



HONG KONG
WEB HOSTING ASSOCIATION
香港網頁寄存商協會

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To: Bills Committee

Attn.: Mr. Raymond Lam

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Submission to the Bills Committee on Prevention of Child Pornography Bill

1. Web Hosting

1.1 Role of Web Hosting

Web hosting provides Internet services for domain name owners (e.g. xyz.com). It can be described by an analogy. It is like an owner of a building renting out blocks of rooms and related services for different occupants. In terms of hosting, the hosting providers lease hardware and software (e.g. web and mail servers) for the domain name owners to publish their web content in the Internet.

Our services include domain name registration (e.g. .com, .net, .org, .com.hk, .com.cn etc.), e-mail service and web data storage. The objectives are to deliver secure and reliable data storage over the Internet. Clients can update the website content to our web servers and distribute information online in real-time.

1.2 Relation to Child Pornography

As domain name owners are responsible for the use and update of content for their web content and e-mail, a hosting company is the middle-man between the owners and website visitors. A hosting company has no rights to manage, alter and copy the web content. Hence, the site might contain illegitimate materials, such as child pornography.

2. Our View on Child Pornography

We strongly hold the view that publishing and distributing child pornography that depicts children under 16 years of age by all communication media, including materials transmitting through webs and e-mails over the Internet, should be prohibited. To deter and protect against the child sexual abuse, the parties who commit the offence should be liable for the relevant



consequences and damages.

3. Ambiguity of the Bill

In view of the revised Prevention of Child Pornography Bill, there are some ambiguities raised.

3.1 Definition of Child Pornography

It is not explicitly mentioned whether the phrase “data stored” in Section 2(b) include all electronic data stored on the web hosting companies’ servers. It is a concern that the data stored may include both published and non-published web data in which the data stored for child pornography may not be known.

3.2 Possession of Child Pornography

1. As the domain registrant is the ultimate intellectual property owner, the copyright and all other intellectual property rights in the information on the website belong to the relevant owners, not the hosting company. Hosting company, the technology and service provider, accepts no liability and control for the website contents, which can be update in real time.
2. However, it is an ambiguity whether “Possession of child pornography” implies the inclusion of the web hosting company, the storage and technology providers in which the corrupt intention of pornography was not known at the time of domain owners’ applications for the hosting service.

3.3 Defences and Exemptions

Under the “Defences”, Section 4(2) implies that the exemption maybe available given that the child pornography was not seen or not known. However, there is no exemption made explicit to the innocent parties who merely provide the communication medium, information technology and tools to facilitate users (for example hosting companies), who happened to be the child pornography criminals.

3.4 Removal of the Child Pornography

Upon the event of suspecting or charge on reasonable grounds that the website contains child pornography, when the authorised officers have the power to stop and remove the owner of the structure to remove or efface the child pornography (Section 12(1)), it raises concerns whether



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the entire web server will be stopped. If this were the case, the relevant hosting company would suffer at a great loss because the web server is shared amongst many clients. The business operation of hosting companies and clients will be adversely interfered.

4. Implications and Recommendations

Given the above expressed opinions, it is recommended that the Council incorporate electronic distribution of child pornography over the Internet in the Proposal, in terms of the definitions and procedures in enforcement. With a fair and accurate Legislation, the children can be protected from child sex abuse and the offenders can be deterred and punished accordingly, without prejudice against the web hosting industry.

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