



The American Chamber
of Commerce in Hong Kong
1904 Bank of America Tower
12 Harcourt Road, Hong Kong

March 25, 2014

The Honorable Leung Chun-Ying, GBM, GBS, JP
Chief Executive
Hong Kong SAR Government
Chief Executive's Office
Tamar, Hong Kong

Dear Chief Executive,

RE: Immediate Copyright Reform is Needed in Hong Kong

The American Chamber of Commerce in Hong Kong (*AmCham*) is encouraged by the Chief Executive's 2014 Policy Address which recognizes the "great potential" of Hong Kong's creative industries and expresses the Administration's commitment to enhancing their competitiveness.

We appreciate the ongoing work by the Commerce and Economic Development Bureau (*CEDB*) to explore policies that "[enhance] the IP protection regime [...and support] IP creation and exploitation" (2014 Policy Address). On March 18, 2014, the Administration submitted to the Commerce and Industry Panel of the Legislative Council its recommendations from the recent public consultation on parody, which will support progress for copyright reform in Hong Kong.

While we are encouraged by these developments, we note that discussions on the digital copyright agenda began almost a decade ago. We also note that the product of those protracted discussions and public consultations – the Copyright (Amendment) Bill 2011 (*Bill*) – ultimately was unsuccessful. AmCham was supportive of the Bill, recognizing the importance of the Bill's introduction of a "technology-neutral communication right" in affording copyright owners some protection against unauthorized online distribution of their works.

Creative industries in Hong Kong have suffered tremendously while the debate about copyright reform has been languishing. Illustrative of this point is the decline in Hong Kong film production over the last 20 years (from approximately 300 films being produced in the early 1990s to only 48 films in 2013) and the relative prosperity of film markets in other parts of Asia (for example, in India and Korea). Hong Kong ought to be committed to fostering and safeguarding the next Run Run Shaw of Hong Kong cinema, as well as fledgling companies in the film production ecosystem. Many global media and entertainment companies have relocated their regional headquarters out of Hong Kong. Hong Kong also risks missing out on the full benefits of information and communication technology investments.

High standards of intellectual property rights protection are needed not only to protect, foster and enhance the competitiveness of Hong Kong's creative and innovation industries but also to develop key economic opportunities for Hong Kong's knowledge-based businesses. Hong Kong's current copyright legislation and policy lag behind other jurisdictions in addressing the operational realities of

working in the digital age. This problem is garnering the attention of a number of governments around the world.

We strongly urge the Administration to reintroduce the Bill (taking into account CEDB's recent recommendations on parody). Time is of the essence. Recognizing Hong Kong's broader political realities, it is our strong view that the Bill needs to be reintroduced this month and passed in this Legislative Council year.

To support the reintroduction of the Bill, AmCham recently held a Forum to drive public awareness on the importance of copyright reform, entitled "The Future of Digital Copyright in Hong Kong". Held on February 27, 2014 the Forum brought together over 80 leading experts, industry stakeholders, and senior government representatives from the Consulates-General of the United States, Canada and United Kingdom along with senior representatives from the Hong Kong Legislative Council, Intellectual Property Department and Customs & Excise Department. Moderated by CNN's Patricia Wu, the Forum provided a platform for a robust discussion about copyright developments in the United States, Europe and around the Asia-Pacific region, highlighting the importance of copyright protection in the digital age. All stakeholders (creative industries, ISPs, telecommunication companies, netizens and legal academia) were represented at the Forum and **the clear consensus was that immediate copyright reform is needed in Hong Kong.**

AmCham's leadership and particularly the Intellectual Property Committee would be very pleased to arrange a working group meeting to discuss the timeframe and strategy for reintroducing the Bill. Please feel free to pass on the contact details of Ms. Ming-Lai Cheung, Director, Government Relations & Public Affairs (mcheung@amcham.org.hk and Tel: 2530 6927) for follow-up.

Yours sincerely,



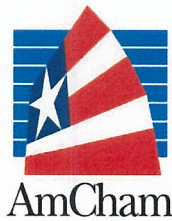
Peter Levesque
Chairman 2014



Richard Vuylsteke
President

Encl: Information & President's Remarks for "The Future of Digital Copyright in Hong Kong" and accompanying press release issued by the American Chamber of Commerce dated February 28, 2014.

Cc: Ambassador Clifford Hart, Consul-General of the United States, Hong Kong and Macau
Secretariats of all Legislative Council Members
Mr. Gregory So Kam-leung, Secretary for Commerce and Economic Development



The American Chamber of Commerce in Hong Kong
“The Future of Digital Copyright in Hong Kong”
February 27, 2014 (Thursday)

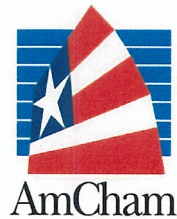
Venue: HKUST Business School Central
15/F Hong Kong Club Building
3A Chater Road, Central

Speakers: Joe Welch, Senior Vice President, Government Relations - Asia, 21st Century Fox
Stacy Baird, Executive Director, US-China Clean Energy Forum IP Program
Checkley Sin, Chairman, National Arts Entertainment and Culture Group Limited
Craig Choy, Legal Advisor, Copyrights And Derivative Works Alliance
Dean Marks, Senior Vice President, Intellectual Property, Warner Bros. Entertainment Inc.
Paul Berriman, Group Chief Technology Officer, PCCW and HKT
Lento Yip, Chairman, Hong Kong Internet Service Providers Association
Patricia Wu, Anchor & Reporter, CNN (Moderator)

Media: Open

Background:

The forum which will bring together various experts and stakeholders involved in the copyright industries to discuss the importance of copyright protection for creative industries in Hong Kong in the digital age. An international panel of experts will share views and experiences on copyright regimes in the U.S., Europe and around the region as compared to Hong Kong.



**The American Chamber of Commerce in Hong Kong
The Future of Digital Copyright in Hong Kong
Richard Vuylsteke, AmCham President
February 27, 2014 (Thursday)**

Opening Remarks

Good Afternoon and Welcome to today's event.

I believe that everyone here knows that a key mission and priority for AmCham is to foster a strong and competitive Hong Kong.

We cannot rest on our laurels. Being the best place for business includes paying close attention to the competition and working vigorously to stay at the cutting edge.

A key attribute of Hong Kong's competitiveness is its ability to attract and retain innovative companies and creative talent. So clearly, the fostering of creative and innovative industries is a key economic opportunity for Hong Kong.

We know that knowledge economies depend on the rule of law and high standards of intellectual property rights protection.

Unfortunately, Hong Kong's current copyright legislation and policy lags behind other jurisdictions, including the UK, Australia, Singapore, Taiwan, and Korea.

There is a large spectrum of challenges when one addresses the operational realities of working in the digital age. For example, Hong Kong truly needs to aggressively address online piracy and unauthorized digital distribution if we are going to attract and retain first-class business and investment here.

AmCham will continue to urge the Hong Kong Government to regain its position of IPR leadership. To this end, we urge immediately adopting a more robust intellectual property rights regime, including reintroducing and passing the Copyright Amendment Bill in this LegCo session.

Today's IP event is representative of AmCham's continuing engagement on IP issues – which also means raising awareness throughout the Hong Kong community about the problems and possible solutions.

AmCham President's Remarks at The Future of Copyright in Hong Kong February 27, 2014

So, let's get started! It's my pleasure to introduce our Moderator for today's panel discussion, Patricia Wu of CNN, who we all know well from CNN's weekday morning program – CNN Newsroom Live from Hong Kong. Now she is live from AmCham!

Closing Remarks

This Copyright Forum is a very good example of what AmCham is all about and what makes its job as a chamber so delightful. Because when you get smart and dedicated people together for candid discussion, you can bring about very clear results. Our panel today demonstrated this.

As I said in my earlier comments, Hong Kong cannot be complacent – and it certainly can't be complacent when a sense of urgency is demonstrated. If we have learned nothing else out of today's event, there is indeed a sense of urgency concerning Hong Kong's IP agenda. We cannot be complacent in solving copyright issues.

Hong Kong is a world city. When we try to solve problems, we naturally don't look at our feet – but look at best practices internationally. And besides looking for international best practices, we also seek to collaboratively engage all stakeholders – like we have today with the people sitting here as panelists and the organizations they represent, and representatives from the government, the industry, professional associations, and the public.

The best decision to come out of today is that we need to cooperate and stay focused on key issues and not be forever sidetracked by nitpicking exceptions, especially when we are facing an environment that requires urgent action.

And so I hope that when you walk out of the door today you will remember the content of our constructive discussion on copyright, because this is essential if we are to succeed with the recommendations that this panel – and you in the audience – have made. We need to adopt a more robust intellectual property rights regime, which means we need to reintroduce and pass the Copyright Amendment Bill in this LegCo session.

Let's get down to business. We do not have 3 years, we don't have 14 years; we are trying to save the environment for creativity and innovation in this very great city, so let's get on with it!

I want to thank the panelists, the associations, the government attendees, and all of you for attending this event. It's been a terrific opportunity for the exchange of information. Our sincere, heartfelt thanks to you all. I hope you have been energized by today's activity and that we'll go forth with conviction and get things done. #

**MEDIA RELEASE
FOR IMMEDIATE RELEASE**

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Urgent Copyright Reform Needed in Hong Kong

Hong Kong – February 28, 2014 – Yesterday the American Chamber of Commerce in Hong Kong hosted a forum on “The Future of Digital Copyright in Hong Kong,” which brought together some 80 leading experts, industry stakeholders, and government representatives as well as members of the public to share their views on the issue of copyright protection in the digital environment in Hong Kong.

Hong Kong Falling Behind

Joe Welch, Senior Vice-President of Government Relations for 21st Century Fox, noted that “Hong Kong has fallen behind its regional and international peers” when it comes to safeguarding intellectual property rights and attracting investment and creating new opportunities for its creative industries.

Urgent Action Needed to Stop Theft

Checkley Sin, Chairman of the National Arts Entertainment and Culture Group Ltd, explained the harm already caused by ongoing copyright infringement to the creative industry in Hong Kong. Sin, a local film producer and director of “Ip Man” fame, urged the Hong Kong Government, which recognizes the importance of fostering the creative and innovation industries, “to take urgent measures to address the widespread problem” of Internet piracy and “to protect artists and creators from unauthorized theft and distribution of their works.”

Urgent action is required to reintroduce the Copyright (Amendment) Bill, which was first discussed in 2005 but never been passed, resulting in Hong Kong’s copyright laws being severely outdated in the new digital world. Panelists at the Forum described how this has contributed to the demise of Hong Kong’s creative industry. Illustrative of this point is the decline in Hong Kong film production over the last 20 years (from approximately 300 films being produced in the early 1990s to only 48 films in 2013) and the relative prosperity of mainland China, India, and Korea film markets.

According to Paul Berriman, Chief Technology Officer at PCCW and HKT, “Hong Kong needs a legal framework for the authorities to police the digital borders as well as the physical borders.”

Internet Service Providers (ISPs) Onboard

Large-scale commercial piracy contributes to the congestion and degradation of Internet services for users. ISPs (Internet Service Providers) also face legal and business uncertainty, with potential liability arising from the use of their platforms for the distribution of illegitimate online content. According to Chairman Lento Yip of the Hong Kong Internet Service Providers Association, “ISPs will have to afford vast resources to operate the notice mechanisms that benefit both the copyright owners and legitimate content consumers in exchange for provisions to limit ISP liability. This reflects ISPs continued efforts to make HK the best connected city.” He is “supportive of the [Copyright (Amendment) Bill 2011] in its current form.”

Finding the Right Balance

The issue of copyright reform in Hong Kong has touched upon a number of sensitivities, among which includes the concern voiced by Craig Choy, legal adviser to the Copyrights and Derivative Rights Alliance, over perceived political censorship arising from the treatment of “parody.” Choy commented that an exemption for parody should be allowed and that parody “can be beneficial to the original rights owners as outlined in a report recently released by the Intellectual Properties Office in the UK.”

Stacy Baird conveyed his past experiences in working with US copyright legislation and noted that a modernization of Hong Kong’s copyright laws would not curtail important freedoms enjoyed by Hong Kongers over the Internet. He observed that there are “protections for free speech, including parody, under the existing Hong Kong law – indeed, there has never been a copyright prosecution for a parody here. Were there to be, foreign judicial decisions would place parody squarely into ‘fair dealings.’”

Taking a leaf from US and UK experiences on copyright reform, Warner Bros Senior Vice-President Dean Marks commented that “effective measures outside of Asia have been adopted to address the problem of Internet piracy without impinging on the interests of the general public and without contravening international trade obligations” and that “to take on Internet piracy, statutory provisions establishing a legal framework is needed, along with close cooperation and voluntary efforts by both rightholders and Internet intermediaries.”

All Key Stakeholders in Agreement

A clear consensus was reached among all stakeholders that immediate copyright reform is needed in Hong Kong. Richard Vuylsteke, President of the American Chamber of Commerce, closed the session with a plea urging that “the Hong Kong Government regain its position of leadership and immediately adopt a more robust intellectual property rights regime by reintroducing and passing the Copyright (Amendment) Bill.”

A copy of the President’s remarks can be downloaded in the following link:

<http://www.amcham.org.hk/images/PublicAffairs/2014Advocacy/2014%2002%2027%20AmCham%20HK%20Copyright%20Forum%20-%20Presidents%20Remarks%20FINAL.pdf>

A photograph taken at the forum is attached below.



Photo 1: From left: Lento Yip, Paul Berriman, Joe Welch, Craig Choy, Checkley Sin, Stacy Baird, Patricia Wu with Dean Marks via video conference (Photo: AmCham HK)

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With roughly 1,700 members, the American Chamber of Commerce in Hong Kong (AmCham) is one of the largest American Chambers outside the United States, the largest international chamber in Hong Kong, and one of the most dynamic and influential international business organizations in the Asia-Pacific region. AmCham's mission is to foster commerce among the United States, Hong Kong, and Mainland China; and to enhance Hong Kong's stature as an international business center.