

Copyright (Amendment) Bill 2014

Committee Stage

Amendments to be moved by the Honourable CHAN Kam-lam, SBS, JP

<u>Clause</u>	<u>Amendment Proposed</u>
New	After the proposed section 38(3), add — “(4) A term of contract is unenforceable to the extent that it purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright.”.
18	After the proposed section 39(6), add— “(7) A term of contract is unenforceable to the extent that it purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright.”.
19	After the proposed section 39A(2), add — “(3) A term of contract is unenforceable to the extent that it purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright.”.
19	After the proposed section 39A, add — “39B. User-generated content (1) It is not an infringement of copyright for an individual to use an existing work or other subject matter (or copy of one) which has been published or otherwise made available to the public, in the creation of a new work or other subject matter in which copyright subsists and for the individual (or, with the

individual's authorization, a member of their household) to use the new work or other subject matter or to authorize an intermediary to disseminate it, if –

- (a) the use of, or the authorization to disseminate, the new work or other subject matter is done predominantly for non-commercial purposes;
 - (b) the source (and, if given in the source, the name of the author, performer, maker or broadcaster) of the existing work or other subject matter (or copy of it) are mentioned, if it is reasonable in the circumstances to do so;
 - (c) the individual had reasonable grounds to believe that the existing work or other subject matter (or copy of it) as the case may be, was not infringing copyright; and
 - (d) the use of, or the authorization to disseminate, the new work or other subject matter does not have a substantial adverse effect, financial or otherwise, on the exploitation or potential exploitation of the existing work or other subject matter (or copy of it) or on an existing or potential market for it, including that the new work or other subject matter is not a substitute for the existing one.
- (2) For the purposes of subsection (1) –
- (a) ***intermediary*** (中介人) means a person or entity who regularly provides space or means for works or other subject matter to be enjoyed by the public; and

(b) *use* (使用) means to do anything that by this Ordinance the owner of the copyright has the sole right to do, other than the right to authorize anything.”.

24 After the proposed section 41A(8), add —

“(9) A term of contract is unenforceable to the extent that it purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright.”.

75 After the proposed section 241(5), add —

“(5A) A term of contract is unenforceable to the extent that it purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright.”.

76 After the proposed section 241A(2), add —

“(2A) A term of contract is unenforceable to the extent that it purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright.”.

78 After the proposed section 242A(4A), add —

“(4B) A term of contract is unenforceable to the extent that it purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright.”.

Long title By deleting "for additional factors in considering whether additional damages should be awarded in an action for infringement;" and substituting "for additional factors in considering whether additional damages should be awarded in an action for infringement; and to make amendments to improve the presentation of the Ordinance;".

Long title By deleting "for related matters" and substituting "to provide for related and consequential amendments".