

Bills Committee on the Copyright (Amendment) Bill 2011

The Administration's Responses to Comments raised by Deputations

Members of the Bills Committee, at the meeting on 23 July 2011, requested for a summary of Administration's response to major comments on the Copyright (Amendment) Bill 2011 ("the Bill") expressed by the deputations and the written submissions received by the Committee.

2. The requested summary is attached at Annex.

Background

3. The Administration introduced the Bill into the Legislative Council on 15 June 2011 which contains legislative proposals based on a set of refined proposals for strengthening copyright protection in the digital environment released in November 2009. At its meeting on 23 July 2011, the Bills Committee invited the public to present their views.

4. During the previous public consultations, the Administration has engaged stakeholders, including members of the public, online service providers, business associations, universities, statutory bodies, and relevant government departments on formulating the proposals. Some of their suggestions had been taken on board when we formulated the legislative proposals in the Bill. We will continue to engage stakeholders to explain the main objective and scope of the Bill.

Commerce, Industry and Tourism Branch
Commerce and Economic Development Bureau
October 2011

**Major Comments on the Copyright (Amendment) Bill 2011 (“the Bill”) raised by Stakeholders and Members of the Public
at the meeting of the Bills Committee on 23 July 2011**

	Organisations/Individuals	Views / Concerns	Administration’s Response
1.	IFPI (Asian Regional Office) (LC Paper No. CB(1)2780/10-11(01))	<p>(i) Suggest clearly defining in the Bill that the distribution of “pre-release work” is an act that prejudicially affects copyright owners.</p> <p>(ii) Suggest clarifying subsections 28A(5) and (6) to avoid creating a loophole for infringers, e.g. a website operator takes steps to rebroadcast a copyright work via the Internet.</p>	<p>(i) We have distilled from relevant case law factors that the court may take into account when considering the issue of “prejudice”. These factors include the economic prejudice caused to the copyright owner, and the nature of the work, including its commercial value. We believe this approach allows sufficient flexibility for the court to give due weight to all relevant factors, including the commercial value of a “pre-release work”.</p> <p>(ii) The two subsections aim to place it beyond doubt that the mere forwarding/sharing of a hyperlink to a particular web page or viewing/downloading materials from a hyperlink (practices that netizens are commonly engaged in) do not constitute an unauthorised communication to the public. If someone takes steps to simulcast a broadcast protected by copyright, he is not just a passive recipient of a communication made available by someone else. By taking active step to re-communicate this copyright work to the public, he infringes the communication right of the copyright owner.</p>

Organisations/Individuals	Views / Concerns	Administration's Response
	<p>(iii) Suggest narrowing the scope of online services that may qualify for the safe harbour (e.g. social networking sites if they are not merely hosting materials) and recognising periodic payments charged by online service providers (OSPs) who make available infringing materials as “financial benefits” under the proposed section 88B(2)(b).</p> <p>(iv) Suggest expanding the list of factors for determining “authorisation”.</p> <p>(v) Opine that the exception for temporary reproduction by OSPs should form part of the safe harbour regime, rather than as a stand-alone exception.</p>	<p>(iii) We do not see sufficient justification for precluding social networking sites from obtaining this protection where they have complied with the conditions stipulated in the Bill. Separately, section 88B(4)(a)(ii) of the Bill provides that the court may take into account “whether the fee of the online service provided by the service provider is for, and the value of the online service provided by the service provider lies in, providing access to infringing material”. This bears out our intention to distinguish (a) OSPs conducting a legitimate business from (b) those providing infringing materials for financial benefits.</p> <p>(iv) We have suggested listing those factors that are most logically connected to the question of “authorisation”. The list itself is non-exhaustive. There is nothing to stop parties to proceedings and the court from examining the overall circumstance of a dispute and relying on the relevant case law to determine whether there is a case of “authorisation”.</p> <p>(v) Temporary reproduction of copyright work (technically known as caching) is transient or incidental in nature and technically required for the process of data transmission to function efficiently. Caching activities help save bandwidth and are indispensable for</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
		<p>(vi) Suggest that a Graduated Response System (GRS) be introduced to deal with repeat infringers.</p> <p>(vii) Suggest excluding copies made from online transmission from the media shifting exception.</p>	<p>efficient transmission of information on the Internet. The above factors in our view support the introduction of a stand-alone copyright exception for temporary reproduction.</p> <p>(vi) The concept of GRS is controversial and its implications have to be carefully considered. Many consider it disproportionate to deprive users' Internet connection based on claims of copyright infringement. We remain of the view that it is not an opportune time to consider introducing a GRS system in Hong Kong, especially when its implications are yet to be fully tested in overseas jurisdictions. However, we note that some copyright owners and OSPs in the US have recently come to a voluntary agreement on enhanced co-operation in combating online infringement, including measures against repeat infringers. We will continue to monitor the latest international developments and possible options to enhance copyright protection in the digital environment.</p> <p>(vii) One of the qualifying conditions for this exception is that one must own a legitimately acquired sound recording. If someone downloads a copy of sound recording without authorisation, he is not entitled to this exception.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
2.	International Federation of the Phonographic Industry (HK Group) Ltd (LC Paper No. CB(1)2776/10-11(01))	<ul style="list-style-type: none"> (i) Support the introduction of a technology-neutral communication right. (ii) Support the clarification of “authorisation” in the digital environment. (iii) Suggest that a GRS be introduced. (iv) Request the Administration to address the remedies in dealing with infringement at source by introducing technical measures preventing access to infringing materials. 	<ul style="list-style-type: none"> (i) Noted. (ii) Noted. (iii) Please see our response to item 1(vi) above. (iv) We will continue to monitor the latest international developments and possible options to enhance copyright protection in the digital environment.
3.	Internet Society Hong Kong (LC Paper No. CB(1)2839/10-11(01))	<ul style="list-style-type: none"> (i) Support the introduction of a technology-neutral communication right. (ii) Support the safe harbour provision. (iii) Support the introduction of a media shifting exception. (iv) An exception should be introduced for parody. 	<ul style="list-style-type: none"> (i) Noted. (ii) Noted. (iii) Noted (iv) The proposed introduction of a new exception for parody is liable to substantially change the existing balance of interests between copyright owners and users. As such, it requires thorough consideration and extensive public consultation. Please also refer to the Administration's paper on <i>Parody</i> submitted to the Bills Committee.

	Organisations/Individuals	Views / Concerns	Administration's Response
4.	Asia Internet Coalition (LC Paper No. CB(1)2780/10-11(03))	<p>(i) Opine that OSPs should not be held legally responsible for copyright infringing content created by Internet users if they take down infringing content on receipt of a valid notice from a copyright owner. Recommend that OSPs be safeguarded from injunctions to provide legal certainty.</p> <p>(ii) Support the formulation of a Code of Practice to facilitate the implementation of the safe harbour provision.</p>	<p>(i) The limitation of liability (in this case, monetary liability) serves as an incentive for enlisting OSPs' cooperation in combating online piracy. We do not see sufficient justification to deprive copyright owners of their right to seek redress from the court totally. The court will take into account the specific circumstances of each case before granting injunctive relief in appropriate cases.</p> <p>(ii) Noted.</p>
5.	The Professional Commons	<p>(i) The Administration should strike a balance between the interest of copyright owners and the freedom of creation.</p> <p>(ii) Suggest that sanctions against mash-up works should not be introduced.</p>	<p>(i) The legislative proposals have been carefully formulated with a view to striking a reasonable balance between the free flow of information across the Internet and the freedom of expression on the one hand, and enhancing copyright protection in the digital environment on the other hand. Please also refer to the Administration's paper on <i>Copyright and Freedom of Expression</i> submitted to the Bills Committee.</p> <p>(ii) The existing and proposed sanctions are targeted at large-scale copyright infringement, not parody/mash-up works. The Bill does not alter the existing legal principles in determining whether a certain</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
			work disseminated on the Internet constitutes a copyright infringement. In this connection, the dissemination of a parody or mash-up work on the Internet that does not amount to copyright infringement today will remain so under the Bill.
6.	Impoverished Friends of Future Feeling Expression	(i) The Bill, by allowing the Government to prosecute the public even without the copyright owners' complaint, would impact on the freedom of expression.	(i) Customs and Exercise Department (C&ED) would need to obtain confirmation and evidence from a copyright owner proving copyright subsistence and infringement before a case could be put before the Department of Justice for pursuing any prosecution. Please also refer to our response to item 5(i) above.
7.	Online Service Providers Alliance (LC Paper No. CB(1)2787/10-11/(01))	(i) Support the clarification that a person does not initiate communication if he does not "determine the content of the communication". (ii) Support introducing the safe harbour provisions for OSPs.	(i) Noted. (ii) Noted.

	Organisations/Individuals	Views / Concerns	Administration's Response
		<p>(iii) Suggest charging a reasonable cost for issuing notices and counter-notices.</p> <p>(iv) Personal information in counter notice should be given to the court, instead of the complainant.</p>	<p>(iii) The cost of implementing the safe harbour provisions is to be borne by individual copyright owners, OSPs and users. This is similar to the respective arrangements in Australia, Singapore and the US, where there is no statutory cost-sharing mechanism. Given the special role of the OSPs, we propose to introduce the safe harbour provisions as an incentive to enlist support from OSPs in the fight against online piracy. Most copyright owners and OSPs (some of them are also developers of digital content) recognise that they need each other's support to develop successful business models in the digital environment, and that the safe harbour provisions help provide a reasonable balance between their interests. Against this background, we consider it reasonable to ask parties concerned to bear their own costs in relation to the implementation of the proposed system.</p> <p>(iv) We will take into account the advice of the Privacy Commissioner, and ensure that the arrangements will comply with the Personal Data (Privacy) Ordinance.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
		<p>(v) Request to clearly define what constitute “reasonable time” for handling the notice.</p> <p>(vi) Urge the Administration to consult the industry and public on the Code of Practice.</p> <p>(vii) Suggest providing exceptions for non-commercial mash-up works.</p>	<p>(v) The Administration has consulted the public and stakeholders on the first draft of the Code of Practice, which set out, <i>inter alia</i>, the proposed time frame for handling the notice. We are reviewing the comments received.</p> <p>(vi) The Administration has consulted the public and stakeholders on the first draft of the Code of Practice. We are reviewing the comments received.</p> <p>(vii) Please see our response to item 3(iv) above.</p>
8.	Hong Kong Human Rights Monitor	<p>(i) The criminalisation of mash-up works would stifle creativity.</p> <p>(ii) Exceptions for parody are provided under the law of US and Australia and the EU has also issued a Directive to allow Member States to introduce an exception for parody.</p>	<p>(i) Please see our response to item 5(ii) above.</p> <p>(ii) Please see our response to item 3(iv) above. The overseas copyright legislation and case law in Australia, the UK and the US which we have surveyed illustrates the difficulty in formulating a universal legal definition of parody. Nor is it evident that there exists a widely accepted approach in dealing with parody. We will continue to monitor international developments on this topic.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
9.	Hong Kong and International Publishers' Alliance (LC Paper No. CB(1)2839/10-11/(02))	<p>(i) Support the introduction of a technology-neutral communication right and the corresponding criminal sanctions.</p> <p>(ii) Suggest criminalising unauthorised downloading/infringement in the course of business (regardless of whether it is a profit-making or not-for-profit organisation).</p> <p>(iii) Suggest stipulating the responsibilities of OSPs if they fail to follow the prescribed conditions under the safe harbour provisions.</p>	<p>(i) Noted.</p> <p>(ii) Criminal sanctions against unauthorised communication of copyright work to the public in the course of business are provided under clause 51 (particularly new sections 118 (8B) to 118(8D)) of the Bill. The existing formulation of the criminal sanctions reflects the consensus in the community not to criminalise the act of mere purchasers and users of infringing copies or products, with the exception of business end-users in a limited context. Since the existing law does not criminalise the act of those purchasers or users of pirated products, it would require very strong justifications to introduce an asymmetric legal regime solely for the sake of Internet piracy. In the absence of such justifications and consensus, we propose to maintain the existing legal position pertaining to unauthorised downloading activities.</p> <p>(iii) Under our current proposal, if an OSP fails to comply with the conditions specified under section 88B of the Bill, it will not be able to claim the limitation of liability under the safe harbour provision.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
		(iv) Opine that the “notice and notice” and “notice and take down” regime are not effective.	(iv) We will continue to monitor the latest international developments and possible options to enhance copyright protection in the digital environment.
10.	Hong Kong Reprographic Rights Licensing Society (LC Paper No. CB(1)2839/10-11(03))	<p>(i) View that the existing criminal sanctions against commercial scale copyright infringement are inadequate.</p> <p>(ii) Opine that the “notice and notice” and “notice and take down” regime are not effective.</p> <p>(iii) Concerned about the temporary reproduction exception might give rise to a loophole for infringers to get a full copy of a work by accessing multiple temporary copies.</p> <p>(iv) The scope of the media shifting exception should explicitly exclude sound recordings of literary works.</p>	<p>(i) We believe the existing and proposed criminal sanctions are adequate to deter large-scale copyright piracy. Under the Ordinance, the maximum penalty for criminal piracy is in general imprisonment for four years and a fine of HK\$50,000 in respect of each infringing copy.</p> <p>(ii) Please see our response to item 9(iv) above.</p> <p>(iii) Please see our response to item 1(v) above.</p> <p>(iv) With a view to giving greater certainty to users and having regard to similar statutory exceptions already allowed in overseas jurisdictions, the proposed media-shifting exception is limited to media shifting of sound recordings for private and domestic use (see Clause 44 of the Bill).</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
11.	Hong Kong Information Technology Federation (LC Paper No. CB(1)2839/10-11(04))	<p>(i) Support the introduction of a technology-neutral communication right.</p> <p>(ii) Support the formulation of a Code of Practice for providing certainty, and suggest consulting the public and OSPs on the Code.</p> <p>(iii) Support the introduction of additional factors to assist the court in determining the award of additional damages; however, the claimant of any additional damages should not violate the freedom of expression and no valid claim should be made when such creation has no commercial value.</p> <p>(iv) There should be requirements for OSPs to implement policies to deal with repeat end-user infringements.</p>	<p>(i) Noted.</p> <p>(ii) Noted. Please see our response to item 7(vi) above.</p> <p>(iii) Noted. Please also see our response to item 5(i) above.</p> <p>(iv) Please see our response to item 1(vi) above.</p>
12.	Inmediahk.net (LC Paper No. CB(1)2776/10-11(02))	<p>(i) Suggest when considering “to such an extent as to affect prejudicially the copyright owner”, only economic impact should be taken into account.</p>	<p>(i) We have distilled from relevant case law factors that the court may take into account when considering the issue of “prejudice”. These factors include the economic prejudice caused to the copyright owner, and the nature of the work, including its commercial value. We believe this approach allows sufficient flexibility for the court to give due weight to all relevant factors, including the commercial value of a work.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
		<p>(ii) Suggest consulting small OSPs and user groups when formulating the Code of Practice.</p> <p>(iii) Suggest Section 39 of the Copyright Ordinance should also exempt non-commercial derivative work.</p> <p>(iv) Request providing exceptions for non-commercial mash-up works.</p> <p>(v) Suggest that a Code of Practice for law enforcement be formulated.</p>	<p>(ii) Please see our response to item 7(vi) above.</p> <p>(iii) Section 39 covers fair dealing with works for the purposes of criticism, review or news reporting. Please also see our response to item 3(iv) above.</p> <p>(iv) Please see our response to item 3(iv) above. Our policy intent in introducing the proposed criminal sanction is to combat large-scale copyright piracy. There were cases elsewhere and in Hong Kong (such as the "Big Crook" case) where the court had deemed fit to invoke criminal penalties against infringers whose acts had caused (or were liable to cause) significant prejudice to the copyright owners, even though the infringing acts might not have been motivated by profit/financial reward.</p> <p>(v) Noted.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
13.	Hong Kong In-media (LC Paper No. CB(1)2776/10-11(03))	<p>(i) View that the Bill will suppress freedom of expression in Hong Kong.</p> <p>(ii) Suggest that copyright exceptions should be given to remix and mash-up works.</p> <p>(iii) OSPs would remove any alleged infringing materials on receipt of a notice, even the complaint may eventually be proven to be unfounded. This would stifle the freedom of expression on the Internet.</p> <p>(iv) Suggest the general public and other departments in charge of education, home affairs, etc. be involved during the amendment exercise.</p>	<p>(i) Please see our response to item 5(i) above.</p> <p>(ii) Please see our response to item 3(iv) above.</p> <p>(iii) Under the safe harbour provision, when filing a notice of alleged infringement, the complainant is required to verify by a declaration that the contents contained in the notice are true and accurate. Any false declaration made by the complainant may attract civil or even criminal liabilities. In addition, a subscriber is entitled to file a counter notice. This provides the subscriber with an effective redress to seek reinstatement of materials that in his view have been wrongfully removed.</p> <p>(iv) During the two earlier rounds of public consultations conducted in 2006/2007 and 2008/2009, we have engaged stakeholders, including members of the public, OSPs, business associations, universities, statutory bodies, and relevant government departments. Some of their suggestions had been taken on board when we formulated the legislative proposals in the Bill.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
14.	Mr Jacki Dominic LEE (LC Paper No. CB(1)2776/10-11(04))	(i) Suggest that the Bill be withdrawn.	(i) In formulating the proposals in the Bill for enhancing copyright protection in the digital environment, we have not lost sight of the need to strike a reasonable balance between protecting copyright on the one hand, and maintaining the free flow of information across the Internet, safeguarding personal privacy, and fostering the further development of Hong Kong as a regional Internet service hub on the other hand. Our major proposals include – (a) introducing a technology-neutral communication right; (b) modifying existing and introducing new copyright exceptions which aim at providing greater flexibility to individual users, the education sector and libraries/archives/museums in using digital technology to advance study and research, giving and receiving instructions, preserving valuable works and disseminating information and knowledge; (c) To allay netizens' concerns, we have proposed in the Bill non-exhaustive factors (distilled from relevant case law) that the court may take into account when considering the issue of "prejudice". Although other overseas jurisdictions also have similar criminal sanctions, they do not specify in their statute what amounts to "prejudice";

	Organisations/Individuals	Views / Concerns	Administration's Response
		<p>(ii) OSPs would remove any alleged infringing materials on receipt of a notice, even the complaint may eventually be proven to be unfounded. This would stifle the freedom of expression on the Internet.</p> <p>(iii) Consider that many mash-up works are non-commercial and will not affect the interests of copyright owners; and suggest a consultation on the treatment of mash-up works be conducted.</p>	<p>(d) establishing a statutory safe harbour for OSPs to provide a level playing field for enlisting their assistance in combating online piracy;</p> <p>(e) introducing a copyright exception for caching by OSPs;</p> <p>(f) introducing a copyright exception for media shifting of sound recordings for private and domestic use; and</p> <p>(g) prescribing additional factors to assist the court in considering the award of additional damages in civil proceedings pertaining to online infringement.</p> <p>(ii) Please see our response to item 13(iii) above.</p> <p>(iii) Please see our response to item 3(iv) above.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
		(iv) Suggest that the scope of “derogatory” treatment be clarified.	(iv) The Bill does not change the existing legal framework for the protection of moral rights. It remains the case that an infringement of moral rights (including the right to object to derogatory treatment) does not attract criminal liability. Please refer to the Administration's paper on <i>Derogatory Treatment</i> submitted to the Bills Committee.
15.	Doujin Organisation and Working Network of Hong Kong	(i) View that some of the mash-up works should be regarded as original work; note that no other jurisdictions have regulated mash-up works; and disagree that mash-up works would have derogatory effect on the original work.	(i) Noted. Please see our responses to item 3(iv) and item 14(iv) above.
16.	Internet Freedom Concern Group (LC Paper No. CB(1)2776/10-11(05))	(i) Suggest that the Bill be withdrawn. (ii) Consider that the definition of the public may not be clear. (iii) Suggest providing more exceptions to cover remix, mash-up works and parody.	(i) Please see our response to item 14(i) above. (ii) The Bill has defined what amounts to “communication to the public” (see Clause 13 of the Bill). Similar to the copyright laws in overseas common law jurisdictions (e.g. the UK, Australia and New Zealand), the term “public” is left to be construed according to its general and ordinary meaning. (iii) Please see our response to item 3(iv) above.

	Organisations/Individuals	Views / Concerns	Administration's Response
		<p>(iv) Suggest the general public and other departments in charge of education, home affairs, etc. be involved during the amendment exercise.</p> <p>(v) Suggest introducing a "fair use" provision in the existing ordinance.</p>	<p>(iv) Please see our response to item 13(iv) above.</p> <p>(v) The open-ended fair use concept is fundamentally different from the existing fair dealing regime in Hong Kong. Such a fundamental change should not be implemented without thorough consideration and a good measure of consensus in the community. After a public consultation exercise conducted in 2004/2005, the Administration concluded that it would be more important and desirable to give clear guidance to both users and owners of copyright work regarding the particular purpose and circumstances under which an act might be done without infringing copyright (rather than seeking to introduce the fair use concept in Hong Kong).</p>
17.	Green Radio	<p>(i) Parody is a well-established creative technique and mash-up works should not be regarded as copyright infringement.</p>	<p>(i) Please see our response to item 5(ii) above.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
18.	The Melancholy of Creative Freedom	<p>(i) Consider “communication to the public” would be too broad as some online platforms may share information without the subscribers taking any actions.</p> <p>(ii) Opine that not all OSPs would have the manpower to handle large amount of complaints within an hour.</p> <p>(iii) In some cases, mash-up works help promote the original work.</p> <p>(iv) The Administration may take legal actions against infringers without the consent of copyright owners. This will stifle the freedom of expression.</p>	<p>(i) Please see our response to item 16(ii) above.</p> <p>(ii) Please see our response to item 7(v) above.</p> <p>(iii) Noted. Please see our response to item 3(iv) above.</p> <p>(iv) Please see our response to item 6(i) above.</p>
19.	Concern Group of Rights of Derivative Works (LC Paper No. CB(1)2780/10-11(04))	<p>(i) Concerned that imposing criminal liability on non-commercial infringing activities would stifle creativity.</p> <p>(ii) Opine that “to such an extent as to affect prejudicially the owner of the copyright” is too broad and ambiguous.</p>	<p>(i) Please see our response item 5(ii) above.</p> <p>(ii) To clarify the meaning of this phrase, we have introduced in the Bill a non-exhaustive list of factors, which are mainly distilled from relevant case law (see Clause 51 of the Bill, especially new sections 118(2AA) and 118(8C)). Please also refer to the Administration’s paper on “<i>Prejudice</i>” in <i>Criminal Copyright Infringement Cases in Hong Kong and Overseas Jurisdictions</i> submitted to the Bills Committee.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
		<p>(iii) Scope of criminal liability should be confined to economic loss only. Oppose to the criminalisation of mash-up works.</p> <p>(iv) Suggest that derogatory treatment should not be taken as a prejudice to copyright owners.</p> <p>(v) Suggest introducing a fair use provision.</p> <p>(vi) Suggest strengthening regulations of the licensing bodies for enhancing transparency.</p> <p>(vii) Suggest introducing "Creative Commons".</p>	<p>(iii) Please see our response to item 5(ii) and 12(i) above.</p> <p>(iv) Please see our response to item 14(iv) above.</p> <p>(v) Please see our response to item 16(v) above.</p> <p>(vi) There is an established mechanism for resolving disputes between a licensing body and a prospective user through the Copyright Tribunal. The scale of copyright royalties charged by licensing bodies registered in the Copyright Licensing Bodies Registry could be found at the website of the Intellectual Property Department. If a person considers that he has been refused a licence under a licensing scheme unreasonably or considers the terms of an offered licence unreasonable, he may refer the matter to the Copyright Tribunal for resolution.</p> <p>(vii) A copyright owner is free to share his works with others through any means (including granting a Creative Commons licence). We have no qualms about sharing activities so long as copyright is respected and that they are in compliance with the existing laws.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
20.	Mr Timothy CHENG (LC Paper No. CB(1)2776/10-11(06))	<p>(i) Suggest that the Bill has not clearly defined the issue of “communicating to the public” and “prejudice”.</p> <p>(ii) Worried that the management officers of OSPs, who are not aware that infringing materials have been uploaded, will be treated as having implicitly permitted netizens to upload infringing works and thus prosecuted for aiding and abetting copyright infringement.</p> <p>(iii) Suggest a subscriber should not be forced to submit personal data to a complainant in a counter-notice.</p>	<p>(i) Please see our response to items 16(ii) and 19(ii) above.</p> <p>(ii) The Bill expressly provides that OSPs are not required to monitor their service or positively seek facts that indicate infringing activities (see the new section 88B(5) in Clause 45 of the Bill) in order to qualify for protection under the safe harbour. In order to prosecute an OSP for aiding and abetting copyright infringement, the prosecution bears the burden to prove, inter alia, that the OSP has the requisite mens reas, such as knowingly assisting or encouraging the copyright infringement. If the OSP is not aware of the uploading activity, it can hardly be regarded as knowingly assisting or encouraging a copyright infringement.</p> <p>(iii) Please see our response to item 7(iv) above.</p>
21.	Mr Ricky CHAN	<p>(i) View that the Bill would adversely affect the netizens.</p> <p>(ii) Worried that the Government would prosecute netizens even without the copyright owners' complaint.</p>	<p>(i) Please see our response to item 5(i) above.</p> <p>(ii) Please see our response to item 6(i) above.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
22.	Mr WONG Yeung-tat	<p>(i) View that the Bill would restrict the freedom of expression.</p> <p>(ii) The Administration may take legal actions against infringers without the consent of copyright owners. This will stifle the freedom of expression.</p> <p>(iii) Request providing an exception for mash-up works and parody.</p>	<p>(i) Please see our response to item 5(i) above.</p> <p>(ii) Please see our response to item 6(i) above.</p> <p>(iii) Please see our response to 3(iv) above.</p>
23.	Mr CHAN Ching-tao	<p>(i) View that the Bill would suppress freedom of expression on the Internet.</p> <p>(ii) Request providing an exception for mash-up works.</p>	<p>(i) Please see our response to item 5(i) above.</p> <p>(ii) Please see our response to item 3(iv) above.</p>
24.	Open Radio Hong Kong (LC Paper No. CB(1)2780/10-11(05))	<p>(i) Consider the definition of "public" too vague; suggest forwarding materials posted by copyright owners should not be regarded as communicating to the public.</p>	<p>(i) The Bill has defined what amounts to "communication to the public" (see Clause 13 of the Bill). New section 28A(5) under Clause 13 also provides that a person "does not communicate a work to the public if the person does not determine the content of the communication". Thus, the mere forwarding/sharing of a link does not constitute communication of a copyright work to the public.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
		<p>(ii) Suggest extending the safe harbour provisions to cover uploaded content in network radios or TVs.</p> <p>(iii) Concerned that the alleged infringer would be required to provide his personal data when sending counter notice.</p> <p>(iv) Concerned that the safe harbour provisions would be abused. OSPs would remove any alleged infringing materials on receipt of a notice, even the complaint may eventually be proven to be unfounded. This would stifle the freedom of expression on the Internet.</p> <p>(v) The public should be consulted when formulating the Code of Practice.</p> <p>(vi) Suggest extending the media shifting exception to cover all types of copyright work.</p> <p>(vii) Oppose to prescribing additional factors for awarding additional damages by the court.</p>	<p>(ii) Under our current proposal, an operator of a network radio or TV that qualifies as a "service provider" (defined in section 88A of the Bill) may enjoy safe harbour protection if the operator complies with the conditions under section 88B.</p> <p>(iii) Please see our response to item 7(iv) above.</p> <p>(iv) Please see our response to item 13(iii) above.</p> <p>(v) Please see our response to item 7(vi) above.</p> <p>(vi) Please see our response to item 10(iv) above.</p> <p>(vii) The court may still take into account all the circumstances as appropriate when determining whether additional damages ought to be awarded in a particular case, and if so, the quantum of such damages. The proposed factors and the existing ones are non-exhaustive.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
		<p>(viii) Suggest an exception be introduced for satire and parody.</p> <p>(ix) Suggest that an exception be given to netizens' use of an insubstantial part of a work with appropriate acknowledgement for the purpose of review.</p>	<p>(viii) Please see our response to item 3(iv) above.</p> <p>(ix) Using an insubstantial part of a work does not attract liability for copyright infringement. Section 22 of the Copyright Ordinance provides that copyright infringement must involve reproduction or use of the whole or any substantial part of a work. Further, section 39 of the Copyright Ordinance provides a permitted act for fair dealing with a work for the purpose of criticism or review subject to, amongst others, the condition that it is accompanied by a sufficient acknowledgement.</p>
25.	Business Software Alliance (LC Paper No. CB(1)2776/10-11(07))	<p>(i) Support the introduction of a technology-neutral communication right.</p> <p>(ii) Suggest that clarification be made as to other existing rights will not be subsumed under the communication right.</p> <p>(iii) Suggest more clear guidelines be provided under the safe harbour to avoid confusion.</p>	<p>(i) Noted.</p> <p>(ii) Other than "making available", "broadcast" and "inclusion in a cable programme service" which will be subsumed under the new communication right, existing exclusive rights (e.g. copying, issuing of copies) will remain intact under the Bill.</p> <p>(iii) Please see our response to item 7(vi) above.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
		<p>(iv) OSPs should be required to inform copyright owners of receipt of a counter notice under the law.</p> <p>(v) Support prescribing additional factors for awarding additional damages by the court.</p> <p>(vi) Suggest that the Administration should reconsider introducing statutory damages.</p> <p>(vii) Concerned that there is no policy to deal with repeat infringers.</p>	<p>(iv) Noted.</p> <p>(v) Noted.</p> <p>(vi) Damages are compensatory in nature and, as a general rule, the plaintiff has to prove to the court the loss he suffered and that the infringement in question is the effective cause of the loss. We are not aware of any example of statutory damages for tort actions in Hong Kong. In other words, the introduction of statutory damages into our intellectual property protection regime could have far-reaching implications on other civil proceedings. Moreover, it is very difficult to specify a range (or ranges) of statutory damages that could do justice over a wide spectrum of infringements. We remain of the view that statutory damages should not be introduced.</p> <p>(vii) Please see our response to item 1(vi) above.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
26.	Motion Picture Association - International (LC Paper No. CB(1)2780/10-11(06))	<p>(i) Support the introduction of a technology-neutral communication right.</p> <p>(ii) View that criminal sanctions should not be limited to unauthorised communications in the course of any trade or business “for profit or reward”, not-for-profits institutions should not be exempted; recommend removing the words “for profit or reward” from 118(8B).</p> <p>(iii) Opine that one-time set up fees and periodic payment should be regarded as “financial benefit”, suggest deleting section 88B(4)(b).</p> <p>(iv) “Authorisation” should be defined disjunctively rather than conjunctively.</p> <p>(v) Oppose the media shifting exception for sound recordings.</p>	<p>(i) Noted.</p> <p>(ii) Under the Copyright Ordinance, “business” also includes business conducted otherwise than for profit (see section 198(1) of the Ordinance). The proposed criminal sanctions against unauthorised communication of a work to the public do not change the existing position.</p> <p>(iii) Please see our response to item 1(iii) above.</p> <p>(iv) To provide greater clarity as to what constitutes “authorisation”, we propose to introduce a list of factors to facilitate the court in considering cases involving “authorisation” (see Clause 9 of the Bill, i.e. the new section 22(2A)). The factors are non-exhaustive and the court may give due weight to different factors depending on the facts and circumstances of individual cases.</p> <p>(v) Please see our response to item 10(iv) above. We believe our proposal has struck a reasonable balance between the interests of copyright owners and users.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
		(vi) Prefer introducing statutory damages. (vii) OSPs should be required to implement a policy to deal with repeat infringers.	(vi) Please see our response to item 25(vi) above. (vii) Please see our response to item 1(vi) above.
27.	International Federation Against Copyright Theft (Greater China) Ltd. (LC Paper No. CB(1)2780/10-11(07))	(i) Agree with all comments made by MPA International. (ii) Opine that “notice & notice” and “notice & takedown system” will not be effective. (iii) OSPs should be required to implement a policy to deal with repeat infringers.	(i) Noted. (ii) Please see our response to item 9(iv) above. (iii) Please see our response to item 1(vi) above.
28.	Movie Producers and Distributors Association of Hong Kong Limited (LC Paper No. CB(1)2839/10-11(05))	(i) Supports the proposed Bill in general. (ii) Suggest introducing a GRS.	(i) Noted. (ii) Please see our response to item 1(vi) above.
29.	Mr LEE Siu-cheong	(i) Consider that the Bill would stifle creativity. (ii) Consider the Government should not prosecute alleged infringers without the copyright owners' complaint.	(i) Please see our response to item 5(ii) above. (ii) Please see our response to item 6(i) above.

	Organisations/Individuals	Views / Concerns	Administration's Response
30.	Mr WONG Ka-lok	<ul style="list-style-type: none"> (i) Consider the Bill would stifle the freedom of expression. (ii) Suggest providing exceptions for parody and mash-up works. (iii) The Government should not over-regulate the Internet through the safe harbour provisions. 	<ul style="list-style-type: none"> (i) Please see our response to item 5(i) above. (ii) Please see our response to item 3(iv) above. (iii) The safe harbour provision helps OSPs limit their liability for copyright infringement occurring on their service platforms. These arrangements are in line with those in overseas jurisdictions such as Australia, Singapore and the US. Giving greater legal certainty to OSPs will help them deliver better services to netizens.
31.	Free Creation Alliance 23th Special Force (LC Paper No. CB(1)2780/10-11(08))	<ul style="list-style-type: none"> (i) The Bill would stifle the freedom of expression on the Internet. 	<ul style="list-style-type: none"> (i) Please see our response to item 5(i) above.
32.	Entertainment Software Association (LC Paper No. CB(1)2776/10-11(08))	<ul style="list-style-type: none"> (i) Suggest that clarification be made as to whether other existing rights will be subsumed under the communication right. (ii) Concerned that there is no policy to deal with repeat infringers in the Bill or the Code of Practice. 	<ul style="list-style-type: none"> (i) Please see our response to item 25(ii) above. (ii) Please see our response to item 1(vi) above.

	Organisations/Individuals	Views / Concerns	Administration's Response
33.	Peanut Fans Club	<p>(i) Consider that the Bill would stifle creativity and the freedom of expression.</p> <p>(ii) Suggest that mash-up works should not be criminalised.</p>	<p>(i) Please see our response to item 5(i) above.</p> <p>(ii) Please see our response to item 5(ii) above.</p>
34.	Pirate Party Hong Kong	<p>(i) Consider the existing Copyright Ordinance will stifle creativity.</p> <p>(ii) Non-commercial mash-up works help promote creativity and should be encouraged.</p>	<p>(i) Please see our response to item 5(ii) above.</p> <p>(ii) Please see our response to item 3(iv) above.</p>
35.	全球改圖苦主大聯盟香港分會 (LC Paper No. CB(1)2794/10-11(01))	<p>(i) Suggest that “damage to reputation” and “psychological damage” should not be regarded as “affecting prejudicially the copyright owner”.</p> <p>(ii) Suggest that an exception be provided for non-commercial mash-up and derivative works.</p> <p>(iii) The Bill should not be passed before public concerns are addressed and clarified.</p>	<p>(i) Please see our response to item 14(iv) above.</p> <p>(ii) Please see our response to item 3(iv) above.</p> <p>(iii) Please see our response to item 5(i) above.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
36.	Prof Alice Lee, Associate Dean, Faculty of Law, The University of Hong Kong (LC Paper No. CB(1)2825/10-11(01))	<p>(i) The intention of the Bill is to introduce a technology-neutral right of communication instead of targeting parody.</p> <p>(ii) The proposed non-exhaustive factors in section 118(8C) which are distilled from the "Big Crook" case provides guidance and certainty on the requirement of prejudicial effect. The proposed criminal sanction is confined to catch only certain types of communication which affect the commercial value of a copyright work and/or cause economic prejudice to the copyright owner. The proposed criminal provisions offer sufficient protection to true parodists and prevent those who trade in infringing products from getting away by packaging the infringing products as parodies. Thus, a parody that will not substitute the original work would not attract any criminal liability.</p> <p>(iii) Oppose the adoption of the US concept of fair use as the fair dealing regime in Hong Kong is fundamentally different from the open-ended fair use concept in the US. Such a fundamental shift would not and should not be implemented unless there is a public consensus derived from a public consultation.</p>	<p>(i) Noted.</p> <p>(ii) Noted.</p> <p>(iii) Noted.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
		<p>(iv) Parodists may rely on the fair dealing provision under section 39 in certain circumstances provided that the prescribed conditions are met. In any event, the non-exhaustive factors under section 118(8C) should already provide sufficient safeguards.</p> <p>(v) The Bill has struck a proper balance between the interests of different parties and the proposed technology-neutral right of communication should add value to the copyright regime in Hong Kong.</p>	<p>(iv) Noted.</p> <p>(v) Noted.</p>
37.	Mr NG Yui-hang	<p>(i) Derivative work should also be regarded as an original creation.</p> <p>(ii) The Bill would particularly stifle mash-up works on the Internet</p>	<p>(i) Noted.</p> <p>(ii) Please see our response to item 5(ii) above.</p>
38.	Civil Disobedience Against Impotent Government Council	<p>(i) The scope of “derogatory treatment” should be clarified; oppose that “psychological damage” would be taken into account when considering what amounts to “prejudice” to copyright owners.</p>	<p>(i) Please see our response to item 14(iv) above.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
39.	Keyboard Frontline (LC Paper No. CB(1)2776/10-11(09))	<ul style="list-style-type: none"> (i) Suggest that the Bill be withdrawn. (ii) Suggest that the definition of “the public” in the communication right be clarified. (iii) Consider that the introduction of criminal sanction against unauthorised communication would stifle the production of mash-up works. (iv) Suggest that the Bill has not clearly defined what constitutes “to such an extent as to affect prejudicially the interest of the copyright owner”. If this also includes non-economic loss, this will be abused by the Administration. (v) Suggest that the safe harbour could not provide sufficient protection to users as OSPs will tend to remove all potential infringing materials. (vi) Suggest that passing a copy of counter-notice to a complainant will compromise personal privacy. 	<ul style="list-style-type: none"> (i) Please see our response to item 14(i) above. (ii) Please see our response to item 16(ii) above. (iii) Please see our response to item 5(ii) above. (iv) Please see our response to item 19(ii) above. (v) Please see our response to item 13(iii) above. (vi) Please see our response to item 7(iv) above.

	Organisations/Individuals	Views / Concerns	Administration's Response
40.	Mr AU Wai-kong (LC Paper No. CB(1)2808/10-11(02))	(i) Suggest the Bill be withdrawn. (ii) The proposed Bill creates “white terror” as parodies might fall into the criminal net. (iii) Suggest introducing a US-style fair use provision.	(i) Please see our response to item 14(i) above. (ii) Please see our response to item 5(ii) above. (iii) Please see our response to item 16(v) above.
41.	Flying Public Will Creative Training Conference	(i) Worried that netizens would inadvertently infringe copyright by sharing links connecting to infringing materials through social networking platforms when they have no intention to communicate it to the public. (ii) Concerned that personal privacy would be compromised under the proposed notice system. (iii) Worried that the Government would prosecute netizens even without the copyright owners' complaint. (iv) The Bill would stifle creativity and mash-up works.	(i) Please see our response to item 24(i) above. (ii) Please see our response to item 7(iv) above. (iii) Please see our response to item 6(i) above. (iv) Please see our response to item 5(ii) above.

	Organisations/Individuals	Views / Concerns	Administration's Response
42.	The Frontier (LC Paper No. CB(1)2839/10-11(06))	(i) Suggest the Bill be withdrawn. (ii) The Bill suppresses the freedom of expression in Hong Kong.	(i) Please see our response to item 14(i) above. (ii) Please see our response to item 5(i) above.
43.	The Full Monty	(i) Suggest the Administration explaining clearly to the public the objective and scope of the Bill. (ii) Concerned the definition of “prejudice”; worried that it would suppress the freedom of expression in Hong Kong.	(i) Noted. The Administration has been engaging the media and stakeholders to explain the main objective and scope of the Bill. (ii) Please see our response to item 19(ii) above.
44.	Citiety Visual Media College (LC Paper No. CB(1)2839/10-11(07))	(i) View that the Bill will suppress the freedom of expression and creativity. (ii) Derivative and mash-up works should not be regarded as a copyright infringement. (iii) Many teachers actually encourage their students to create derivative and mash-up works for the purpose of instruction and breeding creativity.	(i) Please see our response to item 5(i) above. (ii) Please see our response to item 5(ii) above. (iii) Fair dealing with copyright works for research, private study as well as giving and receiving instructions is permissible under the existing provisions. The position remains unchanged under the Bill

	Organisations/Individuals	Views / Concerns	Administration's Response
45.	Ms LEE Wai-ye, Part-time Lecturer, Gender Studies, The Chinese University of Hong Kong	(i) Opine that mash-up works help academics to study social phenomena and problems; worried that the Administration would selectively exercise its power to prosecute and suppress expressions critical to the Government.	(i) Please see our response to item 5(ii) above. Please also refer to the Administration's paper on <i>Copyright and Freedom of Expression</i> submitted to the Bills Committee.
46.	Feeding Bald Eagle Focus Group	(i) Opine that mash-up works only reflect the public's views and discontent; worried that mash-up works would be caught by the criminal net after the passage of the Bill.	(i) Please see our response to item 5(ii) above.
47.	Proletariat People Force	(i) Opine that the Bill would stifle the freedom of expression.	(i) Please see our response to item 5(i) above.
48.	The Law Society of Hong Kong (LC Paper No. CB(1)2808/10-11(01))	(i) Support the introduction of a technology-neutral communication right and the corresponding criminal sanctions. (ii) Concerned whether the burden of the statutory defence in section 118 would be of persuasive or evidential burden.	(i) Noted. (ii) Similar statutory defences are available for several existing copyright piracy offences under the existing Copyright Ordinance (e.g. in section 118(3)). It is well established from relevant copyright infringement cases that a defendant, when invoking the existing statutory defence, bears the burden to prove lack of knowledge on the balance of probabilities (i.e. more credible than other evidence), instead of the more onerous burden of proof borne by the prosecution.

	Organisations/Individuals	Views / Concerns	Administration's Response
		<p>(iii) View that all exceptions should satisfy the three-step test.</p> <p>(iv) Support the introduction of the safe harbour provision. The Code of Practice should be carefully drafted and constantly reviewed.</p> <p>(v) Support introducing an exception for temporary reproduction of copyright work by OSPs, but concerned that the definition of “temporary” or “promptly” might create uncertainty.</p> <p>(vi) Support introducing the media shifting exception for sounding recordings for personal and domestic uses.</p> <p>(vii) Disappointed that statutory damages would not be introduced.</p>	<p>(iii) Noted.</p> <p>(iv) Noted. Please see our response to item 7(vi) above.</p> <p>(v) There are merits in allowing these terms to be interpreted by reference to their ordinary and general meanings in the context of the circumstances of each case. This allows rooms for the court to take into account factors such as the latest technological developments and industry practices. The respective copyright laws of the overseas common jurisdictions that we have surveyed, notably Australia, New Zealand, Singapore and the UK, also do not attempt to define these terms.</p> <p>(vi) Noted.</p> <p>(vii) Please see our response to item 25(vi) above.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
49.	tvRhk (LC Paper No. CB(1)2776/10-11(10))	<ul style="list-style-type: none"> (i) Suggest that the Bill be withdrawn. (ii) Suggest that the Bill would stifle mash-up works. (iii) Suggest that a public consultation be conducted on the impact of mash-up works on copyright. 	<ul style="list-style-type: none"> (i) Please see our response to item 14(i) above. (ii) Please see our response to item 5(ii) above. (iii) Please see our response to item 3(iv) above.
50.	Miss Anny CHENG (LC Paper No. CB(1)2776/10-11(11))	<ul style="list-style-type: none"> (i) Suggest that the Bill has not clearly defined what constitutes "to such an extent as to affect prejudicially the interest of the copyright owner". If this also includes non-economic loss, this will be abused by the Administration to curtail freedom of expression. (ii) Suggest that "derogatory" treatment should be clearly defined to avoid abuses. (iii) Suggest that a fair use exception be introduced. 	<ul style="list-style-type: none"> (i) Please see our response to item 19(ii) above. (ii) Please see our response to item 14(iv) above. (iii) Please see our response to item 16(v) above.
51.	Consumer Council (LC Paper No. CB(1)2776/10-11(12))	<ul style="list-style-type: none"> (i) Content that its concerns over some of the issues have been, by and large, favourably addressed. 	<ul style="list-style-type: none"> (i) Noted.

	Organisations/Individuals	Views / Concerns	Administration's Response
52.	The Hong Kong Bar Association (LC Paper No. CB(1)2776/10-11(13))	(i) Consider that there is nothing controversial about the Bill and have no comments.	(i) Noted.
53.	Mr Ramona CHEUNG (LC Paper No. CB(1)2776/10-11(14))	<p>(i) Suggest that no criminal sanction should be introduced to accompany the communication right.</p> <p>(ii) Suggest that clarification be made as to whether existing permitted acts for libraries such as “making and supplying” cover “communication”.</p> <p>(iii) Suggest that copyright exceptions should not be restricted by contractual terms.</p> <p>(iv) Suggest setting an Extended Collective Licensing system to facilitate the use of orphan works.</p>	<p>(i) Please see our response to item 5(ii) above.</p> <p>(ii) “Supplying” in the existing permitted acts (e.g. section 48) is intended to cover supplying by way of electronic communication.</p> <p>(iii) The Administration will consider how to deal with this issue having regard to international developments in this area.</p> <p>(iv) Orphan work is a global issue for libraries, copyright owners and prospective users. There is yet to be an internationally agreed approach to deal with this issue. The Administration will consider how to take it forward having regard to international developments in this area.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
54.	Time Warner Inc. (LC Paper No. CB(1)2776/10-11(15))	(i) Suggest that the safe harbour provisions/Code of Practice must contain a requirement to implement a policy to deal with repeat infringers.	(i) Please see our response to item 1(vi) above.
55.	Hong Kong Motion Picture Industry Association (LC Paper No. CB(1)2776/10-11(16))	<p>(i) Support the introduction of a technology-neutral communication right.</p> <p>(ii) Suggest that a “copyright verification mechanism” be introduced in the Code of Practice to accompany the safe harbour provision. Under the proposed mechanism, the copyright owner will provide information to enable OSPs to locate infringing materials uploaded by the latter’s users.</p> <p>(iii) Support prescribing additional factors for awarding additional damages by the court.</p> <p>(iv) Suggest that a GRS be introduced.</p>	<p>(i) Noted.</p> <p>(ii) The Code of Practice proposes that copyright owners should provide adequate information enabling OSPs to identify a specific infringement. The Administration has consulted the public and stakeholders on the first draft of the Code of Practice. We are reviewing the comments received.</p> <p>(iii) Noted.</p> <p>(iv) Please see our response to item 1(vi) above.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
56.	Dr Hagen SO (LC Paper No. CB(1)2776/10-11(17))	<p>(i) Criminal sanctions should be limited to profit-making infringing activities.</p> <p>(ii) If the enforcement agencies could initiate investigations on suspected infringement cases, it might lead to abuses.</p> <p>(iii) Suggest that the public be consulted in the formulation of the Code of Practice.</p> <p>(iv) Suggest that a fair dealing exception be introduced for satire and parody.</p>	<p>(i) The proposed criminal sanctions, mirroring the existing sanctions available against unauthorised distribution under section 118(1)(e) and 118(1)(g) of the Ordinance, are targeted at copyright infringements conducted (a) for the purpose of or in the course of any trade or business that consists of communicating copyright works to the public for profit or reward; or (b) to such an extent as to affect prejudicially the copyright owner. The Bill therefore maintains the existing line demarcating the boundary between criminal and civil liability arising from copyright infringement. Our policy intent is to combat large-scale piracy. Please also refer to the Administration's paper on "<i>Prejudice in Criminal Copyright Infringement Cases in Hong Kong and Overseas Jurisdictions</i>" submitted to the Bills Committee.</p> <p>(ii) Please see our response to item 6(i) above.</p> <p>(iii) Please see our response to item 7(vi) above.</p> <p>(iv) Please see our response to item 3(iv) above.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
57.	Luvi LEUNG (LC Paper No. CB(1)2776/10-11(18))	<p>(i) Suggest that if the prosecution could lay charges without the consent of a copyright owner, the criminal sanction could be abused.</p> <p>(ii) Suggest it would be difficult to determine what constitutes “to such an extent as to affect prejudicially the interest of the copyright owner”, and it is unclear how the five factors are formulated.</p>	<p>(i) Please see our response to item 6(i) above.</p> <p>(ii) Please see our response to item 19(ii) above.</p>
58.	Rocky LO、K B TSE、 Stephen LAU Chi-Kin、藍 輝田 (LC Paper No. CB(1)2776/10-11(19))	<p>(i) All non-commercial infringing activities should not be regulated.</p>	<p>(i) Please see our response to items 5(i) and 56(i) above.</p>
59.	Mr Hin LEUNG (LC Paper No. CB(1)2776/10-11(20))	<p>(i) Suggest that the Bill be withdrawn.</p> <p>(ii) Criminal sanction against non-profit-making infringements would stifle creativity. If this also includes non-economic loss, this will be abused by the Administration to curtail freedom of expression.</p> <p>(iii) Only serious economic loss should be taken into account in determining what amounts to “prejudice”.</p> <p>(iv) Suggest a fair use exception be introduced.</p>	<p>(i) Please note our response to item 14(i) above.</p> <p>(ii) Please see our response to items 5(ii) and 56(i) above.</p> <p>(iii) Please see our response to item 12(i) above.</p> <p>(iv) Please see our response to item 16(v) above.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
60.	Fung, a member of the public (LC Paper No. CB(1)2776/10-11(21))	(i) Suggest that the Copyright Ordinance needs not be amended as the proposals would restrict rights such as the freedom of expression.	(i) Please see our response to item 5(i) above.
61.	A member of the public (LC Paper No. CB(1)2776/10-11(22))	(i) Suggest that the scope of criminal liability should be clearly delineated, and that harm to moral right should not be included in the criminal liability. (ii) Suggest an exception be introduced for parody and mash-up works. (iii) Suggest a fair use exception be introduced. (iv) Suggest an exception be given to those who provide free subtitles to TV programmes which have not been commercially released in Hong Kong.	(i) Please see our responses to item 19(ii) and item 14(iv) above. (ii) Please see our response to item 3(iv) above. (iii) Please see our response to item 16(v) above. (iv) It is the copyright owner's decision whether to commercially release a certain TV programme in Hong Kong. It is not justifiable to prevent him from doing so in future even if the programme is not available in Hong Kong at the moment. Therefore, we do not see sufficient justification for considering this proposed exception.
62.	Mr CHEUNG Shek-kan (LC Paper No. CB(1)2776/10-11(23))	(i) Suggest that peer-to-peer and social media should be carved out from the definition of "communication to the public". Otherwise, many netizens might be subject to civil or criminal sanctions when they share hyperlinks on the Internet.	(i) Please see our response to item 24(i)

	Organisations/Individuals	Views / Concerns	Administration's Response
		<p>(ii) Suggest that factors such as psychological damage and harm to reputation should not be taken into account in determining what amounts to “prejudice”.</p> <p>(iii) The public should be consulted in the formulation of the Code of Practice.</p> <p>(iv) Suggest that the Code of Practice should be implemented first, and, if accepted by the public, the Bill should then be considered.</p> <p>(v) Suggest the fair dealing exception be extended to non-commercial mash-up works.</p>	<p>(ii) Please see our response to item 14(iv) above.</p> <p>(iii) Please see our response to item 7(vi) above.</p> <p>(iv) Our proposal is that compliance with the Code of Practice will be regarded as having fulfilled one of the qualifying conditions of the safe harbour provision. This incentive will help enlist support from OSPs in combating online piracy. Without the legal certainty provided by the Bill, the efficacy of the Code may be affected.</p> <p>(v) Please see our response to item 3(iv) above.</p>
63.	The Chinese Manufacturers' Association of Hong Kong (LC Paper No. CB(1)2776/10-11(24))	(i) Support the introduction of a technology-neutral communication right and the corresponding criminal sanctions against unauthorised communication conducted in the course of business.	(i) Noted.

	Organisations/Individuals	Views / Concerns	Administration's Response
		<p>(ii) Concerned that the sanctions against unauthorised communication made “to such extent the prejudicially affects the copyright owner” may hamper reasonable sharing of information.</p> <p>(iii) Welcome the modified and new exceptions for schools and libraries/archives/museums.</p> <p>(iv) Support introducing the statutory safe harbour for OSPs.</p> <p>(v) Support the exception for temporary reproduction of copyright work by OSPs.</p> <p>(vi) Support introducing the media shifting for sounding recordings for private and domestic uses.</p> <p>(vii) Suggest extending the media shifting exception to all types of copyright works.</p> <p>(viii) Consider the likelihood of widespread circulation may not be a useful factor for the court to consider awarding additional damages.</p>	<p>(ii) Please see our response to item 19(ii) above.</p> <p>(iii) Noted.</p> <p>(iv) Noted.</p> <p>(v) Noted.</p> <p>(vi) Noted.</p> <p>(vii) Please see our response to item 10(iv) above.</p> <p>(viii) Please see our response to 24(vii) above.</p>
64.	<p>小郎(自由撰稿人) (LC Paper No. CB(1)2776/10-11(25))</p>	<p>(i) Suggest the Bill be withdrawn.</p>	<p>(i) Please see our response to item 14(i) above.</p>

	Organisations/Individuals	Views / Concerns	Administration's Response
		<p>(ii) Criminal sanction against non-profit-making infringement would stifle creativity.</p> <p>(iii) The factors for determining the issue of “prejudice” could still be abused for prosecuting infringement that is not made for profit.</p> <p>(iv) Clarify whether “derogatory” treatment will be used as a factor for determining what amounts to “prejudice”. If this is the case, this factor should be removed.</p> <p>(v) Suggest that a fair dealing exception of non-commercial mash up works should be introduced.</p> <p>(vi) A fair use exception should be introduced.</p> <p>(vii) Should regulate the licensing bodies to ensure that a transparent and consistent charging policy is put in place, especially for non-commercial use of copyright work.</p> <p>(viii) Creative Commons should be given a legal status.</p>	<p>(ii) Please see our response to item 5(ii) above.</p> <p>(iii) Please see our response to item 19(ii) above.</p> <p>(iv) Please see our response to item 14(iv) above.</p> <p>(v) Please see our response to item 3(iv) above.</p> <p>(vi) Please see our response to item 16(v) above.</p> <p>(vii) Please see our response to item 19(vi) above.</p> <p>(viii) Please see our response to item 19(vii) above.</p>
65.	水君(學生) (LC Paper No. CB(1)2776/10-11(26))	(i) Many mash-up works are non-commercial and will not affect the interests of copyright owners.	(i) Please see our response to item 3(iv) above.

	Organisations/Individuals	Views / Concerns	Administration's Response
		(ii) Concerned that the Bill might stifle creativity.	(ii) Please see our response to item 5(ii) above.
66.	Pang nick (LC Paper No. CB(1)2776/10-11(27))	(i) Suggest the Bill be withdrawn.	(i) Please see our response to item 14(i) above.
67.	Cable and Satellite Broadcasting Association of Asia (LC Paper No. CB(1)2780/10-11(09))	(i) Support introducing the safe harbour provisions for OSPs. (ii) Disappointed that statutory damages will not be introduced. (iii) Suggest introducing a mechanism to deal with repeat infringers. (iv) Disappointed that alternatives to “Norwich Pharmacal” will not be introduced.	(i) Noted. (ii) Please see our response to item 25(vi) above. (iii) Please see our response to item 1(vi) above. (iv) Under the existing law, copyright owners may invoke the “Norwich Pharmacal” procedure to discover the identity of an alleged infringer. Users are concerned that an alternative mechanism might be subject to abuse. They are worried that their personal data would be used for other purposes. We do not consider it justifiable to put in place an alternative infringer identity disclosure mechanism that bypasses judicial scrutiny and that may compromise the protection of personal data privacy.