

Bills Committee on the Copyright (Amendment) Bill 2014

The Government's Further Response to a Member's Proposed Committee Stage Amendments to the Long Title

Purpose

In a letter dated 11 November 2015, Hon WONG Yuk-man requested the Government to further respond in writing to his views on the long title of the Copyright (Amendment) Bill 2014 (the Bill) as set out in the manuscript of his speaking points presented at the Bills Committee meetings.

2. This paper provides the Government's further response.

Hon WONG Yuk-man's views

3. In sum, Hon WONG Yuk-man considers that the long title of the Bill fails to cover a number of clauses of the Bill. He does not consider the wording "for related matters" in the long title can cover these clauses. In his views, "related matters" and "consequential amendments" should be set out separately as in a number of other Bills.¹ Otherwise, all the "consequential amendments" in the Bill would contravene Rule 50(3) of the Rules of Procedure (RoP) of the Legislative Council (LegCo)² for not falling within the purposes set out in the long title. Hon WONG Yuk-man, in contending that the meaning of "for related matters" should not be stretched, also cited the LegCo President's ruling in relation to Hon Andrew CHENG Kar-foo's proposed CSAs to the Fixed Penalty (Smoking Offences) Bill in June 2008, in which the then LegCo President ruled that "the use of the expression 'related matters' in the long title of a bill does not have the effect of expanding the scope or changing the subject matter of the bill as represented by the provisions in it."³

4. Given the above, Hon WONG Yuk-man has proposed Committee Stage Amendments (CSAs) to the long title by adding "to make amendments to improve the presentation of the Ordinance" and by replacing "to provide for

¹ Examples previously provided by Hon WONG Yuk-man included the Road Traffic (Amendment) Bill 2011 and the Trust Law (Amendment) Bill 2013.

² Which reads: "The bill shall be given a long title setting out the purposes of the bill in general terms."

³ Paragraph 11 of the ruling.

related matters” with “to provide for related and consequential amendments”.

The Government’s further response

5. We stand by our response set out in our paper discussed by the Bills Committee at its meeting on 2 November (LC Paper No. CB(4)155/15-16(02)). We would like to supplement with more details as set out below.

6. Rule 50(3) of the RoP 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, or what should it contain, are summarised in the ruling of the LegCo President on the CSAs proposed to the Communications Authority Bill dated 27 June 2011. Paragraph 8 of the ruling states 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. These requirements echo the parliamentary practice in the United Kingdom (UK) as set out in Erskine May’s *Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th edition). In pages 527-528, it is stated that “[t]he long title sets out in general terms the purposes of the bill, and should cover everything in the bill ... Conversely, the long title should not refer to significant purposes which are not covered by the provisions of the printed bill ...”.

(a) *Whether the long title of the Bill is in compliance with Rule 50(3) of the RoP*

7. The long title of the Bill is -

“A Bill to amend the Copyright Ordinance to provide for the rights to communicate a work or performance to the public by a copyright owner or performer; for limiting an online service provider’s liability; for acts that may be done without infringing copyright or performers’ rights; for additional factors in considering whether additional damages should be awarded in an action for infringement; and for related matters.”

In the light of the explanations above and as can be seen in the substantive provisions of the Bill and its Explanatory Memorandum, the Bill concerns the right of communication to public, limitations on liability of online service providers, permitted acts, additional damages, and related amendments.

8. We are satisfied that the long title of the Bill can cover all clauses of the Bill, for they do either form part of the specific matter set out in the long title or they are consequential amendments that are related to the specific matters set out in the long title. More elaboration in the ensuing paragraphs.

9. The long title of the Bill refers to certain specific matters (e.g. “to provide for the rights to communicate a work or performance to the public by a copyright owner or performer”). Some consequential amendments may be covered by those specific matters, as they form part of the statutory framework to implement those matters. For example, the amendments mentioned in paragraph 4 of the Explanatory Memorandum, while they are consequential to the new section 28A (concerning the new communication right), form part of the specific matter mentioned above. Clauses for deleting the references of “copy/copies” in a number of provisions are related to the “communication right” while the amendments in section 7(5) are related to permitted acts. Sections 40 and 57 are related to both of the communication right and permitted acts, which are the subject matters of the Bill.

10. In addition, the long title refers to “and for related matter” at the end. In page 527 of *Erskine May*, it is stated that the phrase “‘and for connected purposes’, with which [a long title in the UK] commonly ends, makes it possible to omit an express reference in the long title to minor matters related to the main substance of the bill.” The Hong Kong position is the same. In our view, it is reasonable to regard the phrases “and for connected purposes” and “and for related matters” as the same in substance. The expression “related matters” in the long title of the Bill covers the consequential amendments contained in the Bill that are related to the specific matters set out in the long title.

11. Hon WONG Yuk-man has referred to the LegCo President’s ruling on Hon Andrew CHENG Kar-foo’s proposed CSAs to the Fixed Penalty (Smoking Offences) Bill (Smoking Bill) in support of his view (please see paragraph 3 above). However, it should be noted that the ruling is about whether Hon Andrew CHENG Kar-foo’s proposed CSAs were relevant to the subject matter of the Smoking Bill.

12. On that occasion, Hon Andrew CHENG Kar-foo proposed CSAs to add completion of a smoking cessation counselling as an alternative to paying fixed penalty for smoking offences. He argued that his CSAs were within the scope

of the Smoking Bill because smoking cessation counselling should be one of the "related matters" stated in the long title. The LegCo President took the view that the use of the expression "related matters" in the long title of a bill does not have the effect of expanding the scope or changing the subject matter of the bill as represented by the provisions in it. Hon Andrew CHENG Kar-foo's proposed CSAs were ruled to be outside the scope of the Smoking Bill.

13. We note that Hon WONG Yuk-man has also referred to a ruling made by the then LegCo President in 2002 as illustration on "related matters". We believe he was referring to the ruling on CSAs to Electoral Provisions (Miscellaneous Amendments) Bill 2002 (Election Bill) proposed by Hon Andrew CHENG Kar-foo. In that case one of the purposes of the Election Bill, as stated in the long title, was to amend the District Councils Ordinance to change the number of members to be elected to the Islands District Council, Sai Kung District Council and Yuen Long District Council (there was no reference to "related matters" in the long title). The proposed CSAs sought to abolish the appointed and ex-officio seats for the second term district councils. Hon Andrew CHENG Kar-foo argued that as the Election Bill proposed that each district council should continue to be made up of elected, appointed and ex-officio members and that there should be a limited increase in the number of elected members for the said districts, CSAs to abolish appointed and ex-officio seats should be relevant to the Election Bill. In the ruling (paragraph 11) the then President stated that –

“It is important that one does not confuse matters that are relevant to a bill with matters that are the subject matter of the bill. The background to and the considerations that have gone into the making of a policy decision to present a bill to the legislature, whilst relevant to that decision, may not necessarily be the subject matter of the bill.”

14. The ruling was on the point that there is a distinction between matters that are relevant to a bill and matters that are the subject matter of the bill, but does not relate to the meaning of "related matters". Also, it is noteworthy that this ruling clearly sets out the principle that matters that are relevant to a bill may not necessarily be the subject matter of the bill. Applied to the situation of the CSAs proposed by Hon WONG Yuk-man, whilst he argues that they are relevant to the Bill, they cannot be equated to be the subject matter of the bill.

(b) *Whether the CSAs to be proposed by the Government fall within the scope of the Bill*

15. Under Rule 57(4)(a) of the RoP, an amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates. We confirm that the final set of CSAs to be proposed by the Government (as attached to the last Bills Committee paper of reference LC Paper No. CB(4)155/15-16(02)) is in order, and no amendment to the long title would be made necessary by the passage of such CSAs.

(c) *Amendment of the long title*

16. Rule 58(9) of the RoP provides that amendment to the long title of the bill shall be made at the conclusion of the Committee stage proceedings if it is made necessary by an amendment to the bill. A clear principle has been set out in previous LegCo President's rulings 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. 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 CSAs to the Special Holiday (3 September 2015) Bill (the Holiday Bill) dated 6 July 2015. The long title of the Holiday Bill states that it is "[a] bill to make 3 September 2015 an additional general holiday and an additional statutory holiday in 2015 for the purposes of the General Holidays Ordinance (Cap. 149) and the Employment Ordinance (Cap. 57) respectively". Hon WONG Yuk-man's CSAs sought to change the date to the dates of (a) the birth or death of certain political or social figures; (b) the establishment of certain institutions or facilities; (c) the occurrence of certain events including disasters, battles, uprisings, social or political incidents, and the signing of treaties; and (d) festivals. As the long title named a specific date which would make his CSAs outside scope, he also moved CSAs to amend the long title. In paragraph 13 of the ruling the LegCo President stated that-

“Under Rule 50(3) of the Rules of Procedure, the long title of a bill is to set out the purposes of a bill in general terms. It is not subject to amendment at Committee stage of the bill unless an amendment made to the provisions in the bill makes it necessary to do so or for some other technical reasons such as to improve the language or to clarify a

certain point which is within the scope of the bill. Proposed amendments to the long title to enlarge the scope of a bill should not be admissible under the Rules of Procedure.”

17. In view of Rules 50(3) and 58(9) of the RoP, previous LegCo President rulings and the above analysis, we consider that it is not necessary for the Government to amend the long title of the Bill as suggested by Hon WONG Yuk-man, and that Hon WONG Yuk Man’s proposed CSAs to the long title of the Bill should not be admissible.

Presentation

18. Members are invited to note the Government’s further response as set out above.

Commerce and Economic Development Bureau
Intellectual Property Department
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