

**The Hong Kong
Institute of
Trade Mark
Practitioners**
香港商標師公會

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By Email (co_consultation@cedb.gov.hk)

Commerce, Industry and Tourism Branch
Commerce and Economic Development Bureau
23/F, West Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Attention: Division 3

Dear Sirs

Public consultation on updating Hong Kong's copyright regime

We would like to thank the Secretary for Commerce, Industry and Technology for the opportunity to comment on updating Hong Kong's copyright regime.

1. Background

This submission is made by The Hong Kong Institute of Trade Mark Practitioners Limited ("HKITMP"), the membership of which consists of solicitors, barristers, trade mark agents and patent agents, who are principally engaged in trade mark and other intellectual property practice. The HKITMP's aim is to protect the interests of trade mark owners, for which purpose we are active and in regular liaison with the Intellectual Property Department and other relevant industry bodies.

The HKITMP acts as a conduit and forum for discussion, and promotes the views of the professionals who engage in trade mark and other intellectual property work.

This submission on behalf of the HKITMP has been prepared by the HKITMP's Copyright Committee, consisting of Council Members who have a particular interest and expertise in copyright. The views expressed are from a legal and policy perspective in our capacity as solicitors and intellectual property law practitioners, acting independently without regard to the views of any particular copyright body or organisation.

2. Issues raised in the Public Consultation Paper

The HKITMP agrees with the Government's proposed approach in respect of the four issues raised in the Public Consultation Paper, namely:

- (a) **exhaustive approach to exceptions:** To maintain the existing exhaustive approach by setting out all copyright exceptions based on specific purposes or circumstances in the Copyright Ordinance (Cap. 528) ("**Ordinance**").
- (b) **contract override:** To maintain the current approach to contractual arrangements between IP right owners and users and not introduce provisions to the Ordinance to restrict the use of contracts to exclude or limit the application of statutory copyright exception(s).
- (c) **illicit streaming devices:** Not to introduce specific provisions in the Ordinance to govern devices used for accessing unauthorised contents on the Internet.

In addition, the introduction of the communication right into Hong Kong's copyright law is long overdue. The communication right will address copyright issues that have emerged from new technology such as streaming (which is especially important now in the 5G world). Similar communication rights have been introduced for a long time in other jurisdictions – including Mainland China, the European Union, Australia, the United Kingdom, Singapore, New Zealand and Canada – and Hong Kong has been left sorely behind.

- (d) **judicial site blocking:** Not to introduce a copyright-specific judicial site blocking mechanism into the Ordinance at this stage.

3. Urgency for current update; subsequent consultations

The HKITMP considers the implementation of the Copyright (Amendment) Bill 2014 ("**2014 Bill**") long over-due. The lack of updates to Hong Kong's copyright regime means Hong Kong is behind in comparison to other jurisdictions and IP rights owners in the city are on the back foot. In order to reinforce Hong Kong's role as the regional IP trading centre, it is of paramount importance that Hong Kong's copyright regime is up-to-date and in line with those of all major international jurisdictions.

We urge the Government to update the copyright regime as soon as possible and use the 2014 Bill as the basis of the legislative package. We further urge the Government to push forward and accelerate the process wherever possible.

Once the current update is completed, we recommend the Government to immediately commence another consultation process on broader changes, including on issues identified in Chapter 7 of the Public Consultation Paper, as well as to consider (a) whether to establish a copyright register, and (b) review of the Copyright Tribunal powers and procedure.

We can be available to address any queries that the Government may have on the above.

Yours faithfully

A handwritten signature in black ink, consisting of a series of connected loops and curves, representing the name Theresa Mak.

Theresa Mak
President

The Hong Kong Institute of Trade Mark Practitioners