

Bills Committee on the Copyright (Amendment) Bill 2014

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

Purpose

In its paper (LC Paper No. CB(4)1233/14-15(01)) submitted to the Bills Committee on 25 June 2015, the Government provided responses to drafting issues raised by Members and the Legal Advisor and proposed a set of Committee Stage Amendments (CSAs). In the light of discussions at subsequent meetings and views submitted by a Member in a letter dated 3 July (LC Paper No. CB(4)1289/14-15(01)), the Government would like to propose further CSAs as explained below. Accordingly, the set of CSAs proposed by the Government has been updated at **Annex** for Members' reference.

Newly proposed CSAs

(1) *The Chinese phrase of “被用以進行交易” (Clauses 21, 22, 23, 24, 25(2) and (3), 26(5) and (6), 27(8) and (9), 37, 47(3) and (4), 78, 79(2) and (3), 80(5) and (6), 81 (proposed section 245A) and 83)*

2. In its LC Paper No. CB(4)1233/14-15(01), the Government explained that keeping the word “被” in “被用以進行交易” can make clear the meaning of the provision as a whole and avoid confusion. After further considering Members' views, we propose to replace “被用以進行交易” with “用作交易” and change the arrangement of the sentence as appropriate in the relevant provisions to achieve the same purpose.

(2) *The Chinese phrase of “公眾中任何人” (Clauses 41(2) and 84(2))*

3. In its LC Paper No. CB(4)1233/14-15(01), the Government explained that the use of “公眾中任何人” in the amended section 252 was meant to clarify that the provision concerning the permitted act might apply to any individual member of the public. After further considering Members' views, we propose to replace “公眾中任何人” with “任何公眾人士” to achieve the same purpose.

Presentation

4. 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
September 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”.

21 By renumbering the clause as clause 21(2).

21 By adding before subclause (2)—

“(1) Section 40B(5), Chinese text—

Repeal

“被用以進行”

Substitute

“用作”。”.

21(2) In the Chinese text, by deleting the proposed section 40B(6) and substituting—

“(6) 就第(5)款而言，如 —

(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，某人管有、公開陳列或分發某便於閱讀文本(根據第(1)款製作該文本的人或根據該款獲供應該文本的人除外)；或

(b) 出售或出租某便於閱讀文本、要約出售或要約出租某便於閱讀文本，或為出售或出租而展示某便於閱讀文本，

該文本即屬用作交易。”。

22 By renumbering the clause as clause 22(2).

22 By adding before subclause (2)—

“(1) Section 40C(7), Chinese text—

Repeal

“被用以進行”

Substitute

“用作”。”.

22(2) In the Chinese text, by deleting the proposed section 40C(8) and substituting—

“(8) 就第(7)款而言，如 —

(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，某人管有、公開陳列或分發某便於閱讀文本(根據第(1)款製作該文本的指明團體或根據該款獲供應該文本的人除外)；或

(b) 出售或出租某便於閱讀文本、要約出售或要約出租某便於閱讀文本，或為出售或出租而展示某便於閱讀文本，

該文本即屬用作交易。”.

23 By renumbering the clause as clause 23(2).

23 By adding before subclause (2)—

“(1) Section 40D(7), Chinese text—

Repeal

“被用以進行”

Substitute

“用作”.”.

23(2) In the Chinese text, by deleting the proposed section 40D(8) and substituting—

“(8) 就第(7)款而言，如 —

(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，某人公開陳列或分發某中間複製品(根據第(1)款有權管有該複製品的指明團體或根據第(3)款獲借出或轉移該複製品的指明團體除外)；或

(b) 出售或出租某中間複製品、要約出售或要約出租某中間複製品，或為出售或出租而展示某中間複製品，

該複製品即屬用作交易。”.

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，”。

24 By adding—

“(5A) Section 41A(7), Chinese text—

Repeal

“被用以進行”

Substitute

“用作”。”。

24(6) In the Chinese text, by deleting the proposed section 41A(8) and substituting—

“(8) 就第(7)款而言，如 —

(a) 在並非為第(1)款所述的目的之情況下，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、公開陳列或分發某複製品；或

(b) 出售或出租某複製品、要約出售或要約出租某複製品，或為出售或出租而展示某複製品，

該複製品即屬用作交易。”。

25(2) By deleting “被用以進行” and substituting “用作”。

25(3) In the Chinese text, by deleting the proposed section 41(6) and substituting—

“(6) 就第(5)款而言，如 —

- (a) 在並非為教學或考試的目的之情況下，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、公開陳列或分發某複製品；
- (b) 出售或出租某複製品、要約出售或要約出租某複製品，或為出售或出租而展示某複製品；或
- (c) 向公眾傳播某複製品(該項傳播憑藉第(3)款不屬侵犯版權的情況除外)，

該複製品即屬用作交易。”.

26(5) By deleting “被用以進行” and substituting “用作”.

26(6) In the Chinese text, by deleting the proposed section 44(4) and substituting—

“(4) 就第(3)款而言，如 —

- (a) 在並非為有關教育機構的教育目的之情況下，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、公開陳列或分發某紀錄或複製品；
- (b) 出售或出租某紀錄或複製品、要約出售或要約出租某紀錄或複製品，或為出售或出租而展示某紀錄或複製品；或
- (c) 向公眾傳播某紀錄或複製品(該項傳播憑藉第(1A)款不屬侵犯版權的情況除外)，

該紀錄或複製品即屬用作交易。”.

27(8) By deleting “被用以進行” and substituting “用作”.

27(9) In the Chinese text, by deleting the proposed section 45(4) and substituting—

“(4) 就第(3)款而言，如 —

- (a) 在並非為有關教育機構的教育目的之情況下，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、公開陳列或分發某複製品；
- (b) 出售或出租某複製品、要約出售或要約出租某複製品，或為出售或出租而展示某複製品；或
- (c) 向公眾傳播某複製品(該項傳播憑藉第(1A)款不屬侵犯版權的情況除外)，

該複製品即屬用作交易。”.

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”.
- 37 By renumbering the clause as clause 37(2).
- 37 By adding before subclause (2)—
- “(1) Section 54A(3), Chinese text—
- Repeal**
- “被用以進行”
- Substitute**
- “用作”。”.

37(2) In the Chinese text, by deleting the proposed section 54A(4) and substituting—

“(4) 就第(3)款而言，如 —

- (a) 在並非為第(1)款所述的目的之情況下，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、公開陳列或分發某複製品；或
- (b) 出售或出租某複製品、要約出售或要約出租某複製品，或為出售或出租而展示某複製品，

該複製品即屬用作交易。”.

41(2) In the Chinese text, by deleting “公眾中任何人” and substituting “任何公眾人士”.

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”。

- 47(3) By deleting “被用以進行” and substituting “用作”。
- 47(4) In the Chinese text, by deleting the proposed section 72(3) and substituting—
- “(3) 就第(2)款而言，如 —
- (a) 在並非為第(1)款所述的目的之情況下，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、公開陳列或分發某複製品；或
- (b) 出售或出租某複製品、要約出售或要約出租某複製品，或為出售或出租而展示某複製品，
- 該複製品即屬用作交易。”。
- 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”.
- 78 By adding before subclause (1)—
- “(1A) Section 242A(3), Chinese text—
Repeal
 “被用以進行”

Substitute

“用作”。

78(6) In the Chinese text, by deleting the proposed section 242A(4A) and substituting—

“(4A) 就第(3)款而言，如 —

- (a) 在並非為第(1)款所述的目的之情況下，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、公開放映、公開播放或分發某錄製品；或
- (b) 出售或出租某錄製品、要約出售或要約出租某錄製品，或為出售或出租而展示某錄製品，

該錄製品即屬用作交易。”。

79(2) By deleting “被用以進行” and substituting “用作”。

79(3) In the Chinese text, by deleting the proposed section 243(3A) and substituting—

“(3A) 就第(3)款而言，如 —

- (a) 在並非為教學或考試的目的之情況下，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、公開放映、公開播放或分發某錄製品；
- (b) 出售或出租某錄製品、要約出售或要約出租某錄製品，或為出售或出租而展示某錄製品；或
- (c) 向公眾傳播某錄製品(該項傳播憑藉第(2)款不屬侵犯本部所賦予的權利的情況除外)，

該錄製品即屬用作交易。”。

80(5) By deleting “被用以進行” and substituting “用作”。

80(6) In the Chinese text, by deleting the proposed section 245(3A) and substituting—

“(3A) 就第(3)款而言，如 —

- (a) 在並非為有關教育機構的教育目的之情況下，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、公開放映、公開播放或分發某紀錄或複製品；
- (b) 出售或出租某紀錄或複製品、要約出售或要約出租某紀錄或複製品，或為出售或出租而展示某紀錄或複製品；或
- (c) 向公眾傳播某紀錄或複製品(該項傳播憑藉第(1A)款不屬侵犯本部所賦予的權利的情況除外)，

該紀錄或複製品即屬用作交易。”。

81 In the proposed section 245A(4), in the Chinese text, by deleting “被用以進行” and substituting “用作”。

81 In the Chinese text, by deleting the proposed section 245A(5) and substituting—

“(5) 就第(4)款而言，如 —

- (a) 在並非為有關教育機構的教育目的之情況下，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、公開放映、公開播放或分發某複製品；
- (b) 出售或出租某複製品、要約出售或要約出租某複製品，或為出售或出租而展示某複製品；或
- (c) 向公眾傳播某複製品(該項傳播憑藉第(2)款不屬侵犯本部所賦予的權利的情況除外)，

該複製品即屬用作交易。”。

83 By renumbering the clause as clause 83(2).

83 By adding before subclause (2) —

“(1) Section 246A(3), Chinese text—
Repeal
 “被用以進行”
Substitute
 “用作”。”.

83(2) In the Chinese text, by deleting the proposed section 246A(3A) and substituting—

“(3A) 就第(3)款而言，如 —
 (a) 在並非為第(1)款所述的目的之情況下，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、公開放映、公開播放或分發某錄製品；或
 (b) 出售或出租某錄製品、要約出售或要約出租某錄製品，或為出售或出租而展示某錄製品，
 該錄製品即屬用作交易。”.

84(2) In the Chinese text, by deleting “公眾中任何人” and substituting “任何公眾人士”.

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”。