

CB(1)1107/06-07(01)

Our Ref : 2006-11-21

21st November, 2006

Mr Christopher Wong
Deputy Secretary (C) 2
Commerce, Industry and Technology Bureau
Level 29, One Pacific Place,
88 Queensway, Hong Kong.

Dear Mr Wong,

Re : The Joint Industry Reponse to CB(1)283/06-07(01)

We refer to your proposed amendments to the Copyright (Amendment) Bill 2006 submitted to the Bills Committee on Copyright (Amendment) Bill 2006 on 15th November 2006 under the reference of CB(1)283/06-07(01). We appreciate the efforts in seeking solutions by the Administration in many of the amendment issues. However, the fundamentals of copyright in the digital era remain highly compromised under the current position in the Bills. We are referring to the proposed amendment to the circumvention of technological measures for copyright protection (pp 2- 6 of the Annex A refer). We wish to set out our positions crystal clear for your kind attention: -

1. We maintain that there must be two layers of copyright protection for digitalized copies of a copyright work. The WIPO Internet treaties establish a separate layer of protection to technological measures ("TPMs"). As such, there is no fair use defence (as in the case of US) or no fair dealing defence (as in the case of U.K.) for any circumvention of TPMs. This is the fundamental pillar of the digital copyright law.
2. Therefore the proposed amended section 273 A (1) which absolves the liability of a defendant if he can establish that the act of circumvention is done for the purpose of carrying out a "NON-INFRINGEMENT ACT" amounts to provision of the fair use or fair dealing defence. If the act is found to be within a category of fair use or fair dealing (as the case may be), the defence prevails. There is no equivalent provision in other leading jurisdiction. This would create a defence for hackers who would like to have a safe haven or loop hole for their activities.
3. As regards the proposed amendments to section 273 (1), section 273 D (1) and 273 D (3), it appears that the administration neglects or omits or fails to provide the protection for the rights of the creators of the TPMs, which they are so protected under the current section 273. Their rights must also be included for the proper protection of the TPMs.
4. As regards the exception to section 273C for time-shifting purpose, we must stress that we are dealing with digital broadcast or cable programme,

the digital copy of a copyright work, say a musical or a film work may be perfectly reproduced and stored in a digital storage medium for the subsequent dissemination all over the world within a matter of seconds. This is different from the concept of time-shifting purpose in an analogue world. We reiterate our earlier views that TPMs should be allowed to be employed by the broadcast stations which allow one time only for the purpose of time-shifting viewing. Any further copying and distribution of the same will be prohibited by means of the TPMs. This does not defeat the real purpose of time-shifting but it provides further safeguard against unauthorised copying or distribution.

5. The proposed reduction of the criminal protection period from an 18 month period down to 12-15 months is unacceptable and is highly detrimental to the legitimate interest of the right owners and especially if they are prepared to post their copyright works on-line as a new business model for the exploitation of their hard earned copyrights. We reiterate that the current criminal protection period be extended to 24 months and if not, the 18 months be maintained.
6. Furthermore, in relation to the new proposal for facilitating enforcement, the assumption that any copy of a work which has no Hong Kong SID code would be presumed to be an infringing copy from abroad needs special consideration as whether it would be in breach of the national treatment and most favored nation treatment of the World Trade Organization as the right owners always have the right to have their product made anywhere in the world.

The undersigned industries would like to thank to consider their joint submission.

(Signatory : Next Page)

852 21127824

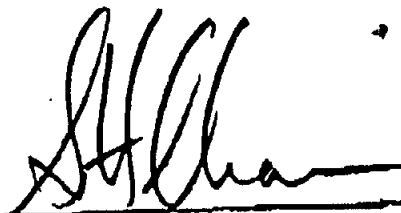
21st November, 2006

Our Ref: 2006-11-21

Re: The Joint Industry Response to CB(1)283/06-07(01)

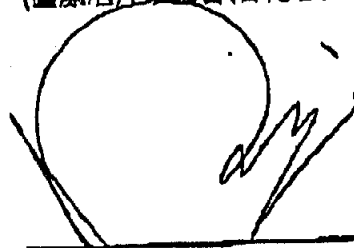
Signed, individually on behalf of individual organizations:

For and on behalf of
Hong Kong Cable Television Limited
(香港有線電視有限公司)



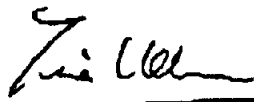
Mr Desmond Chan
General Counsel

For and on behalf of the
International Federation of the
Phonographic Industry (Hong Kong Group)
Limited
(國際唱片業協會(香港會)有限公司)



Mr Ricky Fung
Chief Executive Officer

For and on behalf of
Television Broadcasts Limited
(電視廣播有限公司)



Ma Tina Lee
General Counsel
Legal Department