

Bills Committee on the Copyright (Amendment) Bill 2014

**The Government's response to Members' Proposed
Committee Stage Amendments and Deputations' Submissions**

Purpose

This paper presents for Members' reference the Government's response to the following proposed Committee Stage Amendments (CSAs) and submissions -

- (i) Hon Dennis KWOK's CSAs on restrictions on contract override (LC Paper No. CB(4)1249/14-15(01)(Revised));
- (ii) Hon Cyd HO's CSAs on user-generated content (UGC) (LC Paper No. CB(4)1289/14-15(02));
- (iii) Hon CHAN Chi-chuen's CSAs on fair use (submitted to the Bills Committee on 16 October 2015);
- (iv) Hon WONG Yuk-man's CSAs (submitted to the Bills Committee on 16 October 2015);
- (v) Progressive Lawyers Group (PLG)'s submission (LC Paper No. CB(4)1257/14-15(02));
- (vi) Copyrights and Derivative Works Alliance (CDWA)'s submission (LC Paper CB(4)1257/14-15(03));
- (vii) IFPI Asian Regional Office (IFPI)'s submission (LC Paper CB(4)1352/14-15(01)); and
- (viii) Hong Kong Copyright Alliance (HKCA)'s submission (LC Paper CB(4)1450/14-15(01)).

Contract Override

2. We appreciate the further views submitted by CDWA and the revised proposal by Hon Dennis KWOK for CSAs that would introduce contract override provisions to several existing and proposed copyright exceptions. We note that Hon WONG Yuk-man also proposed CSAs for a similar purpose.¹ At

¹ Hon WONG Yuk-man proposed to amend section 37 of the existing Copyright Ordinance (Cap. 528) (Ordinance) by adding subsection (6) to prevent the overriding of the permitted acts provided for in Division III of Part II of the Ordinance by contract terms.

the meeting on 23 September 2015, we explained the Government's findings and views as detailed in its paper submitted to the Bills Committee in June 2015 (LC Paper No. CB(4)1182/14-15(01)), including the situations in many overseas jurisdictions, the current law and practice in Hong Kong and the reasoning behind our reservation in introducing contract override provisions in the Copyright (Amendment) Bill 2014 (the Bill).

3. It would suffice here to reiterate a few pertinent points -

(a) Freedom of contract plays a vital role in Hong Kong's free-market economy and it remains a cornerstone in the law of contract. Allowing copyright owners and users room to negotiate appropriate terms in respect of the use of copyright works not only provides flexibility and legal certainty that the parties desire in specific circumstances, but also facilitates the efficient and competitive exploitation of copyright works to the benefits of both owners and users of copyright works.

(b) There is no evidence before us that the current copyright exceptions have failed to achieve the benefits intended owing to contract override. It remains speculative that the specific copyright exceptions in question will be treated differently to deprive them of the intended benefit.

(c) It would not be satisfactory, like the CSAs proposed by Hon Dennis KWOK, to include contract override provisions only in certain existing and proposed copyright exceptions, as this might amount to a hierarchy of different exceptions provided for in Division III of Part II of the Copyright Ordinance (Cap. 528) (the Ordinance) without cogent analysis and justification in a comprehensive manner. Piecemeal inclusion of the limitation on contract override in respect of specific exceptions will have the unintended consequence that copyright exceptions that are silent on the limitation can be overridden by contracts. On the other hand, it would be equally unsatisfactory to include a categorical contract override provision in the Ordinance, as proposed by Hon WONG Yuk-man, to which all permitted acts in Division III of Part II would be subject, as this might amount to a fundamental change of the legal norms underpinning the incentive mechanism intended by our copyright regime.

(d) There is no obligation to limit contract override under international treaties which apply to Hong Kong, including copyright treaties or the International Covenant on Economic, Social and Cultural Rights (ICESCR). We note that in its submissions, CDWA mentioned the Report of the Special Rapporteur in the field of cultural rights of the United Nations Human Rights Council (UNHRC) and urged the Administration to observe its obligations under the ICESCR so that the exemptions from civil liability under the Bill will not be undermined by private contractual arrangement. In fact, the Report was a working report submitted by the Special Rapporteur to the UNHRC and examines copyright law and policy from the perspective of the right to science and culture. The Report emphasises both the need for protection of authorship and expanding opportunities for participation in cultural life. The recommendations in the Report are not legally binding. As far as we are aware, no resolution has been adopted or follow-up action taken by the HRC in respect of the Report. It is further noted that in the European Union (EU), recital 45 of the EU Information Society Directive² provides that the exceptions and limitations should not prevent the definition of contractual relations designed to ensure fair compensation for the rights holders insofar as permitted by national law. Article 9 further states that the Directive shall be without prejudice to the law of contract.

4. Given the complexity of the subject, we remain of the view that it would not be prudent to rush into legislating contract override provisions without a comprehensive review (including on the operation of the new copyright exceptions), thorough consultations with stakeholders and consideration of the on-going developments in overseas jurisdictions. As set out in paragraphs 40-44 of our paper issued in June 2015 (LC Paper No. CB(4)1182/14-15(02)), contract override is one of the issues we are prepared to consider in the next round of copyright review, which we plan to launch after the Bill is passed.

² Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

UGC

5. The issue of UGC is not new, and discussion could go as far back as to the public consultation exercise conducted in 2013. The Government's reservation in adopting the generic concept of UGC as a subject matter for copyright exception in this round of update was explained in detail in the Legislative Council Brief covering the Bill issued in June 2014 (paragraph 19 and Annex F) (CITB 07/09/17), a dedicated paper submitted to the Bills Committee in October 2014 (LC Paper No. CB(4)100/14-15(01)) and the Summary of Administration's response to views expressed by deputations and members of the public at the meeting on 25 October 2014 issued in January 2015 (LC Paper No. CB(4)442/14-15(01)). We appreciate the latest views and proposals submitted by CDWA, which were supported by the Hon Cyd Ho in the form of a CSA.

6. But our principled concerns remain to be addressed, certainly not by a mere copying of the Canadian provision. It would suffice here to recall a few pertinent points -

(a) The concept of UGC is very vague and difficult to define, evolving alongside technological developments. There is doubt as to whether a UGC exception can meet the three-step test enshrined in the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization, in particular the first step, i.e. limitations or exceptions should be confined to certain special cases.

(b) It is unclear what additional problems a UGC provision may be able to address, given the enlarged scope of permitted acts in the Bill. In theory, it may be able to benefit some acts outside the enlarged scope, but this still begs the question of why such acts should be exempted from copyright protection.

(c) The concept is unsettled and developing. Only Canada has adopted the concept in its legislation, with no followers to date. We should remain vigilant about international developments.

7. In our considered view, the existing copyright exceptions together with new ones proposed in the Bill would cover a great many UGC commonly seen on the Internet. The clarification of the criminal liability and the provision of

the safe harbour in the Bill as well as the operation of the principles governing civil liability should cover further concerns. As set out in paragraphs 40-44 of our paper issued in June 2015 (LC Paper No. CB(4)1182/14-15(02)), UGC is one of the issues we are prepared to consider in the next round of copyright review that we plan to launch after the Bill is passed.

Fair Use

8. PLG and CDWA advocate the introduction of a non-exhaustive copyright exemption regime along the fair use model of the United States (US) into Hong Kong, while IFPI and HKCA are against it. Both sides presented arguments in support of their causes. Hon CHAN Chi-chuen has also tabled a proposed CSA on fair use. As background, the idea was a subject for public consultation in 2004. The Government received diverse views from the stakeholders and concluded that, on balance, the exhaustive fair dealing approach was preferable as it offered more certainty given that the permitted acts would be clearly set out with appropriate conditions. Meanwhile, the fair dealing approach is also adopted in major common law jurisdictions such as the United Kingdom, New Zealand, Canada and Australia.³

9. It is our considered view that the established fair dealing regime along with the extended scope and number of exceptions introduced in the Bill are suitable and appropriate with reference to Hong Kong's current situation and strikes a fair balance between the interests of different stakeholders. A shift to fair use would represent a fundamental revamp of our copyright regime and must be carefully considered in the light of a proper consultation exercise,⁴ and is beyond the scope of the current round of legislative update. As set out in paragraphs 40-44 of our paper issued in June 2015 (LC Paper No.

³ In February 2014, the Australian Law Reform Commission issued its final report on Copyright and the Digital Economy and recommended the introduction of a fair use exception to Australian copyright law or alternatively, to consolidate and expand the existing fair dealing exceptions. The Australian Attorney-General's Department recently commissioned an economic analysis of, *inter alia*, these recommendations, which will consider the financial effect of the policy options on various stakeholders. It remains to be seen as to whether and how these recommendations will be implemented in Australia.

⁴ In particular, it is important to allow the stakeholders to fully deliberate different policy options and legislative formulations with a view to building consensus on the way forward. In this respect, we note that even for the jurisdictions which have adopted the US-style fair use models, the precise scope and formulation of the relevant exception incorporated in the legislation vary from one jurisdiction to another. For instance, Singapore's "fair dealing in relation to works" provision, which provides a generic fair dealing defence to copyright infringement (see section 35 of Singapore's Copyright Act), sits side by side with its other fair dealing provisions for fixed and specified purposes. Meanwhile, the fair use provision in the Philippines (see section 185.1 of its Intellectual Property Code) appears to be more restrictive than its US counterpart.

CB(4)1182/14-15(02)), we plan to launch a new round of copyright review after the Bill is passed. We are prepared to review fair use therein as well.

The Crimes Ordinance

10. CDWA reiterated its concerns over the use of section 161 of the Crimes Ordinance (Cap. 200) in criminal proceedings. As far as the copyright regime is concerned, we confirm no change in our policy intent in copyright enforcement from the Government position spelt out on 21 April 1993 during the resumption of the Second Reading Debate of the Computer Crimes Bill 1992, as underlined in our paper issued in May 2015 (LC Paper No. CB(4)944/14-15(01)).

Hyperlinks

11. In its submission, CDWA expressed concern over the Television Broadcasts Limited's (TVB) proposal that infringing hyperlinks be outlawed. In our paper issued in June 2015 (LC Paper No. CB(4)1182/14-15(02)), we set out a full response to TVB's proposals which we do not accept in the current exercise. Notably, we believe its proposals concerning hyperlinks would be controversial and alarming, with serious implications for the public interest. That said, we acknowledge the significant concern expressed by some owners about online piracy facilitated by set top boxes and link aggregate websites and remedial ideas such as judicial site blocking. As set out in paragraphs 40-44 of the above paper, these are part of the issues we are prepared to consider in the next round of copyright review that we plan to launch after the Bill is passed.

Hon WONG Yuk-man's proposed CSAs

12. We appreciate the sustained efforts of Hon WONG Yuk-man throughout the Bills Committee proceedings in proposing CSAs, mainly seeking to improve the drafting of some of the provisions under the Bill and the Ordinance. As set out in our previous responses (LC Papers CB(4)1233/14-15(01) and CB(4)1474/14-15(01)), we have already accepted a number of CSAs proposed before the summer. Since September, we have been working intensively to critically examine a great volume of CSAs further proposed batch by batch by Hon WONG Yuk-man in draft, which cumulated in the formal submission on 16 October, and consider accommodation. A few observations are relevant here.

13. First, many of the CSAs proposed by Hon WONG Yuk-man are editorial amendments which the Government would make by way of a separate exercise. The Department of Justice has been making use of the editorial powers under section 2A of the Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990) to make necessary editorial amendments to the replacement pages of the Loose-leaf Edition of the Laws of Hong Kong. On the commencement of the provisions of the Bill, we will prepare replacement pages for the Ordinance and would take the opportunity to make necessary format changes including removing the double quotation marks around the defined terms concerned and printing them in italicised and bold format.

14. Second, a considerable number of the proposed CSAs would alter the legal meanings of the original provisions and fall out of line of the policy intent, or would otherwise result in uncertainty, ambiguity, inconsistency or other unacceptable drafting in the legislation. There are also instances in which the proposed CSAs would be unnecessary, not relevant to the subject matter of the Bill or its clauses, or otherwise not agreeable for inclusion in the Government's proposed CSAs.

15. That said, we appreciate the serious efforts of Hon WONG Yuk-man in proposing changes to improve the drafting of the legislation. Ideas that would inspire drafting improvements will be further considered in earnest by the Law Draftsman and the Intellectual Property Department in a holistic manner with reference to the whole Ordinance. Where appropriate, in a future exercise to update the Ordinance, possible drafting changes may be made to take on board the ideas.

Presentation

16. Members are invited to note the response provided in this paper and a whole set of updated CSAs at **Annex** to be introduced by the Government.

Commerce and Economic Development Bureau
Intellectual Property Department
October 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(6)—

Repeal

“reprographic”。

(5B) 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”.