

立法會
Legislative Council

LC Paper No. CB(3) 219/15-16

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Tel : 3919 3306

Date : 7 December 2015

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 9 December 2015

Copyright (Amendment) Bill 2014

Committee stage amendments

Members were informed vide LC Paper No. CB(3) 153/15-16 issued on 18 November 2015 that the President had given permission for the Secretary for Commerce and Economic Development to move proposed amendments to the above Bill.

2. Members are invited to note that the President has also given permission for Hon CHAN Kam-lam, subject to the Bill receiving a Second Reading, to move his proposed amendments.

3. As directed by the President, the proposed amendments are attached for Members' consideration.

(Boris LAM)
for Clerk to the Legislative Council

Encl.

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>
18	<p>In the proposed section 39, by adding —</p> <p>“(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.”.</p>
19	<p>In the proposed section 39A, by adding —</p> <p>“(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.”.</p>
24(6)	<p>By adding —</p> <p>“(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.”.</p>
75	<p>In the proposed section 241, by adding —</p> <p>“(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.”.</p>
76	<p>In the proposed section 241A, by adding —</p> <p>“(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.”.</p>

78(6) By adding —

“(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.”.

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>
19	In the heading, by deleting “ Section 39A added ” and substituting “ Sections 39A and 39B added ”.
19	By adding — “ 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.”.

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>
19	In the heading, by deleting “ Section 39A added ” and substituting “ Sections 39A and 39C added ”.
19	By adding — “ 39C. User-generated content (1) It is not an infringement of copyright for an individual to use an existing work or copy of one, which has been published or otherwise made available to the public, in the creation of a new work 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 to authorize an intermediary to disseminate it, if – (a) the use of, or the authorization to disseminate, the new work 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 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 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 does not have a substantial adverse effect, financial or otherwise, on the exploitation or potential exploitation of the existing work or copy of it or on an existing or potential market for it, including that the new work is not a substitute for the existing one.

- (2) For the purposes of subsection (1) –

intermediary (中介人) means a person or entity who regularly provides space or means for works to be enjoyed by the public;

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.”.