910 – 001340	Chairman	Ms Emily LAU Wai-hing's written notice to withdraw her membership.	
<b>Agenda item II – Meeting with the Administration</b>			
001341 – 001405	Chairman Administration	<b>Clause-by-clause examination of the Bill</b>  <u>Clause 73</u>	
001406 – 001440	Chairman Administration	<u>Clause 74</u>	
001441 – 002620	Chairman Mr Dennis KWOK Mr MA Fung-kwok Mr Charles Peter MOK Administration	<u>Clause 75</u>  Mr Dennis KWOK's enquiry and the Administration's response on the relationship between a "non-profit-making" and a "commercial" dealing with a performance or fixation under the proposed section 241(4)(a) of the Copyright Ordinance (Cap. 528) ("CO") (regarding fair dealing for the purposes of criticism, review, quotation, and reporting and commenting on current events).  Mr Charles Peter MOK relayed the concern of some netizens on whether the following acts constituted a dealing of commercial nature and would therefore not qualify for the copyright exception under section 241: (i) netizens uploading materials on the web and receiving advertising payments; (ii) netizens paying to boost or promote one's posts; and (iii) online service providers or owners of websites receiving advertising revenue through netizens' uploading of materials onto their websites.  The Administration advised that whether a dealing was for a profit-making purpose or of commercial nature was only one of the factors for consideration. Even if the dealing in question was for a profit-making purpose or of commercial nature, it did not automatically render it unfair. In determining whether the dealing was fair, the court must take into account all the circumstances of the case, as well as other relevant factors. The non-exhaustive list of factors as set out in the proposed	



Time marker	Speaker	Subject(s)	Action required
		<p>section 241(4) were identical to those in the existing fair dealing exceptions under the CO and were in line with the wording in overseas legislation. The Administration considered it appropriate to adopt the same approach in formulating the copyright exception under the proposed section 241. The application of fair dealing provisions had been explained in the Administration's paper (LC Paper No. CB(4)11/14-15(02)).</p> <p>In addition, the introductory provision in section 37 of the CO provided an overriding principle regarding the application of permitted acts. The primary consideration was that the act in question should not conflict with a normal exploitation of the work by the copyright owner and should not unreasonably prejudice the legitimate interest of the copyright owner.</p> <p>Mr MA Fung-kwok's enquiry and the Administration's response on how to assess the effect of the dealing on the potential market for or value of the performance or fixation and who bore the burden of proof.</p>	
002621 – 005720	Chairman Mr CHAN Chi-chuen Mr MA Fung-kwok Administration	<p>Mr CHAN Chi-chuen's enquiry and the Administration's response on the meaning of the Chinese version of the phrase "other than by communication to the public" i.e. "不包括向公眾傳播" in the proposed sections 241(5)(a) and (b) (in relation to fair dealing with a performance or fixation for the purpose of criticism, review, quotation, and reporting and commenting on current events).</p> <p>Discussion on how to assess the amount and substantiality of the portion dealt with in relation to the performance or fixation under the proposed section 241(4)(c) regarding fair dealing with a performance or fixation.</p> <p>The Administration advised that there was no hard and fast rule. However, there were ample precedent cases in this regard. The Administration referred to its paper on the application of fair dealing provisions issued earlier (LC Paper No. CB(4)11/14-15(02)), which summarized cases illustrating how the factors assessing fairness were applied. The underlying purpose of any fair dealing exceptions was to strike a proper balance between copyright protection and reasonable use of copyright works.</p>	The Administration to follow up as per paragraph 3(b) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>Mr CHAN Chi-chuen's enquiry and the Administration's response on public education and promotion on fair dealing exceptions.</p> <p>The Administration advised that fair dealing provisions and the factors had been introduced to the CO since 2007. The fair dealing exception in the proposed section 241 was formulated along the same line. Relevant public education resources on fair dealing exceptions were already available on the official website of the Intellectual Property Department. Nevertheless, the Administration would launch a public education and promotion exercise before the commencement of the enacted provisions.</p>	
005721 – 005810	Chairman Assistant Legal Adviser 4 ("ALA4") Administration	ALA's enquiry and the Administration's response on the drafting of the phrase "performance.....to the public" in the proposed section 241(2)(a) (in relation to fair dealing with a performance or fixation for the purpose of criticism, review, quotation, and reporting and commenting on current events).	The Administration to follow up as per paragraph 3(a) of the minutes.
005811 – 005918	Chairman Administration	<u>Clause 76</u>	
005919 – 010012	Chairman Mr CHAN Chi-chuen Administration	<u>Clause 77</u>  Mr CHAN Chi-chuen's enquiry and the Administration's response on the meaning of incidental inclusion in section 242 (regarding incidental inclusion of a performance or fixation).	
010013 – 010434	Chairman Mr CHAN Chi-chuen Administration	<u>Clause 78</u>  Mr CHAN Chi-chuen's enquiry and the Administration's response on the difference between the meanings of "copies of the fixation" and "fixation" in section 242A (regarding fair dealing for purposes of giving or receiving instruction).	
010435 – 010950	Chairman Mr CHAN Chi-chuen Administration	<u>Clause 79</u>  Mr CHAN Chi-chuen's enquiry and the Administration's response on why a fixation was deemed dealt with if it was communicated to the public under the proposed amendments to section 243(3A) (regarding things done for purposes of instruction or examination).	

Time marker	Speaker	Subject(s)	Action required
010951 – 011207	Chairman Mr CHAN Chi-chuen Administration	<p><u>Clause 80</u></p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response on the meaning of "reasonable steps" and "authorized recipients".</p> <p>The Administration further advised that the meaning of the terms had been explained in its response to issues raised at the meetings on 6 January, 24 February, 9 April and 4 May 2015 (tabled at the meeting and issued vide LC Paper No. CB(4)944/14-15(01) after the meeting).</p>	
011208 – 011303	Chairman Administration	<u>Clause 81</u>	
011304 – 011435	Chairman Administration	<u>Clause 82</u>	
011436 – 011525	Chairman Administration	<u>Clause 83</u>	
011526 – 011658	Chairman Mr CHAN Chi-chuen ALA 4 Administration	<p><u>Clause 84</u></p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response on the meaning of the Chinese version of the phrase "a member of the public", i.e. "公眾中任何人" in section 252 (regarding certain copying permitted when performances communicated to the public) vis-à-vis the Chinese expression of "public", i.e. "公眾".</p>	
011659 – 011840	Chairman Administration	<u>Clause 85</u>	
011841 – 011919	Chairman Mr CHAN Chi-chuen Administration	<p><u>Clause 86</u></p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response on whether a fixation of the reading or recitation of lyrics of a song were covered by the exception under section 253 (regarding use of fixations of spoken words in certain cases).</p> <p>The Administration advised that lyrics were considered literary work and therefore covered by the exception provided under the section.</p>	
011920 – 012023	Chairman Administration	<u>Clause 87</u>	

Time marker	Speaker	Subject(s)	Action required
012024 – 012118	Chairman Administration	<u>Clause 88</u>	
012119 – 012215	Chairman Administration	<u>Clause 89</u>	
012216 – 012309	Chairman Administration Mr CHAN Chi-chuen	<u>Clause 90</u>  Mr CHAN Chi-chuen's enquiry and the Administration's response on precedent cases regarding derogatory treatment.	The Administration to follow up as per paragraph 4 of the minutes.
012310 – 012518	Chairman ALA4 Administration	<u>Clause 91</u>  ALA's enquiry and the Administration's response on the drafting of the Chinese version of the phrase "a member of the public", i.e. "公眾中任何人" in the proposed amendments to section 252 (regarding certain copying permitted when performances communicated to the public).	The Administration to follow up as per paragraph 3(c) of the minutes.
012519 – 012550	Chairman Administration	<u>Clause 92</u>	
012551 – 012610	Chairman Administration	<u>Clause 93</u>	
012611 – 012630	Chairman Administration	<u>Clause 94</u>	
012631 – 012720	Chairman Administration	<u>Clause 95</u>	
012721 – 012758	Chairman Administration	<u>Clause 96</u>	
012759 – 013110	Chairman Ms Cyd HO Mr CHAN Chi-chuen	Completion of the clause-by-clause examination of the Bill.  <u>Date of next meeting</u>  The Chairman said that the Bills Committee would follow up issues arising from previous meetings at the next meeting.	

Council Business Division 4  
Legislative Council Secretariat  
23 June 2015