



Clerk to Bills Committee on
Copyright (Amendment) Bill 2014
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Dear Sirs

COPYRIGHT (AMENDMENT) BILL 2014

PCCW Media Limited ("PCCW Media") welcomes the opportunity to comment on the on Copyright (Amendment) Bill 2014 (the "2014 Bill").

PCCW Media is an integrated multimedia and entertainment group based in Hong Kong, a producer of high quality original programming for distribution in Hong Kong and overseas, a major employer of skilled media and entertainment staff and operates a leading pay television service, in Hong Kong.

Hong Kong's Copyright Regime Needs Urgent Up-dating

Hong Kong's Copyright Ordinance (the 'Ordinance') has not kept pace with technological and overseas developments and consequently fails to provide a robust and up-to-date intellectual property framework to underpin innovation and creativity and drive economic growth.

The key legislative proposals of the 2014 Bill are long over-due. The Administration originally began an updating exercise in 2006 and introduced a package of proposals in the Copyright (Amendment) Bill 2011 (the "2011 Bill"). The 2011 Bill was the result of years of deliberation and extensive consultation but was allowed to lapse.

While the legislative process has been stalled, the technical methods and scale of online piracy of copyright works have expanded with a devastating impact on Hong Kong's media and creative industries. An epidemic of pirate services that stream movies, drama series and live programming for free or near-free is destroying jobs and investment incentive.

There is nothing in the Ordinance that prevents the streaming of pirated content into Hong Kong. High definition media players, specifically enabled to receive pirated streams, are widely available to consumers in Hong Kong. Consumers can receive and view pirated television channels, the latest movies, complete drama series etc, all for free. Consequently they are less willing to pay a fair price for legitimate pay TV services. There is a perception among consumers that the pirate streaming

services are not unlawful. Consumers are exposed to un-regulated content and advertising, served up by criminal organizations, but masquerading as legitimate TV.

Hong Kong law enforcement officers acknowledge that streaming piracy is rampant and expanding and they are powerless to take action because Hong Kong's laws have failed to keep pace.

Hong Kong's International Obligations

The International Community is watching us.

On December 1996 at the World Intellectual Property Organization's (WIPO) Diplomatic Conference in Geneva, over 130 countries adopted the WIPO Copyright Treaty (WCP) and the WIPO Performances and Phonograms Treaty (WPPT) (the 'Internet Treaties'). The Internet Treaties were a response to the challenges of digital technologies, particularly the Internet and have applied to Hong Kong since 2008. Having already adopted the reforms in the 1990s, the USA, UK, EU and Australia are already looking to further up-dating of their copyright regimes.

Our Comments on some of the Proposals of the 2014 Bill:

- **Communication Right**

A technology-neutral right of communication is contained in both of the Internet Treaties, has been adopted by a long line of overseas jurisdictions and was originally proposed in the 2011 Bill. The introduction of a communication right is essential for preserving the rights of copyright owners in the digital age and is a necessary first step for tackling on-line piracy. There cannot be any rational basis for further delaying the introduction of a communication right.

- **Criminal Liability**

Criminal sanctions in respect of unauthorized communication of copyright works were originally proposed in the 2011 Bill and the 2014 Bill clarifies the threshold for criminal liability by focusing on economic prejudice. The sanctions are necessary but we should be under no illusion about their reach. They will not deter overseas criminal organizations who are supplying the vast quantity of pirated streams flowing into Hong Kong.

- **Safe Harbour**

The 'Safe Harbour' provisions (together with authorization liability and a code of practice) should be seen as a first step towards gaining OSP cooperation in the fight against on-line piracy.

However we have serious concerns whether the Safe Harbour provisions as proposed in the 2014 Bill, will be fully effective in combating pirated streaming (of live broadcasts, in particular). Overseas experience also indicates serious difficulties in the legal and practical application of similar Safe Harbour provisions.

We therefore think the operation of the Safe Harbour provisions should be closely monitored and together with experience gained in overseas jurisdictions, reviewed in say 12 months with a view to strengthening their legal and practical operation, especially in relation to pirated streaming of live broadcasts.

Timetable / Next Steps

The 2014 Bill must be passed without further delay and we urge the Government not to be sidetracked. The 2014 Bill follows the three guiding principles of the consultation exercise. There has been extensive consultation which has been taken into consideration in drafting the 2014 Bill. With every day of delay, more jobs are at risk, investment goes elsewhere and Hong Kong's standing as a media hub is diminished.

In parallel with the legislative timetable, work should continue on further updating Hong Kong's Copyright regime to combat on-line piracy. PCCW Media is ready to participate in that on-going effort.

Yours faithfully,



Michael Fagan
General Counsel