

**Submission to Panel on Commerce and Industry of
Legislative Council on
Further Proposal for Strengthening Copyright Protection in
Digital Environment**

Introduction

The Consumer Council is pleased to submit its view to the Panel on the Administration's further proposals for strengthening copyright protection in the digital environment.

2. We reiterate our position previously made in our submissions in 2007 and 2008 in response to the public consultation on the Administration's proposals on the same subject.

Further expansion of the net of criminal sanction

3. The Council has expressed its concern over the negative impact of excessive criminal sanction against unauthorized communication of copyright work to the public on timely dissemination, freedom of speech and creativity in the digital world, in its previous submissions. The Council's concern becomes even graver as a result of the proposed further expansion of the net of criminal sanction¹ by making technology neutral the criminal sanction against infringing activities conducted in non-business context.

4. It may not be easy for an Internet user to know the work he sends out over the net by whatever digital transmission technology is copyright protected. As previously submitted, the meaning of "affect prejudicially" being an element of the proposed offence, could be broad in scope and not necessarily restricted to economic prejudice. In such a case, the risk of being found guilty will hang over the Internet user from time to time during his Internet activities. The chilling effect on information sharing and exchange activities in the digital world cannot be overlooked.

5. The Council is concerned that excessive protective measures may upset the balance between the interests of the copyright owner on one hand and those of the Internet user on the other.

¹ Paragraph 8 of LC Paper No. CB(1)341/09-10(08).

Proposal of statutory limitation of liability regime for Online Service Providers (OSPs) in dealing with online privacy

6. We support the introduction of a statutory regime limiting the liability of OSPs for copyright infringement provided that they complied with certain prescribed conditions as regards combating online infringements on their service platform. That said, we would not like to see that the prescribed conditions or the Code of Practice to be complied with by the OSPs would amount to excessive protective measures that may upset the balance between the opposing interests.

7. As stated in our submission of 2007, the Council has reservations about the notice and takedown procedures on the grounds that:

- i) the user's right to Internet access may be unfairly limited merely due to a notice claiming infringement from the purported copyright owner;
- ii) the procedures may be abused and used for other purposes than copyright protection; and
- iii) a claim of copyright ownership should be adjudicated by the court and not by the OSPs.

8. Furthermore, we agree with the European Parliament that access to the Internet is a fundamental right, the limitation of which should be subject to prior ruling of the court.²

Proposal of prescribing additional factors for considering the award of additional damages

9. While disagreeing to the introduction of statutory damages, we raise no objection to this proposal provided that stakeholders in particular the Internet users are fully consulted on this matter.

² Paragraph 13 of LC Paper No. CB(1)341/09-10(08).

Proposal of introducing a media shifting exception for sound recordings

10. As a result of convergence technology blending voice, video, data and image into one flexible network, a copyright work may exist in mixed form or multiple forms. It follows that the proposed shifting exception that confines to sound recordings is too narrow. It should apply to all forms of copyright work.

Consumer Council
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