

17 November 2011

Bills Committee on Copyright (Amendment) Bill 2011
Legislative Council
HKSAR Government

Attention

Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Paul TSE Wai-chun, JP
Dr Hon Samson TAM Wai-ho, JP

C/O

Ms YUE Tin-po
Clerk to the Bills Committee

Dear Honourable Chairman and Members of the Bills Committee,

We, Composers and Authors Society of Hong Kong, would like to express our views as follows on the topic of re-creation (二次創作) :-

1. A matter of willingness and a matter of respect

- a. An author of any copyright work is the primary owner of that work.
- b. He/she may or may not want his/her work to be the object of re-creation.
- c. For instance, music composer Tom composed a song for Political Party A to express the party's mission. Tom will least likely want to see this song become a re-created version by Party A's political opponents.
- d. It is thus fundamentally important to seek the prior approval of an author to see whether he/she is willing or not to let his/her work to be the object of re-creation in any particular case.

- e. On the side of anyone who intends to re-create someone else's works, they will be showing their respect to the original authors by seeking the latter's prior approval.

2. A matter of moral right

- a. The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right ... not to have his work subjected to derogatory treatment [*Copyright Ordinance Section 92(1) refers*].
- b. The treatment of a work is derogatory if it amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author or director [*Copyright Ordinance Section 92(2)(b) refers*].
- c. For those authors who are unwilling to let their works be associated with any elements that they consider derogatory, bad taste or undesirable, they need a safeguard mechanism to say no and, if necessary, to take legal action against any such unwelcome/unauthorised association.

3. A real case

In the forum organised by CEDB on 2011/9/22, our member Mak Chun Hung (also known as Brother Hung in the film music industry) delivered a real life case :

- a. Brother Hung composed and produced music for the film *Break Up Club* (分手說愛你) directed by 黃真真 and starred by 房祖名 / 薛凱琪.
- b. Brother Hung spent 8 months doing nothing else in order to produce the said film music. It was a total dedication and great creative efforts on the part of Brother Hung. The result was that both himself and the Film Director were very satisfied with the music.
- c. While Brother Hung retains the copyright ownership of *Break Up Club's* film music, Film Director 黃真真 specifically asked Brother Hung not to use the music in any other occasions. Brother Hung agreed to this request for exclusive use.
- d. *Break Up Club's* film music will therefore not be open for re-creation purpose unless with the prior consent of Brother Hung.

4. What to do now?

- a. We think the controversy on re-creation is an unintended spring-up in the course of the Government's well intentioned review in strengthening copyright protection in the digital environment.
- b. Such legislative process and the related consultation exercise started as far back as year 2005. It is thus high time we implemented the much needed measures to step up our copyright protection in the digital environment, including the introduction of the technology-neutral right of communication to tackle this fast evolving digital online era and the assistance of online service providers in combating online piracy.
- c. The controversy on re-creation should not hinder the above and if it warrants a broad and in-depth study the Government may consider doing so but should be a separate independent one not affecting the implementation of the long overdue measures to step up our copyright protection in the digital environment.

Should clarification be required on any of the above views, please feel free to let us know.

Yours faithfully,
For and on behalf of
Composers and Authors Society of **H**ong Kong

Geoffrey Lau
Head of Strategic Planning