



Legislative Council Panel on Commerce and Industry
Proposal for Strengthening Copyright Protection in the Digital Environment

Dear Mr. Chairman and Panel Members,

Thank you for providing the Hong Kong Chamber of Small and Medium Business Ltd this opportunity to present our views on this important matter.

The Chamber supports protection of copyrighted works in the digital environment. Small and medium businesses are significant users and creators of copyrighted materials. Creativeness and innovativeness seldom take place in isolation; they are the result of individual efforts, working singly or with others. Corporations are not creative or innovative, people are. Hong Kong SME's comprise of individual entrepreneurs and small groups of individuals seeing a need and through creativity and innovation, finding a solution to such needs, despite having limited resources.

As authors of copyrighted works and other intellectual property rights, our members expect strong but reasonable protection so that they may enjoy the fruits of their labour. At the same time, the Chamber recognizes the necessity of ensuring free flow of information to help stimulate the flow of creative juice for finding solutions in a very competitive marketplace. Having the right balance in the legislative landscape is therefore crucial for members of our Chamber

As copyright holders, our members want a convenient mechanism to enforce their copyrights against unauthorized usurpers of their work. At the same time, we do not want to be hampered by threats from corporate copyright holders for limited and reasonable use of information that sows the seeds of creativity and innovation.

Against this background, our Chamber has the following views concerning some of the Panel's proposals:

Criminal sanction against those who initiate unauthorized communication of copyright works to the public – (a) in the course of business conducted for profit; or (b) where it is made to such an extent as to affect prejudicially the copyright owners.

Since criminal sanction is a severe punishment, the threshold for imposing such punishment must be reflective of the severity of the punishment and stigma associated with a criminal record. The elements of offenses must be specific and precise. The Chamber is concerned that the meanings of terms such as "initiate", "communication", "public" and "affect prejudicially" are ambiguous and broad. We can foresee the claim that even minute matters may be said to "affect prejudicially" the rights of corporate copyright holders and a real opportunity exists for abuse, intimidation and oppressive action against legitimate users seeking reasonable and limited use of copyrighted



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works. Minor infractions, which arguably may have prejudicial effect, should not result in criminal sanction. Balance between crime and punishment is required.

To provide a balance between the needs of users and the rights of copyright holders, the Chamber suggests that exceptions and defenses for civil and criminal copyright infringement be strengthened to facilitate dissemination of information required for stimulating creativity and innovation. The Chamber encourages the 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.

Introducing a media shifting exception for sound recordings

The Chamber agrees with the Panel that media shifting for sound recordings should be permitted. In addition, the Chamber is of the view that media shifting should also be permitted for publications as it has become a necessity to have both digital and paper versions of the same publication. In our mobile society, individuals may find reading digital versions more convenient in some situations, such as commuting or traveling to and from meetings and appointments. On the other hand, it is more convenient and efficient to use a paper version of the same publication when comparing or analyzing the work in a small group setting. It is our view that the rationale for allowing media shifting exception for sound recordings also apply to publications so we encourage the Panel to reconsider inclusion of publication in its media shifting proposal.

The Chamber either supports or has no view in respect of the Panel's other proposals.

Respectfully submitted,

The Hong Kong Chamber of Small and Medium Business Limited

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