



香港版權大聯盟  
Hong Kong Copyright Alliance

31 August 2015

Ms YUE Tin-po  
Clerk  
Bills Committee on Copyright (Amendment) Bill 2014  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Ms Yue,

**Copyright (Amendment) Bill 2014 (the “Bill”)**

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Hong Kong Copyright Alliance

The Hong Kong Copyright Alliance (the “Alliance”) consists of 16 organizations from the music, television and film, broadcasting, comics and animation, software and information technology sectors and represents over 1,400 members. We are broadly representative of the copyright and creative industries regarding copyright protection in Hong Kong.

Copyright Exemptions

It has come to our attention that certain groups are seeking to resume the discussions on the abandonment of Hong Kong’s existing fair dealing provisions in favor of adopting a non-exhaustive list of “fair use” principles for use in determining whether a copyright infringement has occurred, similar to Section 107 of the United States Copyright Act 1976. This issue was last examined by the Administration in 2005 when it was concluded that a fair use system, without the extensive jurisprudence existing like in the United States, would not “give clear guidance to both copyright work users and owners regarding the particular purpose and circumstances under which an act might be done without infringing copyright.”<sup>1</sup>

Proponents for the adoption of a fair use doctrine regularly cite unsupported statistics from studies commissioned by The Computer & Communications Industry Association (CCIA), purportedly evidencing the economic benefits derived from the adoption of such a regime. Starting as early as 2007, CCIA commissioned studies on “copyright exceptions” or “fair use” and has regularly had these studies updated. Recently in September 2012, the Australian Digital Alliance (ADA) similarly commissioned and released two reports written by Lateral Economics (LE) that adapted and applied the methodology used in the CCIA prior reports.

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<sup>1</sup> Refer to Paragraph 20 in the Legislative Council Panel on Commerce and Industry - Proposals on Various Copyright-Related Issues dated 21 June 2005 (<http://www.legco.gov.hk/yr04-05/english/panels/ci/papers/ci0621cb1-1792-5e.pdf>)



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However, these reports have been conclusively refuted within academic circles as both misleading and inaccurate. For example, in 2012, research conducted by Dr. George R Barker of the Centre for Law and Economics at the Australian National University concluded that there are three fundamental flaws in the LE papers “that make the analysis unreliable and its recommendations irrelevant”<sup>2</sup> and that there is a massive underestimation of the cost of watering down Australian copyright laws, and the resulting damage to both the creative industries and the Australian economy. Further, he concludes that “contrary to the LE reports economic theory suggests that any weakening in the enforcement of copyright, through introduction of ill-defined exceptions and safe harbours of the kind promoted in the LE reports, would have significant negative economic costs, and little or no benefit.”<sup>3</sup>

International Practices

In recent years, while some countries have considered and/or adopted a fair use doctrine, the greater international norm has been to dismiss arguments made by the proponents for fair use rather than adopt them (including most recently, Australia). At present, fewer than ten jurisdictions around the world adhere to a fair use regime. While we expect further attempts to initiate or resume similar discussions, using similar arguments and CCIA statistics, throughout the world we urge policy makers in Hong Kong to keep *real* international norms in mind during any subsequent consideration of this issue in the future.

Swift Passage of the Bill

The Alliance recognizes and appreciates the Administration’s efforts to deal with the challenges faced by the creative industries with the introduction of the Bill. Unauthorized online distribution of content has grown massively during the ten years since the Administration commenced its review on improvements in online copyright protection. While the Alliance does not support the adoption of the fair use doctrine in Hong Kong, we recognize the importance of continuous discussions on copyright. However we strongly urge the Administration not to delay the passage of the Bill, which has already been delayed far too long, any further. Discussions of “fair use” systems should be separately dealt with through further consultation, allowing sufficient time for full consideration of all the many facets of complex issues. In such a consultation, we fully expect to have additional topics to propose to the government.

Yours sincerely  
  
Sam HO  
Honorary Secretary

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<sup>2</sup> Specifically, the identified deficiencies include fundamental weaknesses in the theoretical economic analysis of the costs and benefits of broadening copyright exemptions; fundamental weaknesses in the empirical analysis and in particular the methodology it adopts from earlier US and European Studies; and fundamental weaknesses in the legal analysis. Refer to page 5 of Dr George R Barker report entitled ‘Estimating the Economic Benefits of Fair Use and Other Copyright Exceptions: A Critique of Recent, Research in Australia, US, Europe and Singapore’, published November 26, 2012.

<sup>3</sup> Ibid.