



**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**

**30 April 2007**  
**Internet Professional Association**

## Public Consultation on Copyright Protection in the Digital Environment

### Introduction

The Internet Professional Association (iProA) is pleased to submit our views and recommendations to the Commerce and Industry Branch of Commerce, Industry and Technology Bureau, The Government of the Hong Kong Special Administrative Region, in response to the public consultation on Copyright Protection in the Digital Environment. Our submission is focused in the following major areas: 1) Overview for copyright policy, 2) Legal liability for unauthorized uploading and downloading of copyright works, 3) Control over communication of copyright works to public, 4) Role of Online Service Providers (OSPs) & Internet Access Service Providers (IASPs) to combating Internet privacy, 5) Facilitating copyright owners to take civil actions against online infringement, 6) Statutory damages for copyright infringement, and 7) Copyright exemption for temporary reproduction of copyright works.

### 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 leads 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) Legal liability for unauthorized uploading and downloading of copyright works**

- 2.1 Criminal liability should not be expanded to unauthorized downloading activities of copyright works in Hong Kong. Since buying pirated DVD is not a criminal act, no point to criminalize downloading. It will only create an inconsistency of physical and digital world on copyright protection. In addition, it may restrict activities on and development of the Internet.
- 2.2 We support criminalizing uploading with intention on direct commercial advantage or are significant in scale (because of the large scale lost incurred to copyright owners). To criminalize an act, we need to be careful that we only criminalize people with intention for uploading.
- 2.3 BT seed uploading, with the proof of intention and scale, it is possible to process as criminal act. The existing law should be enough for judge (especially with court case already). It may not be necessary to have special law on criminalize P2P seed uploading.
- 2.4 The P2P uploading is only one of the many ways of file sharing and transferring; new technology may come up anytime. Too specific definition may lead to unnecessary and obsolete law easily. It is not a very good practice to have a law on one specific technology. Under common law system, we should leave that to the court to accumulate enough cases to further refine the definition of distribution (uploading) and own (downloading), scale, etc.

## **3) Control over communication of copyright works to public**

- 3.1 The copyright law of Hong Kong should specify the scope of coverage regarding 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, details of the copyright law and its implications such as dissemination of information and freedom of expression can be better understood and evaluated before it is passed by the legislature. 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 rapid rate beyond most people's anticipation or imagination. There is a possibility that new technology may lead to new issues or implications. No one can guarantee that these new issues can be solved or covered by existing copyright law appropriately or fairly. In addition, it may also restrict activities or development related to the new technology.

#### **4) Role of Online Service Providers (OSPs) & Internet Access Service Providers (IASPs) to combating Internet privacy**

- 4.1 We understand that 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 access. But it does not mean that OSP / IASP should bear all the responsibilities of infringing acts. The main responsibility of the OSP and IASP is to provide a platform for people to access the Internet and use its services.
- 4.2 OSPs should help to limit the lost and damage of copyright material on Internet, especially Search Engine and Portal companies. Search Engine and Portal companies become the major focal point of Internet traffic, their “support” of piracy will lead to large scale of damage. We do not want to have the case of Baidu’s MP3 search engine happened in Hong Kong.
- 4.3 In addition, OSP or IASP has the responsibility to report any potential case of piracy act. If such activities happen, OSP or IASP can reserve the right to remove such materials as soon as possible. But they should not bear the responsibility of their user for such abusive usage of online services.
- 4.4 OSP / IASP can reserve the right to charge the copyright owner(s) for costs incurred in searching for those potential infringement records. There are admittedly costs bore by the OSP / IASP, either on manpower or on technological hardware / software, relating to the search process. It is therefore the responsibility of the copyright owners to bear some 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 development of the Internet industry on to the right track.

#### **5) Facilitating copyright owners to take civil actions against online infringement**

- 5.1 A specific mechanism should be established to enable copyright owners to request IASPs for related information on activities that violate the Copyright Bill. It must be made compulsory that IASPs must keep all logs for evidentiary purpose.
- 5.2 To ensure the accuracy of logs kept, the logging systems must be automated rather than manual, with mechanisms to prevent illegal change, deletion or mis-recording of any log information by operators, whether intentionally or carelessly. Annual reports must be submitted for auditing to show systematic automated procedures on log keeping. Security control and measures over the logged information should also be audited, to protect against any leakage of sensitive information such as personal data of Internet users.

- 5.3 The log evidence must be kept for at least 1 year, or up to a reasonable period, for any investigation; given that administrative procedures before log evidence can be requested from IASPs take a certain period of time to process. The cost of the logging system and related security measures should be shared among 3 parties, namely the IASPs, Copyright owners and Internet users.
- 5.4 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 criminal investigation for illegal Internet activities like hacking, in addition to locating Copyright Bill violators.
- 5.5 The problem now is on civil cases. Since it is civil, we should let the 2 industries (IASPs and Content Providers) to come up with a business arrangement. With more and more court cases on civil infringement, the industry should be able to estimate the possible lost they can recovered. At the same time, IASP should also be able to standardize their workflow to work on the investigation, i.e. more accurate to calculate the cost per search. The 2 industries, with the help of government as mediation, should be able to establish an efficient win-win cooperation channel. Content provider can judge whether it is worth on make the case on court and IASP can help possess a corporate citizen and make small money at the same time.
- 5.6 But in order to make that happened, trust between 2 industries need to be build up. Content providers should provide a single channel for IASP to verify the request in coming from the true content owners. IASP on the other side, should be protected by defense on a possible infringement by provider personal data (easiest way is to write that down on the IASP's code of practice).

## **6) Statutory damages for copyright infringement**

- 6.1 We may not be able to come up with a fair fine. It's premature to draw any conclusion for both content providers and users.

## **7) Copyright exemption for temporary reproduction of copyright works**

- 7.1 It is of no concern to general public and content providers. We don't think copyright owner will sue IASP, OSP for that "technical" temporary reproduction; it's just a waste of resources. Thus, it is to support for the copyright exemption for temporary reproduction of copyright works.

## **8) Conclusion**

We hope that the above recommendations made for the Government of the Hong Kong Special Administrative Region on Copyright Protection in the Digital Environment will help raise awareness on copyright protection in Hong Kong. While protecting intellectual property rights, we should make sure that, these rules must not hamper or hazard the evolving technology and its changes that improve life, it is the "spirit" that we are having when reviewing the copyright policy, which making Hong Kong towards a real digital city.

### **Internet Professional Association**

28 April 2007