

Bills Committee on the Copyright (Amendment) Bill 2011

**The Administration's Responses to Issues
raised by Stakeholders and Members of the Public during Consultation**

Members of the Bills Committee, at the meeting on 5 July 2011, requested for a summary of Administration's response to the main issues and commentaries that were raised by stakeholders and members of the public at the meeting of the Panel on Commerce and Industry on 19 January 2010.

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2. The requested summary is attached at Annex.

Background

3. In November 2009, the Administration released a set of refined proposals for strengthening copyright protection in the digital environment. At its meeting on 19 January 2010, the Panel on Commerce and Industry heard the views of deputations about the refined proposals.

4. Those refined proposals formed the basis of the legislative proposals incorporated into the Copyright (Amendment) Bill 2011 ("the Bill").

5. The Administration introduced the Bill into the Legislative Council on 15 June 2011.

Commerce, Industry and Tourism Branch
Commerce and Economic Development Bureau
October 2011

**Major Comments on the Refined Proposals for Strengthening Copyright Protection in the Digital Environment
raised by Stakeholders and Members of the Public
at the Meeting of the Panel on Commerce and Industry on 19 January 2010**

	Organisations / Individuals	Views / Concerns	Administration's Response
1.	<p>Anglo-Chinese Textbook Publishers Organization</p> <p>Hong Kong and International Publishers' Alliance (HKIPA) (LC Paper No. CB(1)865/09-10(08))</p> <p>Hong Kong Educational Publishers Association (LC Paper No. CB(1)865/09-10(09))</p> <p>Hong Kong Publishing Federation Limited (LC Paper No. CB(1)865/09-10(24))</p> <p>Hong Kong Reprographic Rights Licensing Society (LC Paper No. CB(1)865/09-10(10))</p>	<p>(i) Support the introduction of a technology-neutral communication right; suggest that the criminal sanctions be expanded to cover infringement in the course of any trade or business.</p> <p>(ii) Suggest introducing criminal sanctions against unauthorised downloading.</p>	<p>(i) A technology-neutral communication right has been provided under Clauses 9 and 13 of the Bill. Criminal sanctions against unauthorised communication of copyright work to the public in the course of any trade or business are provided under clause 51 (particularly new sections 118 (8B) to 118(8D)) of the Bill.</p> <p>(ii) The existing formulation of the criminal sanctions reflects the consensus in the community not to criminalise the act of mere purchasers and users of infringing copies or products, with the exception of business end-users in a limited context. Since the existing law does not criminalise the act of those purchasers or users of pirated products, it would require very strong justifications to introduce an asymmetric legal regime solely for the sake of Internet piracy. In the absence of such justifications and consensus, we propose to maintain the existing legal position pertaining to unauthorised downloading activities.</p>

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		<p>(iii) Support introducing a statutory safe harbour provision if a codification of secondary liability is put in place.</p> <p>(iv) Limitation of liability should apply to monetary relief only.</p> <p>(v) Do not oppose introducing an exception for temporary reproduction of copyright works by online service providers (OSPs).</p> <p>(vi) Suggest that the media shifting exception should not be applied to sound recordings of literary works.</p>	<p>(iii) The safe harbour provision is provided under Clause 45 of the Bill covering the new sections 88A to 88I of new Division IIIA. To provide greater clarity as to what constitutes “authorisation” in the digital environment, we propose to introduce a non-exhaustive list of factors to facilitate the court in considering cases involving “authorisation” (see Clause 9 of the Bill, i.e. the new section 22(2A)).</p> <p>(iv) The limitation of OSP’s liability is confined to monetary relief (see the new sections 88B(1) in Clause 45 of the Bill).</p> <p>(v) Noted.</p> <p>(vi) With a view to giving greater certainty to users and having regard to similar statutory exceptions already allowed in overseas jurisdictions, the proposed media-shifting exception is limited to media shifting of sound recordings for private and domestic use (see Clause 44 of the Bill).</p>

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		<p>(vii) Request the introduction of statutory damages.</p> <p>(viii) Prepared to discuss what additional factors should be prescribed for awarding additional damages by the court.</p> <p>(ix) Suggest implementing a policy to identify and deal with repeat infringers (such as a Graduated Response System (GRS)).</p>	<p>(vii) Damages are compensatory in nature and, as a general rule, the plaintiff has to prove to the court the loss he suffered and that the infringement in question is the effective cause of the loss. We are not aware of any example of statutory damages for tort actions in Hong Kong. In other words, the introduction of statutory damages into our intellectual property protection regime could have far-reaching implications on other civil proceedings. Moreover, it is very difficult to specify a range (or ranges) of statutory damages that could do justice over a wide spectrum of infringements. We remain of the view that statutory damages should not be introduced.</p> <p>(viii) The proposal to prescribe additional factors to assist the court in considering the award of additional damages in civil proceedings pertaining to online infringement is provided under Clause 49 of the Bill.</p> <p>(ix) The concept of GRS is controversial and its implications have to be carefully considered. Many consider it disproportionate to deprive users' Internet connection based on claims of copyright infringement. We remain of the view that it is not an opportune time to consider introducing a GRS system in Hong Kong, especially when its implications are yet to</p>

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			<p>be fully tested in overseas jurisdictions. We note that some copyright owners and OSPs in the US have recently come to an agreement on enhanced co-operation in combating online infringement, including measures against repeat infringers. We will continue to monitor the latest international developments and possible options to enhance copyright protection in the digital environment.</p>
2.	Business Software Alliance (LC Paper No. CB(1)904/09-10(01))	<p>(i) Support the introduction of a technology-neutral communication right and the corresponding criminal sanctions.</p> <p>(ii) Suggest that any exception should only be introduced after careful consideration.</p> <p>(iii) Support introducing a statutory safe harbour for OSPs.</p>	<p>(i) Noted.</p> <p>(ii) Taking into account stakeholders' views and overseas experience, we propose to bring in new exceptions and/or modify the existing ones to provide greater flexibility to the education sector in communicating copyright works when giving instructions (especially for distance learning), and to facilitate libraries/archives/museums in their daily operations and in preserving valuable works.</p> <p>(iii) The safe harbour provision is provided under Clause 45 of the Bill covering the new sections 88A to 88I of new Division IIIA.</p>

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		<p>(iv) Suggest that limitation of liability should apply to monetary relief only.</p> <p>(v) Suggest that a code of practice will only be effective if a codification of authorisation is put in place.</p> <p>(vi) Do not support introducing an exception for temporary reproduction of copyright work.</p> <p>(vii) Suggest that the media exception should not be extended to computer programmes.</p> <p>(viii) Suggest that statutory damages should be introduced.</p> <p>(ix) Prepared to discuss what additional factors should be prescribed for awarding additional damages by the court.</p>	<p>(iv) Please see our response to item 1(iv) above.</p> <p>(v) To provide greater clarity as to what constitutes "authorisation" in the digital environment, we propose to introduce a non-exhaustive list of factors to facilitate the court in considering cases involving "authorisation" (see Clause 9 of the Bill, i.e. the new section 22(2A)).</p> <p>(vi) Temporary reproduction of copyright work (technically known as caching) is transient or incidental in nature and technically required for the process of data transmission to function efficiently. Caching activities help save bandwidth and are indispensable for efficient transmission of information on the Internet.</p> <p>(vii) Please see our response to item 1(vi) above.</p> <p>(viii) Please see our response to item 1(vii) above.</p> <p>(ix) Please see our response to item 1(viii) above.</p>

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3.	Cable & Satellite Broadcasting Association of Asia (LC Paper No. CB(1)865/09-10(28))	<p>(i) Suggest that criminal liability should be imposed on downloaders.</p> <p>(ii) Suggest that a statutory safe harbour provision will only be effective if statutory damage, an alternative to the “Norwich Pharmacal” procedure or a GRS are introduced.</p>	<p>(i) Please see our response to item 1(ii) above.</p> <p>(ii) Please see our response to items 1(vii) and 1(ix) above. Under the existing law, copyright owners may rely on the “Norwich Pharmacal” procedure to discover the identity of an alleged infringer. Users are concerned that an alternative mechanism might be subject to abuse and worried that their personal data would be used for other purposes. We do not consider it justifiable to put in place an alternative infringer identity disclosure mechanism that bypasses judicial scrutiny and which may compromise the protection of personal data privacy.</p>
4.	Mr Ramona CHEUNG (LC Paper No. CB(1)865/09-10(27))	<p>(i) Suggest that appropriate exceptions should be given to libraries.</p> <p>(ii) Suggest broadening the existing scope in section 51 of the Copyright Ordinance to cover all types of copyright works, and revising the prescribed condition of “not reasonably practical to purchase” to “not being obtained within a reasonable time at an ordinary commercial price”.</p>	<p>(i) Please see our response to item 2(ii) above.</p> <p>(ii) Section 51 of the Copyright Ordinance already covers the types of copyright works which are normally kept by libraries and archives, and the Bill proposes to expand the scope of section 51 to cover artistic work. We do not consider that the legal effect of the proposed condition will be significantly different from the existing one. We do not see a strong case to amend it.</p>

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5.	Concern Group of the Education Sector on Copyright Law (LC Paper No. CB(1)865/09-10(20))	<ul style="list-style-type: none"> (i) Support the introduction of a technology-neutral communication right. (ii) Suggest that the introduction of the communication right should not adversely affect the scope of permitted acts under the fair dealing provision of the Copyright Ordinance. (iii) Support the introduction of a statutory safe harbour for OSPs. (iv) Concerned about the cost implications if web sites and web hosting services provided by education institutions are regarded as OSPs. (v) Support the exception of temporary reproduction of copyright works by OSPs. (vi) Suggest that the media shifting exception be extended to other types of works. (vii) Suggest allowing circumvention of technical protection measures against media-shifting. 	<ul style="list-style-type: none"> (i) Noted. (ii) Please see our response to item 2(ii) above. (iii) Noted. (iv) For education institutions, the existing fair dealing exception for giving and receiving instructions provides them with a good measure of flexibility in using copyright works. Moreover, the proposed amendments to sections 44 and 45 will expand the current exceptions to cater for the need to provide distance learning by education institutions. (v) Noted. (vi) Please see our response to item 1(vi) above. (vii) We consider it necessary to enable copyright owners to opt out of the media shifting exception by imposing technical protection measures if they believe their legitimate interest will be jeopardised.

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		(viii) Support prescribing additional factors for awarding additional damages by the court.	(viii) Noted.
6.	Consumer Council (LC Paper No. CB(1)904/09-10(04))	<p>(i) Concerned about the negative impact of criminal sanction on freedom of speech and creativity as the meaning of “to such an extent as to affect prejudicially the copyright owner” could be very broad in scope.</p> <p>(ii) Support introducing a statutory safe harbour for OSPs.</p> <p>(iii) Suggest that the “notice and takedown” system may unfairly limit the right to access the Internet.</p> <p>(iv) Suggest the media shifting exception be extended to cover other types of copyright works.</p> <p>(v) Do not oppose prescribing additional factors for the court to take into account when considering the award of additional damages.</p>	<p>(i) To clarify the meaning of “affect prejudicially”, we have introduced in the Bill a non-exhaustive list of factors for the court to take into account. These factors are mainly distilled from relevant case law (see Clause 51 of the Bill, especially new sections 118(2AA) and 118(8C)).</p> <p>(ii) Noted.</p> <p>(iii) The “notice and takedown” system will not affect the right to access the Internet.</p> <p>(iv) Please see our response to item 1(vi) above.</p> <p>(v) Noted.</p>
7.	Entertainment Software Association (LC Paper No. CB(1)883/09-10(01))	<p>(i) Support the introduction of a technology-neutral communication right and the corresponding criminal sanctions.</p> <p>(ii) Support introducing a statutory safe harbour provision for OSPs.</p>	<p>(i) Noted.</p> <p>(ii) Noted.</p>

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		<p>(iii) Suggest that the safe harbour will only be effective if it is supported by a GRS.</p> <p>(iv) Suggest that the Administration should reconsider introducing statutory damages.</p>	<p>(iii) Please see our response to item 1(ix) above.</p> <p>(iv) Please see our response to item 1(vii) above.</p>
8.	Hong Kong Bar Association (LC Paper No. CB(1)865/09-10(17))	<p>(i) Support the introduction of a technology-neutral communication right.</p> <p>(ii) Oppose any expansion of the scope of criminal liability to combat uploading and downloading activities.</p> <p>(iii) Oppose imposing liability on OSPs as it is difficult for them to monitor and control all online activities; if a liability is imposed, it should be limited.</p> <p>(iv) Support introducing a media shifting exception for sound recording.</p> <p>(v) Oppose introducing statutory damages.</p> <p>(vi) Suggest providing a specific mechanism for copyright owners to seek information on alleged infringers.</p>	<p>(i) Noted.</p> <p>(ii) Noted.</p> <p>(iii) Please see our response to item 1(iv) above. The Bill expressly provides that OSPs are not required to monitor their service or positively seek facts that indicate infringing activities (see the new section 88B(5) in Clause 45 of the Bill) in order to qualify for protection under the safe harbour.</p> <p>(iv) Noted.</p> <p>(v) Noted.</p> <p>(vi) Under the existing law, copyright owners may rely on the "Norwich Pharmacal" procedure to discover the identity of an alleged infringer. Users are concerned that an alternative mechanism might be subject to abuse and worried that their</p>

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			<p>personal data would be used for other purposes. We do not consider it justifiable to put in place an alternative infringer identity disclosure mechanism that bypasses judicial scrutiny and which may compromise the protection of personal data privacy.</p>
9.	<p>Hong Kong Broadband Network Ltd. (LC Paper No. CB(1)865/09-10(21))</p>	<p>(i) Support the introduction of a technology-neutral communication right.</p> <p>(ii) Support introducing a statutory safe harbour provision for OSP underpinned by a voluntary code of practice.</p> <p>(iii) Concerned whether a “notice and takedown” system will be abused by people who are not the true copyright owners.</p> <p>(iv) Support introducing an exception for temporary reproduction of copyright work by OSPs.</p> <p>(v) Support introducing a media shifting exception for sound recording.</p> <p>(vi) Support prescribing additional factors for awarding additional damages by the court.</p>	<p>(i) Noted.</p> <p>(ii) Noted.</p> <p>(iii) To prevent possible abuses, we have proposed to impose criminal and civil liability on any person who makes a false statement in a notice (see the new sections 88E and 88F in Clause 45 of the Bill).</p> <p>(iv) Noted.</p> <p>(v) Noted.</p> <p>(vi) Noted.</p>

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10.	Hong Kong Comics and Animation Federation (LC Paper No. CB(1)904/09-10(05))	<p>(i) Suggest more measures be taken to address cross-boundary infringing activities.</p> <p>(ii) Suggest that more education on respect for intellectual property be organised for primary and secondary school pupils.</p>	<p>(i) Noted.</p> <p>(ii) To promote awareness of and respect for intellectual property rights in the community, IPD will continue to organise school visits and educational programmes for school children.</p>
11.	Hong Kong Information Technology Federation (LC Paper No. CB(1)904/09-10(07))	<p>(i) Support the introduction of a technology-neutral communication right and the corresponding criminal sanctions.</p> <p>(ii) Support introducing a statutory safe harbour provision for OSPs.</p> <p>(iii) Suggest that the exception for temporary reproduction of copyright works by OSPs should be in the form of a limitation of liability scheme.</p> <p>(iv) Support prescribing additional factors for awarding additional damages by the court.</p> <p>(v) Suggest that the Administration should reconsider introducing statutory damages.</p> <p>(vi) Suggest that the Administration should reconsider introducing a GRS.</p>	<p>(i) Noted.</p> <p>(ii) Noted.</p> <p>(iii) Please see our response to item 2(vi) above.</p> <p>(iv) Noted.</p> <p>(v) Please see our response to item 1(vii) above.</p> <p>(vi) Please see our response to item 1(ix) above.</p>

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12.	Hong Kong Institute of Professional Photographers (LC Paper No. CB(1)865/09-10(06))	(i) Suggest that photographic works should also be protected by the Copyright Ordinance. (ii) Do not support any form of media shifting.	(i) Photograph is a type of copyright work protected by the Copyright Ordinance. (ii) Noted.
13.	Hong Kong Library Association and Joint University Libraries Advisory Committee (LC Paper No. CB(1)865/09-10(23))	(i) Support the introduction of a technology-neutral communication right. (ii) Suggest introducing a statutory exception for libraries from criminal sanctions. (iii) Suggest clarifying whether a library will be regarded as OSPs and be required to follow the code of practice. (iv) OSPs should be allowed to charge the copyright owners for using the “notice and notice” as well as “notice and takedown” systems.	(i) Noted. (ii) Please see our response to item 2(ii) above. (iii) Please see our response to item 5(iv) above. (iv) The cost of implementing the safe harbour provisions is to be borne by individual copyright owners, OSPs and users. This is similar to the arrangement in Australia, Singapore and the US, where there is no statutory cost-sharing mechanism. Given the special role of the OSPs, we propose to introduce the safe harbour provisions as an incentive to enlist support from OSPs in the fight against online piracy. Most copyright owners and OSPs (some of them are also developers of digital content) recognise that they need each other to develop successful business models in the digital environment, and that the safe harbour provisions help provide a reasonable balance between their interests.

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		<p>(v) Support introducing an exception for temporary reproduction of copyright works by OSPs.</p> <p>(vi) Suggest that media shifting should not be limited to sounding recordings for personal and domestic uses, and suggest the provision of guidelines on media shifting for replacement or preservation.</p> <p>(vii) Opine that technical measures may render the media shifting exception impracticable.</p>	<p>Against this background, we consider it reasonable to ask parties concerned to bear their own costs in relation to the implementation of the proposed system.</p> <p>(v) Noted.</p> <p>(vi) Please see our response to item 1(vi) above.</p> <p>(vii) Please see our response to item 5(vii) above.</p>
14.	Hong Kong Motion Picture Industry Association Ltd. (MPIA) (LC Paper No. CB(1)865/09-10(14))	<p>(i) Support introducing a “notice and takedown” system.</p> <p>(ii) Costs of implementing the “notice and takedown” system should not be borne by copyright owners.</p> <p>(iii) OSPs should implement escalating sanctions against infringers.</p> <p>(iv) OSPs should keep a record of infringing activities conducted by its subscribers and pass the information to copyright owners free of charge on the latter's request.</p> <p>(v) Oppose introducing a media shifting exception for sound recordings.</p>	<p>(i) Noted.</p> <p>(ii) Please see our response to item 13(iv) above.</p> <p>(iii) Please see our response to item 1(ix) above.</p> <p>(iv) Please see our response to item 8(vi) above.</p> <p>(v) Noted.</p>

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15.	Hong Kong Small & Medium Enterprises Association (LC Paper No. 966/09-10(03))	(i) Suggest educating the public on the legal requirements of using copyright works to avoid inadvertent breach of the law.	(i) Noted.
16.	Hong Kong Video Development Foundation Ltd (LC Paper No. CB(1)865/09-10(11))	<p>(i) Support the introduction of a technology-neutral communication right.</p> <p>(ii) Suggest introducing criminal sanctions against uploaders and downloaders who have downloaded a large quantity of copyright materials.</p> <p>(iii) Support introducing a statutory safe harbour provision for OSPs.</p> <p>(iv) Suggest clearly defining what amounts to "authorisation".</p> <p>(v) Support introducing an exception for temporary reproduction of copyright works by OSPs.</p> <p>(vi) Do not support any form of media shifting unless there is an effective and efficient digital copyright protection regime.</p> <p>(vii) Suggest introducing statutory damages.</p> <p>(viii) Request the introduction of alternatives to the "Norwich Pharmacal" procedure.</p>	<p>(i) Noted.</p> <p>(ii) Please see our response to item 1(ii) above.</p> <p>(iii) Noted.</p> <p>(iv) Please see our response to item 2(v) above.</p> <p>(v) Noted.</p> <p>(vi) Noted.</p> <p>(vii) Please see our response to item 1(vii) above.</p> <p>(viii) Please see our response to item 8(vi) above.</p>

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17.	HUCOM Task Force on Copyright in Education (LC Paper No. CB(1)865/09-10(12))	<ul style="list-style-type: none"> (i) Support the introduction of a technology-neutral communication right and the corresponding criminal sanctions. (ii) Suggest providing adequate exceptions for reasonable fair use of copyright works by education and library sectors. (iii) Support the introduction of a statutory safe harbour for OSPs. (iv) Suggest that web hosting services hosted by non-profit-making organisations like universities, schools and research organisations should be carved out from OSPs. (v) OSPs should be allowed to charge the copyright owners for using the “notice and notice” as well as “notice and takedown” systems. (vi) Support providing an exception for temporary reproduction of copyright works by OSPs. (vii) Suggest exempting proxy web caching by education institutions. (viii) Suggest that media shifting should not be limited to sounding recordings for personal and domestic uses, and suggest the provision of guidelines on media shifting for replacement or preservation. 	<ul style="list-style-type: none"> (i) Noted. (ii) Please see our response to item 2(ii) above. (iii) Noted. (iv) Please see our response to item 5(iv) above. (v) Please see our response to item 13(iv) above. (vi) Noted. (vii) Please see our response to item 2(vi) above. (viii) Please see our response to item 1(vi) above.

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		<p>(ix) Opine that technical measures may render the media shifting exception impracticable.</p> <p>(x) Support prescribing additional factors for the court to take into account when considering the award of additional damages.</p> <p>(xi) Agree that an alternative to the “Norwich Pharmacal” procedure is not necessary.</p>	<p>(ix) Please see our response to item 5(vii) above.</p> <p>(x) Noted.</p> <p>(xi) Noted.</p>
18.	International Federation against Copyright Theft (Greater China) Ltd (LC Paper No. CB(1)865/09-10(25))	<p>(i) Support the introduction of a technology-neutral communication right.</p> <p>(ii) Suggest that that the word “initiate” may provide a loophole.</p> <p>(iii) Support introducing a statutory safe harbour provision for OSPs as long as it is clarified that OSPs may be held liable for authorising infringing activities under the Copyright Ordinance.</p> <p>(iv) Support introducing a “notice and takedown” system.</p> <p>(v) Suggest introducing a GRS to target repeat infringers.</p>	<p>(i) Noted.</p> <p>(ii) The word “initiate” is not used in the Bill.</p> <p>(iii) Please see our response to item 1(iii) above.</p> <p>(iv) Noted.</p> <p>(v) Please see our response to item 1(ix) above.</p>

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19.	IFPI, Asian Regional Office (LC Paper Nos. CB(1)865/09-10(04))	<ul style="list-style-type: none"> (i) Support the introduction of a technology-neutral communication right and the corresponding criminal sanctions. (ii) Suggest a statutory safe harbour provision will only be effective if OSPs' liability in online infringement is clarified. (iii) Suggest that limitation of liability should apply to monetary relief only. (iv) Suggest that an exception for temporary reproduction of copyright works by OSPs should be introduced only if the potential liability of such act is clarified. (v) Do not support any form of media shifting. (vi) Support prescribing additional factors for awarding additional damages by the court. (vii) Suggest introducing statutory damages. (viii) Suggest introducing a GRS. 	<ul style="list-style-type: none"> (i) Noted. (ii) Please see our response to item 1(iii) above. (iii) Please see our response to item 1(iv) above. (iv) Please see our response to item 2(vi) above. (v) Noted. (vi) Noted. (vii) Please see our response to item 1(vii) above. (viii) Please see our response to item 1(ix) above.

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20.	International Federation of the Phonographic Industry (Hong Kong Group) Limited (LC Paper No. CB(1)865/09-10(01))	<ul style="list-style-type: none"> (i) Support the introduction of a technology-neutral communication right. (ii) Suggest introducing criminal sanctions against uploaders and downloaders who have downloaded infringing materials over a certain threshold value. (iii) Support introducing a statutory safe harbour provision for OSPs. (iv) Suggest a clarification of what amounts to contributory or vicarious infringement be made in the law. (v) Do not support any form of media shifting. (vi) Suggest introducing statutory damages. (vii) Suggest introducing a GRS. (viii) Suggests introducing the subpoena system under the Digital Millennium Copyright Act of US and streamlining the "Norwich Pharmacal" procedure. 	<ul style="list-style-type: none"> (i) Noted. (ii) Please see our response to item 1(ii) above. (iii) Noted. (iv) Please see our response to item 2(v) above. (v) Noted. (vi) Please see our response to item 1(vii) above. (vii) Please see our response to item 1(ix) above. (viii) Please see our response to item 8(vi) above.
21.	Internet Professional Association (LC Paper No. 966/09-10(05))	<ul style="list-style-type: none"> (i) Support the introduction of a technology-neutral communication right. (ii) Suggest that the scope of criminal sanctions should be carefully delineated. 	<ul style="list-style-type: none"> (i) Noted. (ii) Please see our response to items 1(i) and 1(ii) above.

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		<p>(iii) The meaning of “to such an extent as to affect prejudicially the copyright owners” should be clearly defined.</p> <p>(iv) Appropriate exceptions should be given to libraries and schools.</p> <p>(v) Suggest that the code of practice be formulated having regards to input from relevant professionals.</p> <p>(vi) Suggest media shifting be permissible as long as the purpose is for personal consumption.</p> <p>(vii) Suggest adopting the Creative Commons licensing system and establishing a copyright registration system.</p>	<p>(iii) Please see our response to item 6(i) above.</p> <p>(iv) Please see our response to item 2(ii) above.</p> <p>(v) The Administration will consult stakeholders on the draft code of practice.</p> <p>(vi) Please see our response to item 1(vi) above.</p> <p>(vii) A copyright owner is free to share his works with others through any means (including Creative Commons). We have no qualms about sharing activities so long as copyright is respected and that they are in compliance with the existing laws.</p>
22.	<p>Internet Society Hong Kong (LC Paper No. CB(1)904/09-10(02))</p> <p>Hong Kong Internet Service Providers Association</p>	<p>(i) Support the introduction of a technology-neutral communication right.</p> <p>(ii) Suggest that what amounts to “such an extent as to affect prejudicially the copyright owner” should be clarified to avoid affecting freedom of expression and inadvertent breach of the law.</p> <p>(iii) Support introducing a statutory safe harbour provision for OSPs.</p>	<p>(i) Noted.</p> <p>(ii) Please see our response to item 6(i) above.</p> <p>(iii) Noted.</p>

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		<p>(iv) Suggest consulting stakeholders on the details of the “notice and notice” as well as “notice and takedown” systems.</p> <p>(v) Support introducing an exception for temporary reproduction of copyright works by OSPs.</p> <p>(vi) Suggest that the media shifting exception be extended to other types of works.</p> <p>(vii) Support prescribing additional factors for awarding additional damages by the court.</p> <p>(viii) Agree that a GRS should not be introduced for the time being.</p>	<p>(iv) Please see our response to item 21(v) above.</p> <p>(v) Noted.</p> <p>(vi) Please see our response to item 1(vi) above.</p> <p>(vii) Noted.</p> <p>(viii) Noted.</p>
23.	Law Society of Hong Kong (LC Paper No. CB(1)895/09-10(03))	<p>(i) Support the introduction of a technology-neutral communication right and the corresponding criminal sanctions.</p> <p>(ii) Suggest introducing a new criminal sanction against unauthorised downloading and peer-to-peer file sharing activities.</p> <p>(iii) Suggest that a statutory safe harbour will only be effective if it is supplanted by a GRS.</p> <p>(iv) Suggest that the exemption for temporary reproduction of copyright works by OSPs should form part of the statutory limitation for OSPs rather than a general exemption.</p>	<p>(i) Noted.</p> <p>(ii) Please see our response to item 1(ii) above.</p> <p>(iii) Please see our response to item 1(ix) above.</p> <p>(iv) Please see our response to item 2(vi) above.</p>

	Organisations / Individuals	Views / Concerns	Administration's Response
		<p>(v) Suggest that statutory damages should be introduced though prescribing additional factors for awarding additional damages by the court should also be welcomed.</p> <p>(vi) Suggest introducing an alternative to the “Norwich Pharmacal” procedure to discover the identity of an infringer.</p>	<p>(v) Please see our response to items 1(vii) and 1(viii) above.</p> <p>(vi) Please see our response to item 8(vi) above.</p>
24.	Motion Picture Association – International (LC Paper No. CB(1)865/09-10(02))	<p>(i) Support the introduction of a technology-neutral communication right.</p> <p>(ii) Suggest introducing criminal sanctions against unauthorised downloading and peer-to-peer file sharing activities.</p> <p>(iii) Support introducing a statutory safe harbour provision if a codification of secondary liability is provided.</p> <p>(iv) Suggest that limitation of liability should apply to monetary relief only.</p> <p>(v) Do not oppose introducing an exception for temporary reproduction of copyright works by OSPs as long as the copyright work itself is legal.</p> <p>(vi) Support that the media shifting exception should not be extended to films.</p>	<p>(i) Noted.</p> <p>(ii) Please see our response to item 1(ii) above.</p> <p>(iii) Please see our response to item 1(iii) above.</p> <p>(iv) Please see our response to item 1(iv) above.</p> <p>(v) Noted.</p> <p>(vi) Noted.</p>

	Organisations / Individuals	Views / Concerns	Administration's Response
		<p>(vii) Suggest the introduction of statutory damages.</p> <p>(viii) Suggest that a GRS should be introduced.</p> <p>(ix) Suggest introducing an alternative to the “Norwich Pharmacal” procedure.</p>	<p>(vii) Please see our response to item 1(vii) above.</p> <p>(viii) Please see our response to item 1(ix) above.</p> <p>(ix) Please see our response to item 8(vi) above.</p>
25.	<p>Movie Producers and Distributors Association of Hong Kong Ltd (LC Paper No. CB(1)895/09-10(04))</p>	<p>(i) Support the proposals.</p> <p>(ii) Suggest stipulating in the legislation what OSPs are required to do when being notified of the infringing activities.</p>	<p>(i) Noted.</p> <p>(ii) Please see our response to items 2(iii) and 21(v) above.</p>
26.	<p>News Corporation (LC Paper No. CB(1)865/09-10(07))</p>	<p>(i) Support the introduction of a technology-neutral communication right and the corresponding criminal sanctions.</p> <p>(ii) Support introducing a statutory safe harbour for OSPs.</p> <p>(iii) Suggest that the code of practice be made mandatory by a definite date.</p> <p>(iv) Do not oppose introducing an exception for temporary reproduction of copyright work by OSPs.</p> <p>(v) Suggest that the media shifting exception should not be extended to films.</p>	<p>(i) Noted.</p> <p>(ii) Noted.</p> <p>(iii) Please see our response to item 21(v) above.</p> <p>(iv) Noted.</p> <p>(v) Please see our response to item 1(vi) above.</p>

	Organisations / Individuals	Views / Concerns	Administration's Response
		<p>(vi) Suggest introducing statutory damages instead of prescribing additional factors for awarding additional damages by the court.</p> <p>(vii) Suggest implementing a GRS System if the proposed “notice and notice” and “notice and takedown” systems is not effective.</p>	<p>(vi) Please see our response to item 1(vii) above.</p> <p>(vii) Noted.</p>
27.	The Open University of Hong Kong (LC Paper No. CB(1)865/09-10(19))	<p>(i) Support all five proposals.</p> <p>(ii) Suggest that the media shifting exception be extended to publications.</p>	<p>(i) Noted.</p> <p>(ii) Please see our response to item 1(vi) above.</p>
28.	PCCW Group (LC Paper No. CB(1)865/09-10(16))	<p>(i) Suggest that the criminal sanctions should be confined to unauthorised activities for commercial purposes only.</p> <p>(ii) Suggest that the phrase “to such an extent as to affect prejudicially the copyright owner” may be too broad and needs to be clearly defined.</p> <p>(iii) Support introducing a statutory safe harbour for OSPs.</p>	<p>(i) Please see our response to item 1(i) above.</p> <p>(ii) Please see our response to item 6(i) above.</p> <p>(iii) Noted.</p>

	Organisations / Individuals	Views / Concerns	Administration's Response
		<p>(iv) Suggest a complete exemption of both civil and criminal liabilities for OSPs under the safe harbour provision.</p> <p>(v) Suggest that the costs of implementing the “notice and notice” and “notice and takedown” systems should be borne by the copyright owners.</p> <p>(vi) Suggest that the notices sent by copyright owners be in the form of a statutory declaration.</p> <p>(vii) Agree that a GRS should not be introduced.</p>	<p>(iv) The proposed safe harbour provisions in the Bill will exempt OSPs from pecuniary liability. The existing safe harbour provisions in Australia, Singapore and the US do not provide a blanket exemption of liability for OSPs. While the limitation of liability provides an incentive to enlist OSPs' cooperation in combating online piracy, it will not be justifiable to deprive copyright owners of their right to seek redress from the court totally. In any event, the court would take all circumstances of a case into consideration before granting the relief required.</p> <p>(v) Please see our response to item 13(iv) above.</p> <p>(vi) Please see our response to item 9(iii) above.</p> <p>(vii) Noted.</p>

	Organisations / Individuals	Views / Concerns	Administration's Response
29.	Savantas Policy Institute (LC Paper No. CB(1)865/09-10(03))	<ul style="list-style-type: none"> (i) Support introducing a technology-neutral communication right. (ii) Suggest that the corresponding criminal sanction should be limited to a few classes of actions. (iii) Support introducing a statutory safe harbour provision for OSPs. (iv) Suggest that the media shifting exception be extended to other types of works. (v) Do not support prescribing additional factors for awarding additional awards. 	<ul style="list-style-type: none"> (i) Noted. (ii) Please see our response to item 1(ii) above. (iii) Noted. (iv) Please see our response to item 1(vi) above. (v) Noted.
30.	Television Broadcasts Limited (LC Paper No. CB(1)865/09-10(26))	<ul style="list-style-type: none"> (i) Support the introduction of a technology-neutral communication right and the corresponding criminal sanctions. (ii) Support introducing a statutory safe harbour for OSPs as long as liability of OSPs is clarified in the law. (iii) Suggest that the code of practice be made available as soon as possible. (iv) Limitation of liability should apply to monetary relief only. 	<ul style="list-style-type: none"> (i) Noted. (ii) Please see our response to items 1(iii) above. (iii) Please see our response to item 21(v) above. (iv) Please see our response to item 1(iv) above.

	Organisations / Individuals	Views / Concerns	Administration's Response
		<p>(v) Do not oppose introducing an exception for temporary reproduction of copyright work by OSPs.</p> <p>(vi) Support introducing a media shifting exception for sound recording.</p> <p>(vii) Suggest introducing a statutory damage instead of prescribing additional factors for awarding additional damages by the court.</p> <p>(viii) Suggest introducing a GRS.</p>	<p>(v) Noted.</p> <p>(vi) Noted.</p> <p>(vii) Please see our response to item 1(vii) above.</p> <p>(viii) Please see our response to item 1(ix) above.</p>
31.	The American Chamber of Commerce in Hong Kong (LC Paper No. CB(1)895/09-10(05))	<p>(i) Support the introduction of a technology-neutral communication right and the corresponding criminal sanctions.</p> <p>(ii) Suggest introducing criminal sanctions against illegal downloading and peer-to-peer sharing activities.</p> <p>(iii) Support introducing a statutory safe harbour for OSPs which is underpinned by a “notice and takedown” system and a GRS.</p> <p>(iv) Support prescribing additional factors for awarding additional damages by the court.</p> <p>(v) Suggest introducing statutory damages.</p>	<p>(i) Noted.</p> <p>(ii) Please see our response to item 1(ii) above.</p> <p>(iii) Please see our response to items 2(iii) and 1(ix) above.</p> <p>(iv) Noted.</p> <p>(v) Please see our response to item 1(vii) above.</p>

	Organisations / Individuals	Views / Concerns	Administration's Response
		(vi) Suggest introducing an alternative to the "Norwich Pharmacal" procedure.	(vi) Please see our response to item 8(vi) above.
32.	The Chinese Manufacturers' Association of Hong Kong (LC Paper No. CB(1)865/09-10(18))	<p>(i) Support the introduction of a technology-neutral communication right and the corresponding criminal sanctions against unauthorised communication conducted in the course of business.</p> <p>(ii) Concerned that the sanctions against unauthorised communication "made to such an extent as to affect prejudicially the copyright owner" may hamper reasonable sharing of information.</p> <p>(iii) Support the introduction of a statutory safe harbour for OSPs.</p> <p>(iv) Support introducing an exception for temporary reproduction of copyright works by OSPs.</p> <p>(v) Suggest that the media shifting exception be extended to other types of works.</p> <p>(vi) Do not support prescribing additional factors for awarding additional damages by the court.</p>	<p>(i) Noted.</p> <p>(ii) Please see our response to item 6(i) above.</p> <p>(iii) Noted.</p> <p>(iv) Noted.</p> <p>(v) Please see our response to item 1(vi) above.</p> <p>(vi) Noted.</p>

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33.	The Hong Kong Chamber of Small and Medium Business Ltd. (LC Paper No. CB(1)904/09-10(03))	<p>(i) Concerned that terms such as “initiate”, “communication”, “public” and “affect prejudicially”, if not well defined, will be subject to abuses.</p> <p>(ii) Expanding the scope of “fair dealing” for limited and reasonable use of copyright work for analysis, comparison and research even in a commercial context.</p> <p>(iii) Support media shifting for sound recordings, and suggest that the exception be extended to publications.</p>	<p>(i) Please see our response to items 6(i) and 18(ii) above. The Bill has clearly defined what amounts to “communication to the public” (see Clause 13 of the Bill).</p> <p>(ii) Please see our response to item 2(ii) above.</p> <p>(iii) Please see our response to item 1(vi) above.</p>
34.	The Lion Rock Institute	<p>(i) Suggest that the legislative proposals be shelved.</p> <p>(ii) Oppose the proposed criminal sanctions, and suggest that civil litigation should be used to resolve copyright disputes.</p>	<p>(i) Noted.</p> <p>(ii) Noted.</p>
35.	The Newspaper Society of Hong Kong (LC Paper No. CB(1)904/09-10(06))	<p>(i) Support the introduction of a technology-neutral communication right and the corresponding criminal sanctions.</p> <p>(ii) Suggest that what amounts to “such an extent as to affect prejudicially the copyright owner” should be clarified.</p> <p>(iii) Support introducing a “notice and takedown” system; but a “notice and notice” system should not be adopted.</p>	<p>(i) Noted.</p> <p>(ii) Please see our response to item 6(i) above.</p> <p>(iii) Please see our response to items 2(iii) and 21(v) above.</p>

	Organisations / Individuals	Views / Concerns	Administration's Response
36.	Time Warner Inc (LC Paper No. CB(1)865/09-10(13))	<ul style="list-style-type: none"> (i) Support the introduction of a technology-neutral communication right. (ii) Suggest that that the word/phrase “initiate” and “in the course of a business conducted for profit” may provide loopholes. (iii) Suggest that additional exceptions for the educational sector and library may not be necessary. (iv) Support introducing a statutory safe harbour provision for OSPs. (v) Suggest that limitation of liability should apply to monetary relief only. (vi) Suggest that “notice and notice” system is ineffective; support introducing a “notice and takedown” system. (vii) Suggest that an exception for temporary reproduction of copyright works by OSPs may not be necessary as it may create a loophole for allowing reproduction of copyright works without any technical need. (viii) Suggest introducing statutory damages. (ix) Suggest introducing a GRS. 	<ul style="list-style-type: none"> (i) Noted. (ii) Please see our response to item 18(ii) above. (iii) Noted. Please see our response to item 2(ii) above. (iv) Noted. (v) Please see our response to item 1(iv) above. (vi) Please see our response to item 2(iii) above. (vii) Please see our response to item 2(vi) above. (viii) Please see our response to item 1(vii) above. (ix) Please see our response to item 1(ix) above.

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		(x) Suggest streamlining the "Norwich Pharmacal" procedure.	(x) Noted.
37.	Warner Bros. (F.E.) Inc (LC Paper No. 966/09-10(04))	(i) Disappointed that a GRS will not be introduced.	(i) Please see our response to item 1(ix) above.
38.	Dr YANG Mo, Southern District Councillor (LC Paper No. CB(1)865/09-10(22))	(i) Support the introduction of a technology-neutral communication right. (ii) Support introducing a statutory safe harbour and formulating a code of practice for limiting the liability of OSPs.	(i) Noted. (ii) Noted.
39.	Joint submission from Yahoo, eBay, Google and Nokia (LC Paper No. CB(1)865/09-10(15))	(i) Suggest that the scope of the criminal sanctions be clearly defined, e.g. the phrase "to such an extent as to affect prejudicially the copyright owner"; suggest providing a list of factors to clarify what amounts to the "prejudicial" threshold. (ii) Support introducing a statutory safe harbour provision for OSPs. (iii) Suggest organising a public consultation on the code of practice. (iv) Suggest that OSPs should not be required to monitor third party materials. (v) Suggest that the code of practice be given legal effect under the Copyright Ordinance.	(i) Please see our response to item 6(i) above. (ii) Noted (iii) Please see our response to item 21(v) above. (iv) Please see our response to item 8(iii) above. (v) Compliance with the Code of Practice will be regarded as meeting one of the conditions that qualify an OSP for

	Organisations / Individuals	Views / Concerns	Administration's Response
		<p>(vi) Suggest that a mechanism to prevent abuses be put in place.</p> <p>(vii) Support introducing an exception for temporary reproduction of copyright works by OSPs.</p> <p>(viii) Suggest that the Administration consider if there should be a consistent policy on media shifting on all types of work.</p> <p>(ix) Agree that statutory damages should not be introduced.</p>	<p>protection under the safe harbour provision (see Clause 45 of the Bill, especially the new section 88B).</p> <p>(vi) Please see our response to item 9(iii) above.</p> <p>(vii) Noted.</p> <p>(viii) Please see our response to item 1(vi) above.</p> <p>(ix) Noted.</p>