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Clerk to Bills Committee on Copyright (Amendment) Bill 2014
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Sirs,

IFACT-GC Submission on the Copyright (Amendment) Bill 2014

The International Federation Against Copyright Theft (Greater China) Limited (“IFACT-GC”) is a trade association representing 36 international producers and distributors of theatrical motion pictures, home entertainment, comics, animation and television programming.

We are writing in response to the Council’s announcement inviting submissions from interested parties in response to the Copyright (Amendment) Bill 2014. IFACT-GC appreciates the opportunity to provide the following comments in advance of the Bills Committee meeting scheduled for October 25th, which we will attend.

Although the IFACT-GC has previously expressed concern about perceived insufficiencies in the 2014 Bill, we support the Government’s present initiatives and it is essential that Hong Kong now finally takes the first step towards modernizing its legal environment to better protect copyrights in the digital environment.

Subject to the following comments and suggestions, the IFACT-GC urges the Legislative Council to move the proposals forward with all deliberate speed.

Communication right:

FACT-GC supports an all-embracing right of communication as part of the Copyright Ordinance and the intention to enact a technical-neutral exclusive right of communication. However, Not-for-profit institutions should not be automatically immunized from criminal liability if they engage in widespread unauthorized communications of works to the public in the courses of their business. We would therefore recommend removing the words “For profit or reward” from the wording of the proposed section 118(8B).

Also, we have previously voiced our concern for the proposed exclusion of liability in section 28A(5) for persons or entities who intentionally make knowingly infringing content available by shielding themselves from the ability to determine the exact identity of the content. We there recommend again that this provision be deleted.

“Safe harbor” for OSPs

IFACT-GC notes that the new Division IIIA (proposed new sections 88A to 88I) amendments generally conform to the provisions of the United States’ Digital Millennium Copyright Act (DMCA) amendments that protect service providers from monetary liability for infringements occurring on its network of platform. However, a primary deficiency in this respect is that the proposals do not require, as a prerequisite to all safe harbor protection, that service providers adopt and reasonably implement a policy that provides for the termination, in appropriate circumstances, of the accounts of repeat infringers. Such a requirement is consistent with existing legislation in Australia, as well as the United States, and sets a basic minimum requirement without which a service provider cannot benefit from safe harbor treatment. This is particularly important with respect to providers of conduit services, who might otherwise be exposed to only very limited legal incentives for cooperation with right holders. We therefore recommend that such a requirement be explicitly included within the proposed section 88B(2) of the amendments, as well as the Code of Practice referenced in the proposed section 88I.

As a service dedicated to infringement could claim safe harbor status even if its business model depends on charging users for participating in infringing activities (as long as those charges are non-discriminatory and are assessed on a periodic such as by subscription basis, this would not be appropriate and we therefore recommend the deletion of the proposed section 88B(4)(b).

We also look forward to engaging with the Administration when an outside consultant is retained to further analyze various legislative and non-legislative tools to contain online infringement.

Permitted Acts

We have previously voiced our principled objection to the so-called “media shifting” proposals for sound recordings and maintain our concern here. The provisions should not be construed to permit the circumvention of technological protection measures or digital rights management used by content owners to protect their works.

Award of Additional Damages

We strongly prefer Hong Kong to adopt statutory damages in lieu of additional damages and wish to maintain that preference for the record.

The foregoing reflects IFACT'GC's primary concerns and comments in response to the legislation presently under consideration. We look forward for further discussion during the Bills Committee meeting on October 25.

Yours Sincerely,



Sam Ho
General Manager