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Date: Wed, 18 Apr 2001 17:31:01 +0800
To: <flam@legco.gov.hk>
From: Legco<pi@legco.gov.hk>
Subject: fwd: views

Dear Florence,

I have attached an email from a member of the public for your information.

Yours sincerely,

Timothy FAN
(Public Information Officer)

Date: Thu, 12 Apr 2001 04:58:03 -0700 (PDT)
From: Anonymous Anonymous <Anonymous_Anonymous_@excite.com>
To: pi@legco.gov.hk
Subject: The Intellectual Property (Miscellaneous Amendments) Ordinance
2000-Proposed Amendment
X-Mailer: Excite Inbox
X-Sender-IP: 202.67.238.253

Dear Sir/Madam,

I wish to make a few comments regarding the abovementioned ordinance-specifically, an extract from the Secretary for Commerce and Industry Mr Chau Tak Hay's speech regarding the proposed amendment:

"The Government will proceed immediately to draft a simple amendment bill with the aim of suspending the implementation of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 concerning criminal provisions as they affect works in the printing media including newspapers, magazines, periodicals and books, as well as broadcasts and cable programmes, and the downloading of information from the Internet. But the suspension will not apply to the downloading of computer programmes, music or films from the Internet. Provisions in the new Ordinance as they affect computer programmes, music and films will remain in force."

I believe Mr Chau has insufficient understanding of how the general public and corporations use computers. As an example, data or computer backup is essential for most enterprise computer users, among others. Software such as Norton Ghost creates an "image" of all the contents in the hard drive to create a backup. In other words, the software indiscriminately copies everything to an "image", computer programmes inclusive. To obey the proposed amendments would mean either outlawing such software, or sacrificing information security, which would ultimately prove detrimental to the knowledge economy. (As an example, if Internet or data servers were not backed up and were subsequently hacked, the recovery of the servers would be slowed drastically).

The downloading of software from the Internet: Shareware and freeware are downloadable programmes deliberately made available for free, legal downloading by their creators. Mr Chau should not immediately assume (as so many others have) that all programmes available for download on the Internet are pirated. To do so would be gross misjudgement of the actual situation, and to continue to outlaw this would severely hinder how people in Hong Kong use the Internet. Is it really reasonable to indiscriminately outlaw the downloading of programmes (including shareware and freeware) just to crush piracy? An example of what might happen: A user goes to the HK Education City website (run by the Education Department) and wants to view an online video. S/he finds out that RealPlayer (a programme used to view multimedia) has to be downloaded. Strictly speaking, to download RealPlayer would be illegal. To download the video (which is also possible) would also be illegal. As you can clearly see, the proposed amendment makes acts conducted by the average Internet user illegal, and therefore does little to bring Hong Kong's population into the Internet Age.

As for the trading of online music, there are still issues present: If the artist actually authorises the trading of his/her/their music (as many

artists do-for an example please go to <http://www.mp3.com>), would the online music trade still be illegal? Even if the artist did not authorise the trade of his/her/their music online, how can the Government police this? Websites and centralised music trade systems (the most notable of them being Napster) can be litigated and/or shut down (assuming the Government can actually shut down and/or litigate trade systems outside the HKSAR and China), but decentralised systems such as Gnutella and Freenet cannot be stopped by anybody. Much of the same applies to videos.

In the abovementioned speech Mr. Chau encouraged public awareness of the intellectual properties issue and used this to justify the amendment. Similarly, the Council should also be aware of what users will suffer if this amendment is passed unchecked. In my humble opinion, the purpose of such ridiculously stringent legislation that cannot be enforced is, at best, rather dubious. I therefore urge the Council to carefully consider the long-term implications of this amendment for computer users, rather than just the financial interests of intellectual property holders.

Thank you for your kind attention in the matter.

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