

立法會
Legislative Council

LC Paper No. CB(4)1317/14-15
(These minutes have been seen
by the Administration)

Ref : CB4/BC/6/13

Bills Committee on Copyright (Amendment) Bill 2014

Minutes of the 18th meeting
held on Tuesday, 9 June 2015, at 8:30 am
in Conference Room 2B 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 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
Hon Dennis KWOK
Dr Hon Elizabeth QUAT, JP
Hon CHUNG Kwok-pan

Public officers attending : Agenda item I

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 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

I. Meeting with the Administration

Follow-up to issues arising from previous meetings

- 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)1119/14-15(01) -- Administration's response to letter from Hon WONG Yuk-man as set out in CB(4)979/14-15(01) on issues relating to safe harbour provisions
- LC Paper No. CB(4) 1119/14-15(02) -- Administration's response to issues raised at the meeting on 7 May 2015 on issues relating to derogatory treatment
- 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)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)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

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

Follow-up actions to be taken by the Administration

2. The Administration was requested to consider reviewing the existing section 92(2)(b) of the Copyright Ordinance (Cap. 528), by replacing the phrase "or is otherwise prejudicial" with "or otherwise is prejudicial", to ensure that the element of being "prejudicial to the honour or reputation of the author or director" would qualify all derogatory acts referred to in that section.

Date of next meeting

3. The Chairman reminded members that the 19th meeting would be held on 23 June 2015 at 8:30 am to follow up issues arising from previous meetings.

II. Any other business

4. There being no other business, the meeting ended at 9:34 am.

Council Business Division 4
Legislative Council Secretariat
15 July 2015

**Proceedings of the 18th meeting of
Bills Committee on Copyright (Amendment) Bill 2014
on Tuesday, 9 June 2015, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Meeting with the Administration			
000546 – 001640	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 (safe harbour) (LC Paper No. CB(4)829/14-15(01)).	
001641 – 003520	Chairman Mr WONG Yuk-man Mr CHAN Chi-chuen Administration	<p>Briefing by the Administration on its response to the letter from Hon WONG Yuk-man as set out in CB(4)979/14-15(01) on issues relating to safe harbour provisions (LC Paper No. CB(4)1119/14-15(01)).</p> <p>Discussion on the definition of "service provider" under the proposed new section 88A (regarding definitions).</p> <p>Mr WONG Yuk-man was of the view that the definition of service provider was too wide. It might cover Facebook users who acted as, or were unknowingly made to be, administrators of Facebook pages or groups. They could be subject to unexpected legal liabilities.</p> <p>The Administration advised that the safe harbour provisions were modelled on similar provisions in other jurisdictions. Facebook users might be covered by the definition of service provider under the safe harbour provisions by acting as page or group administrators, and, if meeting the statutory requirements, benefit from the provisions that were intended to offer service providers additional protection against liabilities for copyright infringements occurring on their platforms, in the same way as other service providers. But it was important to note that the proposed new section 88B(5)(b) also provided that a service provider did not incur extra liability if it failed to qualify for the limitations on liability under the safe harbour provisions.</p> <p>Discussion on the responsibilities of the service provider for monitoring its service for copyright infringements.</p> <p>The Administration further advised that the service provider would be required to take reasonable steps to limit or stop the infringement as soon as practicable after the service provider became aware of objective facts or circumstances that would lead inevitably to the</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>conclusion that the infringement had occurred. Nonetheless, under the proposed new section 88B(5)(a)(i), a service provider was not required to monitor its service or actively seek facts that indicated infringing activity.</p> <p>Discussion on the meaning of a "broad consensus" under the definition of "standard technical measure" in the proposed new section 88A.</p> <p>The Administration advised that, generally speaking, such measures referred to those widely accepted by the industry and copyright owners. The wording in the Hong Kong provisions drew reference from overseas legislation such as the US's, and overseas case law might serve as reference in future proceedings.</p>	
003521 – 005528	<p>Chairman Ms Cyd HO Mr Charles Peter MOK Mr CHAN Chi-chuen Administration</p>	<p>Briefing by the Administration on its response to issues raised at the meeting on 7 May 2015 on issues relating to derogatory treatment (LC Paper No. CB(4)1119/14-15(02)).</p> <p>Discussion on the meaning of derogatory treatment.</p> <p>Ms Cyd HO's enquiry and the Administration's response on whether acts such as parody, satire, altered pictures and remixes of music would constitute derogatory treatment.</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response on whether the rewriting of a song's lyrics, or any other treatment resulting in the altered work being mistaken as the original work of the author, would constitute derogatory treatment.</p> <p>The Administration advised that only when the treatment in question was prejudicial to the honour or reputation of the author or director would it amount to derogatory treatment. Generally speaking, treatments such as parody, satire and the rewriting of song lyrics would unlikely have prejudicial effect to the honour or reputation of the authors or directors as the treatments would not be mistaken as the original works of the authors or directors.</p>	

Time marker	Speaker	Subject(s)	Action required
005529 – 010422	Chairman Mr Paul TSE Ms Cyd HO Administration	Mr Paul TSE's enquiry and the Administration's response on the existing section 92(2)(b) of the Copyright Ordinance (Cap. 528) (regarding derogatory treatment of a work).	The Administration to follow up as per paragraph 2 of the minutes.
010423 – 010456	Chairman Administration	Date of next meeting The Chairman reminded the Administration to provide responses to outstanding issues and proposed Committee Stage amendments as soon as possible.	

Council Business Division 4
Legislative Council Secretariat
15 July 2015