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**HONG KONG COPYRIGHT FORUM'S VIEW ON THE ISSUES SET OUT IN THE PUBLIC  
CONSULTATION PAPER ENTITLED "UPDATING HONG KONG'S COPYRIGHT REGIME"  
FROM THE COMMERCE AND ECONOMIC DEVELOPMENT BUREAU  
("CONSULTATION PAPER")**

**We, Hong Kong Copyright Forum ("HKCF")** is comprised of various sectors of the local creative industry. Currently it has 13 participating organizations, representing widely the copyright and IP industries in Hong Kong.

HKCF fully agree with the Government that Hong Kong cannot afford to lag behind in our IP regime and support the Government to revive the copyright exercise immediately with a goal to re-introduce the Copyright (Amendment) Bill 2014 (the "2014 Bill") to meet with the demand of the IP industry once the Seventh Legislative Council has commenced in January 2022 and aim to complete the legislation processes and pass the 2014 Bill before July 2022.

As we all know, Hong Kong has failed to update our copyright regime for more than 15 years while the technological developments have been advancing in giant steps and rapid speed. The current Copyright Ordinance (Cap.528) ("CO") simply cannot address the different needs of society in the digital environment nor providing efficient and effective protection for copyright. We were deeply disappointed to witness the failure of the passage of the two amendment bills in 2011 and 2014 respectively. Such failures have put Hong Kong over two decades behind in keeping our copyright regime in line with international developments, causing tremendous financial losses to the local creative industries for years due to the ongoing rampant online illegal streaming activities, diminishing the livelihood of many people in the local IP industry and putting off many potential business opportunities from overseas investors.



Before responding to the specific issues of the Consultation Paper, it is useful for us to spell out some facts below as background:

A) Facts on the Piracy Problems – Two major piracy problems, i.e. illicit streaming devices (“ISDs”) and infringing links, have almost destroyed the entire local copyright industries across different sectors.

1. For more than 10 years, ISDs have spread all over the world, hurting deeply into the legitimate revenue of the local movie, video and TV industries. The syndicates engaged in the manufacture and distribution of such ISDs involve Hong Kong people and businesses. Retail shops and stalls are openly selling ISDs with local and overseas contents at Apliu Street and Golden Shopping Arcade in Shamshuipo fearless of law enforcement. Online sales of ISDs are also rampant. Customs would have taken more enforcement actions had there been adequate and clear provisions in the CO. Civil actions are slow and ineffective. New legal provisions on criminal sanctions can provide a fast deterrent to the widespread ISDs problem.

2. Infringing links have grown to be a huge problem as mobile phones are becoming one of the daily necessities for almost everyone now and they can access infringing contents via links on the Internet. Desktop/laptop computers, ePads and eTVs can also access infringing links. Websites and chat forums with huge volumes of infringing links listed with movie names/TV drama titles (down to individual episodes) are abundant. Similar infringing websites also exist for music and comic works. They exist directly or indirectly for the purpose of gain without the authorization of copyright owners. They are not personal videos for private exchange between family members or friends.

The 2014 Bill provides that “a person does not communicate a work to the public if the person does not determine the content of the communication”. Therefore, the mere act of sharing infringing contents via a hyperlink may not constitute copyright infringement, if the hyperlink only provides those who click on it a means to access materials on another website.

We are disappointed that the copyright industries had not been consulted on this issue before the Government made public such a position. In fact, the Court of Justice of the EU has ruled that posting links to copyrighted materials for profit may infringe copyright even if the person sharing the link is not the one uploading the copyrighted material.

The damage done by infringing links to the various sectors in the copyright industries is very real



and severe, and the problem must be addressed without further delay. Otherwise, this legislative review will serve little purpose to the copyright industries. Criminal sanctions on uploading and distributing infringing links should be added.

B) On the specific issues in the Consultation Paper:

1. **Exhaustive Approach to Exceptions**

We do not object to continue to maintain the current exhaustive approach by setting out all copyright exceptions based on specific purposes or circumstances in the CO.

2. **Contract Override**

We do not oppose the Government's position to maintain a non-interference approach to contractual arrangements agreed between copyright owners and users.

3. **ISDs**

We strongly suggest Hong Kong to introduce specific provisions to the CO to govern devices used for accessing unauthorized contents on the Internet, including set-top boxes and Apps.

Referring to the arguments of “no genuine need” (stated in 5.9 (a) of the Consultation Paper) that the existing legal regime has been used successfully to deal with ISDs as demonstrated in the Maige Box case; and there is “risk of banning legitimate use of neutral devices” (stated in 5.9 (b) of the Consultation Paper), we have a different view.

ISDs have evolved over the years to different formats to evade enforcement actions. “Neutral devices” are uncommon to find these days. They actually are not that “neutral” as one would say (like the audio cassette recorders or video cassette recorders in the old days). As tested and verified by one of our members, using an “Unblock Tech” set-top box and a “EVPAD” set-top box as examples, one must have an “Unblock Tech” decoder to access the contents that only the “Unblock Tech” set-top box will provide whereas the EVPAD decoder cannot, and vice versa.

Hong Kong should without further delay introduce specific criminal provisions in the CO to deal with all parties engaged in infringing ISDs, including manufacturers, distributors and salespersons of ISDs. The risk of banning neutral devices can be avoided by carefully crafting the wording of the specific ISDs provisions.

The ISDs problem has been reported over the mass media for many years and many visitors to



Hong Kong like to visit the shops at Apliu Street and its vicinity to purchase ISDs. Isn't it a laughingstock for the international copyright community? The current CO (and the proposed 2014 Bill) does not provide adequate and clear provisions for Customs to stop all ISDs activities, as evidenced by the rampant sales of ISDs openly in Hong Kong over the past years!

In addition, we have concerns on the draft s.28A(4) to (6) of the 2014 Bill which are set out below:

28A(4) The mere provision of facilities by any person for enabling or facilitating the communication of a work to the public does not of itself constitute an act of communicating the work to the public.

*(A person who intentionally provides facilities or other means and knowingly enables or facilitates the unauthorized communication of copyrighted works should be caught.)*

28A(5) A person does not communicate a work to the public if the person does not determine the content of the communication.

*(Most infringers who post or embed infringing links on websites and ISDs do not determine the content of the links. This provision would effectively carve out all acts of re-transmission of unauthorized contents.)*

28A(6) For the purposes of subsection (5), a person does not determine the content of a communication only because the person takes one or more steps for the purpose of –

- (a) gaining access to what is made available by someone else in the communication; or
- (b) receiving the electronic transmission of which the communication consists.

*(The rapid growth of infringing links has already caused substantial damage to various sectors in the copyright industries. Any person who intentionally makes knowingly infringing links available (whether or not that person can determine the contents of communication) should not be exonerated and should be subject to criminal sanctions. We urge for deletion of s.28A(4) to (6) of the 2014 Bill.)*

Despite the fact that Singapore is the only common law jurisdiction so far that has enacted ISD specific provisions, it does not mean that Hong Kong ought to wait till more jurisdictions have enacted such provisions before following suit. Singapore was smart to take the first step to save her copyright industries. Why can't Hong Kong also "save our neck" quickly? Leaving copyright owners, especially the SMEs, to take civil action against ISDs dealers is slow and





ineffective.

Take Taiwan as another reference, they have passed a copyright law amendment in 2019 to address the ISDs and illegal applications. With the passage of such amendment, it enabled their police force in conjunction with the local IP industry to successfully crack down tens of ISD syndicates and seized thousands of ISDs including but not limited to Unblock, U-Box, Q-Box, Joy TV, Dream Box, Eplay, EV Box, PV Box, QBTB Box, etc. (please refer to Appendix I attached herewith in relation to the details of the Taiwan Copyright Law: Article 87 & Article 93)

#### **4. Judicial Site Blocking**

We do think Hong Kong should introduce a copyright-specific judicial site blocking mechanism to the CO. However, we believe the best way is to have the Government instead of copyright owners to apply to the court for an order of injunction, to require OSPs to take steps to prevent or disable their local subscribers or users from accessing websites or online locations, usually outside the territory of Hong Kong, that have been identified to have dedicated to distributing infringing contents of copyright works or facilitating such distribution without authorization from respective copyright owners who have filed the complaints.

One may argue that it should be the responsibility of copyright owners to seek injunction from the court, within its jurisdiction, by ordering the OSPs to block the access to infringing activities, should judicial site blocking be introduced. Also, there may be concerns in jurisdiction and the costs of OSPs in complying with site blocking orders. To address these two points: (a) we must realize the costs of copyright owners in seeking injunction from the court in ordering the OSPs to comply with site blocking orders which usually involves tremendous amount of monies and time, which many cannot afford, especially the SMEs, and very likely they may consider not taking any civil action against the offenders; (b) we are confident that OSPs are willing to cooperate with copyright owners to combat online piracy once copyright-specific statutory provisions are written out that could clarify the nature and extent of an OSP's responsibilities, as having a 'safe harbor' for them would be their key concern.

#### **5. Extension of the copyright protection term from 50 years to 70 years**

We believe that it is essential to extend the current copyright protection term in Hong Kong from Life+50 years to Life+70 years. According to the latest global database: [https://en.wikipedia.org/wiki/List\\_of\\_countries%27\\_copyright\\_lengths](https://en.wikipedia.org/wiki/List_of_countries%27_copyright_lengths), 86 countries have already their copyright protection term to be or exceed 70 years. Those countries in Asia also include



Indonesia, Japan, South Korea, Singapore and Sri Lanka. In order to facilitate Hong Kong as an International Intellectual Property Trade Centre, we must strengthen our copyright protection term to attract both the overseas and local creative industry stakeholders/enterprises to/remain in the Special Administration Region.

Having stated our views to the five issues above, we are pleased to the introduction of a new technology-neutral exclusive communication right for copyright owners to communicate their works to the public through any mode of electronic transmission being proposed in our copyright regime.

In response to the digital environment, we find that exemption clauses encourage the general public to disrespect copyright owners' interests rather than promote IPR since most entities did not inform the corresponding copyright owners about the copyrighted works usage and their intention. However, we are not resisting the educational and NGO exemption, but certain restrictions apply. We propose to set limitations for the film, music, comics and animation copyright exceptions in the digital environment for the education sector, libraries, museums and archives that (a) it shall not be more than ten percent (10%) of the copyright works, while each continuous usage should not exceed 25% of the allowable usage when film copy is involved, and (b) proper application documents are crucial to inform the copyright owners, which is fundamental for all educational establishments and NGO entities to promote IPR respect. According to the curriculum planning, there should be some documents to be filled in to notify the copyright owners about the intention of the copyrighted works usage. If without limitation, we worry that it will not only seriously hinder the development of local digital copyright works but also the competitive edge of Hong Kong as a regional copyright trading hub.

In summary, we strongly believe that it is of utmost importance to the passage of the Copyright (Amendment) Bill 2014 in the shortest time possible so that copyright owners will be empowered with the communication right as provided therein and that the law enforcement will be able to help combating and eliminating the rampant online infringing activities that have been going on for so many years. However, it is the unanimous stand of HKCF that the draft s.28A(4) to (6) of the 2014 Bill (which are set out above) must be removed from the 2014 Bill before it is presented to the LegCo for review and proceeding further. Should this demand be denied for whatsoever reason, HKCF shall back down its support to the copyright exercise.

We realize that there may still be some different views towards certain issues in this document from other stakeholders but hopefully that would not be any excuse for the Government to



prolong the legislative processes or become a result in adjournment of the proceedings after the First Reading at LegCo and then another failure of the passage of the amendment bill.

Thank you for your kind attention. Should there be any queries to the views we have put forth above, please feel free to contact us at any time.

Yours sincerely,

For and on behalf of

**Hong Kong Copyright Forum**

A handwritten signature in blue ink, appearing to read 'Clera Chu', is written over the printed name and title.

Clera Chu

Its: Convener

**Participants of the Hong Kong Copyright Forum (in alphabetical order):**

1. Asian Licensing Association Co. Limited
2. Broadteck International Co., Limited
3. Hong Kong Comics and Animation Federation Limited
4. Hong Kong Creative Industries Association Limited
5. Hong Kong Digital Entertainment Association
6. Hong Kong Motion Picture Industry Association Limited
7. H.K. Record Merchants Association
8. Hong Kong Theatres Association Limited
9. International Federation Against Copyright Theft (Greater China) Limited
10. MediaQuiz International Holdings Limited
11. Movie Producers and Distributors Association of Hong Kong Limited
12. Song Entertainment Limited
13. Television Broadcasts Limited

**For inquiries, please contact:**

1. Ms. Clera CHU – Convener ( )
2. Ms. Jane WONG – Secretariat ( )



## Appendix I:

### Taiwan Copyright Law: Article 87 & Article 93

#### 第 87 條

有下列情形之一者，除本法另有規定外，視為侵害著作權或製版權：

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八、明知他人公開播送或公開傳輸之著作侵害著作財產權，意圖供公眾透過網路接觸該等著作，有下列情形之一而受有利益者：

- （一）提供公眾使用匯集該等著作網路位址之電腦程式。
- （二）指導、協助或預設路徑供公眾使用前目之電腦程式。
- （三）製造、輸入或銷售載有第一目之電腦程式之設備或器材。

前項第七款、第八款之行為人，採取廣告或其他積極措施，教唆、誘使、煽惑、說服公眾利用者，為具備該款之意圖。

#### Article 87

Any of the following circumstances, except as otherwise provided under this Act, shall be deemed an infringement of copyright or plate rights:

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8. Knowing that the works broadcast or transmitted publicly by another person infringe economic rights, with the intent to provide the public to access such works by the Internet, acting as follows, and to receive benefit therefrom:

- (1) To provide the public with computer programs which have aggregated the Internet Protocol Addresses of such works.
- (2) To direct, assist or preset paths to the public for using computer programs in the preceding item.
- (3) To manufacture, import or sell equipment or devices preloaded with the computer programs of the first item.

A person who undertakes the actions set out in subparagraphs 7 or 8 above shall be deemed to have "intent" pursuant to that subparagraph when the advertising or other active measures employed by the person instigates, solicits, incites, or persuades the public to use the computer program or other technology provided by that person for the purpose of infringing upon the economic rights of others.





## Appendix I:

### Taiwan Copyright Law: Article 87 & Article 93

#### 第 93 條

有下列情形之一者，處二年以下有期徒刑、拘役，或科或併科新臺幣五十萬元以下罰金：

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四、違反第八十七條第一項第七款或第八款規定者。

#### Article 93

In any of the following circumstances, a sentence of up to two years imprisonment or detention shall be imposed, or in lieu thereof or in addition thereto, a fine of not more than five hundred thousand New Taiwan Dollars:

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4. Violations of subparagraphs 7 or 8 of paragraph 1 of Article 87.