

HKITF Comments to the Bills Committee on the Copyright (Amendment) Bill 2006

Introduction

1. The Hong Kong Information Technology Federation (HKITF) is a non-profit and non-political trade association representing the interests of IT related businesses in Hong Kong. IT enables Hong Kong to further transform its economy into a knowledge based economy. The development of knowledge based economies is made possible through strong protection of intellectual property rights.

2. We welcome the opportunity to respond to the Copyright (Amendment) Bill 2006 (the “Bill”) and offer our comments on areas of support and concern.

Copyright Exemption

3. The Bill proposes new fair dealing exemptions for the education sector and Government. The education and government sectors play important leadership roles in Hong Kong’s society. They are also important commercial drivers. We are concerned that the fair use exemptions are unduly wide and could be prone to abuse. We believe that those exemptions could negatively impact on industries that provide IT services to these sectors and weaken respect for IPR protection in Hong Kong.

4. In relation to the fair use exemption for education, we note that our members in the software industry already offer computer software products and/or specialized licensing schemes to students, teachers and schools at substantially discounted prices. This kind of special offers should eliminate the need to include computer software as part of the fair dealing exemption for the education sector.

5. In relation to the fair use exemption for Government “for the purposes of efficient administration of urgent business”, we find this unduly wide, as it could cover all areas and forms of activities by the Government. We also find it difficult to understand under what circumstances the Government would need to rely on this exemption, given that licensed software is widely available in Hong Kong. We therefore believe that inclusion of computer software in this fair use exemption for government is inappropriate.

Employee Defense

6. We have previously voiced our strong opposition to the introduction of a specific employee defense. The Federation believes that a specific employee defense is unnecessary and could worsen the piracy situation in Hong Kong. The current Copyright Ordinance already provides a complete defence against end-user criminal liability to anyone – whether employee or employer - who does not have knowledge of the infringing nature of the work. We believe that a specific employee defense will result in employers encouraging their employees to accept the use of pirated works in their organizations. More seriously, we believe that the introduction of an employee defense will send a wrong and confusing message to the general public on the importance of IP protection, and could undermine past efforts to promote IPR in the territory.

Directors’ and partners’ liability

7. We welcome the introduction of criminal liability for directors and partners proposed in the Bill. We believe this proposal is an important part of broader efforts to enhance corporate governance and accountability. In particular, we think the factors listed in the Bill which a court may take into account in connection with the liability of a director or

partner will help business owners understand what is expected from them in relation to responsible management of IT assets in their organizations.

Circumvention of Technological Measures for Copyright Protection

8. In general, we are very supportive of the introduction of civil and criminal liability for acts of circumvention, dealings in circumvention devices and provision of circumvention services. The existing copyright law is enhanced greatly by these provisions. However, we are concerned that the provisions may not offer the extent of IP protection as originally intended.

- Acts of Circumvention under section 273A: We are concerned that to establish liability, there is a requirement for copyright owners to show that an offender knew that the act of circumvention would “induce, enable, facilitate or conceal an infringement of the copyright in the work”. This requirement is unduly onerous on copyright owners. Also, we object to the requirement that the act of circumvention must be done in the course of trade or business. This requirement fails to take into account those acts of circumvention which may not necessarily be conducted in a trade context but still prejudicially impacts copyright holders.

- Dealing in devices / services under section 273B: This provision is problematic for similar reasons as those identified above.

- Criminal offences under section 273C: We believe that the criminal liability provisions for dealing in circumvention devices/services are too limited. Whether a dealing in circumvention devices or services is conducted for a profit motive should not be relevant.

- Exemptions under section 273D to 273F: Our general comment is that the proposed exemptions to liability should only be available if the rights of copyright owners have not otherwise been negatively prejudiced. In relation to the particular exemption relating to circumvention devices that have the effect or purpose of “controlling market segmentation” under section 273F, we believe the effect of this blanket exemption would allow the continued trade of circumvention devices that bypass region controls to access pirated works (eg. computer games and software) in Hong Kong. This is unacceptable and we urge the government to take steps to address this loophole during the legislative process.

Final Comments

9. We humbly invite the Government to take the above into account in the legislative process. We look forward to partnering with the Government to promote the development of the IT industry and further the protection of IP rights in Hong Kong.

The Council
Hong Kong Information Technology Federation

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