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(English version only)

Bills Committee on Copyright (Amendment) Bill 2011
Legislative Council Secretariat
Room 1038, 10/F
Murray Road Multi-storey Carpark Building
2 Murray Road, Central
Hong Kong

18 July 2011

Dear Committee members,

I am a librarian and have the following views on the Copyright (Amendment) Bill 2011.

1. I do not see the need to accompany the communication right with criminal sanction if most jurisdictions do not have such dedicated offence as surveyed in the Administration paper to the Commerce and Industry Panel in Nov 2009. As many economists have demonstrated, over protection of copyright is counterproductive to the interests of creators and public at large.
2. To balance off restricted rights, libraries are always granted permitted acts as they represent public interest. However, in this Bill, the exemption of communication right is only mentioned in s.51A for the class of "replacement copies of works" among the existing permitted provisions of ss.46 – 53 of CAP 528. It is not clear whether the other permitted acts of libraries as "make and supply" to users is meant the same as "communicate" to users. Clearer drafting is required to set legal consistency and certainty.
3. The libraries exemption for copyright has been much discussed recently worldwide:
 - a. WIPO has issued a draft treaty on Exceptions and Limitations for the Persons with Disabilities, Educational and Research Institutions, Libraries and Archives in Jun 2011.
 - b. The European Commission has issued a Communication strategy on IPRs and a proposal for a directive on 'certain permitted uses of orphan works' in May 2011.
 - c. UK Hargreaves Review recommends to extend the list of exceptions including library archiving as mass digitization of collection copying in May 2011.

4. Hence, I recommend members to consider adopting the following principles from the above initiatives:

- a. To ensure that public law (copyright) is not overridden by private law (contract). It will have great implication on the future library collection as electronic collections are governed by contracts, which often undermine permitted copyright exceptions.
- b. To set up 'Extended Collective Licensing' ECL, as in Nordic countries to facilitate "use" for the orphan works, which constitute to our heritage and culture.

Conclusion

If it takes the Hong Kong Government 14 years to transpose the communication right, Article 8 of the WIPO Copyright Treaty 1996, into our legislation, we may do better by considering and incorporating the principles of the draft Treaty of WIPO in this exercise.

Yours sincerely,



Ramona CHEUNG

c.c. Government Librarians Association