

《2014 年版權(修訂)條例草案》

委員會審議階段

由黃毓民議員動議的修定案

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13

加入—

**“28A. 向公眾以電子傳播侵犯版權**

- (1) 向公眾傳播某作品(不論屬任何類別)，屬受該作品的版權所限制的作為。
- (2) 在本部中，凡提述向公眾傳播某作品，即提述向公眾以電子傳播該作品，包括——
  - (a) 將該作品廣播；
  - (b) 將該作品包括在有線傳播節目服務內；及
  - (c) 向公眾提供該作品。
- (3) 在本部中，凡提述向公眾提供某作品，即提述以有線或無線的方式提供該作品，而提供的方式，使在香港或其他地方的公眾人士可於其各自選擇的地點及時間觀看或收聽或接收該作品(例如透過互聯網提供作品)。
- (4) 任何人僅提供設施，使某作品得以向公眾傳播或利便某作品向公眾傳播，本身並不構成向公眾傳播該作品的作為。
- (5) 如有關傳播的內容並非由某人決定，則該人不屬向公眾傳播作品。
- (6) 就第(5)款而言，任何人不會只因為下述目的採取一個或多於一個步驟，而屬決定某項傳播的內容——
  - (a) 觀看或收聽或接收他人在該項傳播中提供傳播的內容；或

(b) 接收構成該項傳播的電子傳送信息。”。

Copyright (Amendment) Bill 2014

**Committee Stage**

Amendments to be moved by the Honourable Wong Yuk Man

<u>Clause</u>	<u>Amendment Proposed</u>
13	<p>By adding—</p> <p><b>“28A. Infringement by electronic communicating to public</b></p> <p>(1) The communication of a work of any description to the public is an act restricted by the copyright in the work.</p> <p>(2) References in this Part to the communication of a work to the public are to the electronic communication of the work to the public, including—</p> <p>(a) the broadcasting of the work;</p> <p>(b) the inclusion of the work in a cable programme service; and</p> <p>(c) the making available of the work to the public.</p> <p>(3) References in this Part to making a work available to the public are to making the work available, by wire or wireless means, in such a way that members of the public in Hong Kong or elsewhere may access the work from a place and at a time individually chosen by them (such as by making works available through the Internet).</p> <p>(4) The mere provision of facilities by any person for enabling or facilitating the communication of a work to the public does not of itself constitute an act of communicating the work to the public.</p>

- (5) A person does not communicate a work to the public if the person does not determine the content of the communication.
- (6) For the purposes of subsection (5), a person does not determine the content of a communication only because the person takes one or more steps for the purpose of—
  - (a) gaining access to what is made available by someone else in the communication; or
  - (a) receiving the electronic transmission of which the communication consists.” .

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14	在第 29(1)條中，在中文文本中，刪去“是受文學”而代以“屬受文學”。
14	在第 29(2)條中，在中文文本中，刪去“第 23 至 28 條或第(1)款所指定的作為中的任何作為，亦屬受該等作品的版權所限制的作為。就此而言，在作出該作為時該改編本是否已經以書面或其他方式記錄，並不具關鍵性”而代以“第 23、24、25、27 或 28A 條或第(1)款所指定的作為中的任何作為，亦屬受該等作品的版權所限制的作為。就此而言，在作出該作為時該改編本是否已經以書面或其他方式記錄，並非關鍵”。
14	在第 29(3)條中，在“改編本”的定義中，刪去““改編本””而代以“ <b>改編本</b> ”。
14	在第 29(3)條中，在英文文本中，刪去所有“in relation to”而代以“for”。
14	在第 29(3)(a)(ii)條中，在中文文本中，刪去“視屬何情況而定”
14	在第 29(4)條中，在“翻譯本”的定義中，刪去““翻譯本””而代以“ <b>翻譯本</b> ”。

Copyright (Amendment) Bill 2014

**Committee Stage**

Amendments to be moved by the Honourable Wong Yuk Man

<u>Clause</u>	<u>Amendment Proposed</u>
14	In section 29(1), in the Chinese text, by deleting “第 23 至 28 條或第(1)款所指明的作為中的任何作為，亦屬受該等作品的版權所限制的作為。就此而言，在作出該作為時該改編本是否已經以書面或其他方式記錄，並不具關鍵性” and substituting “第 23、24、25、27 或 28A 條或第(1)款所指明的作為中的任何作為，亦屬受該等作品的版權所限制的作為。就此而言，在作出該作為時該改編本是否已經以書面或其他方式記錄，並非關鍵”.
14	In section 29(2), in the Chinese text, by deleting “不具關鍵性” and substituting “非關鍵”.
14	In section 29(3), in the definition of "adaptation", by deleting ""adaptation"" and substituting "adaptation".
14	In section 29(3), in the English text, by deleting “in relation to” (wherever appearing) and substituting “for”.
14	In section 29(3)(a)(ii), in the Chinese text, by deleting “視屬何情況而定”.
14	In section 29(4), in the definition of "translation", by deleting ""translation"" and substituting "translation".

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新條文

刪去第 30 條而代以—

“任何人未獲作品的版權擁有人特許，將該作品的複製品輸入或輸出香港，而在該複製品輸入或輸出香港時，他知道或有理由相信該複製是侵犯版權複製品，而且他輸入或輸出該複製品並非供自己私人和家居使用，即屬侵犯該作品的版權。”。

Copyright (Amendment) Bill 2014

**Committee Stage**

Amendments to be moved by the Honourable Wong Yuk Man

Clause

Amendment Proposed

New

By deleting section 30 and substituting—

“The copyright in a work is infringed by a person who, without the licence of the copyright owner, imports into Hong Kong or exports from Hong Kong, otherwise than for his private and domestic use, a copy of the work which is, and which at the time of the importation or exportation he knows or has reason to believe to be, an infringing copy of the work.”.



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建議修正案

- 15 在中文文本中，刪去第 31(1)條而代以—
- “ (1) 任何人未獲作品的版權擁有人特許，就該作品的複製品作出以下作為，而在他作出該等作為時，他知道或有理由相信該複製品是該作品的侵犯版權複製品，即屬侵犯該作品的版權—
- (a) 為任何貿易或業務的目的或在任何貿易或業務的過程中，管有該複製品；
  - (b) 將該複製品出售、出租、要約出售或要約出租，或為出售或出租而展示該複製品；
  - (c) 為任何貿易或業務的目的或在任何貿易或業務的過程中，公開陳列或分發該複製品；或
  - (d) 並非為任何貿易或業務的目的，亦並非在任何貿易或業務的過程中，分發該複製品並足以損害版權擁有人。”。

15 在第 31(1)(d)條中，在中文文本中，刪去“不具關鍵性”而代以“非關鍵”。

15(3) 加入—

“ (3) 為施行第(1)(d)款，法院在裁定某作品的侵犯版權複製品的分發是否足以損害版權擁有人時，須考慮有關個案的整體情況，包括但不限於以下任何一項事宜——

    - (a) 該作品的性質，包括其商業價值(如有的話)；
    - (b) 相對於該作品的整體，被分發的遭複製部分所佔的數量及實質分量；
    - (c) 分發的方式；及
    - (d) 該項分發對版權擁有人所造成的經濟損害(如有的話)，包

括該項分發對該作品的潛在市場或價值的影響。”。

Copyright (Amendment) Bill 2014

**Committee Stage**

Amendments to be moved by the Honourable Wong Yuk Man

<u>Clause</u>	<u>Amendment Proposed</u>
15	<p>By deleting section 31(1) and substituting—</p> <p>“(1) The copyright in a work is infringed by a person who, without the licence of the copyright owner—</p> <ul style="list-style-type: none"><li>(a) possesses for the purpose of or in the course of any trade or business;</li><li>(b) sells or lets for hire, or offers or exposes for sale or hire;</li><li>(c) exhibits in public or distributes for the purpose of or in the course of any trade or business; or</li><li>(d) distributes (otherwise than for the purpose of or in the course of any trade or business) to such an extent as to affect prejudicially the owner of the copyright,</li></ul> <p>a copy of a work which is, and which at the time the act is done he knows or has reason to believe to be, an infringing copy of the work.</p>
15	<p>In section 31(2), in the Chinese text, by deleting “不具關鍵性” and substituting “非關鍵”.</p>
15(3)	<p>By adding—</p> <p>“(3) For the purposes of subsection (1)(d), in determining whether any distribution of an infringing copy of a work is made to such an extent as to affect prejudicially the owner of the copyright, the court must take into account all the circumstances of the case which may include but are not limited to any of the following—</p> <ul style="list-style-type: none"><li>(a) the nature of the work, including its commercial value (if</li></ul>

any);

- (b) the amount and substantiality of the portion copied (in relation to the work as a whole) that was distributed;
- (c) the mode of distribution; and
- (d) the economic prejudice (if any) caused to the owner of the copyright as a consequence of the distribution, including the effect of the distribution on the potential market for or value of the work.”.

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16	在第 32(1)條中，在中文文本中，刪去 “的特許” 而代以 “特許”。
16	在第 32(1)條中，在中文文本中，刪去 “而該人是在知道或有理由相信該物品是將用以製作該等侵犯版權複製品的情況下作出上述作為” 而代以 “而作出上述作為時，該人知道或有理由相信該物品是用以製作侵犯版權複製品”。
16	刪去第 32(2)條而代以— “(2) 任何人未獲作品的版權擁有人特許，藉電訊系統傳送該作品 (但並非藉向公眾傳播)，而作出該傳送時，他是知道或有理由相信將有侵犯版權複製品藉在香港或其他地方接收該傳送而製作，則該人即屬侵犯該作品的版權。”。
16	在第 32(3)條中，在中文文本中，刪去 “不具關鍵性” 而代以 “非關鍵”。

Copyright (Amendment) Bill 2014

**Committee Stage**

Amendments to be moved by the Honourable Wong Yuk Man

<u>Clause</u>	<u>Amendment Proposed</u>
16	In section 32(1), in the Chinese text, by deleting “的特許” and substituting “特許”.
16	In section 32(1), by deleting “knowing or having reason to believe” and substituting “and at the time the act is done knows or has reason to believe”.
16	By deleting section 32(2) and substituting — “(2) Copyright in a work is infringed by a person who at the time of transmitting, without the licence of the copyright owner, transmits the work by means of a telecommunications system (otherwise than by communicating to the public), knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in Hong Kong or elsewhere.”.
16	In section 32(3), in the Chinese text, by deleting “不具關鍵性” and substituting “非關鍵”.