

Joint Submission
to
Commerce and Industry Branch,
Commerce, Industry and Technology Bureau,
The Government of the Hong Kong Special Administrative Region
on Public Consultation
on Copyright Protection in the Digital Environment
from



British Computer Society,
Hong Kong Section



Hong Kong Institution of Engineers,
Information Technology Division



Information Systems Audit and Control
Association, Hong Kong Chapter



Internet Professional Association



Hong Kong Woman Professionals and
Entrepreneurs Association

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This paper is the joint response of the British Computer Society (Hong Kong Section), the Hong Kong Institution of Engineers (Information Technology Division), Information Systems Audit and Control Association - ISACA (Hong Kong Chapter), Internet Professional Association, and Hong Kong Woman Professionals and Entrepreneurs Association on the Public Consultation on Copyright Protection in the Digital Environment.

Introduction

This paper is pleased to give the following comments and recommendations to the Commerce and Industry Branch of Commerce, Industry and Technology Bureau, The Government of the Hong Kong Special Administrative Region, on the public consultation on Copyright Protection in the Digital Environment. Our submission is divided into four major areas: 1) Overview for Copyright Policy, 2) Criminal Liability of Downloading Activities, 3) Control over Communication of Copyright Works to Public, 4) Liability of online service providers (OSPs) & Internet Access Service Providers (IASPs).

1) Overview for Copyright Policy

- 1.1 Creativity, innovation and investment are crucial to boosting productivity of the Hong Kong economy. Hong Kong must be able to harness creativity and promote innovation in order to compete in the global, knowledge-based economy. Copyright protection creates the link in the chain which motivates individuals and firms to innovate and create, with confidence that their investment is protected.
- 1.2 Copyright policy should make a balance between copyright protection and innovation which allowing individuals, businesses and institutions to use information and ideas in ways consistent with the digital age. As we all know, most ideas and creations are more or less inspired and supported by the collective knowledge of human being. To ensure the creation of new works, it is also very important to keep the information flows free and rich, so as to inspire and give birth to new creations.
- 1.3 Copyright policy should not be technology-oriented. We are in the dawn of a new era, where digital information led the aggregation of knowledge and its exchange. As technology is going very fast in this new era, we must look ahead

and take a position to setup an environment to make Hong Kong a competitive place.

2) Criminal Liability of Downloading Activities

- 2.1 Criminal liability should not be expanded to unauthorized downloading of copyright works activities in Hong Kong.
- 2.2 It is difficult for users to determine if the information or data (whether it is song, movie clip, article, photograph or graphics etc.) downloaded from the internet is authorized or not, whether the users are general users or professionals. Even if a source over the network claims itself being the legal copy right owner, it is difficult for people to ascertain the case.
- 2.3 Downloading by itself is a technique utilizing modern network infrastructure to transfer digitalized data or information in a more efficient manner. Copyright holders should integrate downloading as an alternative channel along with their existing distribution channels to reach their clients. It is unreasonable to restrict Internet users to make use of the technology and technique because it might be used to infringe upon one's property rights.
- 2.4 Besides, on the internet, there are a lot of links that connect to other web sites. It is difficult for users to determine which site leading by the link is legal or illegal. The data source server could redirect the connection to other site without the control of the data requester. To pose criminal liability to downloading, users may easily get into the trap and many disputes may arise.
- 2.5 In addition, it may restrict the activities and development on the internet

3) Control over Communication of Copyright Works to Public

- 3.1 The copyright law of Hong Kong should specify the forms of communication technology through which the copyright works are disseminated, whether now or in the future. An 'all-embracing right' should not be introduced into the Copyright Ordinance.
- 3.2 By specifying the forms of communication, the details of the copyright law and

the implications such as dissemination of information and freedom of expression can be better understood and evaluated before laying down the law. In addition, if the law is more precise, it will be more efficient and fairer when interpreting and enforcing the law.

- 3.3 Technology changes in a progressive rate and are out of one's anticipation or imagination. There is a possibility that new technology may lead to new issues or implications. No one can guarantee that they can be solved or covered by the copyright law appropriately or fairly. In addition, it may also restrict the activities or development related to the new technology.

4) Liability of Online Service Providers (OSPs) & Internet Access Service Providers (IASPs)

4.1 Role of OSPs & IASPs to Combating Internet Piracy

- 4.1.1 We understand that the OSPs are aware of piracy activities conducted in their service platforms. They can try their best to take necessary actions to remove those infringing materials or to block their accesses. But it does not mean that OSP / IASP should bear all the responsibility of the infringing acts. It is because the main responsibility of the OSP and IASP is only to provide a platform for people to access the internet and use its services.
- 4.1.2 As long as the internet is a free and open environment, both OSP and IASP may not have the authority and ability to prevent all online piracy activities. In fact, it is very difficult for the OSP / IASP to search and monitor all piracy activities. If we impose legal liabilities on the OSP / IASP, it will, no doubt, hinder the internet development of Hong Kong. The civil or criminal liability is really against the development of internet and Hong Kong into a knowledge society.
- 4.1.3 In addition, the OSP or IASP has the responsibility to report any possible case of piracy act. If such happen, the OSP or IASP can reserve the right to remove such act as soon as possible. But they should not bear the responsibility for their user to such an abuse usage of online services.
- 4.1.4 The OSP / IASP can reserve their rights to charge the copyright owner(s) for costs in searching for those possible infringement records. There are admittedly costs bore by the OSP / IASP, either on manpower or on technological hardware, in the

searching process. It is therefore the responsibility of the copyright owners to bear such costs. Consideration of non-legislative measures like industry guidelines or codes of practice in relation to record-keeping practices, which bind all IASPs, is, of course, welcome. This surely does help combat online piracy activities and guide the development of internet industry on the right track.

4.2 Mechanism for OSPs & IASPs to Contribute in Combating Internet Piracy

- 4.2.1 A specific mechanism should be established for copyright owners requesting ISPs for the related information of the activities of people who violate the Copyright Bill. IASPs must be requested to keeping all the logs compulsory for evidentiary purpose.
- 4.2.2 To ensure the accuracy of all the logs kept, the logging systems must be automated rather than manual systems, which prevent from illegal change and deletion or mis-recording of any log information intentionally or carelessly by operators. Annual reports must be submitted to display the systematic automated procedure on log keeping for auditing. The security control and measures over the logging information should also be audited, to protect over any leakage of the sensitive information such as personal data of the Internet users.
- 4.2.3 The log evidence must be kept at least 1 year, suggested up to 3 years, for any investigation, given that the administrative procedures, before log evidence can be requested from IASPs, take a certain period of time. The fee for the logging system and related security measures should be shared among 3 parties, namely the IASPs, Copyright owners and the Internet users.
- 4.2.4 Reference to point 4.10, Chapter 4 of the Consultation on Copyright Protection in the Digital Environment, the logs kept by IASPs would also facilitate the criminal investigation for illegal internet activities like hacking, in addition to locating the Copyright Bill violators.

5) Conclusion

This submission has made the above recommendations for the Government of the Hong Kong Special Administrative Region on Copyright Protection in the Digital Environment.

We hope that these recommendations will help rising the awareness of Copyright Protection in Hong Kong as a digital city.

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