

## **Bills Committee on the Copyright (Amendment) Bill 2014**

### **The Government's Response to a Member's Proposed Committee Stage Amendments on the Long Title**

#### **Purpose**

At the meeting of the Bills Committee on 19 October 2015, Hon WONG Yuk-man expressed the view that some of the clauses of the Copyright (Amendment) Bill 2014 (the Bill) are beyond the subject matter of the Bill and thus proposed Committee Stage Amendments (CSAs) to the long title as a remedy. The Government would like to respond as follows.

#### **The Government's response**

2. We confirm that the drafting of the Bill is in order. There is no question of some of its clauses being beyond the subject matter of the Bill.

3. In relation to Hon WONG Yuk-man's proposal to amend the long title, Members may wish to note that Rule 50(3) of the Rules of Procedure (RoP) of the Legislative Council (LegCo) provides that a bill shall be given a long title setting out the purposes of the bill in general terms. The requirements of a long title have been stated in previous rulings of the LegCo President. For example, in the ruling on the proposed amendments to the Communications Authority Bill dated 27 June 2011, the LegCo President stated that the long title should set out the purposes of the bill in general terms, should cover everything in the bill, and must accurately reflect its content (at paragraph 8). Considering the purposes of the Bill and its content, the Government is of the view that the long title complies with procedural requirements.

4. The Bills Committee has noted that Hon WONG Yuk-man intends to propose amendments to the long title, to add "to make amendments to improve the presentation of the Ordinance", and "to provide for related and consequential amendments". The Government is of the view that the proposals are not necessary, and they may have problems with the requirements of Rule 58(9) of the RoP and principles set out in previous rulings of the LegCo President. Rule 58(9) of the RoP provides that "[i]f any amendment to the title of the bill is made necessary by an amendment to the bill, it shall be made at the conclusion of the proceedings ...". A clear principle has been set out in previous rulings of the LegCo President that the long title is not subject to amendment unless an amendment made to the substantive provisions in the bill makes it necessary to do so. Also, the long title cannot be amended to expand the scope of a bill to allow

some proposed amendments which would otherwise be outside scope to be moved. The most recent LegCo President's ruling on this point is the ruling on Hon WONG Yuk-man's proposed amendments to the Special Holiday (3 September 2015) Bill dated 6 July 2015.

5. In the above light, we do not consider that the CSAs proposed by Hon WONG Yuk-man are admissible under the RoP.

6. We have also taken the opportunity to critically review and update the set of CSAs proposed to be moved by the Government and are pleased to provide the latest version at **Annex**. We are satisfied that such CSAs are relevant to the subject matter of the Bill and to the subject matter of the clause to which it relates as required by Rule 57(4)(a), and no amendment to the long title would be made necessary by the passage of such CSAs.

7. It only remains for us to reiterate and supplement our observations set out in paragraphs 13-15 of our last paper of reference LC Paper No. CB(4)61/15-16(01). We appreciate the efforts of Members to improve the drafting of legislation. In this light, at the appropriate time, the Government would make necessary format and editorial changes with the powers given to the Secretary for Justice under section 2A of the Laws (Loose-leaf Publication) Ordinance 1990 and section 17 of the Legislation Publication Ordinance (Cap. 614)<sup>1</sup>. 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 Copyright Ordinance (Cap. 528). Where appropriate, in a future exercise to update the Copyright Ordinance, possible drafting changes may be made to take on board the ideas.

## **Presentation**

8. Members are invited to note the above response.

Commerce and Economic Development Bureau  
Intellectual Property Department  
October 2015

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<sup>1</sup> By virtue of section 17(a), the Secretary for Justice may, by order in the Gazette, make an alteration to an Ordinance for the purpose of securing uniformity in expression within the Ordinance or with another Ordinance.

Copyright (Amendment) Bill 2014

**Committee Stage**

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

Clause

Amendment Proposed

- 6 By adding before subclause (1)—
- “(1A) Section 17(5), in the English text—  
**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—

“(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。”。
- 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”.”.

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”.”.

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