

**Submissions to the Committee on the  
Copyright (Amendment) Bill 2006**

<b>Issues relating to Rights Management Information (RMI)</b>		
- to give new rights to copyright owners and their exclusive licensees to seek civil remedies against any person who tampers with RMI		
<b>Organizations / Individuals</b>	<b>Views / Concerns</b>	<b>Administration's Response</b>
<p><b><u>Film Industry</u></b></p> <ul style="list-style-type: none"> <li>● Hong Kong Video Development Foundation Ltd (HKVDF)</li> <li>● Motion Picture Association (MPA)</li> <li>● Movie Producers and Distributors Association of Hong Kong Limited (MPDA)</li> </ul> <p><b><u>Broadcasting Industry</u></b></p> <ul style="list-style-type: none"> <li>● PCCW Limited (PCCW)</li> </ul>	<p>HKVDF and MPDA support the proposal.</p> <p>PCCW and MPA consider the requirement that the plaintiff has to prove “knowledge of copyright infringement” a barrier to enforcement.</p> <p>PCCW raises the following additional points –</p> <p>(a) the nexus between the act of interference with rights management information (“RMI”) and liability is unclear. It questions whether the existing section 274(2) together with the proposed section 274(2B) treat the act of interference as if it is an act of infringement or equivalent to infringement. Is the plaintiff required to show nexus between the act of interference and the specific copyright works or related rights in order to establish liability?</p> <p>(b) it is unclear why the “knowledge requirement” covers knowledge of infringement in rights in performances whereas the “knowledge requirement” provision in the proposed sections 273A and 273B does not.</p>	<p>Article 12 of World Intellectual Property Organization (WIPO) Copyright Treaty and Article 19 of WIPO Performances and Phonograms Treaty (collectively, “Internet Treaties”) require contracting parties to provide adequate and effective legal remedies against any person who knowingly interfere with rights management information (RMI) knowing or having reasonable grounds to know that it will induce, enable, facilitate or conceal an infringement of rights covered by the Internet Treaties (“knowledge requirement”).</p> <p>The “knowledge requirement” proposed in section 274(2A) is consistent with the requirements under the Internet Treaties.</p> <p>The effect of the existing section 274(2) (together with the proposed section 274(2B) is to confer on persons listed in these sections the same rights and remedies as the rights and remedies available to copyright owners in respect of infringement of copyright (e.g. injunction, account of profit, damages etc.).</p> <p>One of the conditions for incurring liability under the existing section 274 (as amended by the</p>

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			<p>proposed section 274(2A)) is that a person who interferes with RMI/a trader who deals in works with RMI removed should know or have reasonable grounds to believe that the prohibited acts would induce, enable, facilitate or conceal copyright infringement. Hence, the plaintiff would be required to prove this “knowledge requirement” on balance of probabilities.</p> <p>Sections 273 – 273H (on technological measures) and section 274 (on RMI) seek to protect copyright owners and performers/persons having exclusive fixation rights in performances from infringement of their copyright or rights in relation to performances (as the case may be). In order not to duplicate or complicate the drafting, the references to “performers”, “persons having fixation rights” are contained in section 273G (in relation to technological measures) and section 274(2F) (in relation to RMI).</p>
	<p><b><u>Music Industry</u></b></p> <ul style="list-style-type: none"> <li>• The International Federation of the Phonographic Industry (Hong Kong Group) Limited (IFPI (HK Group))</li> </ul>	<p>IFPI (HK Group) supports the proposal as long as amendments are in line with the UK provisions and EU Directive on this matter.</p>	<p>The addition of the “knowledge requirement” is in line with the requirements under the Internet Treaties. Similar requirements are contained in the UK copyright law and the relevant EU Directive.</p>