

Bills Committee on the Copyright (Amendment) Bill 2014

The Government's response to drafting issues raised by the Bills Committee

Purpose

In previous meetings held by the Bills Committee on the Copyright (Amendment) Bill 2014, Members and the Legal Adviser raised a number of drafting issues. This paper provides the Government's responses, and briefs Members on the proposed Committee Stage Amendments ("CSAs"). We set out the proposed CSAs at Annex A.

CSAs

Difference between "and" and "or" (Clauses 6 and 8)

2. At the meeting held on 8 December 2014, the Government was requested to review the use of the conjunctions "and" and "or" in the proposed sections 17(5)(a)(i) and (ii), 17(5)(b)(ii) and (iii) and 19(6)(a) and (b), and consider replacing "and" by "or", to better reflect the legislative intent. We consider that it is correct to use "and" ("及") to link up a series of paragraphs introduced by "includes" ("包括"). The word "include" in its definition indicates that the matters that follow are not exhaustive. But having considered Members' views, we propose to add ", any of the following" after "work" in section 17(5)(a) and after "artistic work" in section 17(5)(b) respectively. We also propose to add "any of the following" after "includes" in section 19(6). The amendments will enhance clarity.

Making available to the public (Clauses 6 and 8)

3. In response to the suggestion made by the Legal Adviser in a letter to the Government dated 7 November 2014 regarding whether the Chinese equivalent of "making available to the public" should be added to the corresponding English version of sections 17(5) and 19(6), the Government proposes to repeal "making available to the public includes" and substitute "making available to the public (向公眾提供) includes" after "purposes of subsection (3)" in the English version of section 17(5), and after "purposes of subsection (4)" in the English version of section 19(6).

Performance of the work in public (Clauses 18 and 75)

4. In the Legal Adviser’s letter to the Government dated 7 November 2014 and at the meeting on 6 January 2015, questions were raised as to the difference in meaning between the performance of the work “to the public” and the performance of the work “in public” in the proposed section 39(5)(a)(iii). With reference to the existing Copyright Ordinance (Cap. 528)¹, the Government proposes to delete “the performance, exhibition, playing or showing of the work **to** the public” and substitute “the performance, exhibition, playing or showing of the work **in** public” in the proposed section 39(5)(a)(iii). For the same reason, the Government also proposes to delete “**to** the public” and substitute “**in** public” in the proposed section 241(5)(a)(iii) and (b)(iii).

Replacing “信息” with “訊息” (Clause 13)

5. In response to the Legal Adviser’s enquiries in a letter to the Government dated 7 November 2014 and at the meeting held on 16 December 2014 regarding the Chinese equivalent of the term “transmission”, the Government proposes to delete “信息” and substitute “訊息” in the proposed section 28A(6)(b).

Replacing “報導” with “報道” (Clause 18 and etc.)

6. At the meeting held on 6 January 2015, the Government was requested to replace the Chinese character of “導” with “道” in the Chinese term “報導” under the proposed section 39(3) and relevant proposed sections. Having further studied the use of the terms “報導” and “報道”, we note that these two terms can be 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”. In view of the above, the Government proposes to replace “報導” with “報道” in the Chinese version of the following provisions in the Copyright Ordinance -

¹ Section 27(1)- “The performance of the work in public...”.

<u>Clause</u>	<u>Proposed Section</u>
18	39 (Heading), 39(3)
52	91(4)(a)
75	241 (Heading), 241(3)
89	272D(4)(a)

<u>Clause</u>	<u>Section</u>
-	54B(2), 54(2), 55(2), 67(1)(a), 81A(1), 91(5), 93(3), 246B(1)(a), 247(1), 248(1), 253(1)(a), 258A(1), 272D(2) and 272G(1)

Fair dealing for purposes of giving or receiving instruction (Proposed section 41A)

7. In the light of the comments made by Members at the meeting held on 3 February 2015 on the drafting of the Chinese version of section 41A(4)(a) and (b) of the Copyright Ordinance in respect of fair dealing for the purposes of giving or receiving instruction, the Government proposes to repeal everything before “則該項” and substitute “(a) 如該紀錄並無包含一項聲明，以確認作者，或確認被記錄的作品所載的其他創作努力，” in the Chinese version of section 41A(4)(a) and repeal everything before “則第(2)款” and substitute “(b)如該紀錄包含一項聲明，以確認作者，或確認被記錄的作品所載的其他創作努力，” in the Chinese version of section 41A(4)(b), in order to enhance the readability of the provisions.

Replacing “如...條件獲符合” with “如符合...條件” and related amendments (Clause 43 etc.)

8. At the meeting held on 21 April 2015, the Government was requested to review the drafting of the phrase “則如第(2)款所述條件獲符合” in the Chinese version of section 67(1), with reference to a similar phrase in the Chinese version of the proposed section 76A(1) “在符合以下規定的情況下”, to make it more readable. The Government finds Members’ views agreeable. Apart from section 67(1), the Government also proposes to amend the Chinese version of the following provisions-

<u>Clause</u>	<u>Section</u>	<u>Proposed Amendment</u>
2A (new)	2(3)	Repeal “本部中關於享有版權保護所須具備的資格的規定均已獲符合” and

<u>Clause</u>	<u>Section</u>	<u>Proposed Amendment</u>
		substitute “已符合本部中關於享有版權保護所須具備的資格的規定”。
5	9(2)(g)	Repeal “以下條件就該某一電訊系統而獲符合” and substitute “該某一電訊系統符合以下條件”。
29A (new)	47(1)	Repeal “如訂明條件獲符合” and substitute “在符合訂明條件的情況下”。
30	48(1)	Repeal “如訂明條件獲符合” and substitute “在符合訂明條件的情況下”。
31	50(1)	Repeal “如訂明條件獲符合” and substitute “在符合訂明條件的情況下”。
32(2)	51(1)	Delete “的情況下，如訂明條件獲符合，則” and substitute “並符合訂明條件的情況下，”。
33	51A(1)	Delete “如第(2)款指明的條件獲符合” and substitute “在符合第(2)款指明的條件的情況下”。
34	52(1)	Repeal “如訂明條件獲符合” and substitute “在符合訂明條件的情況下”。
35	52A(1)	Delete “如第(2)款指明的條件獲符合” and substitute “在符合第(2)款指明的條件的情況下”。
43	67(1)	Delete “如第(2)款指明的條件獲符合” and substitute “在符合第(2)款指明的條件的情況下”。
45A(new)	70(1)	Repeal “第(2)款所列條件獲符合” and substitute “符合第(2)款所述條件”。
45A(new)	70(3)	Repeal “根據第(4)(a)款訂明的條件獲符合” and substitute “符合根據第(4)(a)款訂明的條件”。
86	253(1)	Repeal “第(2)款所述條件獲符合” and substitute “符合第(2)款所述條件”。
86A(new)	254(1)	Repeal “第(2)款所列條件獲符合” and substitute “符合第(2)款所述條件”。
86A(new)	254(3)	Repeal “訂明條件獲符合” and substitute “符合訂明條件”。

Replacing “不包括向公眾傳播” with “向公眾傳播除外” (Clauses 18 and 75)

9. At the meeting held on 7 May 2015, the Government was requested to review the Chinese version of the phrase "other than by communication to the public" i.e. “不包括向公眾傳播” in the proposed section 241(5)(a) and (b) (in relation to fair dealing with a performance or fixation for the purpose of criticism, review, quotation, and reporting and commenting on current events), for example, by using “向公眾傳播除外”, to avoid ambiguity. Having considered the views of Members, the Government proposes to delete “不包括向公眾傳播” and substitute “向公眾傳播除外” in the Chinese version of the proposed sections 39(5)(a), 241(5)(a) and 241(5)(b).

Safe Harbour Provisions (Clause 50)

10. In the light of the comments made by Hon WONG Yuk-man in his letter dated 12 May 2015 regarding the drafting of the safe harbour provisions, the Government will introduce CSAs to the following provisions to enhance their readability and clarity-

<u>Section</u>	<u>Proposed Amendment</u>
88A (definition of <i>standard technical measure</i>)	In the English version, delete “widely” and substitute “generally”.
88B(1)	In the Chinese version, delete everything before “服務平台” and substitute “(1) 如符合第(2)款指明的條件，某服務提供者不會只因提供有關聯線服務或為有關聯線服務操作設施，而須就在其”.
88B(2)(b)	In the Chinese version, delete everything before “之前沒有收取(而現時亦沒有” and substitute “不曾收取(而亦非正在”.
88B(4)(a)(i)	In the Chinese version, delete “就類似聯線服務收取” and substitute “收取類似聯線服務的”.
88B(4)(b)	Add “without limiting paragraph (a),” before “financial”.

Other responses

11. The below are responses to other matters raised by Members,

which are detailed at Annex B.

(A) *The word “被” in the proposed section 41A(8)*

12. In the proposed section 41A(8), the use of the word “被” in the phrase “被用以進行交易” is in line with the phrases of “被管有、公開陳列或分發” in paragraph (a) and “被出售或出租、要約出售或要約出租，或為出售或出租而被展示” in paragraph (b). As the provision is meant to deem a copy, if sold or let for hire, or offered or exposed for sale or hire outside the scope of the exception, as being “dealt with”, we therefore consider it necessary to keep the word “被” so that the meaning of the provision as a whole can be made clear and confusion can be avoided.

(B) *The number of users that can access the copy under the proposed section 51A(2)(a) and the Chinese drafting of the proposed section 52A(3)*

13. The proposed section 51A is meant to facilitate a specified library, museum or archive to communicate to its staff or users a copy, made pursuant to section 51, of an item in its permanent collection. A proviso has been specified in section 51A(2)(a), i.e. only one user may access the copy through the use of a computer terminal at any one time, so as to balance the legitimate interests between the copyright owner and user. In other words, if the specified institution has more than one copy of the original item, it may allow more than one user to access the work through the use of a computer terminal at any one time. In addition, if the specified institution has obtained a relevant licence from the copyright owner, it may allow a greater number of users to access the copies of a work at any one time. In our view, this exception can facilitate libraries, museums or archives to preserve the original work and promote the spread of knowledge, and at the same time would not unreasonably limit the legitimate interests of copyright owners, e.g. commercial models of developing e-books, licensing for e-communication, etc.

14. Under section 52A(1), if the exempting condition specified in subsection (2) is complied with, the librarian, curator or archivist may play or show any sound recording or film held in the permanent collection to the public without infringing copyright. Section 52A(3) specifies that if the above specified institution knew or ought to have been aware of any licences under licensing schemes that were in force, then the exemption provided by section 52A would not be applicable. In

our view, the proposed section 52A(3) can clearly reflect the legislative intent and is consistent in terms of drafting with other similar provisions in the existing Copyright Ordinance, e.g. sections 44(2), 45(2), 69(2), 83(2), 245(2) and 260(2). There is no need for amendment.

(C) “被用以進行交易” (“dealt with”) and similar phrases in sections 54A(3) and (4)

15. As mentioned in our reply dated 15 January 2015 to the Legal Adviser (LC Paper No. CB(4)364/14-15(02)), “dealt with” and “dealing in” carry different legal meanings when they appear in different provisions. As such, we have used different corresponding Chinese terms for them (“dealt with”—“被用以進行交易” or “被處理”, “dealing in”—“經營”或“經銷”). For easy reference, we set out the corresponding Chinese terms of the respective words used in different provisions in Annex C.

(D) Ordering of sections 54A and 54B in the Copyright Ordinance

16. The existing sections 54A and 54B were added to the Copyright Ordinance by the Copyright (Amendment) Ordinance 2007. Generally speaking, the placing of newly-added provisions would depend on the circumstances and should basically be placed in the same unit with related existing provisions under the same Part heading, Division heading or Cross heading. Newly-added provisions would be placed after the existing provisions in the same unit. However, at times they may be placed before the existing provisions in the same unit, so as to provide a new background or introduction to the existing provisions and serve as an outline. What is important is that the ordering of provisions would not affect their legal effect. In consideration of the reasons above and that we have not received any comments from stakeholders that the ordering of the relevant provisions affect their use of the relevant exceptions since they came into effect, we consider that the existing ordering of provisions is appropriate.

(E) Enlarging the scope of section 56(3) to cover other matters, including those of general education, religious and social interest

17. The exception under section 56(3) mainly permits the appropriate person (i.e. the person required to make the material open to public inspection or the person maintaining the statutory register) or by or

with his or her authority, to copy or issue or make available to the public copies of material which is open to public inspection pursuant to a statutory requirement, or which is on a statutory register (such as the register on company registration, trademark and patent registration or land registration), which contain information about matters of general scientific, technical, commercial or economic interest, for the purpose of disseminating that information. Since such statutory registers mainly contain information about matters of general scientific, technical, commercial or economic interest with less information on matters of other areas, and that there is a higher possibility that the general public would be interested in the former type of information, they were specifically stated in the Copyright Ordinance. This section is similar to the equivalent UK provision and we are not aware of any difficulties in the actual application since its enactment in 1997. It is our view that this section need not be amended.

(F) *Including a reference to document in electronic form in section 57(1) of the Copyright Ordinance*

18. The existing section 57(1) provides that “[t]his section applies where a work has in the course of public business been communicated to the Government for any purpose, by or with the licence of the copyright owner and a document or other material thing recording or embodying the work is owned by or in the custody or control of the Government.” Works in electronic format have to be recorded or stored in a physical medium, which is covered in the existing provision. It is our view that it is not necessary to add in brackets the suggested reference of “including a document in electronic form”.

(G) *Use of the term “接達”*

19. The term “接達” is commonly used as the Chinese equivalent of “access” in the context of gaining access to something through the computer, the Internet or other electronic means. It has been used in existing legislation such as the definition of “access facilities” (接達設施) in section 2(1) of the Building (Planning) Regulations (Cap. 123F) and section 92(5)(b)(ii) of the Banking Ordinance (Cap. 155) etc..

20. “接達” is also listed as the Chinese equivalent of “access” in glossaries of computer-related terms. Please see the Computer

Education – Glossary – Computer Subjects compiled by the Education Bureau², and the Longman-Tsinghua English-Chinese Dictionary of Computer Terms.³

21. The term “接達” is also used by the information technology industry. For example, the term is used in the Practice Statement on Regulation of Obscene and Indecent Material published by the Hong Kong Internet Service Providers Association⁴ to refer to access to the Internet or certain information etc.

22. In view of the above, we consider that the use of “接達” in the provisions is appropriate.

(H) Replacing “performance ... to the public” with “performance ... in public” in the proposed section 241(2)(a) and other related proposed sections

23. The proposed section 241(2)(a) reads “the performance or fixation has been released or communicated to the public;” (“該表演或錄製品已向公眾發行或傳播”). In this sentence, the English equivalent of “向公眾傳播” i.e. “communicated **to** the public” is grammatically correct. We will propose CSAs to replace the expression “performance, **to** the public” (“向公眾表演”) with “performance **in** public” (“公開表演”) in the proposed section 39(5)(a)(iii) and replace the expression “**to** the public” (“向公眾”) in “playing or showing of the fixation to the public” with “**in** public” (“公開”) in the proposed sections 241(5)(a)(iii) and (b)(iii).

(I) The phrase “公眾中任何人” in the proposed section 252

24. At the meeting held on 7 May 2015, some Members commented that the meaning of the Chinese version of the expression “public” i.e. “公眾” can be understood to cover “any member of the public”. In such circumstances, it is not necessary to use the phrase “公眾中任何人” in the Chinese version. The proposed section 252 provides that the relevant rights conferred by the Copyright Ordinance in a fixed

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<http://www.edb.gov.hk/en/curriculum-development/kla/technology-edu/resources/computer-edu/glossary.html>

³ Published by Longman Group (Far East) Limited and Tsinghua University Press (1992).

⁴ http://www.hkispaspa.org.hk/Obscene_c.htm

performance are not infringed by any member of the public who makes a copy of a fixation which is required for the viewing or listening of a fixation that is communicated to the public, provided that such act does not conflict with a normal exploitation of the fixation and does not unreasonably prejudice the legitimate interests of the performer or the person who has fixation rights in relation to the performance. The reference to “公眾中任何人” clarifies that the permitted act can be used individually by any member of the public. We consider that the proposed provision is appropriate.

(J) *The English equivalent of “標準技術措施”*

25. At the meeting held on 19 May 2015, some Members commented that the plural expression “standard technical measures” should be used as the English equivalent of “標準技術措施”. Section 7(2) of the Interpretation and General Clauses Ordinance (Cap. 1) provides that, words and expressions in the singular include the plural and words and expressions in the plural include the singular. Given that “measure” refers to a means of achieving a purpose, we consider that the use of the singular expression of “measure” instead of the plural expression of “measures” is appropriate. Examples of similar usage in the definitions can be found in other legislation, such as “fire safety measure” in section 2 of the Occupational Safety and Health Regulations (Cap. 509 sub. leg. A), “technological measure” in section 273(3)(a) of the Copyright Ordinance (Cap. 528), “disease control measure” in section 2 of the Prevention and Control of Diseases Regulations (Cap. 599 sub. leg. A) and “interim measure” in section 2 of the Arbitration Ordinance (Cap. 609) etc.

(K) *Meaning of the proposed section 88B(5)(a)(i)*

26. According to our proposal, subject to compliance with the qualifying conditions in the proposed section 88B(2) (including the condition that the online service provider (OSP) accommodates and does not interfere with standard technical measures that are used by copyright owners to identify or protect their copyright works in section 88B(2)(c)), an OSP may receive protection under the safe harbour provisions. The proposed section 88B(5)(a)(i) seeks to further clarify that, as long as it complies with the conditions in the proposed section 88B(2), an OSP is not required to monitor and actively seek infringing activities in order to receive protection under the safe harbour provisions. Provisions that are similar to the proposed section 88B(5)(a)(i) have been adopted in the

copyright legislation in Australia, Singapore and the United States. The proposed provision facilitates the understanding of the conditions set out in the proposed section 88B(2) and clearly reflects the legislative intent.

(L) Replacing “or is otherwise prejudicial” with “or otherwise is prejudicial” in the existing section 92(2)(b)

27. Under the existing section 92(2)(b), “or is otherwise prejudicial” means “or is in other ways prejudicial”. The derogatory treatment of a work which is prejudicial to the honour or reputation of the author or director may take different forms, of which “prejudicial distortion” and “prejudicial mutilation” listed in section 92(2)(b) are two of them. As such, it is our view that the existing provision already clearly provides that whether the treatment of a work is “prejudicial to the honour or reputation of the author or director” is the central element in constituting derogatory treatment. It is not necessary to replace “or is otherwise prejudicial” with “or otherwise is prejudicial” as suggested.

Presentation

28. Members are invited to note the response provided in this paper, including the CSAs to be introduced by the Government.

Commerce and Economic Development Bureau
Intellectual Property Department
June 2015

Copyright (Amendment) Bill 2014

Committee Stage

Amendments to be moved by
the Secretary for Commerce and Economic Development

<u>Clause</u>	<u>Amendment Proposed</u>
2	By deleting “3 to 96” and substituting “2A to 97”.
New	By adding— “2A. Section 2 amended (copyright and copyright works) Section 2(3), Chinese text— Repeal “本部中關於享有版權保護所須具備的資格的規定均已獲符合” Substitute “已符合本部中關於享有版權保護所須具備的資格的規定”.”.
5	By renumbering the clause as clause 5(1).
5	By adding— “(2) Section 9(2)(g), Chinese text— Repeal “以下條件就該某一電訊系統而獲符合” Substitute “該某一電訊系統符合以下條件”.”.
6	By adding before subclause (1)— “(1A) Section 17(5)— Repeal “making available to the public includes” Substitute

“, *making available to the public* (向公眾提供) includes”.

(1B) Section 17(5)(a), after “work”—

Add

“, any of the following”.

6 By adding—

“(2A) Section 17(5)(b), after “artistic work”—

Add

“, any of the following”.

8 By adding before subclause (1)—

“(1A) Section 19(6)—

Repeal

“making available to the public includes”

Substitute

“, *making available to the public* (向公眾提供) includes any of the following”.

13 In the proposed section 28A(6)(b), in the Chinese text, by deleting “信息” and substituting “訊息”.

18 In the proposed section 39, in the Chinese text, in the heading, by deleting “報導” and substituting “報道”.

18 In the proposed section 39(3), in the Chinese text, by deleting “報導” and substituting “報道”.

18 In the proposed section 39(5)(a), in the Chinese text, by deleting “(不包括向公眾傳播)” and substituting “(向公眾傳播除外)”.

18 In the proposed section 39(5)(a)(iii), by deleting “to the public” and substituting “in public”.

24 By adding before subclause (1)—

“(1A) Section 41A(4)(a), Chinese text—

Repeal

everything before “則該項”

Substitute

“(a) 如該紀錄並無包含一項聲明，以確認作者，或確認被記錄的作品所載的其他創作努力，”。

(1B) Section 41A(4)(b), Chinese text—

Repeal

everything before “則第(2)款”

Substitute

“(b) 如該紀錄包含一項聲明，以確認作者，或確認被記錄的作品所載的其他創作努力，”。

New By adding—

“29A. Section 47 amended (copying by librarians: articles in periodicals)

Section 47(1), Chinese text—

Repeal

“如訂明條件獲符合”

Substitute

“在符合訂明條件的情況下”。

30 By adding—

“(3) Section 48(1), Chinese text—

Repeal

“如訂明條件獲符合”

Substitute

“在符合訂明條件的情況下”。

31 By renumbering the clause as clause 31(1).

31 By adding—

“(2) Section 50(1), Chinese text—

Repeal

“如訂明條件獲符合”

Substitute

“在符合訂明條件的情況下”。

- 32(2) In the Chinese text, by deleting “的情況下，如訂明條件獲符合，則” and substituting “並符合訂明條件的情況下，”。
- 33 In the proposed section 51A(1), in the Chinese text, by deleting “如第(2)款指明的條件獲符合” and substituting “在符合第(2)款指明的條件的情況下”。
- 34 By adding—
- “(4A) Section 52(1), Chinese text—
- Repeal**
- “如訂明條件獲符合”
- Substitute**
- “在符合訂明條件的情況下”。
- 35 In the proposed section 52A(1), in the Chinese text, by deleting “如第(2)款指明的條件獲符合” and substituting “在符合第(2)款指明的條件的情況下”。
- 43 By renumbering the clause as clause 43(1).
- 43 By adding—
- “(2) Section 67(1), Chinese text—
- Repeal**
- “第(2)款所述條件獲符合”
- Substitute**
- “符合第(2)款所述條件”。

New By adding—

“45A. Section 70 amended (recordings of folksongs)

(1) Section 70(1), Chinese text—

Repeal

“第(2)款所列條件獲符合”

Substitute

“符合第(2)款所述條件”。

(2) Section 70(3), Chinese text—

Repeal

“根據第(4)(a)款訂明的條件獲符合”

Substitute

“符合根據第(4)(a)款訂明的條件”。

50 In the proposed section 88A, in the English text, in the definition of *standard technical measure*, by deleting “widely” and substituting “generally”.

50 In the proposed section 88B(1), in the Chinese text, by deleting everything before “服務平台” and substituting—

“(1) 如符合第(2)款指明的條件，某服務提供者不會只因提供有關聯線服務或為有關聯線服務操作設施，而須就在其”。

50 In the proposed section 88B(2)(b), in the Chinese text, by deleting “之前沒有收取(而現時亦沒有” and substituting “不曾收取(而亦非正在”。

50 In the proposed section 88B(4)(a)(i), in the Chinese text, by deleting “就類似聯線服務收取” and substituting “收取類似聯線服務的”。

50 In the proposed section 88B(4)(b), by adding “without limiting paragraph (a),” before “financial”.

52 In the proposed section 91(4)(a), in the Chinese text, by deleting “報導”

and substituting “報道”.

75 In the proposed section 241, in the Chinese text, in the heading, by deleting “報導” and substituting “報道”.

75 In the proposed section 241(3), in the Chinese text, by deleting “報導” and substituting “報道”.

75 In the proposed section 241(5)(a), in the Chinese text, by deleting “(不包括向公眾傳播)” and substituting “(向公眾傳播除外)”.

75 In the proposed section 241(5)(a)(iii), by deleting “to the public” and substituting “in public”.

75 In the proposed section 241(5)(b), in the Chinese text, by deleting “(不包括向公眾傳播)” and substituting “(向公眾傳播除外)”.

75 In the proposed section 241(5)(b)(iii), by deleting “to the public” and substituting “in public”.

86 By renumbering the clause as clause 86(1).

86 By adding—

“(2) Section 253(1), Chinese text—

Repeal

“第(2)款所述條件獲符合”

Substitute

“符合第(2)款所述條件”.

New By adding—

“86A. Section 254 amended (fixations of folksongs)

(1) Section 254(1), Chinese text—

Repeal

“第(2)款所列條件獲符合”

Substitute

“符合第(2)款所述條件”.

(2) Section 254(3), Chinese text—

Repeal

“訂明條件獲符合”

Substitute

“符合訂明條件”.

89 In the proposed section 272D(4)(a), in the Chinese text, by deleting “報導” and substituting “報道”.

New By adding—

“97. “報道” substituted for “報導”

The following provisions, Chinese text—

- (a) section 54B(2);
- (b) section 54(2);
- (c) section 55(2);
- (d) section 67(1)(a);
- (e) section 81A(1);
- (f) section 91(5);
- (g) section 93(3);
- (h) section 246B(1)(a);
- (i) section 247(1);
- (j) section 248(1);
- (k) section 253(1)(a);
- (l) section 258A(1);
- (m) section 272D(2);
- (n) section 272G(1)—

Repeal

“報導” (wherever appearing)

Substitute

“報道”.

Members had raised the following requests:

- (A) the Administration was requested to review the use of the word “被” in the proposed section 41A(8) (raised on 3 February 2015);
- (B) the Administration was requested to consider:
 - (a) relaxing the condition in the proposed section 51A(2)(a) to allow not only one user of the library, museum or archive to access through the use of a computer terminal at any one time the copy of an item made under the proposed amendments to section 51 (regarding copying by librarians or archivists: replacement copies of works), so as to facilitate the free flow of information; and
 - (b) the drafting of the Chinese version of the proposed section 52A(3) (regarding playing or showing by librarians, curators or archivists: sound recordings or films) to enhance its readability (raised on 9 April 2015);
- (C) the Administration was requested to consider reviewing the different Chinese versions of the similar expressions “dealt with” in section 54A(2)(c) and (3) and the proposed section 54A(4) (regarding fair dealing for purposes of public administration), and “dealing in” (as seen in the various sections such as 31(2), 32(3), 95(1A), 96(6A), 109(1A) and 120(2A), 198(2), 207(1A), 211(1A) and 228(1A), 238(1A)), including “被用以進行交易”, “經營” and “經銷”, to avoid confusion (raised on 21 April 2015);
- (D) the Administration was requested to consider reviewing the ordering of sections 54A (regarding fair dealing for purposes of public administration) and 54B (regarding Legislative Council) which appeared before section 54 (regarding judicial proceedings), contrary to the normal law drafting practice, as seen in the ordering of sections 40A to 40F which appeared after section 40 (raised on 21 April 2015);
- (E) the Administration was requested to consider enlarging the scope of the information about matters of general scientific, technical, commercial or economic interest referred to in section 56(3) (regarding material open to public inspection or on official register)

to cover other matters, including those of general educational, religious and social interest (raised on 21 April 2015);

- (F) the Administration was requested to consider adding the phrase (in parentheses) "including a document in electronic form" after the term "document" in section 57(1) to cover a document in electronic form, as in section 52(1)(a) (raised on 21 April 2015);
- (G) the Administration was requested to consider reviewing the Chinese version of "access" ("接達") in the proposed section 65A and other relevant proposed sections, for example, by using more commonly used terms such as "連接" or "存取" (raised on 21 April and 19 May 2015);
- (H) the Administration was requested to consider reviewing the drafting of the phrase "performance ... to the public" in the proposed section 241(2)(a) (in relation to fair dealing with a performance or fixation for the purpose of criticism, review, quotation, and reporting and commenting on current events) and other relevant proposed sections, and replacing it with "performance ... in public" (raised on 7 May 2015);
- (I) the Administration was requested to consider reviewing the Chinese version of the phrase "a member of the public", i.e. "公眾中任何人" in the proposed amendments to section 252 (regarding certain copying permitted when performances communicated to the public) and other relevant proposed sections, with reference to the Chinese version of the expression "public", i.e. "公眾" in other similar sections such as the proposed amendments to section 273(1)(c)(ii) (raised on 7 May 2015);
- (J) there is a grammatical error in the term "standard technical measure" ("標準技術措施") in the proposed section 88A: the plural form of "standard technical measures" should be used. In the similar situations of other interpretative provisions, the plural form is also used, e.g. "preventive measures" ("預防措施") (raised on 19 May 2015);
- (K) the proposed section 88B(5) is added to restrict the liabilities to be imposed by subsections (1)-(3), but the addition of an exception by subparagraph (i) has make the provision difficult to read. With the unclear definition of "standard technical measure", it is difficult

to judge if the provision is reasonable or not (raised on 19 May 2015); and

- (L) the Administration was requested to consider reviewing the drafting of the existing section 92(2)(b) of the Copyright Ordinance (Cap. 528), by substituting the phrase “or is otherwise prejudicial” with “or otherwise is prejudicial”, to the effect that “prejudicial” was a central element applicable to the acts done to the work which amounted to derogatory treatment (raised on 9 June 2015).

“Dealt with” (“被用以進行交易”) and similar expressions

	Expression	Meaning	Relevant sections
1.	Dealing in 經營	<ul style="list-style-type: none"> - “Dealing in” is defined under sections 198(2) and 238(1A) to mean “buying, selling, letting for hire, importing, exporting and distributing”. - In general, it refers to dealings in the context of trade or business or of similar effect. 	31(2), 32(3), 95(1A), 96(6A), 109(1A), 120(2A), 207(1A), 211(1A), 228(1A)
2.	Dealing In 經銷	<ul style="list-style-type: none"> - In the context of section 118 (Offences in relation to making or dealing with infringing articles, etc.) and section 273C (Offences in relation to circumvention of effective technological measures), “dealing in” is defined under sections 118(10) and 273C(2) to mean “selling, letting for hire, or distributing for profit or reward”. - In relation to the above two criminal provisions, we consider that “經銷”, as compared with “經營”, can better reflect the legislative intent and illustrate the difference from other civil provisions. 	118(1)(e) and (f), 273C(1)(e) & (f)
3.	Dealing with/ Dealt with 被用以進行交易	<ul style="list-style-type: none"> - Where a copy of a work was made under a permitted act and is subsequently (a) possessed, exhibited or distributed, for the purpose of or in the course of trade or business by any person or organization that is not permitted to make and/or use the copy pursuant to the relevant provisions; or (b) sold or let for hire, or offered for sale or hire, the copy would be 	40B to 40D, 41A, 41, 44 & 45, 54A, 72, 242A, 243, 245, 245A, 246A

	Expression	Meaning	Relevant sections
		considered to have been “dealt with” and is treated as an infringing copy. This expression describes a copy that has been dealt with in a way mentioned in (a) or (b) above not in accordance with a purpose or use allowed by the relevant provisions and instead for the purpose of or in the course of trade or business.	
4.	Fair dealing “公平處理”	- The word “dealing” in fair dealing provisions is used in its ordinary meaning referring to the “use” of a work.	All permitted acts on fair dealing, e.g. 38, 39, 39A, 41A, 54A