

ASIAN PATENT ATTORNEYS ASSOCIATION

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“A Friend with a Long and Dark Shadow - Web 2.0 Age vs. COPYRIGHTS

- *How should the copyright system function effectively to accommodate, or to cope with this global integration movement in the long-term interest of the global society?”*

**Alice Chan
Hong Kong**

INTRODUCTION:

The term "**Web 2.0**" is commonly associated with web applications which facilitate interactive information sharing, interoperability, user-centered design and collaboration on the World Wide Web. Examples of Web 2.0 include web-based communities, hosted services, web applications, social-networking sites, video-sharing sites, wikis, blogs, mashups and folksonomies like Facebook, Twitter, LinkedIn, YouTube, Skype, Digg, Craigslist and Wikipedia, to name a few.

A Web 2.0 site allows its users to interact with other users or to change website content, in contrast to non-interactive websites where users are limited to the passive viewing of information that is provided to them. Web 2.0 websites allow users to do more than retrieving information. It includes the following features and techniques:

- (i) search
- (ii) links
- (iii) authoring
- (iv) tags
- (v) extensions
- (vi) signals.

Web 2.0 represents a shift in the Internet from a mostly one-way information flow to an evolving interactive platform, deriving its efficacy from inter-human connections and other network effects. At the same time, globalisation and the spinning integration of information, innovation, knowledge, authorship, creativity, intellectual activities, human thoughts, and their societies are posing new problems in effectively striking a balance between (a) reinforcing growth of web-wise interaction and co-creation; and (b) the protection of intellectual property rights, in

particular copyright, both ends of the spectrum are for the common good of the human evolution. How should this see-saw be balanced?

Pro-Individual Perspective

Web 2.0 platforms promote the free flow of information, the freedom of speech and press, the freedom of creation and co-creation, and the protection of personal privacy.

In Economics, generally speaking, for traditional goods and services, the **law of diminishing marginal utility and diminishing marginal returns** apply, that is, when the demand of traditional goods/services grow, the each additional added value or utility or profit will decrease.

In the age of Web 2.0, it is characterised by a unique “networking effect”: namely, as the size of the user base grows, the utility of such technological networks rises, not falls. In an information economy where the primary output is an intangible idea, design, service or website, not a physical product, the rise of the intellectual property and the services-based economy has generated a new species of increasing returns businesses that leverage the network effect. Many electronic devices, operating systems, and software applications have become platforms that have increasing benefits as they achieve scale.

It is therefore without doubt that the new Web 2.0 platform is one of the greatest inventions for human evolution and will be the trend for human communication and business efficacy.

Pro-Copyright Perspective

However, as a result of this fast-growing sharing of information and co-creation on a global massive scales, the traditional copyright may not be suffice to protect the copyright owners while maintaining the advantages of a free massive flow of information and intangible assets. Some of the problems posed are:

- (a) ambiguities in identifying the author(s) in respect of what copyright work as many of the work in a Web 2.0 platform are co-created or partially co-created with genuine or pen names, or anonymous authors;
- (b) authors may not want copyright protection but want to share information or their creation and by posting the files on the Web 2.0 platform, and it may constitute consent of copying at least by a limited group of people. It depends on how the standard terms in the standard license agreement in each of the Web 2.0 platform are phrased;
- (c) ambiguities in the interpretation of the copyright law and in particular the interpretation of secondary infringement in the cyberspace where “knowledge” and “control” are involved;

- (d) difficulty in identifying the place of the infringement activities and under which jurisdiction. For instance, in some countries, there is a concept like contributory copyright infringement but in others there is none;
- (e) rapidly developing new technologies and users and the change in copyright law cannot cope with such a fast pace; and/or
- (f) difficulty in accessing the numbers of copies of infringement in the cyberspace and to provide evidence on damages.

Proposal for change in Copyright System

At present, in Hong Kong, the **Copyright Ordinance (Cap.528)** contains provisions dealing with unauthorized uploading and downloading of copyright works over the internet. For primary infringement, it is covered by **Sections 22 to 29 of the Copyright Ordinance** where there is no requirement to prove “knowledge” of the infringers. For secondary infringement, it is covered by **Sections 30 to 34** where “knowledge” (i.e. “which he knows or has reason to believe to be an infringing copy of the work”) must be proved. Civil remedies and, in some circumstances, criminal sanctions are provided against such unlawful activities. Our legislative measures are backed by vigorous enforcement action. The Customs and Excise Department monitors the Internet round-the-clock and takes prompt action against suspected piracy activities.

In 2008, the Commerce of Economic Development Bureau in Hong Kong published consultation papers on the following issues of copyright protection in the cyberspace:

- (a) introduce a right of communication covering all modes of electronic transmission for copyright works, with related criminal sanctions against the breach of this right;
- (b) introduce a copyright exemption for temporary reproduction of copyright works by online service providers (OSPs), which is technically required for (or enables) the transmission process to function efficiently;
- (c) facilitate the drawing up of a voluntary code of practice for OSPs in combating internet infringements, the compliance with which or otherwise will be prescribed in law as a factor that the court shall take into account when determining whether an OSP has authorized infringing committed on its services platform;

- (d) continue to rely on the “Norwich Pharmacal” principles, as opposed to introducing an alternative infringer identity disclosure mechanism that is not subject to scrutiny by the court;
- (e) prescribe in law additional factors to assist the court in considering the award of additional damages, in lieu of introducing statutory damages for copyright infringement actions; and
- (f) refrain from introducing new criminal liability pertaining to unauthorized downloading and peer-to-peer file-sharing activities.

An amendment bill to the copyright law is expected to be handed to the Legislative Council before the end of 2010.

CONCLUSION

As the saying goes, every coin has two faces, and every human or object has a shadow. They co-exist. Without doubt, Web 2.0 is a friend to human evolution as it connects people globally and enhances human collaboration, creativity and business efficacy on a non-frontier worldwide basis. The shadow of this friend will be shortened if there is a better enlightened mode of new copyright reform to cater for the latest changes.