

In February of this year, we provided our views to the Commerce, Industry and Technology Bureau in response to the Consultation Document – Review of Certain Provisions of Copyright Ordinance released in December 2004. As an initial observation, we are gratified that several of the preliminary proposals now under consideration appear to conform to our previous positions.

For example, we support the Panel's recommendation to maintain the existing scope of criminal liability against the possession for the use in business of infringing copies of movies and television dramas, as well as the introduction of a new criminal offence in certain circumstances against the director(s) or partner(s) for acts undertaken by corporations or partnerships. We likewise support the Panel's recommendation against the introduction of a general non-exhaustive fair use regime in lieu of retaining the current fair dealing provisions contained in the Copyright Ordinance.

However, MPA views cautiously the proposed extension of such fair dealing provisions to allow libraries to "make replacement copies involving medium shifting." Irrespective of the nature of any permitted acts in respect of libraries, we consider it essential that no format or medium shifting of any nature be permitted to undermine the exclusive rights of the copyright holder.

With respect to the proposed extension of remedies against the circumvention of technological protection measures to cover access control measures as well as acts of circumvention, we have previously recommended that the Ordinance be amended to provide criminal penalties in such instances and we remain of the view that civil remedies, only, may be insufficient. We would therefore suggest that the Panel reconsider this matter with a view towards providing heightened levels of protection. MPA further suggests that criminal penalties (as well as civil remedies) against the interference with rights management information.

We support the introduction of a new criminal offence against dealings in devices, products or components and the provision of services on a commercial scale which circumvent technological protective measures applied to copyrighted works. However, we do not necessarily agree that such dealings must be done for a commercial or profit-making purpose and suggest that appropriate caution be taken in drafting any particular, proposed amendment.

MPA is gratified by the Panel's recommendation to maintain the existing restrictions on the parallel importation of copyrighted works, and we note with interest the recommendation to introduce "rental rights" for films.

In MPA's submission to the Commerce, Industry and Technology Bureau in February, we identified certain other issues relating to the protection and enforcement of rights on the Internet that, although not included in the Bureau's consultation paper, we felt were desirable to maintain consistency with emerging international standards. Included among such issues were clarifications on the rights and obligations of Internet Service Providers and the adoption of statutory damages as a means to facilitate civil rights enforcement. We have since received a letter from the Bureau requesting our further views on such issues for their preparation of what we understand will be a separate consultation document covering these issues. Although we shall certainly respond to the Bureau's kind invitation, we query whether it may be more appropriate for the Panel to combine that exercise with the subject matter presently under consideration.

Yet another issue for consideration that MPA feels would be advisable in order to maintain international competitiveness and provide a proper infrastructure for rights protection in the twenty-first century is an extension of the term of copyright protection. Although Hong Kong's Copyright Ordinance adheres to the minimum standards set forth in the Berne Convention, sixty-eight countries throughout the world now provide terms of protection in excess of the Berne minimum of 50 years *post mortem auctoris* protection. The United States, for example, extended its term of protection by an additional twenty years such that most categories of works are now protected for a 70 year p.m.a. term of protection.¹ A list of the countries providing terms of protection in excess of 50 years is attached as an annex to this submission.

Hong Kong's failure to similarly extend the term of protection provided under its law places creators at a competitive disadvantage in the international marketplace. Term extension will enable Hong Kong's copyright industries to obtain the benefits of extended protection domestically and internationally, through the practical operation of international copyright treaties. The "rule of the shorter term" allows countries with longer terms of protections to apply to Hong Kong works the copyright term that the work would receive under Hong Kong copyright law.

Harmonizing copyright terms with its significant trading partners will provide increased revenue streams to Hong Kong creators. If Hong Kong does not harmonize, the rule of the shorter term – applied in most countries – would prevent Hong Kong authors and copyright owners from getting the full benefit of a foreign copyright term when distributing Hong Kong works abroad. This discriminatory effect deprives Hong Kong of revenue that could be realized from the exportation of the products of its copyright based industries.

¹ Under the U.S. law, works made for hire (which typically extends to audiovisual works, including MPA Member Company products) are protected for a term of 95 years beyond the work's initial publication.

Extending copyright terms for all categories of works will also support both individuals and businesses to create new culturally significant works of creative talent and expression by providing today's film companies and performers with a further incentive to invest time and talent in releasing culturally significant material into the marketplace.

Term extension further provides incentives to preserve or restore older works and the reissue of such works with improved quality and in new formats. Market development for local businesses directly benefits from copyright term extension through the generation of additional corporate and individual income taxes from businesses and individuals engaged in all sectors of distribution, including theatrical, home video, television and online, for the duration of the term of protection.

Other considerations supporting an extension of the term of copyright protection, aside from international harmonization, enhancing the value of exports, and benefits to local businesses and consumers, include fostering the creation of new works, increasing the production of derivative works, and benefiting the heirs of copyright owners.

For these and other reasons we would be pleased to detail further, MPA recommends that the Panel take the opportunity of its current review of copyright related issues to expand the subject matter under consideration to include an extension of the term of copyright protection. We believe there is similar interest among other copyright owners for such an initiative and look forward to discussing this suggestion with you in further detail at the appropriate time.

MPA thanks you, once again, for the opportunity of having provided these comments and we look forward to our participation at the Panel's upcoming meeting on July 19th.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank S. Rittman", with a long, sweeping horizontal line extending to the right.

Frank S. Rittman

attach.

MPA TERM OF COPYRIGHT PROTECTION SURVEY

Worldwide Master Chart

Country	Literary, Musical and Artistic Works	Audiovisual Works
Albania	70 years p.m.a.	70 years Following first publication
Andorra	70 years p.m.a.	70 years p.m.a.
Argentina	70 years p.m.a.	50 years p.m.a.
Aruba	50 years p.m.a.	50 years Following first publication
Australia	70 years p.m.a.	70 years Following first publication
Austria	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
Bahamas	70 years p.m.a.	70 years Following first publication
Bahrain	50 years p.m.a.	50 years Following first publication
Bangladesh	60 years p.m.a.	60 years Following first publication
Barbados	50 years p.m.a.	50 years Following first publication
Belgium	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
Bolivia	50 years p.m.a.	50 years Following first publication
Bosnia & Herzegovina	70 years p.m.a.	70 years p.m.a.
Botswana	50 years p.m.a.	50 years Following first publication
Brazil	70 years p.m.a.	70 years Following first publication
Brunei	50 years p.m.a.	50 years Following first publication
Bulgaria	70 years p.m.a.	70 years Calculation modeled after the EU Copyright Term Directive
Burkina Faso	70 years p.m.a.	70 years Following first publication

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Country	Literary, Musical and Artistic Works	Audiovisual Works
Cambodia	50 years p.m.a.	75 years Following first publication
Canada	50 years p.m.a.	50 years p.m.a.
Chile	70 years p.m.a.	70 years p.m.a.
China	50 years p.m.a.	50 years Following first publication
Colombia	80 years p.m.a.	50 years Following first publication
Costa Rica	70 years p.m.a.	70 years Following first publication
Croatia	70 years p.m.a.	70 years Following first publication
Cyprus	70 years p.m.a.	70 years Calculation modeled after the EU Copyright Term Directive
Czech Republic	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
Denmark	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
Dominican Republic	50 years p.m.a.	70 years Following first publication
Ecuador	70 years p.m.a.	70 years Following first publication
Egypt	70 years p.m.a.	50 years p.m.a.
El Salvador	50 years p.m.a.	50 years Following first publication
Estonia	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
Fiji	50 years p.m.a.	50 years Following first publication
Finland	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive

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Country	Literary, Musical and Artistic Works	Audiovisual Works
France	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
Gabon	50 years p.m.a.	50 years Following first publication
Georgia	70 years p.m.a.	70 years p.m.a.
Germany	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
Ghana	70 years p.m.a.	70 years Following first publication
Greece	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
Guatemala	75 years p.m.a.	75 years Following first publication
Guinea	80 years p.m.a.	80 years Following first publication
Holy See (Vatican City)	70 years p.m.a.	70 years Calculation modeled after the EU Copyright Term Directive
Honduras	75 years p.m.a.	75 years Following first publication
Hong Kong	50 years p.m.a.	50 years Calculation modeled after the EU Copyright Term Directive
Hungary	70 years p.m.a.	70 years p.m.a.
Iceland	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
India	60 years p.m.a.	60 years Following first publication
Indonesia	50 years p.m.a.	50 years Following first publication
Irish Republic	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
Israel	70 years p.m.a.	70 years p.m.a.

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Country	Literary, Musical and Artistic Works	Audiovisual Works
Italy	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
Ivory Coast	99 years p.m.a.	99 years Following first publication
Jamaica	50 years p.m.a.	50 years Following first publication
Japan	50 years p.m.a.	70 years Following first publication
Jordan	50 years p.m.a.	50 years Following first publication
Kenya	50 years p.m.a.	50 years Following first publication
Korea (South)	50 years p.m.a.	50 years Following first publication
Kuwait	50 years p.m.a.	50 years Following first publication
Latvia	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
Lebanon	50 years p.m.a.	50 years Following first publication
Liechtenstein	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
Lithuania	70 years p.m.a.	70 years Calculation modeled after the EU Copyright Directive
Luxembourg	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
Macau	50 years p.m.a.	50 years Following first publication
Macedonia	70 years p.m.a.	70 years Following first publication
Malaysia	50 years p.m.a.	50 years Following first publication
Malta	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive

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Mauritius	50 years p.m.a.	50 years Following first publication
Mexico	100 years p.m.a.	100 years p.m.a.
Micronesia	50 years p.m.a.	75 years Following first publication
Morocco	50 years p.m.a.	50 years Following first publication
Netherlands	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
Netherlands Antilles	50 years p.m.a.	50 years p.m.a.
New Zealand	50 years p.m.a.	50 years Following first publication
Nicaragua	70 years p.m.a.	70 years Following first publication
Nigeria	70 years p.m.a.	50 years Following first publication
Norway	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
Pakistan	50 years p.m.a.	50 years Following first publication
Panama	50 years p.m.a.	50 years Following first publication
Papua New Guinea	50 years p.m.a.	50 years Following first publication
Paraguay	70 years p.m.a.	70 years Following first publication
Peru	70 years p.m.a.	70 years Following first publication
Philippines	50 years p.m.a.	50 years Following first publication
Poland	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
Portugal	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive

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Country	Literary, Musical and Artistic Works	Audiovisual Works
Qatar	50 years p.m.a.	50 years Following first publication
Romania	70 years p.m.a.	70 years p.m.a.
Russia	50 years p.m.a.	50 years p.m.a.
Samoa (Western)	75 years p.m.a.	75 years Following first publication
Saudi Arabia	50 years p.m.a.	50 years Following first publication
Serbia & Montenegro	50 years p.m.a.	50 years p.m.a.
Singapore	70 years p.m.a.	70 years Following first publication
Slovakia	70 years p.m.a.	70 years p.m.a.
Slovenia	70 years p.m.a.	70 years Following first publication
South Africa	50 years p.m.a.	50 years Following first publication
Spain	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
Sri Lanka	70 years p.m.a.	70 years Following first publication
Sweden	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
Switzerland	70 years p.m.a.	70 years p.m.a.
Taiwan	50 years p.m.a.	50 years Following first publication
Thailand	50 years p.m.a.	50 years Following first publication
Trinidad & Tobago	50 years p.m.a.	75 years Following first publication
Tunisia	50 years p.m.a.	50 years p.m.a.
Turkey	70 years p.m.a.	70 years Following first publication

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Country	Literary, Musical and Artistic Works	Audiovisual Works
Ukraine	70 years p.m.a.	70 years p.m.a.
United Arab Emirates	50 years p.m.a.	50 years Following first publication
United Kingdom	70 years p.m.a.	70 years Calculated as required under the EU Copyright Term Directive
United States	70 years p.m.a.	95 years Following first publication
Uruguay	50 years p.m.a.	50 years p.m.a.
Venezuela	60 years p.m.a.	60 years Following first publication
Vietnam	50 years p.m.a.	50 years Following first publication

Countries providing
more than 50 years

68

69