

立法會
Legislative Council

LC Paper No. CB(4)392/15-16
(These minutes have been seen
by the Administration)

Ref : CB4/BC/6/13

Bills Committee on Copyright (Amendment) Bill 2014

Minutes of the 23rd meeting
held on Monday, 19 October 2015, at 4:30 pm
in Conference Room 2B 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, BBS
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Dr Hon Elizabeth QUAT, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Members absent** : Hon Vincent FANG Kang, SBS, JP
Hon Martin LIAO Cheung-kong, SBS, 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 Henry CHAN
Senior Government Counsel (Acting)

Clerk in attendance : Mr Daniel SIN
Chief Council Secretary (4)3

Staff in attendance : Miss Carrie WONG
Assistant Legal Adviser 4

Mr Joey LO
Senior Council Secretary (4)2

I. Confirmation of minutes of meeting

LC Paper No. CB(4)17/15-16 -- Minutes of meeting held on 23 September 2015

The minutes of the meeting held on 23 September 2015 were confirmed.

II. Meeting with the Administration

Draft Committee Stage amendments

LC Paper No. CB(4)61/15-16(01) -- Government's response to members' proposed Committee Stage amendments and deputations' submissions

LC Paper No. CB(4)61/15-16(02) -- Marked-up copy of the Committee Stage amendments proposed by the Administration

LC Paper No. CB(4)48/15-16(01) -- Committee Stage amendments proposed by the Chairman on behalf of the Bills Committee

LC Paper No. CB(4)48/15-16(02) -- Committee Stage amendments proposed by Hon WONG Yuk-man

LC Paper No. CB(4)48/15-16(03) -- Committee Stage amendments proposed by Hon CHAN Chi-chuen

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**).

Bills Committee's decision

3. Mr WONG Yuk-man presented his proposed Committee Stage amendments ("CSAs") to the long title of the Copyright (Amendment) Bill 2014. The Administration responded to Mr WONG's proposals, and, at the invitation of the Chairman, the Assistant Legal Adviser gave her legal opinion. Mr WONG then invited members to consider his proposed amendments and requested the Chairman of the Bills Committee to move the amendments on behalf of the Bills Committee.

4. Mr MA Fung-kwok and two other members did not support Mr WONG's request while four members indicated support therefor. The Chairman said that he would move the amendments on behalf of the Bills Committee, if they complied with the Legislative Council Rules of Procedures.

5. Mr CHAN Chi-chuen requested the Chairman to move his proposed CSAs on fair use on behalf of the Bills Committee. The Chairman suggested Mr CHAN to raise his request for members' consideration at the next meeting of the Bills Committee.

Date of next meeting

6. The Chairman reminded members that the 24th meeting would be held on 2 November 2015 at 4:30 pm to continue the discussion on the CSAs proposed by Mr WONG Yuk-man.

(Post-meeting note: With the concurrence of the Chairman, the next meeting was subsequently rescheduled to 8:30 am on 2 November 2015.)

III. Any other business

7. There being no other business, the meeting ended at 6:27 pm.

**Proceedings of the 23rd meeting of
Bills Committee on Copyright (Amendment) Bill 2014
on Monday, 19 October 2015, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Confirmation of minutes			
000330 – 000355	Chairman	Confirmation of minutes of meeting on 23 September 2015 (LC Paper No. CB(4)17/15-16).	
Agenda item II – Meeting with the Administration			
000356 – 002140	Chairman Administration	Briefing by the Administration on its response to members' proposed Committee Stage amendments ("CSAs") and deputations' submissions.	
002141 – 003700	Chairman Mr CHAN Chi-chuen Mr WONG Yuk-man Mr SIN Chung-kai Ms Claudia MO Mr MA Fung-kwok Administration	<p>Briefing by Mr CHAN Chi-chuen on his proposed CSAs regarding fair use (LC Paper Nos. CB(4)48/15-16(03)).</p> <p>Discussion on Mr CHAN Chi-chuen's proposed CSAs regarding fair use.</p> <p>Mr CHAN Chi-chuen said that the fair use model of the United States ("US") was also adopted by other jurisdictions in Asia, including South Korea, the Philippines and Singapore, to further protect users' use of copyright works.</p> <p>Mr SIN Chung-kai opined that he saw no harm in introducing the fair use model in Hong Kong at this juncture. Ms Claudia MO shared a similar view and said that even if the so-called open-ended fair use model which might affect the interests of copyright owners was adopted in Hong Kong, additional CSAs could be introduced in the Bill to protect the interest of the copyright owners.</p> <p>The Administration advised that even in the jurisdictions where the US-style fair use models were adopted, the precise scope and formulation of the relevant exceptions for fair use incorporated in the legislation varied from one jurisdiction to another. The Administration added that the established fair dealing regime under the Copyright Ordinance (Cap. 528) together with the extended scope and number of fair dealing exceptions introduced in the Bill were suitable and appropriate in the light of Hong Kong's current situation. This approach would meet the objective of striking a fair balance between the interests of different stakeholders. A shift to fair use would involve a fundamental change to</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>the copyright legal framework of Hong Kong, and should not be introduced at this stage. Any major changes to the existing copyright regime should only be introduced after a due process of thorough public consultation and discussion in the Legislative Council ("LegCo").</p> <p>Mr MA Fung-kwok queried why the proposed CSAs from Mr CHAN Chi-chuen should apply to an unpublished work.</p>	
003701 – 012300	<p>Chairman Mr WONG Yuk-man Mr MA Fung-kwok Assistant Legal Adviser 4 ("ALA") Administration</p>	<p>Briefing by Mr WONG Yuk-man on his additional proposed CSAs regarding the long title of the Bill which were tabled at the meeting (LC Paper No. CB(4)79/15-16(01)).</p> <p>Mr WONG Yuk-man said that according to paragraph 2.1.7 of the <i>Drafting Legislation in Hong Kong – A Guide to Styles and Practices</i> ("the Guide") published by the Law Drafting Division of the Department of Justice, the long title had to be wide enough to embrace the whole of the contents of the bill and was usually drafted to be specific enough to give fair notice of the subject of the bill. He was of the view that the current drafting of the long title of the Bill failed to cover any consequential amendments and was not consistent with the styles and practices as set out in the Guide. The CSAs proposed by him aimed to rectify this problem.</p> <p>Mr MA Fung-kwok opined that the reference to the phrase "related matters" used in the long title of the Bill should have covered any "consequential amendments" and there was no need to amend the long title as proposed by Mr WONG Yuk-man.</p> <p>The Administration advised that according to Rule 50(3) of the Rules of Procedure ("RoP") of LegCo, a bill should be given a long title setting out the purposes of the bill in general terms. According to Rule 57(4)(a) of RoP, an amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it was related. When considering whether a proposed amendment was within the scope of a bill, all relevant factors had to be taken into account, including but not limited to the long title, the clauses of the bill, the explanatory memorandum and the LegCo Brief on the bill. The Administration considered that the long title was in order and had already covered any "consequential amendments". There was no need to amend the long title as proposed by Mr WONG Yuk-man.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>ALA pointed out that Rule 58(9) of RoP stated that, "if any amendment to the title of the bill is made necessary by an amendment to the bill, it shall be made at the conclusion of the proceedings detailed [in Rules 58(1) to (8)], but no question shall be put that the title (as amended) stand part of the bill".</p> <p>ALA added that according to paragraph 14.4.8 of the Guide, most amending bills made consequential amendments to other enactments. It was not strictly necessary for the long title to reflect that.</p> <p>Mr WONG Yuk-man requested the Chairman to propose, on behalf of the Bills Committee, CSA to the long title by deleting "for related matters" and substituting "to provide for related and consequential amendments".</p> <p>The Chairman sought members' views on Mr WONG's request. Four members were in support of Mr WONG's proposal and two members indicated disagreement. The Chairman said that he would abide by the Bills Committee's decision, and would move the proposed CSA to the long title of the Bill if it would meet the requirements under the prevailing rules and procedure.</p>	
012301 – 015620	Chairman Mr WONG Yuk-man Mr CHAN Chi-chuen Administration	<p>Briefing by Mr WONG Yuk-man on his proposed CSAs (LC Paper No. CB(4)48/15-16(02)).</p> <p>Discussion on Mr WONG Yuk-man's proposed CSAs.</p> <p>The Administration explained that some CSAs proposed by Mr WONG would alter the legal meanings of the original provisions and would deviate from the respective policy intent, or would otherwise result in uncertainty, ambiguity or inconsistency in the legislation. The Administration would not be able to take up such CSAs.</p> <p>Mr CHAN Chi-chuen responded to an earlier query by Mr MA Fung-kwok and explained the circumstances under which his proposed CSAs should apply to an unpublished work.</p> <p>Mr CHAN Chi-chuen requested the Chairman to move his proposed CSAs on behalf of the Bills Committee. The Chairman suggested that Mr CHAN should raise his request at the next meeting.</p>	

Time marker	Speaker	Subject(s)	Action required
015621 – 015831	Chairman	Date of next meeting	

Council Business Division 4
Legislative Council Secretariat
18 December 2015