



## Country Report Hong Kong

Annual report to the IFLA CLM committee

Helsinki Finland 2012

### Legislation

The Hong Kong Special Administration Region (HKSAR) Government proposed to amend the Copyright Ordinance with the Copyright (Amendment) Bill 2011 (the “Bill”). According to the Government, the Bill seeks to update the copyright law to ensure that (a) it endures the test of rapid advances in technology, (b) it enables cooperation between copyright owners and online service providers (OSPs) in the fight against online infringement, and (c) it facilitates new modes of uses such as e-learning. Key provisions in the Bill include:

- (1) A technology-neutral exclusive right for copyright owners to communicate their works through any mode of electronic transmission, with criminal sanctions against those who make unauthorised communication of copyright works to the public
- (2) Exceptions to (1) above to allow greater flexibility to the education sector in communicating copyright works when giving instructions, and to facilitate libraries/archives/museums in their daily operations and in preserving valuable works. At the same time, preconditions for the exceptions in the form of precautionary measures to prevent unauthorised copying or further communication are included.
- (3) Statutory provisions to establish a “safe harbour” for OSPs to limit their potential liability for copyright infringement occurring on their service platforms. This “safe harbor” is established by a non-statutory Code of Practice listing the conduct expected of OSPs when notified of online piracy.
- (4) A copyright exception for temporary reproduction of copyright works by OSPs, which is technically required for the digital transmission process to function efficiently
- (5) A limited copyright exception for media shifting of sound recordings (e.g. ripping music from CD into MP3 format) for private and domestic use under prescribed conditions
- (6) Additional factors to assist the Court in considering the award of additional damages in civil proceedings pertaining to online infringement

The Bill was published in the Gazette and its first reading had been taken place in the Legislative Council. In response to around 1,300 proposed amendments and a great

concern of its limitations to parody and freedom of speech, the Government delayed its second reading. According to the Government, the Bill would not go ahead during the current term of the Legislative Council as lawmakers have many other pressing issues to deal with in the few remaining sittings.

### **Non-statutory Code of Practice**

The HKSAR Government proposed a non-statutory Code of Practice for Online Service Providers and put it forward for public consultation. Universities submitted their comments to the Government via The Heads of Universities Committee Task Force on Copyright in Education.