

**立法會**  
**Legislative Council**

LC Paper No. CB(4)1240 /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 16<sup>th</sup> meeting**  
**held on Tuesday, 19 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 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 Ronny TONG Ka-wah, SC  
Hon Cyd HO Sau-lan, JP  
Hon Paul TSE Wai-chun, JP  
Hon WONG Yuk-man  
Hon Claudia MO  
Hon YIU Si-wing  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Hon Dennis KWOK  
Hon SIN Chung-kai, SBS, JP  
Dr Hon Elizabeth QUAT, JP  
Hon Martin LIAO Cheung-kong, SBS, JP  
Hon CHUNG Kwok-pan  
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Members absent** : Hon WONG Ting-kwong, SBS, JP  
Hon MA Fung-kwok, SBS, JP

**Public officers  
attending**

: Agenda item III

Commerce and Economic Development Bureau

Mr David WONG, JP  
Deputy Secretary for Commerce and Economic  
Development  
(Commerce and Industry)2

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

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

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**I. Confirmation of minutes of meeting**

LC Paper No. CB(4)853/14-15 -- Minutes of meeting held on 9 April 2015

The minutes of the meeting held on 9 April 2015 were confirmed.

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

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)

LC Paper No. CB(4)979/14-15(01) -- Letter from Hon WONG Yuk-man dated 12 May 2015 on issues relating to safe harbour provisions (Chinese version only)

LC Paper No. CB(4)1024/14-15(01) -- Hon Alice MAK Mei-kuen's letter dated 15 May 2015 on withdrawal of membership (Chinese version only)

LC Paper No. CB(4)1049/14-15(01) -- Letter from Hon MA Fung-kwok dated 15 May 2015 on issues relating to online copyright infringing acts (Chinese version only)

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

### **III. Meeting with the Administration**

#### Follow-up to issues arising from previous meetings

- 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)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)669/14-15(02) -- Administration's response to issues raised at the meeting on 6 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)944/14-15(01) -- Administration's response to issues raised at the meetings on 6 January, 24 February, 9 April and 4 May 2015

- 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)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(02) -- List of follow-up actions arising from the discussion at the meeting on 4 May 2015
- LC Paper No. CB(4)978/14-15(01) -- List of follow-up actions arising from the discussion at the meeting on 7 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)

Other relevant papers

- 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)
- 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)

Discussion

3. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Date of next meeting

4. The Chairman reminded members that the 17<sup>th</sup> meeting would be held on 2 June 2015 at 4:30 pm to follow up issues arising from previous meetings.

**IV. Any other business**

5. There being no other business, the meeting ended at 4:29 pm.

Council Business Division 4  
Legislative Council Secretariat  
30 June 2015

**Proceedings of the 16<sup>th</sup> meeting of  
Bills Committee on Copyright (Amendment) Bill 2014  
on Tuesday, 19 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>			
000600 – 000605	Chairman	Confirmation of minutes of meeting on 9 April 2015 (LC Paper No. CB(4)853/14-15).	
<b>Agenda item II – Information papers issued since the last meeting</b>			
000606 – 000610	Chairman	Ms Alice MAK's written notice to withdraw her membership.	
<b>Agenda item III – Meeting with the Administration</b>			
000611 – 001620	Chairman Administration	Briefing by the Administration on the 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)442/14-15(01)) (the "Summary").	
001621 – 002600	Chairman Mr WONG Yuk-man Administration	Mr WONG Yuk-man opined that the views expressed by deputations and members of the public had not been thoroughly addressed in the Summary.  The Administration advised that it had responded to the views expressed by the deputations and members of the public as far as practically possible. Many of the concerns had been addressed in other documents previously provided, such as the Legislative Council ("LegCo") Brief (File Ref: CITB 07/09/17) and hence not repeated in the Summary.	
002601 – 004240	Chairman Mr CHAN Chi-chuen Ms Claudia MO Mr SIN Chung-kai Ms Cyd HO Administration	Discussion on communication right (in particular, streaming with TV set-top boxes and hyperlinks) and civil and criminal liabilities involved in hyperlink sharing.  The Administration advised that it would further respond in writing to the various concerns expressed by deputations and members of the public, including copyright infringement involving TV set-top boxes and links.	
004241 – 005759	Chairman Mr WONG Yuk-man Administration	Mr WONG Yuk-man was of the view that copyright laws did not provide sufficient protection to users of copyright works against civil and criminal liabilities. For example, a wide range of activities on the Internet which might make use of copyright works, including rewriting	



<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		<p>of lyrics, acoustic covers of songs, and doujinshi were not covered by the fair dealing provisions.</p> <p>The Administration advised that the new exceptions proposed in the Bill together with the existing ones should cover a wide range of activities on the Internet where justified on public policy grounds, such as commenting on current events. The Administration considered that the overall package of the legislative proposals would adequately protect freedom of speech and expression, without causing unreasonable prejudice to copyright owners.</p> <p>Mr WONG Yuk-man opined that the Administration had selectively adopted some international obligations and practices while ignoring others, such as user generated content. In this regard, Mr WONG said that he would propose various Committee Stage amendments ("CSAs") to the Bill. In the event that such CSAs were not supported, he would vote against the Bill upon the resumption of the Second Reading debate on the Bill at the Council meeting.</p> <p>Mr WONG Yuk-man further opined that the copyright regime should not be biased towards the commercial interests of copyright owners, as this would curtail free flow of information and freedom of expression. Instead, the Copyright Ordinance ("CO") should be updated to keep abreast with the cultural and technological developments internationally.</p> <p>The Administration advised that in Division III of Part II of the existing CO, there were over 60 sections specifying a number of permitted acts which might be done in relation to copyright works notwithstanding the subsistence of copyright (such as for the purposes of research, private study, education, criticism, review and reporting current events), and they would attract neither civil nor criminal liability for unauthorized use of copyright works. To tie in with the introduction of the communication right, the Bill had proposed to further expand the scope of permitted acts as appropriate to maintain a proper balance between copyright protection and reasonable use of copyright works.</p> <p>Mr WONG Yuk-man was of the view that new media (such as online radio stations) should be entitled to the same copyright exceptions as the traditional news media did.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration advised that the existing CO had already provided a fair dealing exception for criticism, review and news reporting. Under the Bill, new fair dealing exceptions were introduced to cover the use of copyright works for the purposes of quotation and commenting on current events which should help safeguard freedom of press, regardless of the operation model of the media.</p>	
005800 – 013333	<p>Chairman Mr Charles Peter MOK Ms Cyd HO Administration</p>	<p>Discussion on the Administration's intention to continue to keep the copyright regulatory regime separate from the regulatory regime for other computer crimes, and 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 offences in the digital environment.</p> <p>The Administration confirmed the policy intent in copyright enforcement as set out in its paper to the Bills Committee (LC Paper No. CB(4)944/14-15(01)).</p> <p>Ms Cyd HO expressed that the Bill should not be intended to prevent economic loss of copyright owners. She opined that criminal liability should only be imposed for the use of copyright works for profit-making.</p>	
013334 – 015852	<p>Chairman Mr WONG Yuk-man Administration</p>	<p>Mr WONG Yuk-man's enquiry and the Administration's response on whether the court was in the best position to assess whether a dealing was fair, as judges might not possess any background in the creative industries and the design profession. In a paper provided by the Administration previously, it was stated that in determining whether a dealing was fair, the United States ("US") courts would consider various factors, including whether and to what extent the new work was "transformative" whether the copyright work being used was original and the amount and substantiality of the portion used in relation to the copyrighted work as a whole, which Hong Kong courts might draw reference to, Mr WONG queried the reason for listing the considerations in simplified form in the Bill instead of in full detail.</p> <p>The Administration advised that whether the copyright work being used was "transformative" was not expressly set out in the relevant US copyright legislation. Nonetheless, such a concept had been applied and established by US case laws. The factors for assessing</p>	

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		<p>whether an act was a fair dealing in the Bill were the same as those under the existing statutory provisions. In addition, the reason that the relevant considerations was not set out in the Bill was to provide more flexibility to the court in interpreting the fair dealing provisions under the CO. The language adopted for the new exceptions under the Bill was in line with that for both the existing fair dealing provisions in the CO and other comparable overseas legislation. Such language had also been interpreted and applied in precedent cases. The Administration therefore considered the drafting of the new fair dealing provisions appropriate.</p> <p>Mr WONG Yuk-man said that some deputations had raised the concern that online posting of earnest performance of copyright works (song singing with or without rewriting the lyrics based on the original melodies) would not be covered by the proposed exceptions under the Bill if it did not contain any parodic elements.</p> <p>The Administration advised that in deciding whether to introduce a copyright exception to the CO, it was important to consider if there were sufficient public policy grounds. The Bill proposed a range of new fair dealing exceptions for the purposes of parody, satire, caricature and pastiche, and quotation and commenting on current events. Online posting of earnest performance of copyright works could still be covered by such exceptions, and there would be no legal liability for copyright infringements if it fell within the existing or proposed scope of exceptions (e.g. for the purposes of criticism and review, commenting on current events or parody etc), and met the relevant qualifying conditions (for example, the dealing of the copyright work was fair). The Administration added that some online service platforms such as YouTube had licensing arrangements with some copyright owners authorizing the posting of cover versions of songs. It might not be necessary for copyright owners to resort to copyright legislation.</p> <p>Discussion on the application of the fair dealing exception for the purpose of commenting on current events on the unauthorized use of news footage. Mr WONG Yuk-man enquired whether the fair dealing exception for the purpose of commenting on current events was also available to members of the public.</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		The Administration explained that both the existing fair dealing exceptions for the purpose of criticism, review and news reporting and the proposed exception for commenting on current events were applicable to all users, regardless of whether the users were news organizations or not.	
015853 – 015943	Chairman Administration	Date of next meeting	

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Legislative Council Secretariat  
30 June 2015