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Panel on Commerce and Industry

Meeting on 15 April 2008

Background brief on copyright protection in the digital environment

Purpose

This paper summarizes members' views and concerns on issues relating to copyright protection in the digital environment.

Background

2. The existing Copyright Ordinance (Cap. 528) accords protection to copyright works¹ stored in digital format and on the Internet. It also contains provisions dealing with unauthorized uploading and downloading of copyright works over the Internet. Civil remedies and, in some circumstances, criminal sanctions are provided against such unlawful activities. The legislative measures are backed by vigorous enforcement action taken by the Customs and Excise Department. The Administration has also organized on-going public education programme to promote awareness of and respect for intellectual property rights in the community.

Public consultation on copyright protection in the digital environment

3. Further to the introduction of an enhanced and more flexible copyright protection regime by way of the Copyright (Amendment) Bill 2006 passed by the Legislative Council on 27 June 2007, the Administration separately launched a public consultation exercise on whether the regime should be further enhanced to provide wider protection for copyright works in the digital environment in the light of advances in technology and the development of broadband network. The consultation document covered six issues, namely:

¹ Copyright works include (a) original literary, dramatic, musical or artistic works; (b) sound recordings, films, broadcasts or cable programmes; and (c) the typographical arrangement of published editions.

- (a) the legal liability for unauthorized uploading and downloading of copyright works (including whether unauthorized downloading should be criminalized);
- (b) protection of copyright works transmitted to the public via all forms of communication technology (i.e. whether copyright should be protected regardless of what form of transmission technology was used to disseminate the copyright works to the public);
- (c) the role of online service providers (OSPs²) in relation to combating Internet piracy (including whether online service providers should be held liable for infringing activities occurring on their service platforms);
- (d) facilitating copyright owners to take civil actions against online infringement (including whether simplified procedures should be introduced to assist copyright owners to obtain the personal particulars of online infringers);
- (e) statutory damages for copyright infringement; and
- (f) copyright exemption for temporary reproduction of copyright works.

Members' views and concerns

4. At the Panel meeting held on 16 January 2007, the Administration briefed members on the public consultation exercise on issues relating to copyright protection in the digital environment. The concerns raised by members on the subject were summarized in the ensuing paragraphs.

Legal liability for unauthorized uploading and downloading of copyright works

5. Some members stressed that due regard should be made to the impact that more stringent copyright protection in the digital environment might have on the free dissemination of information, protection of personal privacy, as well as the daily activities of members of the public. They considered that other than the scale of infringement, the Administration should also focus on the intent of the unauthorized downloading activities in order to decide whether such activities warranted criminal sanctions. Members suggested that consideration should be given to criminalizing only unauthorized downloading for commercial purposes but not downloading for private use or record purpose.

² OSPs refer collectively to operators who provide Internet services. The services may be broadly categorized as (a) access services; and (b) application services (e.g. offering server space for websites or storage space for data, managing and operating websites, domain name resolution services, web mail, discussion forums or newsgroups, providing search engines or information location tools to facilitate online information retrieval).

Role of OSPs in relation to combating Internet privacy

6. On the introduction of a system to enable efficient takedown of infringing materials on the Internet or blocking of access to such materials by OSPs, some members were concerned that a takedown system without legislative backing might lead to abuse as OSPs might remove materials from their servers lightly without concrete evidence on whether those were infringing materials, and hence adversely affect dissemination of information in Hong Kong.

7. While sharing with members overseas experiences in this regard, the Administration advised that to guard against abuse, consideration could be given to introducing a notice and takedown system similar to that adopted in the United States, whereby copyright owners could serve a notice to an OSP on certain online piracy activities identified on the OSP's service platform. The OSP should, in response, take down or disable access to the infringing material found. In the event that the affected service subscriber considered that the material removed or the access disabled was a result of mistake or misidentification, he could serve a counter notice to the OSP which should then put back the removed material or cease disabling access.

8. Notwithstanding the proposed introduction of the notice and takedown system, some members remained concerned that OSPs might wrongly remove materials from their service platforms as notices for removal could be served by anyone disguising as the concerned copyright owners. Members considered that the implementation details of the notice and takedown system, if introduced, had to be deliberated with due care.

9. On whether the Copyright Ordinance should be amended to impose liability on OSPs for online piracy activities undertaken by their clients via their service platforms, members considered that any legal responsibility to be imposed should be appropriate and proportionate, and should not be greater than those currently imposed upon OSPs in relation to criminal activities such as hacking activities.

Questions raised at Council meetings

10. Questions relating to Internet piracy were previously raised by Members at the meetings of the Legislative Council on 7 July 2004 and 22 November 2006. At the meetings, Members expressed concern on the mechanism and youth education programme to forge copyright protection in the digital environment.

Issues to be followed up at the Panel meeting on 15 April 2008

11. The public consultation exercise was completed in April 2007. According to the Administration, about 600 submissions have been received and their views have been analyzed. The Administration will report to the Panel the outcome of the consultation and brief members on the preliminary proposal at the Panel

meeting to be held on 15 April 2008.

Relevant papers

12. A list of relevant papers is at the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
10 April 2008

List of relevant papers

Committee	Paper	LC Paper No.
Meeting of the Legislative Council on 7 July 2004	✧ Question No. 14 on "Copyright works released in electronic form"	Hansard
Meeting of the Legislative Council on 22 November 2006	✧ Question No. 19 on "Youth Ambassador Against Internet Piracy Scheme"	Hansard
Meeting of Panel on Commerce and Industry on 16 January 2007	✧ Administration's paper: Consultation Document on Copyright Protection in the Digital Environment	CB(1)694/06-07(03)
	✧ Minutes of the meeting	CB(1)902/06-07