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Submission: Public Consultation on Updating Hong Kong's Copyright Regime 2022

1. Introduction

This submission is made on behalf of IFRRO – the International Federation of Reproduction Rights Organisations – the international association representing collective management organisations in the text and image sector. IFRRO has 153 members in over 80 countries worldwide. Our member in Hong Kong is Hong Kong Reprographic Rights Licensing Society (HKRRLS). Although IFRRO also includes representative author and publisher associations in its total membership, this submission reflects the views of the CMO members of IFRRO.

We have read and support the submissions from HKRRLS and the International Association of Scientific, Technical and Medical Publishers, STM.

2. General Comments

The importance of the creative sector to our social and economic wellbeing has been highlighted over the last two years of the pandemic. Recent studies, such as this [study](#) in Europe, also demonstrate that the pandemic has had a severe impact on the creative sector, causing a loss in 2020 of more than 30% of 2019 revenues. Consequently, support and encouragement for the creative sector is needed more than ever at this time.

The creative sector depends on a strong and efficient copyright system, enabling the effective management and enforcement of rights. The copyright system must also keep pace with the increasingly online and digital environment in which we live and work. And, of course, if Hong Kong is to maintain and build on its position as a regional intellectual property hub, strong and effective copyright protection is required.

For these reasons we are pleased that the government of Hong Kong is taking action to update its copyright system through the implementation of the communication right. However, we have some reservations regarding the exceptions to the new right which we explain later in this submission.

We also note that you have asked for comments on possible new issues for further study. We suggest that the possible implementation of a comprehensive private levy compensation system should be one of these issues. The importance and value of a private copying levy to the cultural and creative industries has been highlighted during the pandemic, when due to measures such as lockdowns and social distancing, the income from private levies became increasingly important to many creators around the world.

As Hong Kong aspires to keep abreast of the development of international norms in its copyright law, we consider another issue that warrants further consideration is internet platform liability, as in recent years there have been developments in other parts of the world regarding the responsibility of ISPs for the use of the content that is shared on their networks.

Issues Raised in the Public Consultation Paper

2.1. Key Legislative Proposals in the 2014 Bill

Communication Right

IFRRO supports the introduction of the communication right. As society becomes increasingly digitised and interconnected, it is also increasingly important to maintain parity with international developments and the standards of protection in overseas jurisdictions.

However, we have concerns regarding the “carve outs” from the communication right, and suggest that they be narrowed, and that the legislation clarify that:

- Users and /or platforms that deliberately facilitate infringing acts of content creators, such as pirate sharing platforms can still be held liable,
- If the service provider has been notified of infringing materials on their website and they do not take down or take steps in accordance with the safe harbour, they can still be held liable,
- Even if the person does not determine the content, if that person shares and makes content widely available to a prejudicial extent, or shares the content for non-commercial purposes, they should still be considered to have “communicated” the work.

Extension of Existing Exceptions to the Communication Right

We agree that it is necessary to extend existing exceptions to the new communication right, however we note that this will significantly expand the uses permitted under exceptions and believe that some further safeguards for copyright owners should be introduced.

In this regard we suggest that a provision (similar to section 203 of the Singapore Copyright Act 2021) be introduced limiting to two the number of extracts from the works of an author or publisher that can be included in a collection of readings compiled by an educational establishment.

We also have concerns that the number of educational establishments able to rely on the exceptions will be significantly widened because of the reference in the definition of “educational establishment” in the Copyright Ordinance to “*schools which are registered or provisionally registered under the Education Ordinance*”. As privately run tutorial centres, many of which are operated for profit making purposes, are registered under the Education Ordinance, these profit-making centres will be able to rely on the exceptions

for education. As a result, we urge that the eligibility to rely on the exceptions be limited to non-profit organisations as is the situation in each of Singapore and the United Kingdom.

New Fair Dealing Exceptions

In respect of the proposed new fair dealing exception for commenting on current events, we note the development in recent years for internet platforms and others to use extracts from newspaper articles to drive traffic to their websites. This development has taken place at a time when traditional news media is threatened by declining revenue.

The introduction of this new fair dealing exception will increase the challenges for the news media in negotiating licences for the use of their content with such platforms, particularly as the platforms will be able to assert that their use of the content was a fair dealing. For that reason, we urge that the exception be made subject to the existence of a licence as is the case for the educational use exception in section 45.

2.2. Exhaustive Approach to Exceptions

IFRRO supports the decision to maintain the existing fair dealing framework for exceptions. This is not only because of the importance of legal certainty but also from a concern that a move to a non-exhaustive approach would lead to the exploitation of copyright owners with an associated need for them to incur the significant expense of litigation to secure their rights. It is not the role of courts to develop copyright policy, that is the prerogative of the legislature, following appropriate consultations with stakeholders.

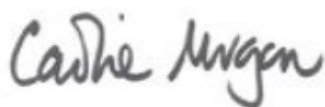
2.3. Contract Override

IFRRO also supports the maintenance of the current position of not statutorily restricting contract override. We hold this view because of the lack of evidence to support any change, and also because of the importance of maintaining freedom of contract in Hong Kong's free market economy.

2.4. Possible New issues for Further Study

We congratulate the Hong Kong government on its commitment to updating and evolving its copyright law. We look forward to further and ongoing consultation on these important issues.

Thank you for the opportunity to make a submission to this review. If you have any questions about the matters raised in this submission please do not hesitate to contact me.



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