

**Our Reference : 2007-4-4**

4<sup>th</sup> April, 2007

Clerk to the Bills Committee on  
Copyright (Amendment) Bill 2006  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central, Hong Kong

Dear Sir/Madam,

**Re: Copyright (Amendment) Bill 2006, TPM issues**

We refer to the meeting of the Bills Committee on the proposed Copyright Amendment Bill held in the morning of 15<sup>th</sup> March which concluded the vetting of the Committee Stage Amendment in respect of, among other things, anti-circumvention of the technological protection measures as applied to the copyright works by the right holders. The revised draft has been adopted at that meeting.

We jointly write to express our grave concern with respect to the requirement that enforcement against circumvention act must be as a result of copyright infringement. This remains a major obstacle in the Bill for the copyright industries to accept.

**The Administration's position**

The Administration's proposed position give hacking activities a blanket defence under the fair dealing exemption applicable to copyright works. This position is NOT adopted in all of the developed countries globally.

The key argument as advanced by the Administration is that the policy objective of the anti-circumvention provisions is to protect copyright work and not technological protection measures per se. If a hacker cracks the technological protection measures, he commits and is therefore liable to a copyright infringement offence.

**Our reasons why it is not acceptable**

1. If the Administration's view is correct (which we do not agree), then
  - (i) It is not necessary to provide any legal protection of the technological protection measures as the hacker would be liable to copyright infringement offence anyway.

- (ii) If the hacker cracks a TPM protected materials which contains copyright work as well as work in the public domain or which are within a scope of fair dealing, he would not be so liable.
  - (iii) In all cases, the copyright owners will have to prove that (i) the defendant circumvents the technological protection measures **and** (ii) the defendant has committed an act of copyright infringement (otherwise the investigation and enforcing costs incurred will be down the drain if the Defendant simply laughs off the action as a joke because he has a fair dealing defence or non-infringement use).
2. The costs of investigation, detection and enforcing the anti-circumvention act are prohibitively high as the quality of the evidence must satisfy the tests set out in paragraph 1(iii) above. It is difficult to get quality evidence in the digital networked environment. The recent BT download cases are good example as to the transaction costs involved per case.
  3. It is very costly to develop technological protection measure standard format for a particular industry such as digital broadcasting, digital downloading of music and digital downloading of movie but it is not difficult to crack the code. The loss to the industries is enormous if the information on cracking become widely available and used by individual at home under the cloak of fair dealing.
  4. The proposed anti-circumvention provisions are of no practical use because of high enforcement costs which will be involved and the protection for TPM is therefore practically non-existent. Copyright owners must rely on the remedies based on the copyright infringement
  5. The Government should try to reduce the costs for detection and enforcement of anti-circumventing activities as the money may be put to better use for creating more intellectual property rights which would generate wealth to the society.
  6. The fact of the matter is that there is no need to circumvent TPM protected copyright work in order to exercise the fair dealing use of a copyright work. There are and will still be a lot of works available in the analog hard copy form; and even if no such analog form is available, the user can still copy an extract from an e-book by traditional ways such as hand written or typing. One may play a TPM protected musical sound recording on a hi fi system and then record an appropriate portion in an analog form such as tape recording for fair dealing use. Nobody will cut out a page from his physical hard copy say a book and paste on a paper in order to exercise his fair dealing use of the work.
  7. Other leading jurisdictions have provided legal protection of technological protection measures per se **without** any linking to copyright infringement.

**Conclusion**

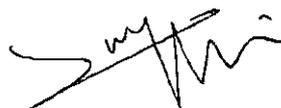
There should be a separate layer of legal protection for technological protection measures. The TPM provisions must be adopted carefully if any Government wants its copyright industries to flourish at the digital age. The copyright industries need the attention of the LegCo members to revert the current position upheld by the Administration. We have no hesitation to request for a session at LegCo meeting for the representatives of the undersigned copyright industries to explain further our worries.

Thank you for your kind attention.

Signed, individually on behalf of individual organizations :

For and on behalf of  
Hong Kong Publishing Federation Limited

For and on behalf of  
Hong Kong Video Development Foundation  
Limited



Mr Simon Li  
Vice Chairman

Ms Clera Chu  
Vice Chairman

For and on behalf of the International  
Federation of the Phonographic Industry  
(Hong Kong Group) Limited

For and on behalf of  
Television Broadcasts Limited



Mr Ricky Fung  
Chief Executive Officer

Ms Tina Lee  
General Counsel  
Legal Department