Dear Sir/Madam,

This letter contains my view on the "Public Consultation on Updating Hong Kong's Copyright Regime Public Consultation Paper". I would like to express my point of view on this issue stated in the paper:

- Hong Kong should not introduce provisions to the CO to restrict the use of contracts to exclude or limit the application of statutory copyright exception(s).

As for the background, I am a professional programmer. I create copyrightable work during work hours as my job duty ("work for hire"). In addition, just like some other programmers, I create copyrightable work outside my work hours that are not within the scope of my employment ("side projects"), including other programs that are completely unrelated to the nature of my job, music, articles, etc.

According to the current copyright ordinance ("CO") section 13, "The author of a work is the first owner of any copyright in it". According to section 14 of CO, "Where a literary, dramatic, musical or artistic work, or a film, is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work ...". Based on the current CO, the first author of "work for hire" is the employer, and the first author of the "side projects" is the employee. However, there's no restriction on the assignment of copyright of "side projects" from the employee to the employer.

Unfortunately, in the market, from time to time I can find employment contracts that requires assigning the copyright of all work to the employer, including "side projects". I do not believe that this kind of employment contract is reasonable. Due to the bureaucracy of some of the companies, it may not be feasible for them to amend the employment contract for the employee. In addition, the employee often does not have much bargaining power. Therefore, he may not be able to voice out his opinion on the wordings of the employment contract and would just tolerate that and sign the contract.

I think that Hong Kong SAR China should introduce restriction of copyright assignment of the aforementioned "side projects" to the employer. Some regions, including Germany and California of the USA, does not allow copyright assignment of "side projects" from employee to the employer.

Without a law preventing "side projects" from getting assigned to the employer, here is what could happen:

- Assuming that the employee declined a job offer due to the wordings of employment contract, it would be a pity both for the company and the employee to miss the talent matching opportunity, which would limit the development of creative economy of HKSAR China.
- Assuming that the employee accepted a job offer that has this kind of contract, the employee may stop working on his "side projects" because he may not be willing to see the copyright of his own "side project" to get claimed by his employer.

Talented programmers often do have "side projects" outside work hours. It can be a private project, a public open source project, or a commercial project. This is how many good programmers had acquired their technical skills. These "side projects" help with their continuous professional development. They also add value to the employee, employer and the society as whole. Therefore, I propose to amend the CO for overriding the employment contract to prevent the copyright assignment of "side projects" from the employee to the employer so that the employee would be able to work on the "side projects" without risking being constrained by the employment contract.

Best Regards,
Mr. Wong