

1. HKITF believes a review and consultation of *copyright in the digital environment* is needed in Hong Kong, but the scope of the current consultation paper, "*Copyright Protection in the Digital Environment*" is too narrow and often one-sided. Before a careful study of what the concept of *copyright* should be in the modern digital world, it is wrong to proceed directly to assume "protection" is the only matter that needs to be strengthened.
2. The first two sentences in the Government's consultation paper stated: "The Government is committed to providing a robust copyright protection regime. This provides an environment conducive to the sustainable development of our creative industries." We believe that it is more appropriate if the first sentence reads as: "The Government is committed to providing a robust *copyright regime*." For the second sentence, we simply do not agree that by taking the approach in the consultation paper, there will be any benefits for the creative industries in Hong Kong. In fact, we believe that it will pose more problems and obstacles for much of the creative activities of the Web 2.0 world of today, including such activities like blogging, audio/video remixing and posting, etc. that depends greatly on follow-on innovation.
3. We point to the following from the UK Government's "Gowers Review of Intellectual Property": "The ideal IP system creates incentives for innovation, without unduly limiting access for consumers and follow-on innovators. It must strike the right balance in a rapidly changing world so that innovators can see further by standing on the shoulders of giants." This is a more much appropriate attitude to adopt when looking at the issues concerning intellectual property.
4. We believe that it is too early to determine the issues of the introduction of criminal liability for so-called unauthorized uploading and downloading copyright works, because we must fully review the proper copyright regime in the digital environment first. Current legislation and law enforcement have also been shown to be successful in the prosecution in Hong Kong of the first BT users in the world.
5. HKITF is concerned about the introduction of liabilities for online service providers (OSPs) for the so-called online piracy activities undertaken by their clients on their service platforms. We maintain that OSPs must be continued to be allowed the exemption from liabilities based on its common carrier status. Any change to this will have lasting and irreparable damaging effects to Hong Kong's freedom of information, a cornerstone of Hong Kong's economic success, not to mention also adding significant and unnecessary cost to OSP operations that will undoubtedly result in higher costs for all consumers.
6. The consultation paper also did not address the need for education at all, and we believe that this omission must also be rectified, as it is impossible to



eradicate the issues with copyright infringement without proper education effort to change the attitudes and behaviours of the users.

7. We also believe that the current consultation is inconsistent with the previous round of consultation and legislation by Government on intellectual property. We note that in the current amendment bill under consideration by the Legislative Council includes significant waivers for infringements of software copyright in the commercial sector, such as the limits on director liabilities to *only those with management responsibilities*, and the introduction of statutory defence for employees. The overall message sent is that enforcement is much stricter for the private citizens at home than for organized businesses using pirated software for commercial activities. This is simply unacceptable and sends the decidedly wrong message.
8. We recommend that the Government should first revise the current consultation paper with a more balanced review paper to tackle copyright in the digital environment, rather than addressing purely enforcement issues. This consultation must include the discussion of all relevant alternative and updated copyright concepts including creative commons, compulsory or voluntary licensing, etc., as well as recommendations on the mandatory introduction of fair use for *all consumers* from the recording industry.

Hong Kong Information Technology Federation
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Established in 1980, the Hong Kong Information Technology Federation is a non-profit, non-political trade association that acts as a forum in which the IT-related businesses in Hong Kong can work together for the benefit of the industry and to maintain a high level of business practice amongst the members. Web: <http://www.hkitf.org>