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(English version only)

HONG KONG BAR ASSOCIATION

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6 January 2010

Clerk to the Panel on Commerce and Industry
Legislative Council
8 Jackson Road
Central, Hong Kong.

Dear Sir/Madam,

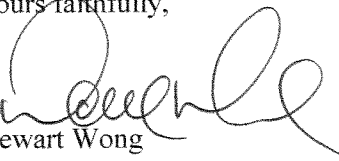
Re: Meeting on 19 January 2010

I refer to your letter dated 21 December 2009 to the Hong Kong Bar Association (“the HKBA”), inviting it to present its views on the Government’s refined proposals to strengthen copyright protection in the digital environment.

The HKBA has, in May 2007, sent in written submissions on the Government’s original proposals. A copy of the submissions is enclosed herewith for your reference. Having considered the refined proposals, the Bar would like to repeat the said submissions, which it takes the view remain valid and applicable. I would be grateful if you could place those submissions before the Panel at its meeting on 19 January 2010.

In the circumstances, the HKBA will not be providing further submissions, and it will not be sending any representatives to attend the meeting on 19 January 2010.

Yours faithfully,


Stewart Wong
Deputy Hon Secretary

Encl.

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Views of the Hong Kong Bar Association

Copyright Protection in the Digital Environment Consultation Paper

With reference to the sub-paragraphs in **Paragraph 7.1 of Chapter 7** of the Consultation on Copyright Protection in the Digital Environment, the Bar Association has the followings views:

- (a) The Bar is of the view that there should not be any expansion of the scope of criminal liability to combat unauthorized uploading and downloading activities in Hong Kong. The Bar is generally against any expansion of the scope of criminal liability as the Bar believes that that results in the tax payer paying to enforce the rights of copyright owners so that copyright owners can make even greater profits at the expense of the tax payer. The Bar believes that it is only fair that copyright owners should foot the bill to protect their own rights which they exploit to generate profits.
- (b) The Bar is in favour of an “all-embracing right to communicate copyright works to the public” should be introduced so that the law need not, hopefully, have to be updated to provide for future developments in technology. That said, provisions relating to the introduction of any such right must be carefully drafted and, judging from the unfortunate experience which the Bar has had with past attempts by the Administration to draft their own legislation instead of copying from well-established provisions elsewhere, it may be better to adopt well-established and tested provisions from other jurisdictions. The Bar should add that the Bar would only be in favour of the introduction of such a new right on condition that it does not attract criminal liability and/or sanctions.
- (c) The Bar is against imposing liability on online service providers. In this day and age, so much gets put online so quickly that it would be impossible for OSPs to monitor and control the same. It would accordingly not be fair to create new legislation to impose liability on them additional to what already exists.
- (d) If (c) is pursued, of course there should be limitations on the liability of OSPs.
- (e) No comment.

- (f) The Bar would be in favour of providing for a specific mechanism under the Copyright Ordinance for copyright owners to seek information about alleged infringers. The single most important feature of such a mechanism must, in the Bar's view, be that it must be subject to judicial scrutiny and approval so that applications would have to be made to a judge. The costs should be borne by the copyright owner but provision can be made that if the copyright owner eventually successfully pursues an action against the party whose identity is disclosed, that party be responsible for the costs.
- (g) The Bar would be in favour of legislation being introduced to require IASP's to keep records.
- (h) Yes.
- (i) The Bar would strongly oppose the introduction of statutory damages. Copyright infringement is a statutory tort and the Bar sees no good reason for departing from the established principle that a party seeking damages should prove his loss since damages are compensatory.
- (j) The Bar would be in favour of expanding the existing scope of copyright exemption but would again caution about the need to properly draft the relevant provisions.

Hong Kong Bar Association

Dated: 26 May 2007