

立法會

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Report of the Bills Committee on Copyright (Amendment) Bill 2022

Purpose

This paper reports on the deliberations of the Bills Committee on Copyright (Amendment) Bill 2022 (“the Bills Committee”).

Background

2. From 2006 to 2013, the Administration conducted a total of three rounds of major consultations on strengthening copyright protection in the digital environment in Hong Kong, and introduced the Copyright (Amendment) Bill 2011 (“the 2011 Bill”) and the Copyright (Amendment) Bill 2014 (“the 2014 Bill”) to the Legislative Council (“LegCo”) in 2011 and 2014 respectively. However, the legislative processes of the two bills could not be completed before the end of the term of office of the respective LegCo.

3. The Administration conducted a three-month public consultation from 24 November 2021 to 23 February 2022 on updating Hong Kong’s copyright regime and strengthening copyright protection in the digital environment. The Administration proposed in the consultation to use the key legislative proposals of the 2014 Bill as the basis of amending the Copyright Ordinance (Cap. 528). Taking into account the views received during the public consultation, the Administration has included such legislative proposals in the Copyright (Amendment) Bill 2022 (“the Bill”), and made suitable adjustments and clarifications in light of the views of the copyright owners on the scope of coverage of the proposed communication right, so as to reflect the legislative intent more accurately.

The Copyright (Amendment) Bill 2022

4. The Bill was published in the Gazette on 27 May 2022 and received its First and Second Reading at the LegCo meeting of 8 June 2022. The Bill seeks to amend Cap. 528 to provide for:

- (a) the rights to communicate a work or performance to the public by a copyright owner or performer;
- (b) limiting an online service provider (“OSP”)’s liability;
- (c) acts that may be done without infringing copyright or performers’ rights;
- (d) additional factors in considering whether additional damages should be awarded in an action for infringement;
- (e) investigation, seizure, disposal and other powers for certain offences in relation to the circumvention of effective technological measures that protect copyright works from infringement; and
- (f) related and miscellaneous amendments.

5. Details of the major provisions of the Bill are set out in paragraph 25 of the LegCo Brief (File Ref.: CITB CR 07/09/28), and paragraphs 4 to 15 of the Legal Service Division Report on the Bill (LC Paper No. LS41/2022).

Commencement

6. The Bill, if passed, will come into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.

The Bills Committee

7. At the House Committee meeting on 10 June 2022, Members agreed to form a Bills Committee to scrutinize the Bill. Hon MA Fung-
kwok was elected Chairman of the Bills Committee. The membership list of the Bills Committee is in **Appendix 1**.

8. The Bills Committee has held three meetings with the Administration and invited written views from the public. A list of the organizations and individuals which/who have provided written views to the Bills Committee is in **Appendix 2**. At the request of the Bills Committee, the Administration has provided written responses to the submissions (LC Paper No. CB(1)615/2022(01)).

Deliberations of the Bills Committee

9. Members of the Bills Committee generally support the Bill having regard to the objectives it seeks to achieve. The deliberations of the Bills Committee are summarized in the ensuing paragraphs. The major issues deliberated by the Bills Committee include:

- (a) impact of the legislative proposals of the Bill on freedom of speech and expression;
- (b) communication right;
- (c) meaning of copying “an insubstantial part” of the underlying works;
- (d) revised and new copyright exceptions;
- (e) safe harbour;
- (f) factors for determining what amounts to “such an extent as to affect prejudicially the copyright owners”;
- (g) provisions concerning rental rights in comic books;
- (h) other issues covered in the public consultation;
- (i) publicity on the Bill; and
- (j) other law drafting issues.

Impact of the legislative proposals of the Bill on freedom of speech and expression

10. The Bills Committee has discussed whether the legislative proposals of the Bill will affect the ordinary online behaviours of the public, such as sharing audio-visual works communicated by others on the Internet, and whether the imposition of criminal liabilities relating to the communication right proposed in the Bill will affect freedom of speech and expression. The Administration has advised that the existing Cap. 528 already provides for criminal offences for distributing infringing copies of works. The Bill does not propose to introduce additional criminal liabilities for distributing infringing copies of works. The proposed inclusion of criminal offence provisions aims to tie in with the legislative proposal to introduce a technology-neutral exclusive communication right, which will impose corresponding criminal liability for unauthorized communication of copyright works to the public under certain circumstances, similar to that imposed for the existing criminal offence of distributing infringing copies of works.

11. Moreover, the new fair dealing exceptions proposed in the Bill generally cover common and reasonable online activities for the purposes of parody, satire, caricature and pastiche, commenting on current events or quotation. These proposals are adequate to address the major concerns of copyright users regarding the use of copyright works for the aforesaid purposes in the digital environment.

Communication right

Proposed new section 28A—Infringement by communicating to public

12. Members have noted that clause 14 of the Bill proposes to add a new section 28A to Cap. 528 to elaborate on the new copyright restricted act of communication of a work to the public, with clarifications on the scope of what constitutes the act of “communication to the public”. The proposed new section 28A(1) provides that the communication of a work to the public is an act restricted by the copyright in the work. The proposed new section 28A(4) provides that a person is considered to have communicated a work to the public if the person has determined the content of the communication. The proposed new section 28A(5) provides that a person does not determine the content of a communication only because the person takes one or more steps for the purpose of gaining access to what is made available by someone else in the communication or receiving the electronic transmission of which the communication consists.

13. Members have asked whether “taking of steps in respect of a communication” mentioned in the proposed new section 28A(5) in the Bill include forwarding of hyperlinks. The Administration has explained that the mere forwarding of a hyperlink or access to the content made available by someone else in the communication, or the mere provision of facilities for enabling or facilitating the communication of a work to the public will not constitute an act of “communicating to the public”.

14. Members have further enquired whether a person who deliberately takes steps in a systematic and planned manner to enable a large number of persons to gain access to an infringing copyright work via the link provided or forwards the link on a large scale may be exempted from legal liability under the proposed new section 28A(5). The Administration has explained that the mere act of providing a link for someone else to gain access to what is made available in the communication does not, by itself, amount to “determining the content of a communication” under the proposed new section 28A(5). Whether the aforesaid act involves any copyright infringement depends on the general circumstances of the case involving the act, such as whether the act constitutes “authorizing” other persons to do an infringing act. The relevant factors set out in the proposed new section 22(2A) may be taken into consideration when determining whether an “authorization” has been granted.

15. Some members have pointed out that even if a person determines the content of a communication, the extent of the act may vary. In the event that a person only extracts part of the content of a work and then communicates it to someone else, and another person modifies the content of the work and communicates it to someone else, both acts may amount to “determining the content of a communication”, but they should be treated differently. The Administration has explained that if a person puts the copy of a work on a server for distribution, regardless of whether the content of the work has been modified, it can be deemed to fall under the definition of “a person having determined the content of the communication” under the proposed new section 28A(4), and such an act can be regarded as having communicated the work to the public. Referring to a case of the Australian court of appeal in 2005, the Administration has explained that if a person aggregates links, then makes curation and posts the links on the Internet to allow others to access infringing contents, such acts may, subject to the evidence and circumstances of the case, be regarded as “authorizing” others to do an infringing act, although they do not by themselves constitute “communication of the work to the public”.

The legal effect of the inclusion of the example in the Bill

16. The Legal Adviser to the Bills Committee (“Legal Adviser”) has enquired about the legal effect of the inclusion of the example in the proposed new section 28A(5) and why it is considered to be appropriate for the purposes of the Bill. Members have also enquired about previous decided court cases in relation to the legal effect of examples and notes in the interpretation of the law. The Administration has responded that the drafting follows the guidelines laid down in “Drafting Legislation in Hong Kong—A Guide to Styles and Practices” published by the Department of Justice. The Administration considers that the proposed example serves to help readers better understand the proposed new section 28A(5), which is technical in nature. Such example is for illustration purposes only and does not seek to cover all the scenarios. It has the same effect as the text of the provision it illustrates. As regards the legal effect of notes, as stated in the proposed new section 198(3A), they serve to provide information only and have no legislative effect.

Proposed new section 118(8D)—Defence

17. Members have noted that the proposed new section 118(8D) in the Bill provides that it is a defence for the person charged with an offence (relating to the communication of a work to the public) under the proposed new section 118(8B) to prove that the person did not know and had no reason to believe that, by communicating the work in question in the circumstances described in section 118(8B)(a) or (b), the person was infringing the copyright in the work.

18. Some members have questioned whether the aforesaid provision requires the person charged with an offence under the proposed new section 118(8B) to prove his innocence in order to be exempted from criminal liability and whether the formulation of the provision contradicts the common law principle of “presumption of innocence”. The Administration has explained that the proposed new section 118(8D) aims to provide a defence that can be relied upon by the accused who is subject to criminal prosecution under Cap. 528 for the offences relating to the communication of works to the public. Ultimately, the burden is on the prosecution to prove that the accused is guilty of a crime beyond all reasonable doubt. This provision mirrors the defence provision concerning the criminal offences of making, distributing or dealing with infringing copies of works, etc. under the existing section 118(3) of Cap. 528 without violating the principle of “presumption of innocence”.

Comparison with the copyright legislation of other places

19. Some members have enquired about the comparison between the concept of “communication right” and its related provisions (i.e. the proposed new section 28A) proposed to be introduced in the Bill and the relevant provisions in the copyright legislation of the United States (“US”). The Administration has advised that like many other overseas jurisdictions which have already introduced a “communication right”, the provisions on “communication right” proposed in the Bill is modelled on the World Intellectual Property Organization Copyright Treaty. Some provisions of the Copyright Act of the US relating to “public performance” are similar to the concept of “communication right” as proposed in the Bill.

Meaning of copying “an insubstantial part” of the underlying works

20. Members have noted that pursuant to section 23(1) and (4) of Cap. 528, the copying of the work is an act restricted by the copyright in every description of copyright work. Copying in relation to a film, television broadcast or cable programme includes making a photograph of the whole or any substantial part of any image forming part of the film, broadcast or cable programme. Some members have requested the Administration to explain the meaning of “a substantial part” and “an insubstantial part”. The Administration has pointed out that in general, the court in which the infringement case is tried will determine whether the reproduction involves “a substantial part” or “an insubstantial part” of the underlying work, having regard to the type of copyright works, the portion reproduced and the overall circumstances.

Revised and new copyright exceptions

Parody, satire, caricature and pastiche, commenting on current events or quotation

21. Some members have suggested that the Administration should provide interpretation and guidelines for the fair dealing exceptions relating to the use of copyright works for the purposes of parody, satire, caricature and pastiche in the proposed new section 39A and the use of copyright works for the purposes, among others, of commenting on current events or quotation in the revised section 39 in the Bill, with a view to clarifying the application of such exceptions.

22. The Administration has advised that, having examined in detail the proposed new fair dealing exceptions and their application, considers that they should be given their own ordinary meaning without the need for

definition, thereby allowing appropriate flexibility for the court to decide in case of litigation and providing more leeway for copyright users. Taking the new fair dealing exceptions relating to the use of a copyright work for the purposes of parody, satire, caricature or pastiche as an example, the Administration has made reference to the relevant exception provisions in the copyright legislation of a number of overseas jurisdictions such as the United Kingdom (“UK”), Australia, Canada, New Zealand, Singapore and the European Union, when drafting the Bill.

Communication of copies of works by educational establishments

23. Members have noted that under the proposed new section 45(1A) in the Bill, a person authorized by an educational establishment may, without infringing copyright, communicate to an authorized recipient a copy of a work specified in the Ordinance, subject to compliance with the prescribed conditions, one of which being that the establishment takes all reasonable steps to ensure that the authorized recipients do not make any copy or further transmission of the communication as stipulated in section 45(1A)(b)(ii).

24. Members requested the Administration to explain and provide examples on the steps or measures that an educational establishment should take in order to comply with the “all reasonable steps” requirement. Some other members have enquired whether appropriate examples and notes should be included in the Bill to assist the court in considering if certain measures or steps can satisfy the “all reasonable steps” criterion. The Administration have pointed out that the Education Bureau (“EDB”) has been providing the education sector with information and guidelines to help schools understand and deal with education-related copyright issues. The Intellectual Property Department will continue to maintain communication with EDB and provide additional guidelines for the education sector where necessary.

25. Some members have pointed out that students or parents may, for various reasons, transmit to each other copyright works received from an educational establishment during distance learning. Members enquired whether students or parents may break the law inadvertently due to such acts.

26. The Administration has responded that teachers and students may fall within the meaning of “authorized recipients” under the proposed new section 45(5). For students who are minors, their parents and guardians may exercise various statutory rights on behalf of these students under the law. On this basis, communication of copies of teaching materials, etc., among students, parents or teachers will also be covered by the relevant exception subject to compliance with the conditions in section 45(1A).

Moreover, according to the existing sections 38 and 41A of Cap. 528, as long as copies of works communicated among students and teachers are used for the purposes of teaching, research or private study and in compliance with the “fair dealing” requirement, such communication is protected by the existing exceptions.

Permitted acts in teaching activities

27. The Administration has also advised that the existing Cap. 528 contains over 60 sections specifying a number of permitted acts (where authorization is not required) which may be done in relation to the reasonable use of copyright works of others without attracting civil or criminal liability (such as for the purposes of research, private study, education, criticism, review and reporting current events). To tie in with the introduction of “communication right”, the Bill proposes to revise and expand the scope of permitted acts as appropriate to maintain the appropriate balance between copyright protection and reasonable use of copyright works (particularly the use of copyright works for specific purposes in the digital environment).

28. Members have enquired whether teaching activities of a commercial nature (e.g. teaching activities provided by private tutorial schools) can be regarded as education-related permitted acts under Cap. 528. The Administration has responded that as far as some statutory copyright exceptions are concerned, the relevant provisions of Cap. 528 allow members of the public to make reasonable use of copyright works for the purposes of research, private study, education, criticism, review and reporting current events, etc., subject to compliance with the conditions of fair dealing. In determining whether the dealing is a fair dealing, the court will take into account all the circumstances of the case, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature. If the copyright owner has set up a licensing scheme for the use of copyright works by educational establishments, some statutory copyright exceptions will not be applicable, and the use of copyright works should be subject to the requirements stipulated in the terms and conditions of the relevant licensing scheme.

Use of copyright musical works of others

29. Some members have enquired about the copyright-related liability involved in using copyright musical works of others as the background music for production of online videos. The Administration has advised that for fair access to and uses of copyright works by users, Cap. 528 specifies a number of permitted acts which may be done in relation to the use of copyright works of others without attracting civil or criminal liability. As

to whether an act or the use of a copyright work falls within the scope of application of “permitted act”, it mainly depends on the purpose of the act. The new fair dealing exceptions proposed in the Bill, in general, cover a wide range of day-to-day Internet activities which involve the use of a copyright work for the purposes of parody, satire, caricature, pastiche, commenting on current events or quotation, etc. The copyright owners of some online musical works may specify whether the use of the works by others is permitted. As regards other copyright musical works, it would be reasonable and prudent for members of the public to enquire with the organizations concerned about the details of the authorization prior to using them.

Designated libraries, museums and archives

30. Members have enquired whether the Administration will draw up a list of “designated libraries, museums and archives” as referred to in the proposed new section 118(2E) and (2F) in the Bill. The Administration has advised that pursuant to the proposed new section 118(2FB), upon passage of the Bill and implementation of the Amendment Ordinance, the Secretary for Commerce and Economic Development may, by notice published in the Gazette, designate “libraries, museums or archives” as required under section 118(2E) and (2F). The Administration will consult stakeholders on the proposals for designating libraries, museums or archives in an appropriate time.

Temporary reproduction by online service providers

31. In respect of the permitted act of temporary reproduction by OSPs under the proposed new section 65A in the Bill, members have noted that one of the prescribed conditions as stipulated in the proposed new section 65A(1)(c) is that the storage of a copy of the work by an OSP is temporary. Members have asked whether, after the stored copy of the work is removed, the OSP is still required to retain the proof of removal or notify the copyright owner concerned so as to prove that the OSP has complied with the requirement of the proposed new section 65A(1)(c); and whether an OSP will be held legally liable if the OSP purports that he or she has removed the temporarily stored copy at a certain time but has not actually done so, and the copy in question is subsequently communicated to someone else.

32. The Administration has explained that the new section 65A is proposed to align with the actual operation of OSPs. As information on the Internet is updated from time to time, general information is only stored temporarily. The proposed new section 65A(1)(d) requires an OSP to update the database in which a copy of the work is stored in accordance with

reasonable industry practice. The proposed new section 65A(1)(f) also requires an OSP to act promptly to remove the copy in the event that it comes to the OSP's knowledge that the work has been removed from the original source from which the copy was made. The Bill stipulates that the copyright in a work is not infringed if the OSP complies with the aforesaid and other requirements set out in the proposed new section 65A(1).

Safe harbour

33. Some members have relayed the concern of OSPs that the implementation of the safe harbour regime may bring severe impact on their operation. In particular, the implementation of the relevant measures under the safe harbour regime will probably increase the workload and burden of OSPs. The Administration has responded that when drafting the safe harbor provisions, it has taken into account the views of different stakeholders and the practices of other overseas jurisdictions. The proposed provisions (i.e. the new Division IIIA proposed to be added to Part II) has already incorporated various safeguards to address the concerns of different stakeholders. Similar safe harbour provisions are also prescribed in the copyright legislation of a number of overseas jurisdictions (such as Australia, Singapore, the UK and the US) to incentivize OSPs to take reasonable steps to limit or stop infringing activities on their service platforms.

34. Members have urged the Administration to expeditiously draw up the Code of Practice on safe harbour to provide practical guidelines and procedures for OSPs to follow after receiving a copyright infringement notification. The Administration has advised that it will continue to engage relevant stakeholders and consider their views so as to improve the Code of Practice and the operational details of the safe harbour regime.

35. Members have noted that under the safe harbour regime, OSPs, after being notified by copyright owners or complainants of any copyright infringement that occurs on their service platforms, are required to "take reasonable steps to limit or stop the infringement as soon as practicable" (the proposed new section 88B(2)). Such steps include removing the relevant material or disabling access to the material, etc. on their service platforms. On the other hand, affected subscribers may give counter notices to dispute measures taken by OSPs such as removing relevant material or disabling access to the material, etc. Upon receipt of such counter notices, OSPs should notify the copyright owners or the complainants concerned. Unless the copyright owners or the complainants concerned have commenced proceedings for infringement of copyright in Hong Kong, OSPs are required to take reasonable steps within a reasonable time to reinstate the material, or

cease disabling access to the material or activity pursuant to the proposed new section 88H.

36. The Legal Adviser has sought clarifications from the Administration on the justifications for using the phrase “as soon as practicable” in the proposed new provisions (e.g. the proposed new section 88B(2)(a)) instead of the term “expeditiously” which is adopted in other jurisdictions to which the Administration has made reference. The Administration has explained that in view of the local circumstances, notably the conflicting views between copyright owners and OSPs respectively, it is inappropriate to wholly adopt the corresponding approach in other jurisdictions. The Administration considers that using the phrase “as soon as practicable” in the proposed new section 88B(2)(a) will strike a proper and reasonable balance between the legitimate interests of copyright owners and OSPs.

37. The Legal Adviser has pointed out that the Code of Practice is not subsidiary legislation and is not subject to the scrutiny of LegCo. Members have raised concerns in this respect, as Members may then be unable to ensure that the Code of Practice can provide clear guidelines to OSPs. Members also consider that the safe harbour regime proposed under the Bill is rather complicated, and have enquired whether the implementation details and the legal liabilities involved will be elaborated in the Code of Practice to be issued by the Administration in future.

38. The Administration has explained that the legal liabilities of OSPs in respect of the safe harbour provisions have been provided for in the Bill. The Code of Practice does not provide for the relevant liabilities, and OSPs may follow the guidelines set out in the Code of Practice on a voluntary basis when complying with the safe harbour provisions. The Administration has added that the draft Code of Practice, which was prepared after consultation with stakeholders, had been examined by the Bills Committee on the 2011 Bill. When the 2014 Bill was scrutinized by LegCo, it had also submitted the draft Code of Practice to the then Bills Committee which had raised no objection to it.

39. Members have sought clarifications from the Administration as to whether the “proceedings” mentioned in the safe harbour provisions under the Bill include both civil and criminal proceedings. The Administration pointed out that the proceedings referred to in the Bill include both civil and criminal proceedings. However, if copyright owners or complainants have only lodged complaints to law enforcement agencies such as the Customs and Excise Department, that may not be regarded as having commenced the proceedings.

Factors for determining what amounts to “such an extent as to affect prejudicially the copyright owners”

40. The Legal Adviser has pointed out that the proposed new sections 31(3), 118(2AA) and 118(8C) in the Bill set out the factors to be considered by the court in determining what amounts to “such an extent as to affect prejudicially the copyright owner”, but the formulation of the proposed new section 31(3) is quite different from that of the proposed new sections 118(2AA) and 118(8C). According to the Administration’s explanation (LC Paper No. CB(1)554/2022(01)) provided in response to the relevant enquiries of the Legal Adviser (LC Paper No. CB(1)436/2022(01)), the same list of non-exhaustive factors is maintained in the proposed new section 31(3) for determining the civil liability for prejudicial distribution of infringing copies of copyright works as in the corresponding legislative proposals under the 2011 Bill and the 2014 Bill. The non-exhaustive factors in the proposed new sections 118(2AA) and 118(8C) are modelled on the relevant provisions in the corresponding legislative proposals under the 2014 Bill to further refine the criminal provisions on the non-exhaustive factors for determining what constitutes “prejudice”, which can reflect more clearly the Administration’s policy objective of targeting large-scale copyright piracy. The legislative proposals concerned also had the support of the Bills Committee on the 2014 Bill.

41. Members have questioned whether the aforesaid provisions should state clearly that section 31(3) does not interact with sections 118(2AA) and 118(8C), so as to avoid confusion and doubts in criminal procedures. The Administration has explained that the proposed new section 31(3) provides for a list of non-exhaustive factors to be considered by the court in determining the civil threshold of “affecting prejudicially”, while the proposed new sections 118(2AA) and 118(8C) provide for a list of non-exhaustive factors to be considered by the court in determining the criminal threshold of “affecting prejudicially”. The court will apply the relevant provisions respectively in making decisions for civil or criminal cases. The Administration is of the view that the court should understand the legislative intent of the proposed new sections 118(2AA) and 118(8C), which is to target large-scale copyright piracy, and would not be confused when using the relevant provisions.

Provisions relating to rental rights in comic books

42. Members have noted that the Bill seeks to repeal certain provisions which have not come into effect, and references to section 25(1)(e) and (f) of Cap. 528 in certain provisions which have not come into effect, in the

Copyright (Amendment) Ordinance 2007 relating to rental rights in comic books, as those provisions are considered to be out-of-date and no longer required.

43. Some members have asked whether the other provisions of the amended Cap. 528 would be sufficient to deal with situations relating to comic books rental if such situations appear again in the market after the passage of the Bill. The Administration has explained that the provisions relating to comic books rental in the Copyright (Amendment) Ordinance 2007 have not yet come into force because the relevant stakeholders need to first introduce rental licensing schemes for comic books. The Administration has learnt from its consultation with the relevant industries that the industries have no intention to formulate the licensing schemes, and also agree to the Administration's move to repeal the relevant provisions.

Other issues covered in the public consultation

Combating illicit streaming devices

44. Members have urged the Administration to proactively step up its efforts in combating illicit streaming devices ("ISDs"). Members are concerned that in addition to those ISDs sold in the market, there are many websites which provide software applications for self-downloading by users to their neutral devices, allowing users to watch and/or listen to infringing audio-visual materials available on the Internet through streaming. Members have urged the Administration to explore ways to deal with the problems about these websites and software applications, especially when such websites and software applications are provided through overseas servers.

45. The Administration has advised that in respect of combating ISDs, the existing Cap. 528 already contains a number of provisions to deal with online copyright infringement activities, which can be applied to combat ISDs under suitable circumstances. When the proposed new provisions relating to the communication right are incorporated into the local statutory framework, coupled with the proposed new provisions elaborating on the meaning of "authorization" of copyright infringement as proposed in the Bill, persons involved in ISD cases can be held accountable for the relevant civil and/or criminal liabilities by stakeholders, depending on the circumstances and evidence of individual cases.

46. The Administration has pointed out at present, most overseas jurisdictions do not have specific provisions relating to ISDs (including set-top boxes and relevant software applications) in their copyright legislation,

and to the knowledge of the Administration, among the common law jurisdictions, so far only Singapore and Malaysia have introduced ISD specific provisions to their copyright legislation, but the effectiveness of such legal provisions has yet to be observed. The Administration will keep in view the latest developments on dealing with ISDs in overseas jurisdictions.

47. Members are of the view that the Administration should be more forward-looking in introducing legislation to regulate ISDs. It needs not wait for other jurisdictions to implement the relevant legislation and regulations before considering whether to adopt the corresponding legislation and regulations. Besides, some members have pointed out that the industries have made it clear to the Government that it should introduce legislation to regulate ISDs as soon as possible. Although the Administration has explained that copyright owners can take action against copyright infringement involving ISDs, etc. pursuant to the existing legislation, the cost of initiating legal proceedings is high. Members consider that it is incumbent upon the Government to safeguard the interests of copyright owners.

48. The Administration has responded that the Bill includes provisions that enable copyright owners to seek additional damages more easily. Different stakeholders in the society have yet to reach a consensus on issues relating to, among others, the regulation of ISDs. The Administration will keep in view the developments in this regard after the passage of the Bill and implementation of the Amendment Ordinance.

Issues relating to the copyright, etc. of works created by artificial intelligence

49. Some members have commented that the Administration should further study the copyright issues relating to works created by artificial intelligence and introduce specific copyright exceptions for text and data mining. The Administration has advised that upon passage of the Bill and implementation of the Amendment Ordinance, it will launch a new round of review to examine the copyright issues raised by different stakeholders that cannot be dealt with in the current legislative amendment exercise.

Statutory damages regime

50. In light of the Administration's response that it has no intention to introduce statutory damages under Cap. 528 at this stage, members have suggested that the Administration should provide more guidelines for the industries to assist copyright owners in seeking reasonable compensation for copyright infringements more effectively. In response, the Administration

has indicated that it will continue to carry out relevant publicity and public education programmes. In addition, the Intellectual Property Department and the Law Society of Hong Kong have been collaborating over the years to provide free legal advice services on intellectual property rights, including advice services on copyright protection.

Publicity on the Bill

51. Members have indicated that the Administration should step up publicity of the Bill so that the public would not misunderstand the legislative proposals. The Administration has responded that it will continue to step up publicity efforts to explain the contents of the Bill to the public, so as to allay their concerns about the possible impact of the legislative proposals on freedom of speech and expression.

Other law drafting issues

Use of “報道” or “報導”

52. Some members have queried the proposal of the Bill which seeks to amend the references to “報導” in various sections of the existing Cap. 528 to “報道”, and pointed out that many media organizations currently use the term “報導” to describe the dissemination of information on current affairs. They have therefore suggested that the Administration should adopt the wording that has been widely used so as to avoid public doubts. The Administration has explained that the issue was brought up by the Bills Committee on the 2014 Bill. Amendments were proposed by the Administration after careful consideration. The terms “報道” and “報導” are found in various Chinese dictionaries and they generally mean reporting news to the public. Both terms are also widely used in society. However, for dictionaries which include both terms, most of them use “報道” as their main entry which may suggest that “報道” is more commonly used nowadays. For this reason, the term “報道” is considered more appropriate for the purposes of those provisions in Cap. 528 in which references are made to the term. Members have suggested that the Secretary for Commerce and Economic Development should explain clearly the underlying reasons and considerations for such an amendment in his speech at the resumption of the Second Reading debate on the Bill.

Enquiries made by the Legal Adviser to the Bills Committee on the contents of the Bill and the Administration's responses

53. The Legal Adviser has made enquiries with the Administration on the following issues relating to the Bill: the proposed new right of communication to the public, the proposed new communication offence, the proposed new or revised permitted acts and the safe harbour regime, etc. The Administration has given its reply to the enquiries made by the Legal Adviser. The enquiries and the Administration's reply are in LC Paper Nos. CB(1)436/2022(01) and CB(1)554/2022(01) respectively. Members have taken note of the contents of the relevant papers.

Proposed amendments to the Bill

54. The Bills Committee has completed scrutiny of the Bill. The Bills Committee and the Administration will not propose amendments to the Bill.

Resumption of the Second Reading debate on the Bill

55. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 7 December 2022.

Consultation with the House Committee

56. The Bills Committee reported its deliberations to the House Committee on 25 November 2022.

Bills Committee on Copyright (Amendment) Bill 2022

Membership list

Chairman	Hon MA Fung-kwok, GBS, JP
Deputy Chairman	Hon Duncan CHIU
Members	Hon Mrs Regina IP LAU Suk-ye, GBM, GBS, JP Hon Paul TSE Wai-chun, JP Hon Elizabeth QUAT, BBS, JP Hon Holden CHOW Ho-ding Hon YUNG Hoi-yan, JP Dr Hon Johnny NG Kit-chong, MH Hon LAM San-keung, JP Hon Dennis LEUNG Tsz-wing, MH Hon LEUNG Man-kwong, MH Hon Kenneth LEUNG Yuk-wai, JP Hon Sunny TAN Revd Canon Hon Peter Douglas KOON Ho-ming, BBS, JP Hon Kenneth FOK Kai-kong, JP (Total : 15 Members)
Clerk	Mr Daniel SIN
Legal Adviser	Ms Doreen WAN

Bills Committee on Copyright (Amendment) Bill 2022

**List of organizations/individuals which/whom have provided
written views to the Bills Committee**

1. Hong Kong Copyright Forum
2. Asian Licensing Association
3. Hong Kong Broadband Network Group
4. The Law Society of Hong Kong
5. Asia Internet Coalition
6. 楊志峰先生
7. Vobile Group Limited
8. Hong Kong Reprographic Rights Licensing Society
9. Hong Kong Bar Association