

Hong Kong, March 2, 2012

To the members of the
Legislative Council
of Hong Kong

Comments on the
COPYRIGHT (AMENDMENT) BILL 2011
File Ref. : CITB 07/09/17

The proposed bill claims to

“update our copyright law so as to ensure that (a) it will endure the test of rapid advances in technology such that we need not change the law every time new communication technology emerges, (b) it enables cooperation between copyright owners and online service providers (OSPs) in the fight against online infringement, and (c) it facilitates new modes of uses such as e-learning.”

Copyright legislation is not fit for the 21st century

While it has to be recognized that the current copyright legislation in many countries fails to address the issues arising from new technologies, it is questionable as to which extent the proposed bill will close this gap.

The tale of the dropping revenues lacks substantial proof

Copyright holders have been complaining for years that copyrighted works can be copied more easily due to the rapid advancement of technologies and broadband connectivity. However, the claim that these developments adversely affected their revenues will not hold once the facts are properly checked:

- **Revenues from cinema ticket sales have not significantly dropped**, so the claim that sharing copied movies on the Internet hampers the sale of cinema tickets does not hold.
- Studies suggest that **movies shared online are actually increasing revenues from DVD sales**.¹
- Internet bandwidth is growing at such a rapid pace that the **distribution of audiovisual content via physical media will soon be history**.
- **Legal online music stores like iTunes and Spotify are extremely successful**. Online sales of music have surpassed the revenues of traditional distribution on CD as of this writing. This is

¹ <http://www.rieti.go.jp/en/publications/summary/11010021.html>

supported by a study from Forrester Research.²

- **Technologies like DRM (Digital Restriction Management) fail to address the legitimate interests of consumers** who want to transfer content that they have legally bought to other media. The use of DRM might actually be an infringement of copyright, because consumers are prevented from using content on devices and operating systems of their choice or make a reasonable amount of copies to be shared with friends (fair use).
- **Criminal sanctions against private persons who do not make a monetary profit** out of copied material owned by copyright holders **are disproportionate** and would criminalize a huge part of the population. It is not the job of the public prosecution authorities to defend outdated business models of the media industry.
- **Forcing OSPs to police their networks will inevitably lead to higher cost for the provision of Internet service, and lead to a orwellian surveillance regime that Hong Kong so far has tried to avoid.**

The media industry has failed to adapt to the technologies of the 21st century. Instead of trying to close the technological gap and coming up with contemporary business models, the media industry has invested significant funds into lobbying, talking legislators around the world into protecting their outdated business models.

An industry that fails to adapt to a new technological environment is doomed. **Legislation that protects these outdated business models will itself be obsoleted by the rapid advancement in technology.**

While it is recognized by most parties in the current discussions around ACTA in Europe and PIPA/SOPA in the US that the current copyright regime urgently needs an update to be fit for the 21st century, this update should not only consider the rights of the media industry.

What we need is an open discussion process that includes the creators of content (artists), the consumers of content, and any parties involved in the distribution process.

The proposed bill fails to address the interests of the producers and consumers, and solely addresses the needs of the intermediaries in the value chain. This would be a contract at the expense of third parties.

I therefore ask the members of the legislative council to reject the proposed bill.

Instead, Hong Kong should get involved in the currently starting international debate on a new copyright framework for the 21st century that balances the interests of all involved parties.

Yours, sincerely

Alexander List

² http://www.forrester.com/rb/Research/us_music_forecast_2009_to_2014/q/id/55347/t/2