

立法會
Legislative Council

LC Paper No. CB(4)1316/14-15
(These minutes have been seen
by the Administration)

Ref : CB4/BC/6/13

Bills Committee on Copyright (Amendment) Bill 2014

Minutes of the 17th meeting
held on Tuesday, 2 June 2015, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Abraham SHEK Lai-him, GBS, 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 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 Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Hon Martin LIAO Cheung-kong, SBS, JP
- Members absent** : Hon Vincent FANG Kang, SBS, JP
Hon Ronny TONG Ka-wah, SC
Dr Hon Elizabeth QUAT, JP
Hon CHUNG Kwok-pan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

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

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 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)1054/14-15 -- Minutes of meeting held on
21 April 2015

The minutes of the meeting held on 21 April 2015 were confirmed.

II. 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)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)1049/14-15(01) -- Letter from Hon MA Fung-kwok dated 15 May 2015 on issues relating to the online copyright infringing acts (Chinese version only)
- 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

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

Date of next meeting

3. The Chairman reminded members that the 18th meeting would be held on 9 June 2015 at 8:30 am to follow up issues arising from previous meetings.

III. Any other business

4. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 4
Legislative Council Secretariat
15 July 2015

**Proceedings of the 17th meeting of
Bills Committee on Copyright (Amendment) Bill 2014
on Tuesday, 2 June 2015, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Confirmation of minutes			
000530 – 000600	Chairman	Confirmation of minutes of meeting on 21 April 2015 (LC Paper No. CB(4)1054/14-15).	
Agenda item II – Meeting with the Administration			
000601 – 001512	Chairman Administration	Briefing by the Administration on its 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)911/14-15(01)).	
001513 – 003640	Chairman Mr WONG Yuk-man Mr Dennis KWOK Mr MA Fung-kwok Mr CHAN Chi-chuen Ms Claudia MO Administration	Discussion on the issues relating to online copyright infringement involving the use of TV boxes and mobile applications, contract override provisions and hyperlink sharing. The Administration advised that it would provide written response to the concerns expressed by deputations and members of the Bills Committee.	
003641 – 004440	Chairman Ms Claudia MO Mr WONG Yuk-man Administration	Briefing by the Administration on its response to issues raised at the meeting on 6 January 2015 (LC Paper No. CB(4)669/14-15(01)). Discussion on the Chinese term "東西" under the proposed section 28A(6)(a) (i.e. "what is made available" in the corresponding English provision) (regarding infringement by communicating to the public). The Administration advised that the use of the term "東西" in the proposed section referred to any concrete or abstract thing. Its use in the proposed section to cover anything that was made available in a communication was appropriate and had been used in several instances in the Copyright Ordinance (Cap. 528) ("CO").	
004441 – 005800	Chairman Ms Claudia MO Administration	Briefing by the Administration regarding precedent cases illustrating "substantial part" of a copyright work (LC Paper No. CB(4)912/14-15(01)). Ms Claudia MO's enquiry and the Administration's response on the meaning of a "substantial part" of a copyright work.	

Time marker	Speaker	Subject(s)	Action required
005801 – 011750	Chairman Ms Claudia MO Administration	<p>Briefing by the Administration on its response to issues raised at the meetings on 6 January, 24 February, 9 April and 4 May 2015 (LC Paper No. CB(4)944/14-15(01)).</p> <p>Ms Claudia MO's enquiry and the Administration's response on acts involving both the playing and showing of a work in public and communicating a work to the public.</p>	
011751 – 014830	Chairman Mr CHAN Chi-chuen Mr MA Fung-kwok Administration	<p>Mr CHAN Chi-chuen enquired whether section 161 of the Crimes Ordinance (Cap. 200) regarding access to computer with criminal or dishonest intent would be invoked to prosecute copyright infringement activities involving the use of TV boxes and mobile applications. Mr CHAN relayed the concern of some user groups that in the CHAN Nai-ming ("the Big Crook") case in 2005, the defendant not only faced charges brought by virtue of section 118(1)(f) of the CO of attempting to distribute an infringing copy of a copyright work, other than for the purpose of or in the course of any trade or business, to such an extent as to affect prejudicially the rights of the copyright owner; but also faced alternative charges of obtaining access to a computer with dishonest intent, contrary to section 161 of the Crimes Ordinance (Cap 200) (access to computer with criminal or dishonest intent). He was also of the view that section 161 of the Crimes Ordinance should not be invoked for prosecution against copyright infringements involving the use of TV boxes and mobile applications.</p> <p>The Administration advised that it remained the policy intent to continue to keep the copyright regulatory regime separate from section 161 of the Crimes Ordinance.</p> <p>Mr CHAN Chi-chuen was of the view that the pressing of alternative charges under the section 161 of the Crimes Ordinance in the Big Crook case was contrary to what the then Secretary for Security said about the Administration's intention not to use this provision for the prosecution of copyright offences.</p> <p>The Administration advised that since its enactment in 1997, the CO had been amended a number of times to introduce criminal sanctions against certain infringing acts. The inclusion of new criminal provisions had followed the due process of public consultation and scrutiny by the Legislative Council prior to implementation. The Administration stressed that it</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>was not its policy intent to "criminalize" any acts which attracted only civil liabilities under the CO by invoking section 161 of the Crimes Ordinance.</p> <p>Mr CHAN Chi-chuen was of the view that if Department of Justice ("DoJ") used section 161 of the Crimes Ordinance to press charges for copyright infringements again in future, the Administration's remarks at the meeting would serve as evidence in any related judicial review against the decision of DoJ.</p> <p>Mr Charles Peter MOK suggested that the Administration should introduce amendments to the Bill to prevent the pressing of alternative charges using section 161 of the Crimes Ordinance against copyright infringements.</p> <p>Mr MA Fung-kwok opined that the legislative intent of a piece of legislation should be to bring offenders to justice. In this regard, the prosecution departments' discretionary power to invoke a certain piece of legislation for prosecution should not be unduly restricted by the legislature.</p>	
014831 – 015010	Chairman Mr MA Fung-kwok Administration	<p>Discussion on the proposed amended section 45 in relation to copyright works communicated by educational establishments to "authorized recipients" to include parents.</p> <p>Mr MA Fung-kwok opined that guidelines should be issued to teachers, students and parents to prevent possible abuse of the exceptions provided under the proposed section 45.</p>	
015011 – 020050	Chairman Mr WONG Yuk-man Administration	Mr WONG Yuk-man's enquiry and the Administration's response on the difference between "release", "issue" and "communicate" to the public under the proposed section 39(5) (regarding criticism, review, quotation, and reporting and commenting on current events).	
020051 – 020105	Chairman Administration	Date of next meeting	