

UNION INTERNATIONALE DES EDITEURS  
INTERNATIONALE VERLEGER - UNION

INTERNATIONAL PUBLISHERS ASSOCIATION  
UNION INTERNACIONAL DE EDITORES

Mr Joseph W. P. Wong  
Secretary for Commerce, Industry and Technology  
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Hong Kong

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30 April 2007

Dear Mr. Wong,

**Comments on Consultation Paper CB(1)694/06-07(03): “Copyright Protection in the Digital Environment”**  
**Issues of particular concerns to the International Publishers Association**

The International Publishers Association (IPA) is the international federation of trade associations representing book and journal publishers worldwide. Established in Paris in 1896, it now counts 72 national, regional and specialised publishers associations from 60 countries (including many from the Asia-Pacific region) among its members. IPA is an accredited non-governmental organisation enjoying observer status to United Nations organisations, including the World Intellectual Property Organisation. One of IPA’s main goals is the development and protection of copyright.

IPA welcomes the opportunity to participate in the consultation on the issue of “Copyright Protection in the Digital Environment” (document CB(1)694/06-07(03); in this letter referred to as the “Consultation Document”).

In our submission, we focus on the main aspects of the considerations and proposals presented in each chapter of the Consultation Document. We reserve the right to make further or additional comments at a later stage. We note that other organisations representing creators, including HKIPA and IIPA, are submitting comments addressing general rightsholder concerns, and we commend their submissions, which we wholly endorse, to your attention. Commenting on each of the chapters in turn:

***Chapter 1: Legal Liability for Unauthorised Uploading and Downloading of Copyright Works***

- Criminal sanctions are an important deterrent, and therefore an important enforcement tool generally. IPA therefore welcomes Cap. 528 of the Copyright Ordinance imposing criminal sanctions for illegal uploading.

- The act of “uploading” is difficult to define, however, in particular if it is to catch all cases of making available, especially in P2P networks. Therefore the act of illegal downloading should be subject to possible criminal liability, just like the act of illegal uploading.
- Subject to exceptions and limitations already contained in copyright law, criminal sanctions should be imposable whenever a reproduction amounts to an illegal up-and download (Para. 1.11, Option (a)). Any link to whether the unauthorised up/downloading is “significant in scale” or for “direct commercial advantage” – as proposed in Para. 1.11, Option (c) - creates unnecessary uncertainty.
- IPA disagrees with consideration (c) in Para. 1.9 that fear of criminal liability may deter users from exercising legitimate uses of copyrighted material. Licensing solutions can be found (e.g. through HKRRLS, who is working diligently towards this goal), and these increasingly cover the electronic environment.
- IPA calls upon HKSAR to also impose criminal liability where persons induce others to carry out unauthorised up/downloading.

***Chapter 2: Protection of Copyright Works Transmitted to the Public via all Forms of Communication Technology***

- An “all-embracing right” for creators, including publishers, to communicate their works to the public should be introduced as suggested in Para. 2.7 of the Consultation Document.
- Infringement of this right should attract civil and criminal liability.
- This new right, and criminal liability for its infringement, will incentivise creators to explore and invest in new business models, which may facilitate the use of copyright content for users and other businesses.

***Chapter 3: Role of Online Service Providers (OSPs) in Relation to Combating Internet Piracy***

- HKSAR should ensure the creation of a robust legal regime for indirect liability, with plenty of incentives for OSPs to co-operate with rightsholders.
- In this context, IPA would like to bring the submissions of HKIPA and IIPA (both also representing the publishing industry) to HKSAR’s attention, and in particular the recommended features for the parameters of co-operation.
- Effective sanctions should be imposable on OSPs failing to co-operate.

***Chapter 4: Facilitating Copyright Owners to Take Civil Action against Online Infringement***

- A specific mechanism should be provided under the Copyright Ordinance for creators, including publishers, to request Internet Access Service Providers (IASPs) to disclose the identity of their clients who are allegedly engaged in online infringing activities. Related privacy concerns can be addressed in the contract between the IASP and its clients.
- *Norwich Pharmacal* orders have in practice burdened creators with substantial court and legal costs, and have put unnecessary case loads on the courts.
- The specific mechanism should not expose creators to excessive administrative costs, or court fees, making the use of the mechanism practically impossible, in particular for individual creators.

***Chapter 5 – Statutory Damages for Copyright Infringement***

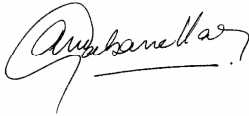
- IPA supports the introduction of statutory damages for copyright infringement.
- Any system requiring creators to prove actual damages would not serve as a deterrent to further infringements as required by TRIPS Article 41(1), as it will be practically impossible for the creator to establish how many times their work was illegally downloaded or transferred on a P2P-system.

***Chapter 6 – Copyright Exceptions for Temporary Reproduction of Copyright Works***

- IPA would like to remind HKSAR that any copyright exception must comply with the three-step-test of TRIPS Article 13: HKSAR should “confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.”
- In this context, HKSAR should bear in mind the increasing economic importance of transient copies, the use of which forms the basis of various new business models. IPA therefore objects to Consideration (a) in Para 6.10.

IPA respectfully requests that HKSAR seriously considers our concerns and views before formulating the government proposals later this spring.

Yours faithfully,



Ana Maria Cabanellas  
IPA President