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Response to The Proposed Copyright Amendment Bill 2011

We are writing in response to the Copyright (Amendment) Bill 2011 (“Proposed Bill”), which was posted at <http://www.legco.gov.hk/yr10-11/english/bills/b201106033.pdf> but deferred for submission to the legislative council because of the public’s concern on parody which resulted in the need for a new round of consultation.

The HKISPA would like to take this opportunity to respond to a matter that relates to the proper operation of ISPs.

The HKISPA and its members have grave concerns regarding the potential abuse of the notice mechanism under Sections 88A to 88I (Division IIIA - Limitations on Liability of Service Providers Relating to Online Materials) of the Proposed Bill.

We appreciate that Section 88C of the Proposed Bill sets out the elements that must be present in the notices and counter notices to make them valid, and that it is defined an offence to make materially false statements in notices. However, as the relevant ISP would have to process and review all notices that are submitted (even those that do not comply with Section 88C), we are concerned that the system may be abused if huge amount of notices not in compliance with Section 88C are posted to ISPs and it would impose significant administrative costs to be borne mainly by the ISPs concerned.

The HKISPA therefore proposes to amend the Proposed Bill as follows:

Amend 88E by adding the underlined words below:

“88E. Offence of making false statements or non-compliant notices”

(1) A person commits an offence if the person—

- (a) *makes any statement in a notice of alleged infringement or counter notice that the person knows to be false in a material respect; or*
 - (b) *recklessly makes any statement in a notice of alleged infringement or counter notice that is false in a material respect.*
 - (c) *recklessly submits notices not in compliance with section 88C.*
- (2) *A person who commits an offence under subsection (1) is liable on conviction to a fine at level 2 and to imprisonment for 2 years.”*

Amend 88F by adding the underlined below:

“88F. Civil liability for making false statements or non-compliant notices”

- (1) *Any person who makes any statement in a notice of alleged infringement or counter notice that the person knows to be false, or does not believe to be true, in a material respect, or recklessly submits notices not in compliance with section 88C, is liable in damages to any person who suffers loss or damage as a result of the making of the statement.*
- (2) *In this section—*
- loss or damage*** (損失或損害), *in relation to a statement, means loss or damage that is reasonably foreseeable as likely to result from the making of the statement.”*

Thank you for your kind attention.

Yours very truly,



Lento Yip
Chairman

On behalf of the Council of the Hong Kong Internet Service Providers Association