

**Copyright (Amendment) Bill 2014**  
**Debate and voting arrangements**

- Object of the Bill :** To amend the Copyright Ordinance (Cap. 528) (“the Ordinance”) to provide for:
- (a) the rights to communicate a work or performance to the public by a copyright owner or performer;
  - (b) limiting an online service provider’s liability;
  - (c) acts that may be done without infringing copyright or performers’ rights;
  - (d) additional factors in considering whether additional damages should be awarded in an action for infringement; and
  - (e) related matters.

<b>Debate Arrangement</b>	
<b>First debate</b>	<b>: Clauses of the first group – Clauses 18, 19, 24, 75, 76 and 78 of amendments proposed by Hon CHAN Kam-lam</b>
Joint debate on the original clauses and the amendments thereto.	
<b>Theme of debate : To add sections relating to contract override provisions in respect of copyright exceptions</b>	
<i>Hon CHAN Kam-lam’s first group of amendments:</i>	
- To respectively add sections 39(7), 39A(3), 41A(9), 241(5A) 241A(2A) and 242A(4B) after the proposed sections 39(6) in clause 18, the proposed section 39A(2) in clause 19, the proposed section 41A(8) in clause 24, the proposed section 241(5) in clause 75, the proposed section 241A(2) in clause 76 and the proposed section 242A(4A) in clause 78 to stipulate that 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 the relevant sections of the Copyright (Amendment) Bill 2014 (“the Bill”), would not infringe copyright.	
<b>Second debate</b>	<b>: Clause of the second and third groups of amendments proposed by Hon CHAN Kam-lam – Clause 19</b>
Joint debate on the original clause and the amendments thereto.	

**Theme of debate : To add sections relating to fair use and user-generated content in respect of copyright exceptions**

*Hon CHAN Kam-lam's second group of amendments:*

- To add a section relating to fair use after the proposed section 39A in clause 19 to stipulate that the fair use of a copyright work is not an infringement of copyright, and to set out the factors that must be considered in determining whether the use of a work in any specific case is a fair use; and
- to amend the heading of clause 19 by deleting “Section 39A added” and substituting it with “Sections 39A and 39B added”.

*Hon CHAN Kam-lam's third group of amendments:*

- To add a section relating to user-generated content after the proposed section 39A in clause 19 to provide that subject to specified requirements, it is not an infringement of copyright for an individual to use a work which has been published, or an existing work or other article/copy otherwise made available to the public, in the creation of a new work or other article in which copyright subsists; and
- to amend the heading of clause 19 by deleting “Section 39A added” and substituting it with “Sections 39A and 39C added”.

<b>Third debate</b>	<b>: Clauses with amendments proposed by the Secretary for Commerce and Economic Development (“SCED”)</b>	<b>– Clauses 6, 8, 13, 18, 21 to 27, 30 to 35, 37, 41, 43, 47, 50, 52, 75, 78 to 81, 83, 84, 86 and 89</b>
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Joint debate on the original clauses and the amendments thereto.

**Theme of debate : SCED's amendments to the Bill in response to the Bills Committee's views**

**Clauses 6 and 8**

- To amend the English text of section 17(5) of the Ordinance in clause 6 by adding “(向公眾提供)” after “making available to the public” as the corresponding Chinese equivalent; and
- to respectively amend sections 17(5)(a) and (b) and 19(6) of the Ordinance in clauses 6 and 8 by adding “any of the following” after “includes”.

**Clause 13**

- In the Chinese text of the proposed section 28A(6)(b), to replace “信息” with “訊息”.

### **Clauses 18, 52, 75 and 89**

- In the Chinese texts of the heading of the proposed section 39 and section 39(3) in clause 18, the proposed section 91(4)(a) in clause 52, the heading of the proposed section 241 and section 241(3) in clause 75 and the proposed section 272D(4)(a) in clause 89, to replace “報導” with “報道”;
- In the Chinese texts of the proposed section 39(5)(a) in clause 18 and the proposed sections 241(5)(a) and (b) in clause 75, to replace “(不包括向公眾傳播)” with “(向公眾傳播除外)”; and
- In the proposed section 39(5)(a)(iii) in clause 18, and the proposed sections 241(5)(a)(iii) and 241(5)(b)(iii) in clause 75, to replace “to the public” with “in public”.

### **Clauses 21 to 27, 37, 47, 78 to 81 and 83**

- To respectively amend the Chinese texts of sections 40B(5), 40C(7), 40D(7), 41A(7), 41(5), 44(3), 45(3), 54A(3), 72(2), 242A(3), 243(3), 245(3) and 246A(3) of the Ordinance, and the proposed section 245A(4) in the aforesaid clauses by replacing “被用以進行” with “用作”, and to renumber the relevant clauses;
- to respectively make textual amendments to the Chinese texts of the proposed sections of 40B(6), 40C(8), 40D(8), 41A(8), 41(6), 44(4), 45(4), 54A(4), 72(3), 242A(4A), 243(3A), 245(3A), 245A(5) and 246A(3A) in the aforesaid clauses to enhance the clarity of the sections; and
- to amend section 41A(6) of the Ordinance in clause 24 by deleting “reprographic”.

### **Clauses 30 to 35, 43 and 86**

- To respectively amend the Chinese texts of sections 48(1), 50(1), 51(1), 52(1), 67(1) and 253(1) of the Ordinance in clauses 30, 31, 32(2), 34, 43 and 86 by making textual amendments in relation to the phrase “獲符合”, to make corresponding amendments to the Chinese texts of the proposed sections 51A(1) and 52A(1) in clauses 33 and 35, and to renumber the relevant clauses.

### **Clauses 41 and 84**

- to respectively amend the Chinese texts of sections 65 and 252 of the Ordinance in the aforesaid clauses by replacing “公眾中任何人” with “任何公眾人士”.

### **Clause 50**

- In the English text of the proposed section 88A, to replace “widely” with “generally” in the definition of *standard technical measure*;
- to make textual amendments to the Chinese texts of the proposed sections 88B(1), 88B(2)(b) and 88B(4)(a)(i) to increase the clarity of the provisions; and
- in the proposed section 88B(4)(b), to add “without limiting paragraph (a),” before “financial”.

**Fourth debate : Clauses with – Clauses 4, 9, 13, 18, 24, 26, 27, 33, amendments proposed 42, 48 and 50 by Hon WONG Yuk-man**

Joint debate on the original clauses and the amendments thereto.

**Theme of debate : Hon WONG Yuk-man's amendments to the above clauses of the Bill**

**Clause 4**

- To amend the English text of section 8(1) of the Ordinance by replacing “thereof” with “of sounds or of visual images and sounds”.

**Clause 9**

- To amend the proposed section 22(2A) to provide that, in determining whether a person has authorized another person to do any of the acts restricted by the copyright in a work, the court “must take into account all the circumstances of the case” instead of “may take into account all the circumstances of the case”.
- to amend the proposed sections 22(2A)(a), (b) and (c) to clarify that when the court takes into account all the circumstances of the case above, “that person” involved in the case refers to “the person alleged having made the authorization”; and
- in the proposed section 22(2A), to add subsection (d) to stipulate that in determining whether a person has authorized another person to do any of the acts restricted by the copyright in a work, the court must take into account any other factors which it may consider relevant, and to make consequential textual amendments to the proposed section 22(2A)(c).

**Clauses 13, 24, 33, 42 and 50**

- In clauses 13, 33, 42 and 50, to respectively amend the Chinese texts of the proposed sections 28A(3) and (6)(a), 51A, 65A(1) and (2), 88A, 88B(2)(d), 88B(4)(a)(ii), 88C(7)(c), 88D(a), 88E(1)(b), 88E(3)(b)(i) and (ii), 88E(3)(c) and 88H(1) to (6) by deleting the term “接達” and substituting it with the following terms: “觀看、收聽或接收”, “連接作查閱或瀏覽”, “連接或取用”, “連接、儲存或存取”, “連接或使用”, “連接或進入”, “連接、接收或取用” or “被連接、接收或取用”, etc.; and in clause 24, to amend the Chinese text of section 41A(5) of the Ordinance by replacing “取用該作品” (wherever appearing) with “連接或取用該作品”, and to make textual amendments to the relevant provisions;
- in the proposed section 65A(1)(b) in clause 42, to delete the wording “automatic and” from “the making and storage forms an automatic and essential part of a technological process”;
- to amend the proposed section 88B(3) in clause 50 by replacing “if the provider” with “if the provider, as far and as soon as practicable,” in the requirement for compliance with all the provisions in the code of practice published by SCED;

- under the proposed section 88I on "Evidence of compliance with conditions" in clause 50, in an action relating to the liability of a service provider, if the provider adduces evidence tending to show that the provider has complied with a condition relating to the limitations on legal responsibilities described in section 88B or a condition specified in the code of practice, "the court must presume, in the absence of evidence to the contrary, that the provider has complied with that condition". The amendment seeks to replace the relevant phrase with "that the provider has complied with that condition, until the contrary is proved"; and
- in the proposed section 88J(2) in clause 50, where SCED may publish a code of practice for providing practical guidance to service providers, to add a reference to the effect that what SCED may specify in the code of practice is subject to sections 88C on notice of alleged infringement and 88E on counter notice.

### Clause 18

- In the proposed sections 39(1) and 39(1)(a) and (b), to add the condition of "fair dealing" for fair dealing with a work for the purpose of criticism, review and reporting on current events as a copyright infringement exception regarding a work, and to make consequential textual amendments to the relevant provisions; and
- to amend the proposed section 39(2)(c) by stipulating that it does not infringe the copyright of a work as long as the extent of the quotation is no more than is required by the legitimate purpose for which it is used.

### Clause 26

- In the proposed section 44(5), to amend the definition of *authorized recipient* by including the parent or guardian of a pupil of an educational establishment who has been authorized by the establishment to receive a communication if the pupil is a minor.

### Clause 27

- To delete the proposed amendments in subclauses (2), (3) and (4) of clause 27 to section 45(1) of the Ordinance (relating to copying by an educational establishment or pupil for purposes of giving or receiving instruction); and
- in the proposed section 45(1A), to delete "of an artistic work, a passage from a published literary, dramatic or musical work, or an extract from a published sound recording or film," to make the text more concise.

### Clause 48

- In the proposed section 76A(1)(c), to delete "owner" in the provision "not more than one private copy of the original copy is made and stored in each device lawfully owned by the owner", and substitute it with "owner or a member of the household in which the owner lives".

**Fifth debate**

**: Clauses with no amendment**

**– Clauses 1, 2, 3, 5, 7, 10, 11, 12, 14 to 17, 20, 28, 29, 36, 38, 39, 40, 44, 45, 46, 49, 51, 53 to 74, 77, 82, 85, 87, 88 and 90 to 96**

<b>Voting Arrangement</b>			
<b>Mover</b>	<b>Voting</b>	<b>Remarks</b>	<b>Amendment(s)</b>
To vote on clauses with no amendment standing part of the Bill			
Hon WONG Yuk-man	Hon WONG Yuk-man's amendments	Irrespective of whether Hon WONG Yuk-man's amendments are passed or not, SCED and Hon CHAN Kam-lam <b>may move</b> their amendments.	<b>Annex and</b> LC Paper No. <b><u>CB(3) 220/15-16</u></b>
SCED	SCED's amendments	Irrespective of whether SCED's amendments are passed or not, Hon CHAN Kam-lam <b>may move</b> his amendments.	<b>Annex and</b> LC Paper No. <b><u>CB(3) 153/15-16</u></b>
Hon CHAN Kam-lam	Hon CHAN Kam-lam's 1 <sup>st</sup> group of amendments	Irrespective of whether Hon CHAN Kam-lam's 1 <sup>st</sup> group of amendments are passed or not, he <b>may still move</b> his 2 <sup>nd</sup> and 3 <sup>rd</sup> groups of amendments.	<b>Annex and</b> LC Paper No. <b><u>CB(3) 219/15-16</u></b>
Hon CHAN Kam-lam	Hon CHAN Kam-lam's 2 <sup>nd</sup> group of amendments	Irrespective of whether Hon CHAN Kam-lam's 2 <sup>nd</sup> group of amendments are passed or not, he <b>may still move</b> his 3 <sup>rd</sup> group of amendments.  If Hon CHAN Kam-lam's 2 <sup>nd</sup> group of amendments are <b>passed</b> , a consequential amendment has to be made to the heading of clause 19 in his 3 <sup>rd</sup> group of amendments by deleting "Sections 39A added" and substituting it with "Sections 39A, 39B and 39C added".	<b>Annex and</b> LC Paper Nos. <b><u>CB(3) 219/15-16</u></b> and <b><u>CB(3) 226/15-16</u></b>
Hon CHAN Kam-lam	Hon CHAN Kam-lam's 3 <sup>rd</sup> group of amendments		<b>Annex and</b> LC Paper No. <b><u>CB(3) 219/15-16</u></b>

**The Secretary for Commerce and Economic Development's amendments**  
(printed in LC Paper No. CB(3) 153/15-16 issued on 18 November 2015)

**Hon CHAN Kam-lam's amendments**  
(printed in LC Paper No. CB(3) 219/15-16 issued on 7 December 2015)

**Hon WONG Yuk-man's amendments**  
(printed in LC Paper No. CB(3) 220/15-16 issued on 7 December 2015)

**Hon CHAN Kam-lam's revised amendments**  
(Issued under LC Paper No. CB(3) 226/15-16 on 8 December 2015)

Council Business Division 3  
Legislative Council Secretariat  
8 December 2015

**《2014 年版權(修訂)條例草案》  
全體委員會審議階段  
修正案表決次序**

**附件  
Annex  
(只備中文本)  
(Chinese version only)**

表決次序	動議人	《條例草案》條文	修正案(內容)	
沒有修正案的條文 (一併表決)	商務及經濟 發展局局長	1、2、3、5、7、10、 11、12、14至17、20、 28、29、36、38、39、 40、44、45、46、49、 51、53至74、77、82、 85、87、88及90至96	沒有修正案的條文(表決原條文納入《條例草案》)	
<b>第 1 項</b> (第 1 至第 42 項修正案 見立法會 CB(3) 220/15-16 號 文件)	黃毓民	4	(1) 將該條重編為草案第 4(2)條。 (2) 在第(2)款之前加入 — “ (1) 第 8(1)條, 英文文本 — 廢除 “thereof” 代以 “of sounds or of visual images and sounds” 。”。	
<b>第 2 項</b>	黃毓民	9(4)	在建議的第 22(2A)條中, 刪去“可考慮有關個案的整體情況”而代以“須考慮有關個案的整體情況”。	
<b>第 3 項</b>	} 一併表決	黃毓民	9(4)	在建議的第 22(2A)(a)條中, 刪去“該人”而代以“被指稱作出授權的人”。
<b>第 4 項</b>		黃毓民	9(4)	在建議的第 22(2A)(b)條中, 刪去“該人”而代以“被指稱作出授權的人”。
<b>第 5 項</b>		黃毓民	9(4)	在建議的第 22(2A)(c)條中, 刪去“該人”而代以“被指稱作出授權的人”。
<b>第 6 項</b>	} 一併表決	黃毓民	9(4)	在建議的第 22(2A)(c)條中, 刪去句號而代以“; 及”。
<b>第 7 項</b>		黃毓民	9(4)	在建議的第 22(2A)條中, 加入 — “(d) 任何其他法庭認為相關的因素。”。
<b>第 8 項</b>	黃毓民	13	在建議的第 28A(3)及(6)(a)條中, 在中文文本中, 刪去“接達”而代以“觀看、收聽或接收”。	

表決次序	動議人	《條例草案》條文	修正案(內容)
第 9 項	黃毓民	18	在建議的第 39(1)條中，刪去“為批評或評論某作品(有關作品)或另一作品，或為批評或評論某作品的表演，而公平處理有關作品，”而代以“為批評或評論某作品，或為批評或評論某作品的表演，”。
第 10 項			
第 11 項			
第 12 項			
	一併表決		
第 13 項	黃毓民	18	在建議的第 39(2)條中，刪去(c)段而代以 — “(c) 該項引用是為某合理目的，並且沒有引用超逾該合理目的所需的程度；及”。
第 14 項	黃毓民	24	在第(2)款之前加入 — “(2A) 第 41A(5)條，中文文本 — <b>廢除</b> 所有“取用該作品” 代以 “連接或取用該作品”。”。
第 15 項	黃毓民	26	在建議的第 44(5)條中，在 <b>獲授權收訊人</b> 的定義中，刪去“教師或學生”而代以“教師或學生(如該學生為未成年人，則包括其父母或監護人)”。
第 16 項	黃毓民	27(2)	刪去第(2)款。
第 17 項	黃毓民	27(3)	刪去第(3)款。
第 18 項	黃毓民	27(4)	刪去第(4)款。
第 19 項	黃毓民	27	在建議的第 45(1A)條中，刪去“藝術作品、已發表的文學作品、戲劇作品或音樂作品的片段或已發表的聲音紀錄或影片的摘錄的”。
第 20 項	黃毓民	33	在建議的第 51A 條中，在中文文本中，刪去所有“接達”而代以“連接作查閱或瀏覽”。
第 21 項	黃毓民	42	在建議的第 65A(1)(b)條中，刪去“自動及”。
第 22 項	黃毓民	42	在建議的第 65A(1)條中，在中文文本中，刪去所有“接達”而代以“連接或取用”。



表決次序	動議人	《條例草案》條文	修正案(內容)	
第 23 項	黃毓民	42	在建議的第 65A(2)條中，在中文文本中，在 <b>聯線服務</b> 的定義中，刪去所有“接達”而代以“連接、儲存或存取”。	
第 24 項	黃毓民	48	在建議的第 76A(1)(c)條中，刪去“擁有人”而代以“擁有人或其居住的住戶中的成員”。	
第 25 項	黃毓民	50	在建議的第 88A 條中，在中文文本中，在 <b>服務平台</b> 的定義中，刪去“接達”而代以“連接或使用”。	
第 26 項	黃毓民	50	在建議的第 88B(2)(d)條中，在中文文本中，刪去“接達”而代以“連接或進入”。	
第 27 項	黃毓民	50	在建議的第 88B(3)條中，刪去“提供者如有遵守在”而代以“提供者如已在切實可行範圍內，盡快和盡量遵守”。	
第 28 項	一併表決	黃毓民	50	在建議的第 88B(4)(a)(ii)條中，在中文文本中，刪去所有“接達”而代以“連接、接收或取用”。
第 29 項		黃毓民	50	在建議的第 88C(7)條中，在中文文本中，刪去(c)段而代以 — “(c) 移除關乎該項指稱侵犯的材料，或使關乎該項指稱侵犯的材料或活動不能被連接、接收或取用；及”。
第 30 項		黃毓民	50	在建議的第 88D(a)條中，在中文文本中，刪去“接達”而代以“連接、接收或取用”。
第 31 項		黃毓民	50	在建議的第 88E(1)(b)條中，在中文文本中，刪去“接達”而代以“連接、接收或取用”。
第 32 項		黃毓民	50	在建議的第 88E(3)(b)(i)條中，在中文文本中，刪去所有“接達”而代以“連接、接收或取用”。
第 33 項		黃毓民	50	在建議的第 88E(3)(b)(ii)條中，在中文文本中，刪去所有“接達”而代以“被連接、接收或取用”。
第 34 項		黃毓民	50	在建議的第 88E(3)(c)條中，在中文文本中，刪去“接達”而代以“被連接、接收或取用”。
第 35 項		黃毓民	50	在建議的第 88H(1)條中，在中文文本中，刪去所有“接達”而代以“連接、接收或取用”。
第 36 項		黃毓民	50	在建議的第 88H(2)條中，在中文文本中，刪去所有“接達”而代以“連接、接收或取用”。
第 37 項		黃毓民	50	在建議的第 88H(3)條中，在中文文本中，刪去所有“接達”而代以“連接、接收或取用”。
第 38 項		黃毓民	50	在建議的第 88H(4)條中，在中文文本中，刪去所有“接達”而代以“連接、接收或取用”。
第 39 項		黃毓民	50	在建議的第 88H(5)條中，在中文文本中，刪去“接達”而代以“連接、接收或取用”。
第 40 項		黃毓民	50	在建議的第 88H(6)條中，在中文文本中，刪去“或停止接達材料或活動”而代以“，或停止有關材料或活動被連接、接收或取用”。

表決次序	動議人	《條例草案》條文	修正案(內容)
第 41 項	黃毓民	50	在建議的第 88I 條中，刪去“則在沒有相反證據的情況下，法院須推定該服務提供者已遵守該條件”而代以“法院須推定該服務提供者已遵守該條件，直至相反證明成立為止”。
第 42 項	黃毓民	50	在建議的第 88J(2)條中，刪去“在不限制第(1)款的原則下，”而代以“在不局限第(1)款的原則下，及除第 88C 及 88E 條另有規定外，”。
局長動議的 修正案 (一併表決) (見立法會 CB(3) 153/15-16 號 文件)	商務及經濟 發展局局長	6、8、13、18、21 至 27、30 至 35、37、 41、43、47、50、52、 75、78 至 81、83、 84、86 及 89	政府就《條例草案》作行文修訂
第一組 (第一至第三組修正案 見立法會 CB(3) 219/15-16 號及 CB(3) 226/15-16 號文件)	陳鑑林議員	18、19、24、75、 76 及 78	就版權豁免加入限制合約凌駕性的條文
第二組	陳鑑林議員	19	就版權豁免加入公平使用的條文
第三組	陳鑑林議員	19	就版權豁免加入源自使用者的內容的條文