

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	Add — “17A. Section 38 amended (Research and private study)”.
New	After 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.”.
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 any of the rights conferred by this Part.”.

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 any of the rights conferred by this Part.”.

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 any of the rights conferred by this Part.”.

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<u>Clause</u>	<u>Amendment Proposed</u>
19	In the heading, delete “ Section 39A added ” and substitute “ Sections 39A and 39AA added ”.
19	Before section 40, add — “ 39AA. 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.”.

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<u>Clause</u>	<u>Amendment Proposed</u>
19	In the heading, delete “ Section 39A added ” and substitute “ Sections 39A and 39B added ”.
19	Before section 40, add — “ 39B. Fair use Notwithstanding the provisions of sections 22, 89, 92 and 96, the fair use of a copyright work, including such use by reproduction or distribution in copies or communication by any other means, for purposes such as criticism, review, quotation, reporting and commenting on current events, parody, satire, caricature, pastiche, education (including multiple copies for educational establishment use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered must include — (a) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit-making purposes; (b) the nature of the copyright work; (c) the amount and substantiality of the portion used in relation to the copyright work as a whole; and (d) the effect of the use upon the potential market for or value of the copyright work.

The fact that a work is unpublished must not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.”.