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香港寬頻網絡有限公司
Hong Kong Broadband Network Ltd.



商界展關懷
caring company 2005/06

LC Paper No. CB(1)865/09-10(21)
(English version only)

Our Ref.: HKBN/LEG/0425/SL
Your Ref.: CB1/PL/CI

Date: 8 January 2010

Ms May Leung
Clerk to Panel on
Commerce and Industry
Legislative Council Building
8 Jackson Road
Central, Hong Kong

By Fax (2978 7569) &
By Email (mleung@legco.gov.hk)

Dear Ms Leung

**Panel on Commerce and Industry
Meeting on Tuesday, 19 January 2010, at 2:30 pm
Copyright Protection in the Digital Environment**

Thank you for your letter of 21 December 2009.

Please be informed that we will not attend the captioned meeting to present our view on the subject matter. Enclosed is our written submission in response to the Administration's Paper on Proposal for Strengthening Copyright Protection in the Digital Environment (LC Paper No. CB(1)341/09-10(08)).

Yours sincerely,
For and on behalf of
Hong Kong Broadband Network Limited

Simon Leung
Head of Legal
Corporate Affairs Department

Encl.

Submission
to the Legislative Council Panel on Commerce and Industry
in relation to the Administration's Paper on Proposals for Strengthening
Copyright Protection in the Digital Environment

8 January 2010

I. INTRODUCTION

1. Hong Kong Broadband Network Limited ("HKBN") welcomes the opportunity to give its views on the Administration's Paper on Proposals for Strengthening Copyright Protection in the Digital Environment.
2. In principle HKBN supports the Government's move to uphold a robust copyright protection regime in Hong Kong. We also recognise the need to balance and address concerns about possible adverse implications that enhanced copyright protection may have on the dissemination of information, while safeguarding personal privacy on the Internet and promoting the development of Hong Kong as an Internet service hub.

II. RESPONSES TO SPECIFIC PROPOSALS

- (a) Recognising copyright owners' right to communicate their works through any mode of electronic transmission, with criminal sanctions against infringement**
3. HKBN accepts that copyright owners' right to communicate their works through any mode of electronic transmission should be recognised. We believe such right is consistent with the technological neutral policy and conducive to the development of Hong Kong's creative industries.
 4. While we believe that introducing criminal sanctions as proposed by the Government may somehow have a deterrent effect on unsophisticated infringers, the effectiveness in combating large-scale and sophisticated infringing activities for profit remains questionable.

5. Moreover, we are concerned that introducing criminal sanctions may impose an undue burden on OSPs particularly in responding to the enforcement agencies in the collation of infringers' records and evidence.

(b) Introducing a statutory limitation of liability regime for OSPs in dealing with online piracy

6. HKBN agrees with the proposal to introduce a statutory regime by way of a voluntary code of practice which gives OSPs the assurance that compliance with certain conditions would qualify OSPs for limitation of liability for copyright infringement.

7. However, we are concerned about whether or not the "Notice and Takedown" system as proposed by the Government is reasonably practicable for OSPs to carry out. OSPs are not in a position to determine whether or not a claimant is the rightful copyright owner or a complaint about copyright infringement is valid, without a court order or such other documentary evidence given by the enforcement agencies. In addition, we can also envisage that the system could be abused by the business competitors of the users by making false claims of infringement. Hence, any decision taken by OSPs to take down or disable access to materials merely based on claims by those claimed to be copyright owners is at the sole risk of OSPs and subject to challenge. As a consequence, OSPs may be held liable for damages suffered by the users if the "takedown" is found to be wrongful eventually.

8. In addition, the "Notice and Takedown" system is not consistent with the interests of the users and OSPs. According to the Telecommunications Ordinance and licence conditions of the fixed telecommunications network licence, telecommunications service providers are required to maintain and provide a good, efficient and continuous service and are prohibited from intervening telecommunications traffic without lawful excuse.

9. For the reasons above, we consider it not to be in the interests of OSPs, users and copyright owners if the "Notice and Takedown" system is adopted.

(c) Introducing a copyright exception for temporary reproduction of copyright works by OSPs

10. We are in broad agreement with the line that the Government is taking.

(d) Prescribing additional factors for considering the award of additional damages

11. We are in broad agreement with the line that the Government is taking.

(e) Introducing a media shifting exception for sound recordings

12. We are in broad agreement with the line that the Government is taking.

III. CONCLUSION

13. HKBN is generally supportive of the Government's overall approach to upholding a robust copyright protection regime in Hong Kong. Nevertheless, we would invite the Panel to take into account our views as mentioned above.