

立法會
Legislative Council

LC Paper No. CB(4)1405/14-15

(These minutes have been seen
by the Administration)

Ref : CB4/BC/6/13

Bills Committee on Copyright (Amendment) Bill 2014

Minutes of the 19th meeting
held on Tuesday, 23 June 2015, at 8:30 am
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 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
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Member attending** : Hon WU Chi-wai, MH
- Members absent** : Hon Vincent FANG Kang, SBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
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

Mr Joey LO
Senior Council Secretary (4)3

Action

I. Confirmation of minutes of meeting

LC Paper No. CB(4)1175/14-15 -- Minutes of meeting held on 4 May 2015

The minutes of the meeting held on 4 May 2015 were confirmed.

II. Meeting with the Administration

Follow-up to issues arising from previous meetings

LC Paper No. CB(4)1182/14-15(01) -- Administration's response to issues raised at the meetings of 20 January and 7 May 2015 and letter from Hon Dennis KWOK as set out in CB(4)944/14-15(02) on issues relating to contract override.

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)1182/14-15(02) -- Administration's response to letter from Hon MA Fung-kwok as set out in CB(4)1049/14-15(01) and submission from Television Broadcasts Limited dated 31 March 2015 on issues relating to communication right

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)755/14-15(01) -- Submission from Television Broadcasts Limited dated 31 March 2015 (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)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)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)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)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)1180/14-15(01) -- List of follow-up actions arising from the discussion at the meeting on 9 June 2015

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)

Discussion

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

Date of next meeting

3. The Chairman reminded members that the 20th meeting would be held on 29 June 2015 at 8:30 am to follow up issues arising from previous meetings and examine the draft Committee Stage amendments to be proposed by the Administration.

III. Any other business

4. There being no other business, the meeting ended at 10:32 am.

Council Business Division 4
Legislative Council Secretariat
12 August 2015

**Proceedings of the 19th meeting of
Bills Committee on Copyright (Amendment) Bill 2014
on Tuesday, 23 June 2015, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action required
Agenda item I – Confirmation of minutes of meeting			
000339 – 000540	Chairman	Confirmation of minutes of meeting on 4 May 2015 (LC Paper No. CB(4)1175/14-15).	
Agenda item II – Meeting with the Administration			
000541 – 002055	Chairman Administration	Briefing by the Administration on its response to issues raised at the meetings of 20 January and 7 May 2015 and the letter from Hon Dennis KWOK as set out in LC Paper No. CB(4)944/14-15(02) on issues relating to contract override (LC Paper No. CB(4)1182/14-15(01)).	
002056 – 004110	Chairman Administration	Briefing by the Administration on its response to the letter from Hon MA Fung-kwok as set out in LC Paper No. CB(4)1049/14-15(01) and the submission from Television Broadcasts Limited dated 31 March 2015 on issues relating to communication right (LC Paper No. CB(4)1182/14-15(02)).	
004111 – 015400	Chairman Mr MA Fung-kwok Mr SIN Chung-kai Ms Cyd HO Ms Claudia MO Mr Charles Peter MOK Mr CHAN Chi-chuen Administration	<p>Mr MA Fung-kwok relayed the broadcasting industry's concern that set top boxes with pre-loaded applications on the market were posing significant piracy challenges to and seriously undermining the economic interests of copyright owners. He urged the Administration to consider introducing legislative amendments in the Bill to regulate the sale of such set top boxes as a matter of priority and to deal with the issue in the Bill first, as distinct from problems concerning hyperlinks. Mr SIN Chung-kai shared a similar view.</p> <p>The Administration advised that the legislative intent of the proposed sections 28A(4) to (6) had been explained in the LC Paper No. CB(4)1182/14-15(02). The passage of the Bill would provide a solid legal basis for law enforcement agencies to combat large-scale online piracy as well as cross-border collaboration. The Administration explained that set top boxes might provide access to both legitimate and infringing contents. Given the far-reaching implications, any suggestion to regulate set top boxes and hyperlinks called for careful consideration and thorough discussion in society. The Administration was of the view that decisions in other common law jurisdictions would be of high reference value to Hong Kong courts.</p>	

Time Marker	Speaker	Subject(s)	Action required
		<p>Mr WONG Yuk-man opposed to the proposed regulation of the sale of set top boxes as such digital devices could be used for both legitimate as well as infringing purposes. Any legislation imposing civil or criminal liabilities that targeted set top boxes might carry far-reaching implications. Similarly, Mr Charles Peter MOK opined that the Administration should adopt a technology-neutral approach and avoid setting a bad precedent on this issue; otherwise, the proposed regulation could be extended to other digital devices, including smartphones and home computers. In light of technological advancement, set top boxes might take many forms and it would be difficult, if not impossible, to define the scope of regulation.</p> <p>Mr Charles Peter MOK's enquiry and the Administration's response on enforcement actions against set top boxes and the liability of online service providers under the safe harbour mechanism.</p> <p>The Administration advised that the operation of set top boxes involved complicated technical as well as legal issues which required more careful consideration. New legislative provisions should only be proposed after thorough study and appropriate deliberation and public consultation. By introducing the concept of communication right, any forms of unauthorized electronic transmission of copyright works to the public (such as streaming) would constitute copyright infringement. Sellers of set top boxes might be liable for authorizing the acts of copyright infringement of third parties who made the unauthorized communication. Furthermore, the factors introduced under the proposed section 22(2A) would also assist the court in deciding whether an act amounts to an authorization of copyright infringement, particularly in the context of the Internet. This would enable copyright owners to seek remedies in civil actions against infringers. In addition, the passage of the Bill would improve the efficacy of law enforcement agencies in combating copyright infringements. As illustrated in the LC Paper No. CB(4)1182/14-15(02), there were a number of overseas cases in which sellers of set top boxes were subject to criminal convictions for conspiracy to defraud and circumvention of effective technological measures.</p> <p>Discussion on whether embedded hyperlinks would constitute copyright infringement.</p>	

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		<p>The Administration advised that an embedded hyperlink did not directly infringe copyright because it was only an Hypertext Markup Language ("HTML") code pointing to the image or other material.</p> <p>Mr MA Fung-kwok's enquiry and the Administration's reply on whether it would consider regulating the provision of hyperlinks on social media.</p> <p>The Administration advised that the policy intent of introducing the concept of communication rights in the Copyright Ordinance (Cap. 528) ("CO") was to combat large-scale online copyright piracy. As explained in the LC Paper No. CB(4)1182/14-15(02), a hyperlink did not in itself contain any substantive content, nor did it determine the availability of the information on that particular Internet location that it pointed to. The Administration did not consider it appropriate to regulate the mere act of sharing a hyperlink on individual social platforms, since such an intervention would not strike a proper balance between copyright protection and the reasonable use of copyright works. As such, the Administration would not consider accepting the proposed regulation of the sharing of hyperlinks on social media at this stage.</p> <p>Mr MA Fung-kwok urged the Administration to launch in earnest a new round of copyright review once the Bill was passed to address the concerns of copyright owners, including those regarding set top boxes, applications and links aggregating sites.</p> <p>Mr WONG Yuk-man's enquiry and the Administration's response on whether the operators of links aggregating sites deliberately designed to facilitate infringing communication and/or downloading of copyright works would be liable for authorizing copyright infringement under the proposed section 22(2A) if no commercial benefits were derived from the site.</p> <p>The Administration advised that whether a website operator was liable for authorizing infringement depended on the overall circumstances of the case. Whether commercial benefits were derived therefrom was only one of the factors in considering "authorization". Therefore, even if no commercial benefits were derived, the website operator might still be liable for having authorized the infringing communication should the circumstances warrant.</p>	

Time Marker	Speaker	Subject(s)	Action required
		<p>Mr CHAN Chi-chuen's enquiry and the Administration's response on whether judicial site blocking would be introduced in the next round of copyright review.</p> <p>The Administration advised that as judicial site blocking had been adopted in a number of overseas jurisdictions, Hong Kong must not lose sight of overseas developments on copyright review. Nevertheless, any changes to the existing regime would be implemented only after the due process of thorough study and public consultation.</p> <p>The Administration was aware of new copyright issues and would kick start a new round of copyright review after the passage of the current Bill to address outstanding and new copyright issues.</p>	
015401 – 020100	Chairman Mr Dennis KWOK Administration	<p>Discussion on contract override and freedom of contract.</p> <p>The Bills Committee would continue to discuss issues relating to contract override and Committee Stage amendments at the next meeting.</p>	
020101 – 020230 –	Chairman Administration	Date of next meeting	