

July 18, 2011

Hon. Mr Chan Kam-lam
Bills Committee on Copyright (Amendment) Bill 2011
Legislative Council Building
8 Jackson Road
Central
Hong Kong

By email: mleung@legco.gov.hk

By fax: 2978 7569

By post

We thank the Legislative Council for the opportunity to submit comments to the Bills Committee considering the Copyright (Amendment) Bill 2011.

Time Warner content and innovation

Time Warner is a global leader in media and entertainment with businesses in television networks, filmed entertainment and publishing. Our brands include Turner, CNN, Cartoon Network, Warner Bros, HBO, Time and Fortune.

Time Warner companies are innovators in technology, products and services – with the ability to develop new business models for digital distribution of our high-quality content and leverage new technology to give consumers access to content when, where and how they want it.

In addressing online piracy, we recognize that in addition to asking policy makers for legislative reform, effective enforcement and public education on intellectual property rights - industry must also play a role. As a guiding principle, Time Warner is committed to pursuing initiatives and creative business models that give audiences more choice and quality, in a manner that supports the value of our content as well as the many platforms on which such content is distributed. We have been encouraged by the progress of our "Content

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Everywhere” initiatives in the United States¹ and are pursuing the international roll-out of some of those initiatives, with a view to enhancing consumer choice, viewing experience and access to compelling content.

It is our mission to advocate policies that promote sustained innovation, investment and consumer value in the creation and distribution of high-quality news and entertainment.

Copyright (Amendment) Bill 2011 (“Bill”)

Throughout the various public consultations on the protection of copyright in the online environment, Time Warner has provided comments to the Administration, including through various trade associations of which we are members (MPA, CASBAA, and ESA). We do not wish to repeat those comments, other than to emphasize that any policy and legislative measures advanced by the Administration must actually be effective in curbing online infringement, taking into account the digital evolution of media and technology and international best practices. Our concern is that, as currently drafted, the Bill will not meet that objective.

The Bill codifies ‘safe harbors’ for online service providers (OSPs) which comply with certain prescribed conditions. The safe harbor is underpinned by a non-statutory Code of Practice that is premised on a “notice and notice” and “notice and takedown” system. Compliance with the Code is a key qualifying factor for the safe harbor.

We believe that as a condition of limitation of liability, it is critical that OSPs be required to adopt and implement a policy that effectively addresses the accounts of repeat infringers. Any system that seeks to address online infringement must also address the problem of end users who utilize internet services to commit unlawful acts, including repeatedly infringing intellectual property rights. Such a policy should recognize that there are particular instances where reasonable steps to prevent the use of services to commit infringement, are justified and warranted.

¹ For example, announced by Time Warner 18 months ago, “TV Everywhere” is a framework to provide TV subscribers with their favorite shows, on demand, on a wide variety of devices at no extra charge. As of May 2011, TV Everywhere is available in 70 million homes in the United States.

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This condition may be included in the proposed section 88B or Code of Practice, and should be based on the legislative intent that OSPs must take reasonable steps to prevent or avoid the unlawful use of their services to cause harm to third parties, including by users who violate their terms of service by committing multiple and ongoing acts of infringement.

Our support is for a system of cooperation between right holders and OSPs to educate and notify end-users in the event of infringement, which identifies a set of reasonable measures that the OSP agrees to take following an agreed upon schedule and procedure. Similar legislation and best practices addressing repeat infringers may be found in a number of other jurisdictions, including France, the United Kingdom, New Zealand, the United States and Australia. Support for the adoption by OSPs of repeat infringer policies may be found in the iiNet appeal judgment.² The Administration may also wish to draw from language currently existing in standard customer service agreements between OSPs and their customers.

Hong Kong is one of Asia's top digital economies with over 2 million registered broadband subscribers as of July 2010 and a 70% internet penetration rate. However, the prevalence of online piracy, including unauthorized file-sharing and streaming of content, remains a significant and growing challenge.

We view the expansion of digital networks and online services as a tremendous opportunity for economic growth. This opportunity must also take into account that the inappropriate and unlawful use of high-speed broadband networks can facilitate the anonymous theft and rapid, ubiquitous illegal distribution of copyrighted works, and sensible efforts should be applied to address this issue.

We appreciate this opportunity to provide our comments for your consideration and look forward to continuing to participate in this legislative process.

Yours faithfully,



International Relations and Public Policy, Asia-Pacific
Time Warner Inc.

² Roadshow Films Pty Limited v iiNet Limited [2011] FCAFC 23