December 15, 2004

Communications & Technology Branch
Commerce, Industry and Technology Bureau
Hong Kong SAR Government
8/F, Murray Building
Garden Road, Central
Hong Kong

RE: AmCham's Comments on the 2004 Digital 21 Strategy of the HKSARG

To Whom It May Concern:

The American Chamber of Commerce in Hong Kong welcomes the opportunity to comment on the draft Digital 21 Strategy document for 2004 recently released by the Hong Kong Government (the "Government").

The American Chamber of Commerce in Hong Kong ("AmCham Hong Kong") is a volunteer and independent business organization, which was established in 1969 and now has a history of over 30 years. AmCham Hong Kong is currently the most dynamic and influential international economic organization in the Asia-Pacific region, representing more than 3,200 member companies and enterprises from over 30 nations, with members from the United States, Europe and across Asia. Among them, there are large multinational corporations as well as small and medium-sized enterprises. The objectives and duties of AmCham Hong Kong include representing our diverse membership on issues of common interest and serving as an advocate with governments.

General Comments

As an initial matter, we note that the Government has made a number of significant achievements with respect to information technology, particularly during the last four years as outlined in the paper. The Government should be commended for its ongoing efforts to build a dynamic IT economy and infrastructure in Hong Kong.

This consultation process is a welcome opportunity to provide our input on the draft 2004 Digital 21 paper, which addresses a wide range of issues of considerable interest to the members of AmCham Hong Kong. We view this public consultation process as a recognition by the

Government that collaboration between the public and private sectors is essential to achieving Hong Kong's aspirations to become a leading digital city.

We note, in addition, that numerous aspects of the proposed Digital 21 strategy have implications for multiple government departments. We assume representatives of various agencies have already been consulted for their input. However, it would be useful for the Government to explain the process by which the draft paper was developed and the manner in which it reflects the views of the Government as a whole.

With respect to the content of the draft text, we note that the paper is a relatively general description of broad objectives. It would be helpful if the paper can include a more detailed discussion on how the Government intends to achieve those objectives, including commentary on the financial implications of implementing the proposed strategy. We have provided below a number of specific comments on the draft Digital 21 paper.

1. Government Leadership

As noted in the draft paper, the Government plays an important role in helping Hong Kong position itself as a leading digital city in the region. The draft paper appropriately sets out how the Government fosters innovation through its own use of technology, and through policies that drive investment in technology. Although we agree the Government should continue to show leadership in this area and plan on being a facilitator of IT growth, this should not detract from the need to ensure respect for principles of technology neutrality and freedom of market forces, hallmarks of Hong Kong's economic success over time.

Moreover, developing new services and IT infrastructure requires significant investment, most of it from the private sector. To encourage efficient investment in infrastructure (by both new entrants and incumbent operators) and to promote innovation, regulatory policies must take into account the need for investors to obtain an adequate return on their investment, in the light of the risks taken, and reduce regulatory uncertainty for investors.

Finally, we note that IT development is also very much led by the overall development of the economy. The Digital 21 strategy needs to ride on other government policies that help improve the general economic climate of Hong Kong.

2. Sustainable E-Government Program

Under the Government's e-government program, good progress has been made to maximize e-option coverage for public services. However, in delivering public services and in the conduct of internal operations, the Government should make further efforts to exploit information technology, thereby leading by example. According to the draft paper, one of the Government's plans is to focus on further driving utilization of e-options by leveraging the most appropriate technologies. As part of this process, we encourage the Government to ensure respect for neutrality and market-based decisions.

3. Infrastructure and Business Environment

The Government highlights several key factors that contribute to building and sustaining a healthy business environment in Hong Kong including, among others, the vigorous protection of intellectual property rights; the promotion of e-business; and the maintenance of high standards of security and data protection.

Intellectual Property Rights

The Government has proactively addressed IPR protection on a number of fronts, including education, legislation and enforcement, and historically has shown leadership in the region on this issue. Nevertheless, IP-related offenses across a wide range of industries remain prevalent in Hong Kong. Not only is this a significant concern to rights holders doing business in Hong Kong, but it is also adversely affects Hong Kong's overall economy. Further, the Government's efforts to foster creativity and innovation in the IT industry are seriously undermined by high rates of piracy. Rampant piracy also damages Hong Kong's perceived competitiveness and reputation as a world class city. Conversely, lowering the piracy rate would have a significant positive impact on IT development and the economy as a whole.

Accordingly, we urge the Government to redouble its efforts to protect intellectual property rights in Hong Kong, including by ensuring that existing and proposed legislation maximize IPR protection and provide an effective deterrent against piracy.

Promoting the Adoption of E-Business

Under the proposed Digital 21 strategy, the Government plans to drive e-business and information technology adoption by business sectors. For this to succeed, it is critical that the Government take measures to secure the digital environment. Hong Kong currently has in place extensive legislation concerning computer-related crime as well as legislation aimed to provide a framework for the conduct of electronic transactions.

However, Hong Kong does not have legislation to curb the already serious problem of spam. Worldwide, unwanted, unsolicited, potentially offensive and fraudulent e-mails are estimated to comprise up to 50% of all e-mail traffic, costing U.S. businesses alone US$9 billion each year in terms of productivity and resource loss. Indications are that the level of spam in Hong Kong is similar in percentage terms. A broader consequence is that spam threatens the viability of e-commerce and public trust in computing.

We understand that several countries around the world have decided to develop or have already enacted anti-spam legislation, including Korea, Taiwan, Japan, Australia, the United States and, pursuant to a European Union directive, all the members of the EU.

We believe the Administration needs to show greater leadership in this area, consistent with the Government's vision to build Hong Kong into a leading digital city. In particular, we believe Hong Kong should introduce further legislation to enhance the reliability and trustworthiness of the online environment, focusing in particular on the problem of spam.

Maintaining High Standards of Security and Data Protection

The draft paper refers to global concerns over information security and the need to maintain a legal and secure information framework. Security is a key enabler for e-commerce and e-government, as well as for important services like health care and online banking. However, this important issue is not elaborated upon and little detail is given on measures that the Government proposes to take to address the challenges brought about by security-related issues.

We suggest that the Digital 21 Strategy paper encompass the Government's detailed strategy and plan of action with respect to this issue. This could include discussion of ways in which the Government could (1) ramp up training for governmental and non-governmental IT professionals and end users; (2) lead by example through best practices in the security area; (3) seek to foster a

more regular public/private sector dialogue on security; and (4) drive cross-border cooperation among justice and law enforcement officials to facilitate the effective investigation and prosecution of cybercrime, including through both bilateral relationships and multilateral fora such as APEC.

The Broadcasting Industry

The Government also comments on the increasing convergence of the broadcasting and telecommunications sectors. It is timely to review current regulations governing both of these sectors, not just because of convergence but also because the level of competition has increased considerably since the early days of liberalization. To lessen the burden of regulations and to avoid regulatory distortion of the market, with the existing level of intense competition in the market, regulations should be rewritten from a clean slate, with the regulator having to justify the need for particular regulations.

Initiatives for digitizing broadcasting should be a matter for individual operators as it involves huge costs, issues of commercial viability, readiness of the market, etc. Further, the Government should not mandate digitization as a matter of license obligation with respect to existing licensees.

Both issues are of great importance to the development of the industry. Apart from consultation, we would suggest that the Government form public/private sector working groups to study these topics.

4. Institutional Review

With respect to the role of the Information Infrastructure Advisory Committee (or "IIAC") we note that, since telecommunications networks are a substantial part of the information infrastructure, the IIAC should include representatives from the telecom industry who can play an important advisory role on policy matters and industry development.

The Government also discusses the possible benefits of a unified regulatory structure covering both telecommunications and broadcasting. This is a subject of considerable importance that requires a thorough consultation process, and perhaps also a private/public sector working group that could jointly study the issue and develop recommendations. Because Hong Kong is a relatively small economy, we should not necessarily adopt models designed for larger economies. In any case, even if there were a single regulatory authority there would still be a need for separate rules, given that telecommunications relates to "transmission" while broadcasting relates more to "provision."

5. Technological Development

Information technology offers far-reaching opportunities and the Government should strive to further strengthen Hong Kong's ability to adopt and apply IT and foster a capacity for local development of innovative applications and services that will benefit the people of Hong Kong. As discussed above, the vigorous protection of intellectual property rights is critical to achieving success in the IT industry. Unless key drivers of the IT ecosystem (such as commercial software companies and other copyright owners) are able to protect their work, there will be a decline in innovation and the IT sector will not be able to achieve its full potential. The Government needs to continue taking comprehensive steps to protect intellectual property, including by further raising IPR awareness within the community, strengthening the legislative regime, and increasing the effectiveness of enforcement.

With respect to the specific areas for work identified by the Government, we offer the following observations:

Evolving New Technologies

- The Government should support innovative new technologies. Some of the most promising include web services and extensible markup language or "XML." These advances can integrate global business applications and serve as a bridge among computers and other devices, connecting legacy IT architectures. Web services and XML have the potential to drive a whole new wave of IT-related economic growth, as well as increased efficiency in the way consumers, businesses and governments interact. We urge the Government to outline in the Digital 21 paper what steps will be taken to promote the further development and adoption of these technologies.

Support for Research and Development

- Further investment in research and development is important to the long term development of the IT industry, and we believe this investment should extend to security-related R&D, given the high priority of that issue. As noted in the draft Digital 21 paper, the Government should ensure that technologies developed with government R&D funds are available for commercialization. This will contribute to the development of a healthy IT ecosystem that will spur innovation, further economic growth, and create jobs.

Focus Area: Wireless Technologies and Services

- One of the most promising technological advances today is reflected in the strong growth of wireless mobility, which will continue to provide more personal flexibility and efficiency by cutting the cord that tethers technology to the Internet. The Government should develop policies that facilitate the emergence and growth of new business models that deliver broadband connectivity based upon existing and emerging wireless technologies.

Focus Area: Digital Entertainment

- Consumers are poised to enjoy new forms of digital entertainment through advances in software and other technologies. In order to fully realize the potential of digital and multimedia technologies, the Government needs to ensure the effective legal protection of technological measures designed to prevent unauthorized access to or use of copyrighted material in digital form, or the unlawful distribution of protected works.

- Under Hong Kong law, there are certain protections against circumvention of copy protection used in computer programs and other works. However, the existing law is ambiguous in some respects and should be clarified. For instance: (1) the law does not explicitly state that components of devices are covered; this scope is important to ensure coverage of circumventing devices manufactured and traded as sub-components of otherwise non-objectionable things; (2) the law addresses the circumvention of copy control technologies but does not expressly address access control technologies; technology is developing in a way that makes access control as important as copy control, making the expansion of the scope of the provision to such technologies critically important; (3) the law does not expressly prohibit the act of circumventing technological

protection measures; and (4) there is ambiguity in the law concerning whether and when criminal liability will attach in cases involving the production, distribution, possession, and use of circumvention devices

- In the Digital 21 paper, the Government should express its commitment to further support technological protection measures, including by amending the law to clarify these potential ambiguities.

Openness in Technological and Standards Adoption

- AmCham Hong Kong applauds the Government's interest in promoting a vibrant, innovation-driven IT industry and its efforts to keep Hong Kong at the forefront in the adoption of new technologies. We also strongly believe that Hong Kong's IT policy should be technology neutral and wholly driven by market forces. This is consistent with Hong Kong's longstanding free market philosophy.

- In the Digital 21 paper, the Government commits to promote open source software (OSS) for adoption within both the public and private sectors, including through specific grants of public funds. We believe that users of information technology should have freedom to choose the products that best meet their needs based upon functionality and overall value – and irrespective of where those products are developed and whether they were produced on a commercial or an open source development model. We ask the Government to affirmatively state in the final Digital 21 paper that it will not favor any particular technology or software development model over another, and that it will adhere to principles of neutrality and allow market forces to drive IT decision-making.

- We also note that the Government does not address the concept of "open standards," a term that is generally used to describe technical specifications meant for widespread industry adoption and which have the potential to facilitate interoperability among a range of different products and services. The phrase "open standards" should not be confused with the phrase "open source," and indeed the two concepts are totally unrelated – by way of illustration, the fact that software is developed on an "open source" model does *not* mean it was built using open standards that facilitate interoperability. Given the increasingly critical need for IT products and systems to interoperate effectively, the final Digital 21 paper should include a discussion of how the Government intends to promote IT development based upon open standards.

Grid Computing

- The Government rightly points out the emerging importance of grid computing but does not discuss in detail plans for specific projects in this area. It would be helpful if the final paper included additional information in this regard.

6. Vibrant IT Industry

The Government has rightly recognized that a vibrant IT industry is a major source of economic growth and prosperity. Market data indicates that in 2002 Hong Kong's IT sector contributed US$2.6 billion to the economy, created 20,000 jobs, and contributed US$461 million in tax revenues to the Government in 2002 (source: IDC). However, as discussed in this submission, the health and productivity of the IT ecosystem depends heavily upon the effective protection of intellectual property rights. Improvements in the area of IPR protection would benefit the

economy by increasing local industry revenues, generating additional tax revenues, and creating additional high-wage, high tech jobs.

We recommend including in the final Digital 21 Strategy paper a discussion of how the Government intends to foster the continued development of a vibrant and healthy IT ecosystem that will drive the creation of more high-skilled jobs and higher economic growth. We also agree with the Government that increased access to IP has the potential to fuel innovation, thereby spurring growth and job creation that benefits consumers, industry and the economy as a whole, and therefore we support the Government's plans to open up IPR ownership by the Government for broader access and use by the information technology sector.

With respect to the impact on IT development of the Mainland/Hong Kong Closer Economic Partnership Agreement (CEPA), we note that there was only limited consultation of the telecommunications and IT sectors on specific industry needs. As CEPA is an ongoing exercise, we urge the Government to consult more widely with industry, preferably through the formation of a working group including industry representatives and government officials.

7.   Human Resources in a Knowledge Economy

AmCham Hong Kong fully supports the empowerment of local IT human resources through effective education institutions and curricula. This is necessary to maintain Hong Kong's competitive position in the region as a knowledge-based economy. We assume that such proposed education would span the entire spectrum of technologies, thus maximizing students' exposure on IT and that, for example, with the new Vocational Training Council courses, teachings would not be unnecessarily restricted to any particular technology or development.

8.   Bridging the Digital Divide

We support the Government's efforts to develop initiatives aimed at ensuring that the entire community benefits from IT development. This should encourage the procurement and deployment of IT products and systems that are engineered to increase the accessibility of information technology to individuals with disabilities or who are otherwise disadvantaged. We also encourage the Government to engage and involve the industry in such efforts, rather than drive initiatives on its own, and suggest that the final Digital 21 paper more clearly reflect the goal of public/private sector collaboration in this area.

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Once again, AmCham Hong Kong is pleased to have had this chance to offer input on the draft Digital 21 strategy. Our membership welcomes further opportunities to partner with the Government in developing a comprehensive strategy for achieving even greater success in the development of Hong Kong's information technology industry.

Yours faithfully,

The American Chamber of Commerce in Hong Kong