

立法會
Legislative Council

LC Paper No. CB(1)1570/09-10
(These minutes have been seen
by the Administration)

Ref : CB1/PL/CI/1

Panel on Commerce and Industry

Minutes of meeting
held on Tuesday, 19 January 2010, at 2:30 pm
in the Chamber of the Legislative Council Building

- Members present** : Hon Vincent FANG Kang, SBS, JP (Chairman)
Dr Hon LAM Tai-fai, BBS, JP (Deputy Chairman)
Hon Fred LI Wah-ming, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Albert CHAN Wai-yip
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
Hon Starry LEE Wai-king
Hon Tanya CHAN
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Dr Hon Samson TAM Wai-ho, JP
- Members absent** : Hon Timothy FOK Tsun-ting, GBS, JP
Hon Ronny TONG Ka-wah, SC
- Public officers attending** : Agenda Item IV
Mrs Rita LAU, JP
Secretary for Commerce and Economic Development

Miss Yvonne CHOI, JP
Permanent Secretary for Commerce and Economic
Development (Commerce, Industry and Tourism)

Mr Christopher WONG, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)

Ms Bonnie YAU
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)

Ms Lavinia CHANG
Assistant Director of Intellectual Property

Agenda Item V

Miss Yvonne CHOI, JP
Permanent Secretary for Commerce and Economic
Development (Commerce, Industry and Tourism)

Ms Linda LAI, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)

Mr Simon GALPIN
Director-General of Investment Promotion

Miss Victoria TANG
Assistant Director-General of Investment Promotion

**Attendance by
invitation** : Agenda Item IV

Law Society of Hong Kong

Ms Anita LEUNG Ping-fun
Representative

Mr Henry WHEARE
Representative

Entertainment Software Association

Ms Monique WOO
Registered Foreign Lawyer

Business Software Alliance

Mrs Belinda LUI
Chairperson

International Federation of the Phonographic Industry
(IFPI) (Hong Kong Group) Limited

Mr Ricky FUNG
C.E.O.

Motion Picture Association – International

Mr Frank RITTMAN
Vice President, Deputy Managing Director & Regional
Policy Officer

Savantas Policy Institute

Mr Charles CHAN
Governor

Movie Producers and Distributors Association of Hong
Kong Ltd

Mr Tony SHU
Executive Secretary

IFPI Asian Regional Office

Ms LEONG May-seey
Regional Director

Internet Society Hong Kong

Mr Charles MOK
Chairman

The Hong Kong Chamber of Small and Medium
Business Limited

Mr Kenneth CHOY
Honorary Secretary

Hong Kong Institute of Professional Photographers

Mr Oswald CHEUNG
Vice President

Consumer Council

Mr Simon CHUI
Senior Legal Counsel

Dr Victor HUNG
Chief Research & Trade Practices Officer

The American Chamber of Commerce in Hong Kong

Dr Richard VUYLSTEKE
President

Hong Kong and International Publishers' Alliance

Mr LEE Wai-wing
Representative

Anglo-Chinese Textbook Publishers Organization and
Hong Kong Educational Publishers Association

Ms WAN Suk-yu
Representative

Hong Kong Reprographic Rights Licensing Society

Ms Dillys YU
General Manager

Hong Kong Small and Medium Enterprises Association

Mr Wilson SHEA
3rd Vice Chairman

The Lion Rock Institute

Mr Andrew SHUEN Pak-man
Research Director

Hong Kong Video Development Foundation Ltd

Miss Clera CHU
Member of the Standing Committee

HUCOM Task Force on Copyright in Education

Mr P K CHIU
Convenor

Time Warner Inc

Mr Alvin LEE
Executive Director, International Relations & Public
Policy, Asia Pacific

Warner Bros. (F.E.) Inc.

Mr Sean MOK
Director, Anti Piracy – SE Asia & Greater China

Hong Kong Motion Picture Industry Association Ltd

Mr Brian CHUNG
Chief Executive

Yahoo Asia Holdings Limited

Mr Patrick CHU
Public Policy and Regulatory Director

International Federation Against Copyright Theft
(Greater China) Ltd

Mr Sam HO Wai-hung
Executive Director & General Manager

Hong Kong Comics and Animation Federation

Mr Thomas TANG
Executive Director

Internet Professional Association

Mr Ringo LAM
Honorary President, Co-Founder & Founding President

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Mr Joey LO
Council Secretary (1)3

Ms May LEUNG
Legislative Assistant (1)6

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)781/09-10 -- Minutes of meeting held on
17 November 2009)

The minutes of the meeting held on 17 November 2009 were confirmed.

II. Information paper issued since last meeting

(LC Paper No. CB(1)903/09-10(01) -- United Nations Sanctions
(Democratic People's Republic of
Korea) (Amendment) Regulation
2010)

2. Members noted that the above paper had been issued for the Panel's information, and also forwarded to the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions for consideration. The Subcommittee would hold meetings to study the subsidiary legislation. As agreed between the Subcommittee and the Administration, the Administration would inform the Panel in future the implementation of the resolutions of the United Nations Security Council that had direct relevance to and impact on trade and industry in Hong Kong.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)895/09-10(01) -- List of outstanding items for
discussion

LC Paper No. CB(1)895/09-10(02) -- List of follow-up actions)

3. The Chairman informed members that so far, the Administration had not proposed any discussion items for the next regular meeting to be held on 9 February 2010. In this connection, he advised that if members would like to propose other items for discussion at the next meeting, they could notify the Clerk after the meeting.

(*Post-meeting note:* With the concurrence of the Chairman, the meeting scheduled for 9 February 2010 would not be held.)

IV. Copyright protection in the digital environment

(LC Paper No. CB(1)341/09-10(08) -- Administration's paper on proposals for strengthening copyright protection in the digital environment

LC Paper No. CB(1)865/09-10(29) -- Paper on copyright protection in the digital environment prepared by the Legislative Council Secretariat (updated background brief)

Submissions from deputations/individual not attending the meeting

(LC Paper No. CB(1)865/09-10(16) -- Submission from PCCW Group (English version only)

LC Paper No. CB(1)865/09-10(17) -- Submission from Hong Kong Bar Association (English version only)

LC Paper No. CB(1)865/09-10(18) -- Submission from The Chinese Manufacturers' Association of Hong Kong (Chinese version only)

LC Paper No. CB(1)865/09-10(19) -- Submission from The Open University of Hong Kong (English version only)

LC Paper No. CB(1)865/09-10(20) -- Submission from Concern Group of the Education Sector on Copyright Law (English version only)

LC Paper No. CB(1)865/09-10(21) -- Submission from Hong Kong Broadband Network Ltd. (English version only)

LC Paper No. CB(1)865/09-10(22) -- Submission from Dr YANG Mo, Southern District Councillor (Chinese version only)

LC Paper No. CB(1)865/09-10(23) -- Submission from Hong Kong Library Association and Joint University Libraries Advisory Committee (English version only)

LC Paper No. CB(1)865/09-10(24) -- Submission from Hong Kong Publishing Federation Limited (English version only)

- LC Paper No. CB(1)865/09-10(26) -- Submission from Television
(English version only) Broadcasts Limited
- LC Paper No. CB(1)865/09-10(27) -- Submission from Mr Ramona
(English version only) CHEUNG
- LC Paper No. CB(1)865/09-10(28) -- Submission from Cable & Satellite
(English version only) Broadcasting Association of Asia
- LC Paper No. CB(1)865/09-10(07) -- Submission from News Corporation
(English version only)
- LC Paper No. CB(1)883/09-10(02) -- Submission from Federation of
(English version only) Hong Kong Industries
- LC Paper No. CB(1)904/09-10(06) -- Submission from The Newspaper
(Chinese version only) Society of Hong Kong
- LC Paper No. CB(1)904/09-10(07) -- Submission from Hong Kong
(English version only) Information Technology
Federation)

4. The Chairman welcomed representatives of the deputations to the meeting. He said that written submissions from deputations received before the meeting had been circulated to members and uploaded onto the Legislative Council (LegCo)'s website for public perusal. He requested the deputations to provide a written submission if they had not already done so, and also provide supplementary submissions, if any, to the Panel after the meeting. He reminded the deputations that when addressing the Panel at the meeting, they were not covered by the protection and immunity under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), and their written submissions were not covered by the said Ordinance.

Presentation by deputations

Law Society of Hong Kong (LawSo)

(LC Paper No. CB(1)895/09-10(03) -- Submission (English version only))

5. Mr Henry WHEARE of the LawSo thanked the Administration for its efforts in drawing up the package of refined proposals aiming to strike a delicate balance between the rights of the copyright owners and the users. He said that legal certainty as to the liability in respect of copyright infringements in the digital environment was particularly essential to online service providers (OSPs). However, the current proposals failed to address this issue. The LawSo expressed disappointment at the reluctance of the Administration to introduce the "graduated response" system. The LawSo also expressed concern that Hong Kong had lagged far behind the global practices in terms of copyright protection.

Entertainment Software Association (ESA)

(LC Paper No. CB(1)883/09-10(01) -- Submission (English version only))

6. Ms Monique WOO of the ESA highlighted that game piracy over peer-to-peer (P2P) network had become a very serious problem, especially in places like Hong Kong where broadband penetration was high. On the Administration's refined proposals, ESA supported recognizing copyright owners' right to communicate their works through any mode of electronic transmission, with criminal sanctions against infringement. ESA opined that the "Notice and Notice" and "Notice and Takedown" mechanisms failed to achieve effective deterrence against online infringing activities. ESA therefore urged the Administration to reconsider the introduction of a "graduated response" system combining educational elements and proper incentives, which would appear to be the most effective and efficient means of producing the intended change in consumer behavior. ESA also urged for the introduction of statutory damages for online infringements.

Business Software Alliance (BSA)

(LC Paper No. CB(1)904/09-10(01) -- Submission (English version only))

7. Mrs Belinda LUI of the BSA suggested that a "graduated response" system should be tailored for use in Hong Kong in such a way that there would be an appropriate balance between deterring repeated online infringements and respecting the civil rights of Internet users. BSA considered that a "graduated response" system would be an effective educational tool in addition to its enforcement function. Whilst the "Notice and Takedown" system was not an effective tool to deter infringements over P2P networks, OSPs should be required to implement a "graduated response" mechanism that included warnings and sanctions, with appropriate safeguards for privacy and due process. BSA welcomed a statutory limitation of liability scheme underpinned by a voluntary code of practice for OSPs in combating online infringements.

International Federation of the Phonographic Industry (Hong Kong Group) Limited (IFPI(HK))

(LC Paper No. CB(1)865/09-10(01) -- Submission (English version only))

8. Mr Ricky FUNG of the IFPI(HK) opined that the refined proposals were still insufficient for tackling online infringement. IFPI(HK) considered that the "graduated response" system should be provided to deal with online infringements. This could address the concern of high litigation costs arising from civil actions for copyright infringement. IFPI(HK) supported introducing a statutory regime which would limit the liability of OSPs for copyright infringement provided that they complied with certain prescribed conditions by way of "safe harbour" formulation in respect of combating online infringements on their service platforms. IFPI(HK) also objected to introducing a media shifting exception for any type of copyright materials.

Motion Picture Association – International (MPA)

(LC Paper No. CB(1)865/09-10(02) -- Submission (English version only))

9. Mr Frank RITTMAN of MPA opined that in proposing to introduce a statutory limitation of liability regime for OSPs in dealing with online piracy, the Administration should first clarify with certainty that OSPs could be held liable under the law for authorizing infringing activities committed on their service platforms. MPA expressed disappointment towards the Administration's remark that it was not an opportune time to consider the introduction of the "graduated response" system which had been recognized internationally as the preferred solution that properly balanced competing interests.

Savantas Policy Institute (SPI)

(LC Paper No. CB(1)865/09-10(03) -- Updated submission (English version only))

(tabled at the meeting and subsequently issued via e-mail on 20 January 2010)

10. Mr Charles CHAN of the SPI opined that while copyright protection was fundamental to providing the incentive for fostering creative work, any legislation that curtailed the free flow of ideas and information should be carefully construed. In formulating the amendments to the copyright law, the Administration should consider whether the legislation would stimulate creativity and whether the exclusive rights granted would be detrimental to the public. Instead, the granting of such rights should confer a benefit on the public that outweighed the monopoly.

Movie Producers and Distributors Association of Hong Kong Ltd (MPDA)

(LC Paper No. CB(1)895/09-10(04) -- Submission (Chinese version only))

11. Mr Tony SHU of MPDA opined that a "graduated response" system should be introduced to deal with online infringements. Clear statutory provisions on liabilities and damages should also be formulated to reduce the high litigation costs arising from civil actions for copyright infringements and enhance the efficiency of copyright enforcement as well as deter further online infringing activities.

IFPI Asian Regional Office

(LC Paper Nos. CB(1)865/09-10(04) -- Submission (English version only))
and (05)

12. Ms LEONG May-seey of IFPI Asian Regional Office said that as the unauthorized use of sound recordings on the Internet had caused grave prejudice to the interests of copyright owners, there was an urgent need for an adequate and effective legal framework for copyright protection of online content in Hong Kong. IFPI Asian Regional Office considered that the potential liability of OSPs for copyright infringements occurring on their service platforms in certain circumstances should be clearly established under the law. Any limitations on the liability of OSPs for online infringement should be restricted to monetary relief only. IFPI Asian Regional Office urged for the urgent introduction of a "graduated response" system with effective sanctions against repeat infringers.

Reference should be made to the successful example of South Korea where the music industry had grown by about 20% as compared to 2008 following the introduction of the relevant system in April 2009.

Internet Society Hong Kong (ISHK)

(LC Paper No. CB(1)904/09-10(02) -- Joint submission from Internet Society Hong Kong and Hong Kong Internet Service Providers Association (HKISPA) (Chinese version only))

13. Mr Charles MOK representing the ISHK and HKISPA opined that copyrights should be protected, while maintaining a balance of the interests of the users and the OSPs. ISHK and HKISPA welcomed the Government's approach in making the copyright law technology neutral. However, care should be taken in defining the circumstances leading to criminal sanctions against infringement as users might refrain from using copyright works for fear of inadvertent breaches. ISHK and HKISPA were of the view that criminal sanctions against copyright infringement should not be taken at the expense of the freedom of expression. They urged the Administration to clearly define the legal liability pertaining to the use of copyright works for the purposes of creativity and commentary. ISHK and HKISPA concurred with the Administration that time was not ripe for a "graduated response" system, and favoured implementation of the "Notice and Notice" and "Notice and Takedown" systems under the Code of Practice. They also suggested expanding the scope of the media shifting exception in future to safeguard the users' right to the fair use of copyright works.

The Hong Kong Chamber of Small and Medium Business Ltd. (HKCSMB)

(LC Paper No. CB(1)904/09-10(03) -- Submission (English version only))

14. Mr Kenneth CHOY of HKCSMB expressed concern about the ambiguity of the terms "initiate" and "affect prejudicially" in the refined proposal regarding criminal sanctions against infringement. HKCSMB also expressed concern that it might provide opportunities for abuse against legitimate users seeking reasonable and limited use of copyright works. To strike a balance between the needs of users and the rights of copyright holders, HKCSMB suggested that the exceptions and defences for civil and criminal copyright infringement be strengthened to facilitate dissemination of information required for stimulating creativity and innovation. HKCSMB further suggested expanding the scope of "fair dealing" to cover limited and reasonable use of copyrighted works for analysis, comparison, and research, even in a commercial context. HKCSMB also supported that the Administration should introduce a media shifting exception for sound recordings and urged that the exception be extended to publications.

Hong Kong Institute of Professional Photographers (HKIPP)
(LC Paper No. CB(1)865/09-10(06) -- Submission)

15. Mr Oswald CHEUNG of HKIPP expressed disappointment that copyright protection for photographic works had been left out in the refined proposals. HKIPP considered that protection for the copyright of photographic works should be included in the provisions.

Consumer Council
(LC Paper No. CB(1)904/09-10(04) -- Submission (English version only))

16. Mr Simon CHUI of the Consumer Council expressed concern about the proposed expansion of criminal sanction by making the copyright law technology neutral in non-business context for fear that the timely dissemination of information, freedom of speech and creativity might be compromised by excessive criminal sanction. The meaning of "affect prejudicially" being an element of the proposed offence, might be too broad in scope and not necessarily restricted to economic prejudice, thus having a chilling effect on information sharing and exchange activities. Pointing out the risk of overprotection of the copyright owners' interests, the Consumer Council also warned against the excessive limitation of the liability of the OSPs for copyright infringements. The Consumer Council considered the proposed media shifting exception that was confined to sound recordings too narrow, and expressed reservation about the "Notice and Takedown" mechanism for fear of possible abuse arising from claimed infringements by copyright owners.

The American Chamber of Commerce in Hong Kong (AmCham)
(LC Paper No. CB(1)895/09-10(05) -- Submission (English version only))

17. Dr Richard Vuylsteke of AmCham commended the Administration for its continued effort in addressing the issues relating to copyright protection in the digital environment. However, AmCham expressed disappointment that Hong Kong appeared to be lagging behind the global best practices. AmCham urged the Administration to adopt tools widely acknowledged to provide strong protection in the digital environment, particularly those for P2P networks. AmCham supported the Administration's proposal to provide for a statutory limitation of liability regime for OSPs. However, AmCham favoured the combination of "Notice and Takedown" and the "graduated response" systems which provided both a good mechanism to educate Internet users and a penalty system most effective in curtailing illegal behaviour.

Hong Kong and International Publishers' Alliance (HKIPA)
(LC Paper No. CB(1)865/09-10(08) -- Submission (English version only))

18. Mr LEE Wai-wing of HKIPA expressed support for the Administration's decision to make criminal sanctions applicable to those who initiated unauthorized communication of copyright works to the public in the course of a business conducted for profit, or where it was made to such an extent as to affect

prejudicially the copyright owners. HKIPA opined that while the Administration's proposal should be broad enough to cover all types of uploading of copyright materials, provisions for criminal liability for unauthorized downloading of copyright works for use in business was still lacking. HKIPA urged that the scope be expanded to cover piracy that was carried out in the course of any trade or business. HKIPA also expressed concern about the effect of the proposed statutory exception to copyright protection for temporary reproduction of copyright works by OSPs as it might prejudice the normal exploitation of copyright works by copyright owners and might be abused by users. HKIPA also urged that the media shifting exception should not be applicable to sound recordings of literary works.

Anglo-Chinese Textbook Publishers Organization (ACTPO) and Hong Kong Educational Publishers Association (HKEPA)

(LC Paper No. CB(1)865/09-10(09) -- Submission (English version only))

19. Ms WAN Suk-yu representing ACTPO and HKEPA shared the view of HKIPA and opined that the copyright law in Hong Kong had lagged behind global practices and was badly in need of overhaul. To keep abreast with the rapidly changing digital environment and to encourage creativity, ACTPO and HKEPA urged the Administration to impose criminal sanctions against those who, in the course of business or trade, infringed the copyright of digital publications and original databases. They also urged for the introduction of statutory damages to provide greater deterrence.

Hong Kong Reprographic Rights Licensing Society (HKRRLS)

(LC Paper No. CB(1)865/09-10(10) -- Submission (English version only))

20. Ms Dillys YU of the HKRRLS shared the views of HKIPA, and opined that the Administration's proposal purported to provide OSPs with safe harbour against copyright liability without clearly stating what liability they would be subject to if they failed to meet the prescribed conditions. On the proposed statutory regime, HKRRLS was of the view that any safe harbours should apply only to monetary remedies rather than liabilities for secondary infringement. The possibility of a judicial trial against activities that facilitate infringement should remain, even for OSPs who could demonstrate their entitlement under the safe harbor provisions. A statutory "graduated response" system should be introduced to impose liability on the OSPs so as to provide incentives for them to cooperate in preventing massive infringement. HKRRLS also expressed disappointment at the Administration's reluctance to introduce any infringer identity disclosure mechanism that was not subject to scrutiny by the Court.

Hong Kong Small & Medium Enterprises Association (HKSMEA)

(LC Paper No. 966/09-10(03) -- Submission (Chinese version only)
(tabled at the meeting and subsequently issued via e-mail on 20 January 2010)

21. Mr Wilson SHEA of HKSMEA expressed full support for the Administration's proposal for further copyright protection in the digital environment. HKSMEA urged that the proposed legislation should require clear

identification of copyright works of which prior consent from the copyright owners on its use must be obtained. HKSMEA also urged for the stepping up of education and promotion on the legislation to avoid inadvertent infringement by SMEs.

The Lion Rock Institute (LRI)

22. Mr Andrew SUEN of LRI opined that the proposed legislation would not be able to offer much protection against online copyright infringement. LRI urged the Administration to shelve the legislative plan. Noting the innovative ideas driving the success of the Youtube and the computer games industry, LRI expressed opposition towards the proposed criminal sanctions which would stifle creativity. LRI favoured the channel of civil litigation in resolving conflicts relating to copyright infringement.

Hong Kong Video Development Foundation Ltd (HKVDF)

(LC Paper No. CB(1)865/09-10(11) -- Submission (English version only))

23. Miss Clera CHU of HKVDF pointed out that the problem of online piracy activities was very serious in Hong Kong. The prohibitive cost of copyright enforcement against online infringers warranted new laws and remedies. HKVDF was dissatisfied that the OSPs had passed on the cost to the copyright owners.

HUCOM Task Force on Copyright in Education

(LC Paper No. CB(1)865/09-10(12) -- Submission (English version only))

24. Mr P K CHIU of the HUCOM Task Force welcomed the Government's commitment in maintaining the efficacy of a robust copyright protection regime in the digital era. The HUCOM Task Force opined that as the Administration was striving to refine the proposals for strengthening copyright protection in the digital environment with the goal of sustaining further development of creative industries in Hong Kong, equal emphasis should also be placed on the free flow of information which was also vital for creative development. The HUCOM Task Force also expressed concern about the possible adverse consequences arising from the suggested enhanced copyright protection measures. With a view to facilitating teaching and learning in the digital era, it was imperative for the Administration to safeguard the fair use of copyright works for the education sector.

Time Warner Inc

(LC Paper No. CB(1)865/09-10(13) -- Submission (English version only))

25. Mr Alvin LEE of Time Warner Inc opined that Hong Kong's copyright law had not kept pace with the information age. Policies that ensured effective copyright protection in the digital environment were necessary for the creative industry in Hong Kong so as to maintain its competitiveness in the region. Time Warner Inc therefore urged the Administration to adopt suitable liability regime for OSPs and effective statutory damages as well as a "graduated response" system to deal with online piracy.

Warner Bros. (F.E.) Inc

(LC Paper No. 966/09-10(04)

-- Submission (English version only)

26. Mr Sean MOK of Warner Bros. (F.E.) Inc urged the Administration to be more decisive in making legislative amendments that would give adequate protection to the industry as new means of online copyright infringements were constantly emerging. Warner Bros. (F.E.) Inc was disappointed that the Administration had not included a "graduated response" system in its refined proposals, and expressed concern that this would weaken the proposed Code of Practice as a tool for education and enforcement.

Hong Kong Motion Picture Industry Association Ltd. (MPIA)

(LC Paper No. CB(1)865/09-10(14) -- Submission (Chinese version only))

27. Mr Brian CHUNG of MPIA expressed support for the Administration's refined proposals, and the "Notice and Takedown" system in particular, which would provide an alternative remedy to the costly litigation arising from civil liability for copyright infringement. MPIA expressed objection to introducing a media shifting exception for sound recordings and considered such an activity a form of copyright infringement.

Yahoo Asia Holdings Limited (Yahoo)

(LC Paper No. CB(1)865/09-10(15) -- Joint submission from Yahoo, eBay, Google and Nokia (English version only))

28. Mr Patrick CHU of Yahoo said that it was incumbent upon the Government to formulate a fair and balanced copyright protection regime that took into due consideration the needs and concerns of the general public and consumers, copyright holders and OSPs. Yahoo supported the introduction of the statutory limitation of liability which would provide legal incentive for OSPs to cooperate in combating online piracy. Regarding the scope of criminal sanctions against infringement, Yahoo requested clearer definitions of the terms used, such as "initiate", in the refined proposals.

International Federation Against Copyright Theft (Greater China) Ltd (IFACT-GC)

(LC Paper No. CB(1)865/09-10(25) -- Submission (English version only))

29. Mr Sam HO of IFACT-GC expressed support for the Administration's refined proposals in general, but opined that the proposals fell short of the best practices in copyright protection. IFACT-GC proposed that OSPs be held liable under the law for authorizing infringing activities committed on their service platforms. IFACT-GC also expressed disappointment at the reluctance of the Administration to introduce a "graduated response" system, and urged the Administration to reconsider its proposal.

Hong Kong Comics and Animation Federation (HKCAF)
(LC Paper No. CB(1)904/09-10(05) -- Submission (Chinese version only))

30. Mr Thomas TANG of HKCAF considered that the Administration should address the copyright infringement problem at source. Currently, many infringing copies of comics and animation movies were available for online viewing at Mainland websites using the streaming technology. This phenomenon had devastated the local comics and animation industry and threatened its survival. HKCAF called on the Administration to relay the problem to the Mainland authorities and urge them to step up copyright enforcement. HKCAF also suggested that education and promotion be stepped up to reinforce copyright awareness in the young generation.

Internet Professional Association (IProA)
(LC Paper No. 966/09-10(05) -- Submission (Chinese version only))

31. Mr Ringo LAM of IProA welcomed the Administration's approach in making copyright law technology neutral. IProA opined that criminal liability should be clearly stated in the proposed legislation to avoid inadvertent infringements. IProA called on the Administration to consider the adoption of a "Creative Commons" licensing system. IProA also supported the proposal regarding a media shifting exception for sound recordings.

Presentation by the Administration

32. Secretary for Commerce and Economic Development (SCED) noted that the vast majority of the deputations were in favour of the Administration's proposal to strengthen copyright protection in the digital environment. She said that the dissenting views raised by individual deputations would be taken into consideration. With the fast pace of development of the digital era, it was necessary for the Administration to review the current regulatory regime to ensure it remained adequate and appropriate in present-day circumstances. The Administration would strive to strike a balance between the interests of the various stakeholders, between protecting privacy and the free flow of information, whilst providing an environment conducive to the development of Hong Kong as an international Internet service hub. As regards the "graduated response" system, she said that the implementation of the system was clouded by debates over its implications on civil rights and liberties, even in jurisdictions where legislation introducing the system had been passed. The Administration believed that it was not an opportune time to consider introducing such a system, especially when its implications were yet to be fully tested in overseas jurisdictions. Regarding the views on extending the proposed media shifting exception for sound recordings to other types of works, SCED said that the matter should be carefully considered in the light of the practices in other overseas jurisdictions. She said that the "Creative Commons" system provided a form of easy licensing and was in line with the existing copyright laws. The Administration would welcome further rational discussions with the relevant stakeholders.

Discussion

Balance of interests

33. In response to Mrs Regina Ip's enquiry, Mr Charles CHAN of the SPI advised that the intellectual property right (IPR) problems faced by the local industry players were similar to those faced by their international counterparts. One major problem was the need to strike a balance between providing the industry with incentives to create whilst ensuring the users' rights to use copyrighted materials for the purpose of creativity and innovation.

Public engagement

34. Dr Samson TAM enquired whether the Administration had plans to further engage the relevant stakeholders, especially the users and the young generation to discuss the refined proposals. In response, SCED advised that the Administration welcomed opinions from the stakeholders and would continue to engage them through various channels such as this Panel meeting and the Tripartite Forum. She further advised that the experience of the overseas countries in adopting similar copyright protection regimes would definitely be taken into account.

35. Principal Assistant Secretary for Commerce and Economic Development (Commerce and Industry) supplemented that a Tripartite Forum meeting had been scheduled for February 2010 to further engage the stakeholders on the Government's package of refined proposals. The Administration was still receiving submissions on its website and would continue to organize various public forums to engage the copyright users and owners. It also monitored relevant comments made by internet users at various internet fora.

Legislative timetable

36. Noting that Hong Kong was lagging behind in copyright protection legislation, Dr Samson TAM enquired about the timetable for the legislative amendments. He opined that Hong Kong should make reference to the copyright protection regimes in other overseas jurisdictions including the "Asian Four Dragons".

37. SCED maintained that thorough consultation with the stakeholders was vital for a subject that involved a delicate balance between the interests of copyright owners, users and OSPs. She advised that the Administration's objective was to introduce the Amendment Bill into the Legislative Council in the second half of 2010.

Co-operation with the Mainland

38. Noting the rampant copyright infringement activities occurring in the comics and animations market in the Mainland, the Deputy Chairman enquired about the measures taken in collaboration with the Mainland authorities against

such activities.

39. SCED responded that under the "One Country, Two Systems" principle, the Hong Kong Special Administrative Region Government was an individual signatory to the World Trade Organization (WTO), and abided by the WTO rules governing the protection of IPR. She assured members that the Administration would continue to reflect the views and concerns expressed by the local stakeholders to the Mainland authorities, and collaborate with them for information sharing and intelligence exchanges.

Summing up

40. Summing up the discussion, the Chairman thanked the deputations for attending the meeting to present their views and concerns. He called on the Administration to strike a reasonable balance between the interests of the copyright holders and the users before finalizing the legislative proposals.

V. Promotion of inward investment

(LC Paper No. CB(1)865/09-10(30) -- Administration's paper on promotion of inward investment

LC Paper No. CB(1)865/09-10(31) -- Paper on promotion of inward investment prepared by the Legislative Council Secretariat (updated background brief)

Presentation by the Administration

41. At the Chairman's invitation, Permanent Secretary for Commerce and Economic Development (Commerce, Industry and Tourism) (PSCIT) and Director-General of Investment Promotion (DGIP) briefed members on the work of Invest Hong Kong (InvestHK) in 2009 and the way forward for 2010, as set out in the Administration's paper (LC Paper No. CB(1)865/09-10(30)).

Discussion

Projects completed

42. Noting that InvestHK had achieved a record result of completing 265 investment projects in 2009 which had been a very challenging year, Dr LAM Tai-fai considered the 2010 target of completing 270 projects against the background of anticipated global recovery to be too conservative. He enquired about the number of companies setting up headquarters in Hong Kong out of the total number of projects completed in 2009, and the achievements in promotion work in Taiwan in 2009, as well as the breakdown by region of the target of completed projects in 2010, namely in the Mainland, Taiwan and the emerging markets.

43. In response, PSCIT advised that with a manpower establishment of about 100 staff, the Administration considered it prudent to set a conservative target for InvestHK in 2010. She further explained that a long lead time spanning up to 36 months was normally required for the completion of a project. Taiwan had been a key target market for InvestHK in the past two years. In fact, InvestHK launched a major marketing campaign in Taiwan in October 2009, which included direct mailing, telemarketing and holding seminars to promote the investment environment of Hong Kong to the Taiwan business community. In 2010, InvestHK would continue to strengthen its aftercare support services to companies already established in Hong Kong with a view to supporting these companies in retaining and expanding their investments.

44. DGIP supplemented that out of the 265 projects completed in 2009, 80% of the companies were new to Hong Kong and East Asia. For most of these companies, Hong Kong was the first stepping stone into the region. As a start, these companies tended to set up local offices rather than regional headquarters in Hong Kong, although these companies often had a regional focus. Most of these companies regarded Hong Kong as a secure platform to access the Mainland market and beyond. In 2009, less than 20% of the 265 offices established in Hong Kong could be considered as regional headquarters. Six companies had come from Taiwan to set up offices in Hong Kong.

Competitive strategies

45. Mrs Regina IP and Mr Albert CHAN said that the figures provided in the Administration's paper were global figures without details such as the countries of origin and the sectoral breakdown by nature of the business concerned, and whether the companies intended to invest in Hong Kong on a long term basis. While agreeing that Taiwan should be a key target market, Mrs Regina IP enquired whether the focus had been placed on attracting businesses in the six key industries, especially the innovation and creative industries, as well as the high-value added industries such as biotechnology and vaccine manufacturing industries. She considered that Hong Kong should no longer rest on its laurels and that its traditional competitive advantages had been caught up gradually by its aggressive neighbouring competitors such as Singapore, Shanghai and Tianjin. She requested that the Administration should provide supplementary information on the comparative competitive strategies of Hong Kong.

46. PSCIT responded that in line with the findings of the consultancy study to review the strategy for inward investment promotion, most of the targeted companies were engaged in the service industries, including business and professional services, financial services, information and communications, creative and innovation and technology, which consisted of high value-added industries. This was also aligned with the Government's policy direction to develop the six new growth industries (namely education, medical, testing and certification, environmental, innovation and technology and cultural and creative industries). Meanwhile, InvestHK would formulate its annual strategic plan in collaboration

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with the Investment Promotion Units (IPUs) under the Economic and Trade Offices (ETOs). Currently, InvestHK maintained IPUs in eleven of the ETOs and the Beijing Office. At Mrs Regina IP's request, the Administration undertook to provide supplementary information on the nature of businesses of the target companies concerned after the meeting. The Administration also undertook to conduct a study on the investment promotion strategies of Hong Kong's competitor(s), and would provide an information note to the Panel in this respect.

47. DGIP supplemented that InvestHK had been discussing with strategic companies, such as large pharmaceutical companies and biotechnology companies, to encourage them to invest in Hong Kong. It also worked closely with partners such as the Hong Kong Science Park in an endeavour to attract high-value investments into Hong Kong. However, attracting investment for a vaccine plant in Hong Kong as suggested by Mrs Ip might involve Government's intervention and providing incentives in specific areas in competition with other neighbouring countries in the region.

48. Dr LAM Tai-fai opined that InvestHK should focus on the companies which would bring in job opportunities and talents, and enhance Hong Kong's international status as well as economic and technological development. He enquired whether a target was set in 2009 for the amount of capital investment and employment opportunities brought about by the 265 projects in Hong Kong.

49. In response, PSCIT and Assistant Director-General of Investment Promotion advised that the total number of jobs created by these companies within the first year was 2711, whilst the number of jobs created/to be created within the first two year were over 6 000. Direct investment of some \$4.4 billion was involved. DGIP added that after setting up of their offices and staff recruitment in Hong Kong, these companies would be requested to indicate their amount of capital to be invested and the number of persons to be employed within the first two years of operation by way of a questionnaire. He said that apart from direct employment, there were tremendous indirect employment opportunities and economic benefits created by these companies.

50. Noting that InvestHK had managed to complete only 265 projects in 2009 with a total of over 20 ETOs established in the Mainland and overseas, Mr Albert CHAN queried the cost-effectiveness of the work of InvestHK. With the diminishing role of Hong Kong as the gateway to China, he enquired whether the Administration had revised the overall strategy to promote inward investment which would be in line with Hong Kong's current policy on economic development. He also suggested that the Administration should cooperate with overseas investment consultancies in promoting Hong Kong to overseas companies. Moreover, the Administration should provide policy incentives, such as concessions on tax or land premium, so as to encourage these companies to set up their operations in Hong Kong.

51. In response, PSCIT advised that in 2010, InvestHK would restructure its target sectors into eight target sectors, namely creative industries, innovation and technology, business and professional services, information and communications technology, transport and industrial, tourism and hospitality, consumer products and financial services. These target sectors included service industries and the six new growth industries. Apart from the traditional markets like North America and Europe, InvestHK would continue to attach particular importance to markets such as the Mainland and Taiwan, and emerging markets such as India, the Middle East and Russia. In view that Hong Kong already had a low tax rate, it might not be possible to offer further tax incentives to the overseas businesses.

52. As regards the number of projects completed, PSCIT explained that the IPU's set up at the ETOs had a small permanent manpower establishment which had to be supplemented by local part-time staff. Apart from its geographical proximity to the Mainland and its sound financial and legal systems, Hong Kong had an added appeal to overseas businesses brought about by the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA). Many of the companies had come to Hong Kong with a view to enjoying the benefits provided by CEPA.

53. DGIP supplemented that InvestHK would develop a strategy, a business plan and a target list for each of its eight priority sectors. Companies around the world in the targeted sector would be shortlisted. Staff of the overseas offices and overseas consultants on performance-related contracts would then engage in an outreach programme to promote Hong Kong to the shortlisted companies.

Role in helping Mainland companies

54. Noting that most Mainland companies were already familiar with the developments in Hong Kong and had established their own local connection networks, Dr LAM Tai-fai expressed concern about the diminishing role and future positioning of InvestHK in assisting these companies to set up their operations in Hong Kong.

55. In response, PSCIT advised that although Mainland companies already had very good connection networks in Hong Kong, many still needed the support of InvestHK to use Hong Kong as a test market or platform to gain greater access to the international market. InvestHK could introduce them to partner organizations and other investment promotion agencies. Mainland companies making their first steps outside the Mainland often found Hong Kong a very different economy to do business. InvestHK could provide them with a great deal of support to help them through the process. In 2009, whilst overseas companies brought in by InvestHK tended to be high-growth companies that started smaller in Hong Kong, the Mainland companies brought in had put in quite a substantial presence and created more job opportunities for Hong Kong. In fact, one large Mainland company had been brought in to set up its manufacturing facilities in one of the industrial estates in Hong Kong. This would generate considerable employment opportunities over the next few years.

Deterrent factors for overseas companies

56. Ms Emily LAU enquired about the factors which had deterred overseas companies from investing in Hong Kong. Noting that InvestHK would strengthen cooperation with the Hong Kong Trade Development Council (HKTDC) to promote Hong Kong as an international business hub, she expressed concern that HKTDC would become a monopoly over the organization of exhibitions/trade shows to promote Hong Kong.

57. In response, PSCIT advised that most of the difficulties expressed by the overseas companies wishing to invest in Hong Kong were general ones concerning issues such as taxation arrangements, the availability of land, and other settling-down arrangements for expatriates. She clarified that major exhibitions/trade shows were not organized exclusively by HKTDC. The role of InvestHK was to cooperate with organizations including but not limited to the Hong Kong Tourism Board and HKTDC to achieve synergy in promoting Hong Kong as an international business hub.

58. In summing up, the Chairman commended InvestHK for its efforts in promoting inward investment in 2009 which had been a very tough year, and hoped that it would continue to encourage and assist overseas, Mainland and Taiwan companies to set up and expand their operations in Hong Kong.

VI. Any other business

59. In response to Ms Emily LAU's enquiry, the Chairman advised that the Complaints Division of the Legislative Council Secretariat was handling a case concerning the development of exhibition industry in Hong Kong. The Panel would follow up the matter upon receipt of the referral from the Complaints Division.

60. There being no other business, the meeting ended at 5:45 pm.