

Bills Committee on the Copyright (Amendment) Bill 2014

**The Administration's response to issues raised at
the meeting on 6 January 2015**

Purpose

At the meeting on 6 January 2015, Members requested the Administration to consider:

- (a) reviewing the drafting of the proposed section 39(2)(c) in view of the difficulty in defining the extent of quotation from a work which was no more than was required by the specific purpose for which it was used;
 - (b) reviewing the drafting of the proposed section 39(5)(b) to specify who determined whether a work had been released or communicated to the public; and
 - (c) replacing the Chinese character of “導” with “道” in the Chinese term “報導” under the proposed section 39(3) and relevant proposed sections.
2. This paper sets out the Administration's response.

(A) *The proposed section 39(2)(c)*

3. The proposed section 39(2) provides for a fair dealing exception for the use of a quotation from a copyright work for various purposes (such as for academic citations, providing information for illustration purposes or facilitating discussions) in appropriate circumstances under prescribed conditions.¹ Its application is not limited to the use of a quotation for the purpose of criticism or review.

¹ The proposed section 39(2) reads –

“Copyright in a work is not infringed by the use of a quotation from the work (whether for the purpose of criticism, review or otherwise) if –

(a) the work has been released or communicated to the public;

(b) the use of the quotation is fair dealing with the work;

4. This proposal is based on Article 10 of the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention), which provides that “[i]t shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose”. The Berne Convention is applicable to Hong Kong.

5. We also note that in introducing a new quotation exception, the United Kingdom (the UK) has also adopted a similar formulation which requires that the use of the quotation should be fair dealing with the work and the extent of the quotation should be no more than is required by the specific purpose for which it is used.²

Purpose and extent of quotation

6. Our proposed section 39(2) does not place any limitation on the purpose for which the quotation is used, nor on the amount that may be quoted, so far as the use constitutes a fair dealing with the copyright work and the extent of the quotation does not exceed that required by the purpose for which it is used. This approach is consistent with that envisaged under Article 10 of the Berne Convention, which requires the making of a quotation to be compatible with fair practice, and that its extent does not exceed that justified by the purpose, and with the UK legislation as well.

7. We consider that the proposed section 39(2)(c) has the benefits of flexibility in its application to cater for a wide range of cases. It seeks to achieve a fair and reasonable result by taking into account the specific circumstances of each case. Its formulation is consistent with the requirements of Article 10 of the Berne Convention and in line with Hong

(c) the extent of the quotation is no more than is required by the specific purpose for which it is used; and
(d) (subject to subsection (6)) the use of the quotation is accompanied by a sufficient acknowledgement.”

² See section 30(1ZA) of the UK Copyright, Designs and Patents Act 1988, which came into force on 1 October 2014 –

“(1ZA) Copyright in a work is not infringed by the use of a quotation from the work (whether for criticism or review or otherwise) provided that—

(a) the work has been made available to the public,

(b) the use of the quotation is fair dealing with the work,

(c) the extent of the quotation is no more than is required by the specific purpose for which it is used, and

(d) the quotation is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).”

Kong's international obligations in this regard. The quotation exception in the latest UK legislation follows the same drafting approach.

(B) The proposed section 39(5)(b)

8. The proposed section 39(5)(b) provides that no account is to be taken of any unauthorised act in determining whether a work has been released or communicated to the public as referred to in the proposed section 39(5). While the determination of whether a work has been released or communicated to the public may ultimately involve a determination by the Court, we consider that it is not necessarily limited to such a determination. The present drafting of the proposed section 39(5)(b) reflects our considered view.

(C) The use of “報導” in the proposed section 39(3) and other relevant proposed sections

9. After considering Members' views on the use of the Chinese term “報導” in the Bill, we have further studied the use of the terms “報導” and “報道”. We note that those two terms 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 that contain both terms, most of them use “報道” as their main entry or state that “報道” is more commonly used nowadays. In addition, the Hong Kong Chinese Lexical Lists for Primary Learning published by the Education Bureau only includes “報道”. As such, we propose to use “報道” in the Bill. For consistency within the Copyright Ordinance (Cap. 528) (the Ordinance), we will consider appropriate committee stage amendments to amend all references to “報導” in the Ordinance to “報道”.

10. In addition, the Administration was asked to consider the Chinese term “東西” (“what is” made available) under the proposed section 28A(6)(a) at a previous Bills Committee meeting. We consider that the term “東西” refers to any concrete or abstract thing. Its use in the proposed section 28A(6)(a) to cover anything that is made available in a communication is

appropriate. The same term has been used in a number of places in the Ordinance to bring out a similar meaning (e.g. section 40).

Presentation

11. Members are invited to note the response provided in this paper.

Commerce and Economic Development Bureau
Intellectual Property Department
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