

**立法會**  
**Legislative Council**

LC Paper No. CB(4)1406/14-15  
(These minutes have been seen  
by the Administration)

Ref : CB4/BC/6/13

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

**Minutes of the 20<sup>th</sup> meeting**  
**held on Monday, 29 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 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 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 Cyd HO Sau-lan, JP  
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

Mr Joey LO  
Senior Council Secretary (4)3

**I. Confirmation of minutes of meeting**

LC Paper No. CB(4)1210/14-15 -- Minutes of meeting held on 7 May 2015

The minutes of the meeting held on 7 May 2015 were confirmed.

**II. Meeting with the Administration**

Follow-up to issues arising from previous meetings

LC Paper No. CB(4)1233/14-15(01) -- Draft Committee Stage amendments proposed by the Administration and its response to the drafting issues raised by the Bills Committee

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)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

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

Date of next meeting

2. The Chairman reminded members that the 21<sup>st</sup> meeting would be held on 6 July 2015 at 2:30 pm to examine the draft Committee Stage amendments proposed by members.

**III. Any other business**

3. There being no other business, the meeting ended at 9:44 am.

Council Business Division 4  
Legislative Council Secretariat  
12 August 2015

**Proceedings of the 20<sup>th</sup> meeting of  
Bills Committee on Copyright (Amendment) Bill 2014  
on Monday, 29 June 2015, at 8:30 am  
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda item I – Confirmation of minutes</b>			
000408 – 000503	Chairman	Confirmation of minutes of meeting on 7 May 2015 (LC Paper No. CB(4)1210/14-15).	
<b>Agenda item II – Meeting with the Administration</b>			
000504 – 004245	Chairman Mr Dennis KWOK Mr WONG Yuk-man Mr CHAN Chi-chuen Mr Martin LIAO Administration	<p>Discussion on contract override provisions</p> <p>Mr Dennis KWOK opined that the Administration had not been able to explain why contract override provisions should not be introduced into the Copyright (Amendment) Bill 2014. He noted that in the Administration's paper on issues relating to contract override (LC Paper No. CB(4)1182/14-15(01)), the freedom of contract was emphasized as the main argument against legislative provisions restricting contract override. Nevertheless, he noted that there were already a number of provisions in Ordinances in Hong Kong which restricted the freedom of contract, such as section 21 of the Employment Ordinance (Cap. 57) (regarding void conditions) and section 83 of the Disability Discrimination Ordinance (Cap. 487) (regarding validity and revision of contracts). Mr KWOK drew members' and the Administration's attention to his proposed draft Committee Stage amendments that would restrict contracts from overriding copyright exceptions which were tabled at the meeting.</p> <p>The Administration advised that the freedom of contract was a cornerstone for contract law and the business world, but it was not unfettered. Copyright legislation delineated the scope of economic rights of the copyright owners, and the parties had the freedom to enter into contractual arrangements on terms mutually agreed to both parties for the use of copyright works.</p> <p>Mr WONG Yuk-man and Mr CHAN Chi-chuen shared Mr Dennis KWOK's view and opined that without any statutory limitation on contract override, the exceptions provided under the Bill would be rendered unenforceable, in particular the copyright exceptions under the proposed section 39A (for parody, satire, caricature and pastiche). In the absence of such restrictions, commercial contracts could be concluded to circumvent copyright exceptions. As such exceptions</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>formed an integral part of the Bill, their support for the Bill would hinge upon whether contract override provisions would be introduced into the Bill to ensure the effectiveness of the exceptions.</p> <p>The Administration advised that, the copyright regime had properly balanced the interests between the copyright owners and users over the years, and there was no empirical evidence showing that users had encountered any particular difficulties in the use of copyright exceptions. There was also no evidence showing that the current copyright exceptions had failed to achieve the benefits intended owing to the availability of contract override. The Administration had considered the justifications for and against contract override provisions in various overseas jurisdictions and was aware that there was no international consensus on the issue. The Administration added that it would not be prudent to rush into incorporating contract override provisions in the Bill without a comprehensive review and thorough consultation with stakeholders who had expressed divergent views on the issue.</p> <p>Mr Martin LIAO opined that as the discussion on the introduction of restriction on contract override was not without controversy in overseas jurisdictions, and contract override provisions had only just been implemented in the United Kingdom ("UK"), it would be advisable for Hong Kong to keep in view the impact of implementation of the provisions in the UK, as well as the international development, instead of rushing into introducing contract override provisions.</p>	
004246 – 010226	Chairman Mr WONG Yuk-man Mr Martin LIAO Mr CHAN Chi-chuen Administration	<p>Discussion on freedom of contract</p> <p>Mr WONG Yuk-man opined that freedom of contract was not an absolute right. A certain extent of restriction on freedom of contract was necessary for public policy reasons, especially when the bargaining powers between the contracting parties were unequal. Without such restriction on contract override, the balance of interests of the copyright regime would be tilted in favour of copyright owners. Otherwise, freedom of creation would be stifled. Mr WONG was of the view that Hong Kong should follow the example of the UK and introduce restrictions on contract override, and evaluate the impact of the change within three to five years.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration advised that where a contract term was found to be contrary to public policy, it might be unenforceable under common law or the Unconscionable Contract Ordinance, depending on whether the conditions were satisfied.</p> <p>Mr Martin LIAO opined that only when there was unequal bargaining power in a contractual relationship should the law come into play. It was questionable whether the law should interfere with freedom of contract before the emergence of such a scenario.</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response on the right of an online service provider ("OSP") to take down materials which involved fair dealing with copyright works from its service platform pursuant to contractual agreements with copyright owners.</p> <p>The Administration advised that irrespective of any contractual arrangements with copyright owners, the OSP had the autonomy to decide what materials to be hosted on their service platforms.</p>	
010227 – 010900	Chairman Administration	Briefing by the Administration's draft Committee Stage amendments and its response to the drafting issues raised by the Bills Committee (LC Paper No. CB(4)1233/14-15(01).	
010901 – 011330	Chairman Assistant Legal Adviser 4 Administration	<p>ALA's enquiry and the Administration's response on the drafting issue raised by Ms Claudia MO at the meeting on 4 May 2015.</p> <p>The Administration advised that there was no difference in meaning between the Chinese version (i.e. "合資格表演的表演者") and the English version (i.e. "a performer") in the existing section 206(1). It was only a matter of difference in expression between English and Chinese and hence no amendment was necessary.</p>	
011331 – 011530	Chairman Mr CHAN Chi-chuen Administration	Legislative Timetable	
011531 – 011615	Chairman Administration	Date of next meeting	



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Legislative Council Secretariat  
12 August 2015