

IFPI Paper on the Recommended Legislative Approach to Strengthening Copyright Protection in the Digital Environment in Hong Kong

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In order to achieve its goal of “creating a robust copyright protection regime” that supports “further sustainable development” of the creative industries, as expressed in the Proposals of the Commerce, Industry and Tourism Branch of the CEDB to the Legislative Council Panel on Commerce and Industry of November 2009 (“the Proposals”), the following should be included in Hong Kong’s new legislation on copyright in the digital environment:

- The potential liability of Internet Service Providers (ISPs) for infringements occurring over their networks in appropriate circumstances should be clearly established under the law;
- Any limitations on the liability of ISPs for online infringement should apply to monetary relief only;
- The law should require ISPs to implement an effective “notice and takedown” procedure to expeditiously remove infringing content hosted on their servers;
- The law should establish a mechanism for dealing with acts of infringement where the infringing content is not hosted on the ISP servers and cannot be taken down, such as a ‘graduated response’ procedure with effective sanctions available against repeat infringers who ignore notices;

In light of the growing piracy problem in Hong Kong and the substantial losses suffered by rightholders as a result of online infringement, these elements should be introduced without further delay.

In respect of other issues addressed in the Proposals –

- **We strongly support the introduction of a broad right of communication to the public, with criminal sanctions against infringement as proposed by the government;**
- **An exception for temporary reproduction by ISPs should only be introduced if it is part of overall legislation on the liability of ISPs. Such exception should be narrowly crafted and include appropriate conditions;**
- **We support the introduction of additional factors for considering additional damages. We also urge that a statutory damages provision be introduced;**
- **A new media shifting exception is unnecessary and could have negative consequences and therefore should not be introduced.**