

CHAN Wing  
Wah



Pushpendra  
RAI



Alex GUO Yi  
Chen



Anne C Y  
CHOI



K C SIU



Joseph KOO



# INTELLECTUAL PROPERTY PROTECTION

HISTORICAL ESTABLISHMENT RELIES ON KNOWLEDGE,  
EXPERIENCE AND TALENTS

Elton  
YEUNG



DATE : NOVEMBER 11, 2005

VENUE : DRAMA THEATRE, HONG KONG ACADEMY FOR PERFORMING ARTS

MODERATOR : CHAN Wing Wah  
Professor of Music and Associate Dean of the Faculty of Arts,  
The Chinese University of Hong Kong

SPEAKERS : Pushpendra RAI, Acting Director, Intellectual Property and Economic  
Development, World Intellectual Property Organisation(WIPO)

Alex GUO Yi Chen  
CEO, ARTKEY Art Licensing Center

Anne C Y CHOI  
President, Asian Patent Attorneys Association, Hong Kong Group

K C SIU  
Managing Director, Hong Kong Record Ltd

Joseph KOO, Composer

Elton YEUNG  
CEO, Composers and Authors Society of Hong Kong Ltd(CASH)

Co-organiser : Composers and Authors Society of Hong Kong Ltd(CASH)



# Intellectual Property in Everyday Life

Geographically, we safeguard territorial integrity; intellectually, we protect intellectual property. Knowledge is to be cultivated, experience to be accumulated and talents need the protection of society so that the fruits of wisdom, of humankind can be handed down and can be further developed for the benefit of our next generations to come.

Pushpendra RAI

Acting Director, Intellectual Property and Economic Development Department, World Intellectual Property Organisation(WIPO)

PROFESSOR CHAN WING WAH:

Good morning, ladies and gentlemen. Welcome to this Asia Cultural Co-operation Forum. This morning's session is co-organised by the Home Affairs Bureau and the Composers and Authors Society of Hong Kong, which is a music copyright organisation.

The history of humankind is the history of civilisation and culture. Its establishment relies on knowledge, experience and talents. Knowledge is to be cultivated, experience to be accumulated and talents need the protection of society so that the fruits of wisdom, of humankind can be handed down and can be further developed for the benefit of our next generations to come.

Geographically, we safeguard territorial integrity; intellectually, we protect intellectual property.

This morning, our distinguished guests will start with Mr Pushpendra Rai. Mr Rai is the acting director of the Intellectual Property and Economic Development division in the World Intellectual Property Organisation, abbreviated WIPO. Mr Rai is responsible for co-ordinating activities and studies related to intellectual property and he implements programmes to assist developing countries in using the intellectual property system.

Before joining WIPO in 1999, Mr Rai worked for several years at policy formulation and implementation level in the Government of India. His last appointment in the

Government of India was Joint Secretary, Ministry of Industry. Ladies and gentlemen, let us welcome Mr Rai.

MR PUSHPENDRA RAI:

It is a pleasure to be over here in Hong Kong for the Asia Cultural Co-operation Forum. I was informed that in this audience today we have a lot of students from technical institutions with a background both in science, design and also the liberal arts. So during the course of my presentation in the next 25 minutes or so, when I take up aspects related to intellectual property, I would try to ensure that I have both those parts covered so that it is of interest both to a scientific audience and also an audience involved in industrial designs and the other liberal arts.

When we talk about intellectual property, we are not talking about something which is not very exotic or something which is very, very different from what we do in our daily life. Normally, you get the impression that intellectual property deals with creations of an esoteric kind. That is not really so.

### Around the living life

To understand intellectual property, all we have to do is look around us. In our homes, we generally have a cabinet which we put in our living room, dining room and whatever other rooms we have; and in these cabinets you will find there will be a whole lot of objects which have some element or the other of intellectual property.

When we talk about intellectual property we are basically talking about two distinct components; the first part is industrial property and the other part is copyright. When we talk about industrial property and copyright we are talking about protecting inventions and creations essentially carried out by humanity. Intellectual property deals with creations of the humankind. It shows the kind of creative skills humanity is able to generate on its own.



Industrial property essentially deals with certain items which we make use of in our daily life. You have a simple electric iron in your house; you will find that the invention at some

When a person is granted some kind of intellectual property for a creation, the right granted to him is not a positive right, but a negative right.

point or the other will have been protected by a patent. You take a look at a CD player; the invention at some point in time would have been protected by a patent. You look at wine bottles or look at the bottles of any other drink; you would find that each one of these bottles is sold under a mark which is protected by a trademark or if it is a wine originating in a certain part of the world, it will be protected by something called a geographical indication. You have a music system over here. You find that the speaker has a particular design. Now this design would have been given by someone which would be protected under what is known as an industrial design.

So intellectual property, as we can see from the simple cabinet, deals with nothing but objects or products which we confront in our daily life.

### Undergo a paradigm shift

The second part is copyright protection. We are looking at the protection of books, CDs, comics, paintings, works of art. Essentially, at some point in time, somebody would have come up with this kind of a creation and in order to provide him with the incentive to continue creating, in order to provide him with the incentive to continue composing if it is music, it is essential to provide him with these rights for a certain period of time so he is able to derive whatever returns he can from the investments that he had made.

But if you look at the world of intellectual property, it has virtually undergone a paradigm shift in the last few years. And what is that shift? The shift is that intellectual property is now being increasingly used as a strategic import for economic development, the strategic use of intellectual property as it is called, or famously known as using intellectual property as a power tool for economic, social and cultural development.

Earlier on, the entire emphasis was on strengthening intellectual property systems. Grant rights, preserve rights and restore rights; that was the entire concern of the intellectual property system. Come up with better systems to ensure the rights are granted. Once granted, the right holder is able to preserve those rights and if those rights are taken away from someone, you should have the right kind of mechanisms to restore those rights to him through proper infringement action.

The new aim now is quite different; the aim is to capitalise on the systems that have already been created and to provide for greater economic, social and cultural

deliverables. It is not merely to preserve the market exclusivity to the right holder but to build strategic partnerships.

What I would like to mention is when we talk about intellectual property, when a person is granted some kind of intellectual property for a creation, the right granted to him is not a positive right, it is a negative right. It is a right given to him to exclude everyone else from the market. When patent rights are given on a drug, it does not entitle, it does not authorise the patentee to sell the drug on the market because before he is able to do that he is to obtain the right kind of approvals from the drug control authorities; but patent rights essentially ensure that everyone else is excluded from the market for a certain number of years so that the creator or inventor is able to recover the cost of his investment.

But now the IP system today is not too worried about strengthening those rights but ensuring as to how strategic partnerships can be created for the right holder by the rights which have been created for him.

### Enhance global competitiveness

Intellectual property is essentially used to for economic and cultural development and to enhance global competitiveness. When we talk about global competitiveness, the first thing which comes to mind is the Growth Competitiveness Index which is compiled by the World Economic Forum every year. How is this index compiled? They basically consider three variables and over here they are comparing one country with another.

The first thing they do is to look at the kind of standing by public institution have in countries, what are the kind of institutions that are available for protecting rights, what are the kinds of systems they have in place for resolving disputes, and also how efficient that institution is and how transparent its procedures are.

The second variable is the macro-economic environment. What are the fiscal policies, what are the monetary policies, how stable are these policies, how often do they change, what is the element of predictability associated with those policies? Do they change at the drop of a hat or change only if the entire system has developed some kind of a consensus that there should be a change in these policies so if there is somebody who is trying to come and become a part of the system or trade with the system or enter into any kind of business relationship with the system is aware of how it is going in the months or years to come.

The third variable to determine growth competitiveness is the technological progress of a nation because without technological progress you can accumulate capital but you cannot embark on a path of sustainable growth. A country can have immense natural resources but only where it is able to invest those resources properly, you will be able to sustain the growth that has been attained by the country.

Now, when they determine the different weightiness given to these variables, they classify countries into two different classes; the core innovators and the non-core innovators. There are no value judgments imputed with these categorisations. The only difference between these two categories is the kind of technical progress that is made in a particular country and the measure which they use is the number of patents which have been taken by the people of that country, and the indicator over here is a country which is classified as a core innovator if its residents have taken more than 15 US patents for every million of population. And if you look at the entire world today, there are only 32 countries which are categorised as core innovators.

The weightiness given for these core innovators for these three variables is 25% for public institutions, 25% for the macro-economic environment and 50% per cent for technology, which clearly shows how important technological development is for a country to become competitive. For the non-core innovators, the weightiness are 33% respectively, which means that apart from giving more importance to technological development, it is also important for these countries to build on the public institutions and to develop the macro-economic environment.

But if they want to concentrate on technology, it is important for them to develop these technologies and there are only two ways you can do that. One is through core innovation which becomes it difficult for developing countries because developing countries last year -the total spent on research and development was only \$45 billion which is less than 10% of what the developed countries invested in research and development.

If you look at some of the companies which make investments in research and development, the major pharmaceutical companies in the western world invested something like 15 to 16% of their overall sales revenues on R&D as against 4 to 5% in developing countries. So the technology would essentially have to come through technological diffusion which is trying to get technologies from outside.

For technological diffusion, one very important way today is through foreign direct investment which flows in from other countries, and the amount of investment which flows into a country are facilitated by the kind of environment the country is able to create for itself.

This environment is dependent on several factors, size of the market, stability of macro-economic policies, the procedures which you have for repatriation of profits and dividends, and most importantly, the kind protection that you provide for intellectual property rights.

### Limit free riders

Why are IPRs so important? Let us take a look at two or three of these elements. The first are patents. How do patents ensure that technological development takes place? One, of course, is that they facilitate transfers and investments. If you are able to provide the right kind of protection for somebody's invention, that person would be willing to come and invest in your country. The patent system is able to disseminate initial knowledge as a free input because when you apply for a patent in a particular country, the first thing you have to do is to disclose the details of your invention, because if you do not make that kind of disclosure, your application will be rejected.

## Intellectual property system also helps the local artist

**Ask:** Are there legal mechanisms by which royalties of the products get distributed equitably?

MR PUSHPENDRA RAI: When we look at IP systems, we should not look at IP systems the way they operate today but we should look at them in the way they unfold or evolve over the next few years. There is a lot of creativity, there is a lot of innovation which is building up in developing countries. And when we provide protection for these creations we are also ensuring that local artists benefit from it very significantly.

Just to give you a very small example. If you go to the market to buy a CD-ROM, a music CD, and you find that there is a CD of a famous artist, world-renowned artist like Madonna or Michael Jackson selling for \$20, and the CD of a local artist who is about to come into the market, about to come of notice selling for \$5, what you will do is say that the difference is very significant and why do I not buy this CD of the local artist which is available for \$5 but I cannot afford the CD of the world-renowned artist which is selling for \$20. But if the pirated CD of the world renowned artist is also available for \$6 or \$7 then you would rather buy the pirated CD than buy the CD of the local artist, therefore depriving him of an opportunity to become known the world over. So the IP system is not just helping the artist who is already renowned or the artist who has already established himself in the market but also helping local artists, budding artists to come of note in the world at large.



In return for that and if you meet with the other conditions of patent ability, you are granted what is known as a patent, which is exclusive rights.

The information which you have disclosed in your patent application is published widely. It is available. Anyone in the world can take a look at it and see what the details of the invention are. There are something like 40 million patent applications information available with about a million being added every year. It is considered as the largest single depository of information, technological information.

So whatever is available as patent information is a free input which could be totally free of charge, but what you are able to do with that and make use of that for further inventions and creations becomes a private good for you.

The patent system – there is a common perception that a patent system is a monopoly and is not really the right kind of a system for a country. But what it does, the patent system, is that it limits free riders but not the innovators. It limits a copycat but it does not limit somebody who is actually going to make an invention or innovation – make a further movement of technological advancement in terms of whatever is available today in the technological field. A famous economist says that the patent system ensures that the person is able to stand on the shoulders of giants who precede them. A person is able to make an invention on the basis of what has already been invested until now.

Patent system encourages licensing arrangements and catalyses new technologies and businesses.

### Trademark to differentiate from competitors

Let us look at the second element of intellectual property which is trademarks. Trademarks – yesterday when Simon Anholt was talking about nation branding, he was also talking about logos. He was also saying that a brand is much, much more than a logo, but when we talk about the logo over here, we talk about a trademark, it is an element used by a company to differentiate its products from those of its competitors.

What a person strives to do through his trademark to attempt to move customers from the first stage, which is brand awareness – when you see a brand for the first time – to a stage of brand recognition leading to a third stage of brand preference and finally to insistence.

## everybody participates in the process of creation

Ask: In terms of disseminate initial knowledge as pre-input for further knowledge, how to define initial knowledge and further knowledge? Further knowledge will someday become initial knowledge. How can the IP system accommodate this?

MR PUSHPENDRA RAI: In fact the entire IP system, the patent system in fact, as a part of the IP system, is really based on this premise because what happens is that one person makes a contribution to a particular part in a particular technology. Having made that contribution, she discloses those details to the world at large. Some other person takes a look at it and then he tries to see as to how he can improve what has happened.

When we talk about patents we are not talking about providing protection for huge and massive inventions all the time like a rocket engine or a very sophisticated revolver or a very sophisticated piece of machinery. If you look at the patent system and look at the kind of applications which people make, every invention, most of the time, makes a very small improvement to the technology, which is already available, and that is the creation which benefits mankind. It is not a quantum jump all the time.

For instance, you have a television set in the house and you have a telephone instrument. At some point in time, somebody would have got a patent for a television set and someone else would have got a patent for a telephone instrument. You, as a creator, if you are able to combine the telephone instrument with the television set in such a way that when the telephone rings in your house, automatically the volume of the TV goes down so that you are able to answer the telephone without physically lowering the volume of the TV, you would qualify for grant or for patent.

So everyone deriving benefits from what has already been done in the past in order to make a further contribution to the stock of knowledge which is already available in that field of technology. That is what the patent system is all about. Everybody creates, everybody participates in the process of creation and jointly contributes in the interests of humanity.

When you see a toothpaste like Colgate for the first time and you get to know that it is a good toothpaste when you go to a shop, you become aware that Colgate is a good toothpaste. You go to a shop and you recognise the brand and you tell the shopkeeper, "No, I want Colgate and not the other toothpaste", you start preferring it to the other toothpaste. Finally, the brand would reach the particular stage where you go to a shop and the shopkeeper says, "No, I do not have Colgate toothpaste, but why don't you try the other one", you will say, "No, I want to insist on Colgate toothpaste because I know it is the best one". So you will go to some other shop if Colgate is not available at that shop. That is what is known as "brand insistence". That is a stage which every manufacturer wants to be on.



How does it create value? It creates value through increased sales volume and price. I would always like to mention the case of the example of two cars which are sold in the United States, the Toyota Corolla and the Geo Prism. All of us are familiar with the Toyota Corolla, but both of these cars, the Toyota Corolla and the Geo Prism—they come off the assembly line, have exactly the same features, have exactly the same after-sales service and network, but the Toyota sells at a price which is 8% more than the Geo Prism, and sells double the number of units in a given year. Why? The simple reason is that people have heard of the brand "Toyota Corolla", but the Geo Prism has not yet established a position in the market.

Over time, a trademark is able to stabilise demand through consumer relationships and the manufacturer is able to earn royalties through licensing and franchising arrangements.

Again, if a brand acquires that kind of reputation in the market, the manufacturer is able to transfer its equity to new product categories. You will find that today Nike is selling shoes, tomorrow it starts selling jackets and the day after tomorrow it will start selling breakfast cereals for the simple reason that Nike is a renowned manufacturer and you associate a certain measure of quality with the name, whatever product you see it on.

### Enhance economic growth ultimately

Just give you an idea of the brand values. Yesterday, we heard about the strength which these values have and I think Simon mentioned that the top hundred companies, the values that you have of the brands which they market is probably more than the entire gross domestic product of all the least developed economies in the world. Over here, you can see that Coca Cola has a brand value of \$70 billion, which perhaps is more than the kind of nature of investments made in plant and machinery by this company.

So over time, this mark, which is used by a particular manufacturer, acquires this kind of reputation in the market and derives this kind of value from it.

When we talk about the creative industries, we talk about copyrights which provide protection for creative industries or cultural industries. The entire effort of the copyright system is to ensure that creativity is protected and the right kind of compensation is provided to its creators and producers.

Intellectual property essentially is about balance. You have to maintain the right kind of balance between rights and obligations and the moment you find that rights have become slightly heavier than the obligations, or the obligations have become slightly more than the rights, you know that there is a problem with the system in that particular country.

The copyright protection system ensures that the right kind of balance is available in the country. The copyright system preserves cultural heritage and prevents the creation from being reproduced elsewhere and competing with the original. And ultimately of course, it enhances economic growth. How does it do that?

If you look at the total size today of the cultural industries, the potential which it has is absolutely remarkable. The world market today is estimated at \$3.05 trillion, which is more than \$3,000 billion and is expected to rise in the next 15 years to \$6.1 trillion, which is a double in size. That is what you are dealing with today.

There is a guide which was published by the WIPO about a year and a half back which it did along with several experts, which essentially provides a methodology for serving the economic contribution of the copyright-based industries and I understand a similar exercise has been done by the Hong Kong authorities and tomorrow, we will have a presentation on that.

When you categorise copyright-based industries, we are not just talking about basic industries which come out with a newspaper or the composer who comes out with a piece of music, we are talking about several industries involved over here, basically categorised in four classes.

One of course is the core copyright industries. These are the industries which actually provide the content for the product. The second are the interdependent copyright industries which are the industries that produce radios, and CD players and computers which actually help to play the content which is provided by the creator.

The third are the partial copyright industries where you find certain items of textiles, or certain crafts which use a part of the copyrighted product. Then, of course, you have the non-dedicated support industries like transportation, internet, telephone, which also get stimulated to disseminate widely the copyrighted product.

Intellectual property maintains the right kind of balance between rights and obligations and the moment you find that rights have become slightly heavier than the obligations, or the obligations have become slightly more than the rights, you know that there is a problem with the system in that particular country.

To look at the contribution of these industries, there are three different ways in which this contribution was gauged. The first was of course the size of the industry as a percentage of the gross domestic product. The second was the employment generated by the industry and the third was the contribution to foreign trade. Just to give you an example for a few countries: in the United States, it is found that copyright industries contribute 12% to the GDP of the country; In Canada, it was more than 5%; In Singapore, again, almost 6%.

Contribution to the employment again is fairly significant: in the United States, more than 8%; Singapore again, it was almost 6%; and there are quite a few other countries which are also embarking on a similar exercise to determine the contribution of the copyright industries to their economies.

### Piracy linkage with criminal activities

But if these rights are not properly and effectively enforced, it leads to a lot of problems. What are the adverse consequences? One of course is that there are no incentives for new creators if people are copying what they have done. Music piracy will erode the encouragement, the incentives for budding artists. Their linkages with criminal activity, because the money so generated from these pirated products fuel criminal activity in different parts of the world and of course deprives government of taxes and duties.

To look at two successes, we look at Cuba which is a very small country but you can see with the help of the patent system, the biotech industry of Cuba has developed remarkably. 66 pharmaceutical patents in the area of biotechnology have been taken by Cuba the world over. And as you can see, they have developed a whole lot of vaccines which are for the benefit of humanity.

The copyright system has been used by India to develop its software industry. The software industry, the rate of growth has tripled in the last 6 to 7 years and the Government of course is contemplating further steps to provide more encouragement to the software industry of India.

There are of course instances where people have missed opportunities in the developed world. As it is out of reach they could not derive advantages from the IP system.

All of us are familiar with various spreadsheet programs today like MS Excel, Lotus

1-2-3, but very few people are aware that the first spreadsheet program was provided by a 29-year-old software programmer called Dan Bricklin in 1979, he came up with a program called VisiCalc. But because he could not obtain protection on his spreadsheet program he did not get a penny's worth of benefit out of this and subsequently, a whole lot of companies made millions and billions of dollars from their other programmes.

The Swiss watch industry in the 1980s, some of the manufacturers came up with quartz movement watches. They came to their association and said, "We would like to display it". At that time, the association said, "No, no, no, this is not something that is really going to capture the market, maybe just an object of curiosity". So they went and displayed it in an exhibition, and over there you had enterprising companies like Citizen and Seiko, which came and saw the new movement in these watches and came back to their countries and started producing them; mass production of quartz movement watches which virtually wiped out the Swiss from the watch industry for a long, long time.

So these are missed opportunities as far as the IP world is concerned and we have to learn from these mistakes before we repeat them in our countries.

### Intellectual property needs imagination

Very briefly, in a minute, the World Intellectual Property Organisation which is an international agency, is a UN agency which deals with the protection and promotion of intellectual property. It administers 23 international treaties and its mandate today is to ensure that people in developed countries and other countries are able to effectively exploit the IP assets which they have created for the betterment of their populations.

The WIPO does not just protect intellectual property the world over but help countries in building capacities and also promoting international co-operation among various stakeholders.

What do we conclude today? Developing countries as I mentioned are increasingly using the IP system. They are making use of the reflectabilities that are available in the system today, are able to address IP as a policy issue in order to improve its understanding and to translate it into policy and practice. But until such time as we have an international consensus on intellectual property, it will not be possible to develop an effective system, because it is that kind of an inherent balance

But until such time as we have an international consensus on intellectual property, it will not be possible to develop an effective system.

which is required in the system before one is able to make use of it internationally. Harmonise it into a system which is used by everyone.

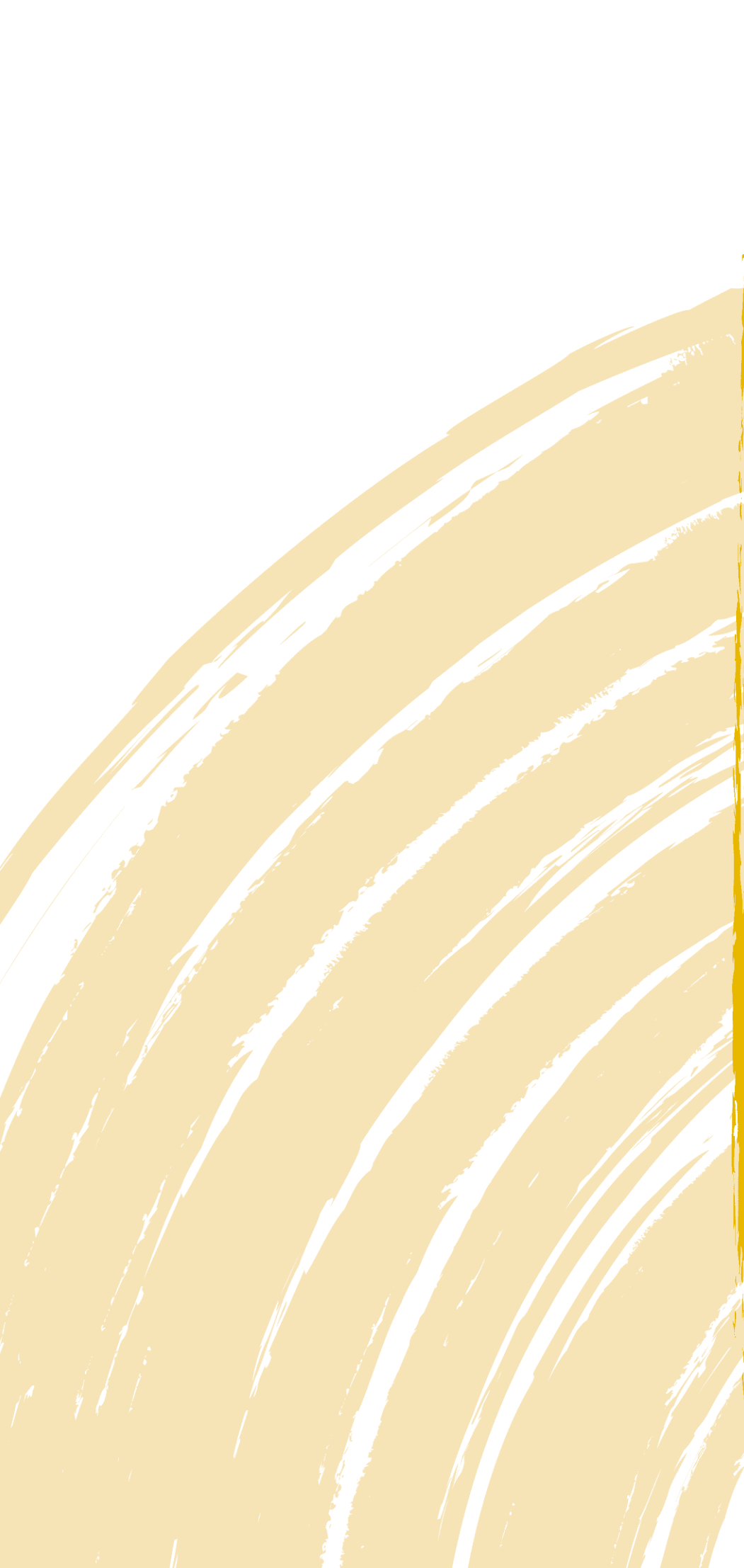
Intellectual property also means a lot of imagination and it is not a monotonous thing only to help creators. People imagine through IP. They try to ensure that people who are hesitant, who are reluctant to change are able to make these changes in various ways. There are a lot of people who do not like computers, are hesitant to start using computers because they say, "Okay, fine, we will use these word processors, but then, you see, we are used to our own mechanical typewriters". So then the IP system ensures you come up with a computer which has the keyboard, which is available in our old mechanical typewriters. People say, "Okay, writing is fine on computers but then we miss our old felt pens". So the IP world today tries to come up with a monitor screen where you can use your old felt pens to write on the screen and it translates into a writing which comes out beautifully on the computer.

People say, "Their phones are fine, these mobile phones are fine", you have all these touch-button screens, touch-button instruments, but what about the old dial rotary system that we are used to? How can we use that? Then you come up with a mobile phone where you have the old rotary dial so you are comfortable with whatever you are using.

People say, "CD players are fine, these CD players are good, you can use it as a walkman. But what about the old gramophone player that we were used to?" Okay, it's fine, you have a CD player on which you have the old loudspeaker also so that you are familiar with it. This is the kind of imagination which the IP system tries should promote. Thank you very much for your attention.

PROFESSOR CHAN WING WAH:

Thank you, Mr Rai, for giving us a very comprehensive introduction to the topic. I particularly like that remark of building up an emotional relationship with customers so that they will achieve the fourth level of insistence using the same product. But of course, if my intellectual property is norespected. I will be more emotional than my customers.







# Art Licensing and Its Power on Fortune

Now this is a white plate. We have this in everybody's home. It is not very expensive. But when it is combined with Qi Ba Shi, an ordinary industrial product costs differently. Linking art and industry is the most basic concept of art licensing.

Alex GUO Yi Chen  
CEO, ARTKEY Art Licensing Center

PROFESSOR CHAN WING WAH:

Our next distinguished guest is Mr Alex Guo Yi Chen. Alex Guo is the founder and CEO of artkey Art Licensing Centre. Not only is he an artist, Mr Guo has also obtained a MBA. In 1996, he set up the first brand, the artkey Art Licensing Centre which is the first Asian art licensing corporation. Mr Guo is currently the Consult Commissioner of the Taiwan Culture Construct Affairs at the School of E-learning. He is also the columnist of some publications and he is a very distinguished artist. Let us welcome Mr Alex Guo.

MR ALEX GUO YI CHEN:

Good morning, ladies and gentlemen. I am very pleased to be able to come to Hong Kong and share with you the subject of art. Today I am going to talk about "Fortune from Art Power". Before I get started, perhaps I will show you a flash which is produced under licensing system and we are going to be talking about the details later on after this flash.

(Video played)

Thanks very much. Well, this flash is a very simple action and we used the eastern artworks when 911 happened; we used that to indicate that we can use love to change life. We are talking about eastern art here. With regard to art licensing, other than 911, in Paris we saw the riots in Paris and also SARS all over the world. We used art to project love to promote love. Let me get into the topic for today. Fortune from Art Power.

There are three parts I would like to go through with you. The first one is the intro-

duction of the art licensing industry and then analysis of international trend and value of art licensing in arts everywhere.

### City is the museum

As you all know, art can become a brand. Internationally, these have become the "in" thing to do. In 1997, in Bilbao, Spain, the museum was set up and a dilapidated city was turned into a very famous renowned art district. But, is that all about a city museum? I don't think so. What does it mean on earth? I think a city is a museum exactly. Let's imagine. When we enter into a city or before we enter into a city, we hop on a plane and we saw a Chinese university professor, Mr Liu Guo Song and his works. All these works of art can be seen on board a plane, his works of art can be seen in the in-flight magazines and many other different places, and this gives us some understanding about this artist. We may demand the attendants to offer the souvenirs and find that pokers and calendars are all marked out his works.



As soon as you arrive it, you may receive a welcome message with his artistic works. You are used to delete such kind of message but this time you feel that it's special. And you may forward to your friends to inform them your special location. When we go into the hotel, adorning the hotel walls are also many works of art. Even in the toilets we see a lot of the works of art for decoration. It gives you the feeling in this particular city, you can see art almost everywhere. When we go into a bank, to change some money of the city before you go into the bank, you see a lot of works of art are there. On your credit cards you also have a lot of works of art and you can also have works of art on souvenirs.

When you go to a city, you have to use the underground, the MRT, the subway and Liu Guo Song's works of art are also used in the subway system. He is the organiser of an art association and he puts forward a lot of arts philosophy and he has a lot of ink painting, a lot of his art is used all over the place. He has indeed a unique style. When you walk into the underground, you find that in the underground system Liu Guo Song's works of art are adorning the wall, the carriages and so on.

Link art and industry together.

This will add to the added value of a product.

When you come out of the underground, you get into a car or you go into a bus. On the bus, you see that there are works of art by Qi Bai Shi and you get a wonderful feeling sitting in a bus like this. You feel as if you have gone into an art gallery.

Then when you have lunch, you see that all the plates and glasses as well as the paintings on the wall are all from the same painter so you enjoy your dinner, and before you end your journey, you have the feeling that you can buy the paintings and artworks of the same author everywhere; in the hotel, in the room, et cetera.

### Make art licensing valuable

Then I would like to say something about art licensing. What concept is this? And what art licensing system do we need to build a city as a museum? In a city, we can make use of art to turn that city into a museum. Art licensing may be as narrow as a plate or as large as a car, house even a brand of city and the image of the nation. They all can be magnified their added value. Art licensing is not just an industry. Information industry is not just selling computers and facsimile machines. Information industry will also enhance knowledge. And art licensing is not just the sale of a plate, a cup or a car. In fact, it is trying to enhance the value of products, or even the added value of a city.

In a moment, I will use a brand name as an example. Now this is a white plate. We have this in everybody's home. It is not very expensive. How can we enhance the added value of our white plate? This is a work of Qi Ba Shi. The value of Qi Ba Shi's works have been rising tremendously. A painting may be selling for \$800,000 these days. It can be used in ordinary industrial products so as to link art and industry together, and this will add to the added value of a product. This is the most basic concept of art licensing. It is not just plates. It may be a vehicle, or a city, that is to make use of art to add value.

Let me now turn to copyright, that is intellectual property. Artworks cover two types of rights: ownership and possession of the property. You buy a piece of artwork, you may display it or store it in your home. In fact, a copyright is involved. If the creator has not given written consent to transfer the copyright to somebody else, then the copyright will remain with the creator. Many creators do not know this. They may think that after selling their products, their products will no longer be related to them and will no longer be of any value to them. In fact, it is just like a composer or a singer. Not just the sale of tickets can generate a revenue for them,

but also, the production of CDs later. So during these years, ArtKey made efforts to let the artists, especially the oriental ones, realize that they own the power. They not only can add value to themselves, but also enhance the value of business even a city.

This can be divided into two parts. First of all, it is the personal rights of the creator himself. The other part is intellectual property and therefore, the transfer of rights are also generate value.

## Protect the artwork while commercializing

Ask: For ArtKey, how do you protect the integrity of the artwork when it is commercialised? What about the extract of a piece of artwork? Will you protect it? In what way can artwork be applied?

MR ALEX GUO YI CHEN: Concerning artists, how can they really authorise their works to be used by just signing an agreement? As far as an artist is concerned, do artists have to pay a fee to us. No, we are responsible for promotion. The artist himself does not have to pay but vetting has to be done including the selection of customers.

There is another question about commercialisation of products. After using these artworks, how can we control their quality so that they will not lose their flavour but receive added value instead? We will do something in that regard. The existence of ArtKey is precisely for showing artwork to the public in their full, including complete authorisation and full observance of stipulated procedures.

## Better when the Government supports

Ask: Taiwan is a cultural place. Do you receive great support from the Government?

MR ALEX GUO YI CHEN: Let me give you an example. In Taiwan, about eight or nine years ago, we started talking about art licensing and we tried to apply artworks to different places of the city and the Government said "I do not understand" and nobody was taking care of such business. So at the beginning, the Government's attitude was not very encouraging. I think it would take a lot of artists that create these ideas before this will become a success and it takes a lot of lobbying and so on.

I think in the past two or three years, Taiwan has been promoting art and the Government has been giving a lot more support and this obviously includes the policy formulation. In terms of funding, the Government does not provide a lot of financial support because they have more important issues that command funding. In fact, if the Government is supportive of art, it would certainly make a difference. The artists themselves should really put forward the ideas. They should translate the ideas into reality. Of course the Government can invest and give financial support so that the artist can have the ambitions realised.

What about the art licensing industry? You might not have heard about this before. In fact, for the same industry, it covers a lot of things, say, art licensing of Hello Kitty, Disneyland and so forth. Art licensing is part of the whole industry. In the East art licensing has not been promoted sufficiently. Hello Kitty and Disneyland may have entered the East but we have not seen the transfer of art licence. In recent years, this industry is growing, normally, 5 % annual growth rate. It is quite a quick growth.

### Convenient avenue for aesthetic appreciation

ArtKey – let me introduce it roughly. It was established in 1997 and we are actually an art licensing centre. Our vision is very simple. We would like to satisfy people's aesthetic aspirations. People in the past might have spent hundreds of thousands of dollars on a piece of artwork and only a few friends and relatives have come to appreciate the art piece. We must provide a convenient avenue for aesthetic appreciation as we just want to satisfy people's aesthetic demands. A number of artists were covered, including Qi Ba Shi and Liu Guo Song as I mentioned and also some collections in the Palace Museum.

For the collection industry, I would also like to say a few words about it. For art licence transfer, we can have agencies like ArtKey. Just like manufacturers of plates, vehicles, or even a city government, a state government, they can all be involved in art licensing parties, media, agents, consultants and so forth, art licensing can be made use of to pass on copyrights from the creators to the manufacturers, and that is precisely the modus operandi of the industry.

First of all, the creator must have a piece of artwork and all the specifics and details should be keyed into a database and put on the internet, and through exhibitions, the artwork can be shown in different cities; Tokyo, London, Hong Kong and Shanghai have all been involved in art licensing, that is to allow manufacturers to come into contact with artwork. This will also help enhance the image of cities and nations. Now this is a standard flow chart for art licensing, that is from the creation of a piece of artwork to the manufacturing of products.

### Inviting everybody to city museums

I mentioned art is everywhere. Through the creation of artwork and art licensing, we can get involved in a number of aspects.

First of all, art licensing \_ to use artwork on products. It is like Tian An Tea, the biggest tea company in Taiwan. In China it is known as Tian Fu Tea Company. In a

## Subtle differences of violating the copyright

Ask: Can the owners of the works reproduce them?

MR ALEX GUO YI CHEN: Earlier it was said that when the painters are selling their products, unless they have entered into an agreement for transfer, the ownership still rests with the painters themselves. After a painting has been sold, in fact, the buyer, unless he has the transfer agreement, the ownership or the owner of the painting cannot reproduce the painting at all because otherwise, he will be on the wrong side of the law.

If you take a picture of the artwork. In fact this is something for the lawyer, not for me. I do not think I can offer any comments. The photographer has the ownership of the photo unless you, I mean, if you reproduce the photos then you are infringing on the right of the copyright. I think there is a subtle difference there.

## Let more people be exposed to art

Ask: This is a question about ideal and reality. ARTKEY seems to turn high art into pop art. You are commercialising the artworks. Is it really the way to go?

MR ALEX GUO YI CHEN: I do not think this is the only way to go. There are so many different ways that we can popularise art. If we can let more people be exposed to art, this is one of the ways we can go about it. So in this regard, we are trying to, through various means, popularise art, this is one of the ways of art promotion.

series of tea leaf boxes and packages, art pieces were used. Previously, it sold for 8,000 cans and after the promotion, it jumped to 12,000 cans, and the price jumped from 800 to 1,200 Taiwan currencies. So, apart from turnover increase, the products can also be increased. That is one of the benefits of art licensing.

The leather brand "IF" is another case. It worked very hard in advertising and promotion but it's very rarely heard of in the past. After it used ArtKey service, that is to use artwork on products for a number of methods, the brand names were advertised. This is one of the applications of art licensing, this is part one.

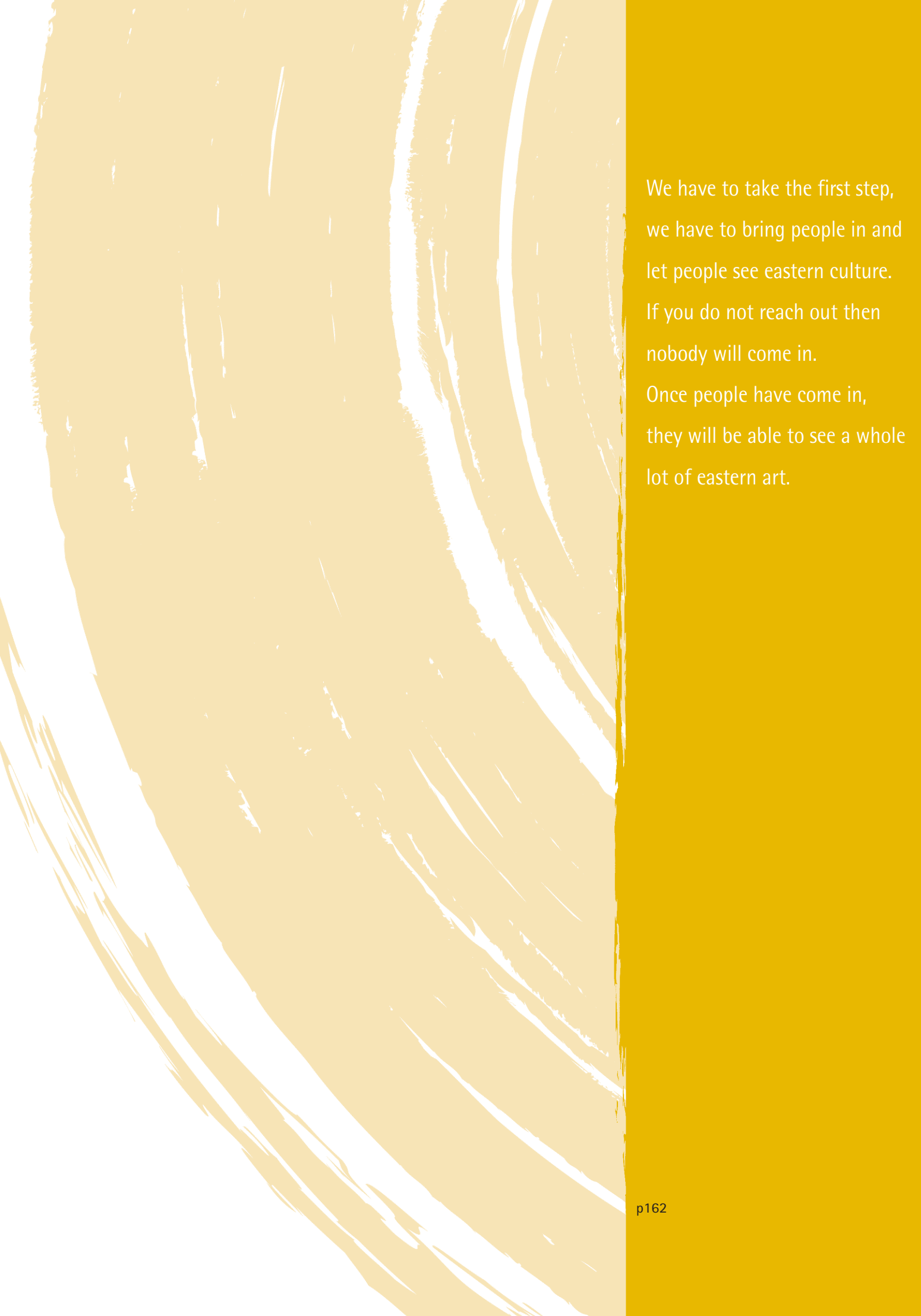
Another aspect is data licensing. It includes downloading colour message on mobile phone, such as e-card, letter format, screen saver etc. For instance, we have collaboration with MSN, Taiwan Telecom, Smartone. The consumers can download the artwork as the opening frame of mobile phone or even forward to friends from the internet. ARTKEY art pieces were used in the packaging process and other products so this digital licensing.

The third aspect is painting licensing, wall painting and other forms of paintings. We liaised with the Palace Museum and a number of artworks were produced on different products and in different places. You can even see art pieces in airports, for example.

These are the three major aspects of art licensing. By means of art licensing, art work of different orders can be distributed to many cities. And let everybody come into city museums.

### Promote the Eastern artists

Another point is how we can promote oriental artists to the west. We can promote the eastern artists to the international market and more and more people will be able to see them. We have to take the first step, we have to bring people in and let people see eastern culture. If you do not reach out then nobody will come in. Once people have come in, they will be able to see a whole lot of eastern art. When westerners enter into the eastern arena, they will be able to know all the famous eastern artists that are adorning each and every city and these would add value to the cities. And through this art licensing, we can equate a lot of art everywhere. Thank you.



We have to take the first step,  
we have to bring people in and  
let people see eastern culture.  
If you do not reach out then  
nobody will come in.  
Once people have come in,  
they will be able to see a whole  
lot of eastern art.





# Digital Download in the Digital Time

Nowadays, a large volume of data and information, no matter where they are located, is just one click away by the use of the internet. However, the convenience brought by technology also facilitates illegal downloading and file sharing.

Anne C Y CHOI

President, Asian Patent Attorneys Association, Hong Kong Group

PROFESSOR CHAN WING WAH:

Our next guest is Ms Anne Choi, Ms Choi joined Wilkinson & Grist in 1976 and since 1981 has been a partner in the firm and now heads its Intellectual Property Department. Ms Choi's practice covers all aspects of intellectual property. In 1987 Ms Choi was invited by the Attorney General of Hong Kong to be a member of the Copyright Sub-committee of the Law Reform Commission. She is also a member of a number of international organisations relating to intellectual property. Ms Choi is currently the President of the Hong Kong Group of Asian Patent Attorney Associate, APAA. Ladies and gentlemen, let us welcome Ms Choi.

MS ANNE CY CHOI:

Thank you, Professor Chan, for the introduction and good morning, ladies and gentlemen. After having heard Mr Guo on how to protect and develop artistic works, we are now going to look at something more sordid – the legal aspect of intellectual property. In this regard, I am looking at the legal aspects of digital download in the context of the digital age.

Now, technological advancement brings convenience to all of us in the digital environment. Nowadays, a large volume of data and information, no matter where they are located, are just one click away by the use of the internet. However, the convenience brought by technology also facilitates illegal downloading and file sharing. Illegal downloading and file sharing involve making copies of a work, infringing upon the copyright, subsisting in a work and is thus objectionable. In addition, the downloaders, software providers which provide the tools enabling the users to make copies for commercial gain may also be responsible for the infringing acts to a certain extent.

### The infringing act to cause the infringement

So on this, we shall look at a few examples of court decisions that have been made around the world. First of all, we look at the case of UMG Recordings v MP3.com, which is a US court case in 2000. MP3.com launched its My.MP3.com service which is advertised at permitting subscribers to store, customise and listen to recordings contained on the CDs from any place where they have an internet connection.

The way they do it is MP3.com purchased tens and thousands of popular CDs which the plaintiff, UMG Recordings, held the copyright, and without authorisation, copied their recordings onto its computer servers so as to be able to replay the recordings for its subscribers. To access such a recording, a subscriber must either prove that he already owns a CD version of the recording by using what they call the "Beam-it" service or must purchase the CD from one of the defendant's co-operating online retailers. Thereafter, the subscribers can access via the internet, anywhere in the world, copies of the plaintiff's recordings made by the defendant.

Now, the defendant seeks to portray its service as the functional equivalent of storing their CDs for the subscribers. However, this is not really accepted by the court and the court held that MP3.com was held liable for copyright infringement. The defendant raised the defence of fair dealings. But again, the court held that this defence is untenable. With regard to the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used in relation to the copyrighted work as a whole –bearing in mind they have stored tens of thousands of recordings – and effect of use upon the potential market and the value of the copyrighted work.

We now turn to look at another case which concerns Napster, which provides transmission of files by hyperlinks on servers. Napster facilitates MP3 transmission among users by keeping hyperlinks instead of actual music files. It also provides peer-to-peer file sharing to allow users to make MP3 music, files stored on users' own computer, available for copying by other users, allow users to search for files stored on other users' computers and transfer copies from one computer to another via the internet. These functions are made possible by Napster's music share software, which is available and free of charge from Napster's internet site.

In addition to just providing these hyperlinks, Napster also provides technical support for indexing and searching of files, for chat room, a chat room service where users can meet to discuss music and a directory of artist information.

Be liable for contributory infringement as one who, with knowledge of the infringing activity, induces, causes or materially distributes to the infringing conduct of another.

The court held that Napster may be liable for contributory infringement as one who, with knowledge of the infringing activity, induces, causes or materially distributes to the infringing conduct of another. Besides actual knowledge, which is found as a matter of fact, it was held that there was also constructive knowledge; because Napster executives have recording industry experience, they have actually enforced intellectual property rights in other instances and Napster executives have downloaded copyrighted songs from the system and have promoted the site with screenshots listing infringing files.

As for vicarious infringement, the court held there should be three elements to be established. There has to be a direct infringement by a primary party, there should be a direct financial benefit to the defendant and the defendant would have the right and ability to supervise the infringers. And applying these tests to the Napster case, Napster may be held liable for vicarious liability as it has the right and ability to supervise the infringing activity of its users and also has a direct financial interest in such activities.

### Authorising an infringing act

In Hong Kong, the notion of contributory and vicarious copyright infringement evolved from tort law is not very well developed. The closest equivalent is authorising an infringing act by another. On this we shall look at the position of Law Society of Upper Canada which keeps a law library and provides photocopying services to its patrons.

In this case, as I said, the defendant is the Law Society of Upper Canada. They operated a research and reference library containing a large collection of legal materials and maintains self-service copiers in the libraries for the use of its patrons. The Law Society made a single copy of each of 11 specific works published by the plaintiff publishers pursuant to its policy regarding access to the law for the specific purposes of research, review, private study and criticism by lawyers and other authorised researchers.

The defendant also provided photocopying services on a not-for-profit basis without monitoring the use of its self-service photocopiers. It merely posted a notice above each machine advising its patrons that copyright law governed the making of photocopies and that it was not responsible for infringing copies being made using its machine.

## To define the ownership of the copyright

**Ask:** A publisher employs a writer to write an article published in a book but without signing an agreement clearing the issue of selling that book's copyright. The writer's article is included to another publisher of a foreign country. Will this publisher be infringing copyright of that writer's work?

**MS ANNE CY Choi:** If a composer is employed by a publisher and writing a book, what protection can he get if the publisher publishes the book? The Ordinance stipulates that if you are an employee then during your employment and within the scope of your work, your works will belong to the employer. Therefore, in that case, the publisher has the right to make public or publish the author's book unless there is an agreement to stipulate otherwise. Otherwise the publisher does have that right. On the other hand, if the author has not written that book during his employment, if the publisher offers a reward for that book then that is another situation. It really depends on the intention at that time, before we can decide to whom the copyright belongs.

The Canadian court held that to amount to authorisation, it has to involve some acts to sanction, approve and countenance. A person does not authorise infringement by merely authorising the use of equipment that could be used to infringe copyright.

A person who authorises an activity can only be presumed to do so only so far as it is in accordance with the law. However, the presumption may be rebutted if a certain relationship or control existed between the infringer and the person who authorised the infringing act. The Law Society's mere provision of photocopiers did not constitute authorising use of the copiers to infringe copyright. There was no evidence that copiers were used to infringe copyright and even if there had been such evidence, the Law Society lacked sufficient control over its patrons who might infringe copyright amounted to having approved, sanctioned or countenanced infringement.

Meanwhile, the notion of contributory copyright infringement continues to develop in the States. In this regard, the Grokster case may be considered a landmark case. In this case, the defendant, Grokster Limited and StreamCast Networks, which are both software distributors freely distribute software that allows users to share computer files with each other, including digitised music and motion pictures. But unlike the case in Napster, it did not employ a centralised set of servers.



Under both networks, no central index was maintained and neither StreamCast nor Grokster maintained control over the index files. Users were connected to supernodes operated by the users themselves, containing indexes of the digital files. Search functions were performed by matching the indexes kept on users' computers.

The United States Court of Appeal affirmed the District Court's summary judgment that the defendants were not liable for contributory and vicarious infringement on the basis that the defendants did not provide a site or facilities for infringement and did not materially contribute to direct infringement. They reached this conclusion on the basis that infringing messages for file indexes did not reside on the defendant's computers, nor did the defendants have the ability to suspend the user functions.

However, this decision was disapproved by the Supreme Court and the Supreme Court held in June 2005 that one who distributes a device with the object of promoting its use to infringe copyright, as shown by the clear expression or other affirmative steps taken to foster infringement and going beyond mere distribution with the knowledge of third-party action is liable for the resulting acts of infringement by third parties using the device, regardless of the device's lawful uses.

So you may want to compare this with the decision in the Law Society case in Canada.

In this case, the Supreme Court also held that Grokster's unlawful objective is unmistakable in that it induces by advertisement or solicitation that broadcasts a message designed to stimulate others to commit violations.

First, it showed itself to be aiming to satisfy a known source of demand for copyright infringement and being the market comprising the former Napster users. In fact, computer users who are looking for Napster would be directed to the Grokster website. Secondly, Grokster did not attempt to sell filtering tools or other mechanisms to diminish the infringing activity using their software. This evidence underscores their intentional facilitation of users' infringement. Thirdly, Grokster makes money actually by selling advertising spaces then by directing as to the screens of computers employing their software. Since the extent of the software used determines the gain to the distributors, the financial sense of the enterprise turns on high volume use which the record shows as infringing. On this basis, the judgment by the Court of Appeal was vacated and the court was remanded for the trial.

## The infringing act to enable sharing

Now we take a look at how the Australian courts deal with a similar situation. In a case, again, which was just decided in September this year, between Universal Music Australia Pty Ltd v Sharman License Holdings Limited, the KAZAA system owned by Sharman is available to users free of charge. It enables one user to share with other users any material in the first user wishes to share, whether that material is subject to copyright simply by placing that material in a file called "my shared folder".

## The verdict of the BT case

**Ask:**What is your opinion of recent the BT case verdict? Should we have put heavier sentencing as a benchmark to deter others? What is your comment on the local "Copyright Ordinance" regarding uploading liability with criminal and civil, and downloading as well?

MS ANNE CY CHOI: What do I think about the verdict of the recent BT case? In fact, there was a huge conflict of interests in that case. On one side, there is the interest of the copyright holder, on the other hand we have the interest of the consumers, that is the users of the network. The interests of these two parties are very often in conflict with each other. The court would like to strike a balance in that conflict. It would like to identify a treatment that is fair to both parties. In that particular case, the defendant might think that three months' imprisonment was too long. He himself did not benefit from the activity. He might have enjoyed that activity, he uploaded something for many people to share. However, he had no benefit in pecuniary terms so he thought the three months' imprisonment was too heavy.

On behalf of the copyright holder, he might think that those three films meant a lot to him. He spent a great deal of money to produce those three films and then the defendant distributed the three films to everybody. What is fair?

In fact, the court would like to strike a balance. I believe we are going to have more and more such cases in the future then the court may come out with a clearer guidance.

A user who is interested in obtaining a copy of a particular work such as a musical item, can instantaneously search the "my shared folder" files of other users worldwide. If the file is located, the title will be displayed and the work can then be downloaded on the first user's computer.

The applicant, that is Universal Music, which is a major distributor of sound recording, claimed against Sharman License Holdings Ltd for copyright infringement.

It was held by the Australian court that the respondents are liable for copyright infringement as provision of KAZAA amounts to authorising infringement. They made this decision based on the following grounds: despite the fact that the KAZAA website contains warnings against the sharing of copyright files and an end user licence agreement under which users are made to agree not to infringe copyright, it has long been obvious that those measures are ineffective to prevent, or even substantially to curtail copyright infringement by users. The respondents have long known that the KAZAA system is widely used for the sharing of copyright files. There are technical measures that enable the respondents to curtail the sharing of copyright files and the respondents have not taken any action to implement those measures.

In fact, it is in the respondents' financial interests to maximise, not to minimise music file sharing because advertising, again, provides the bulk of the revenue earned by the KAZAA system.

In fact, far from taking steps that are likely to curtail file sharing effectively, Sharman Networks have included in the KAZAA website exhortations to users to increase their file sharing and sponsored a KAZAA revolution campaign attacking the record companies and encouraging people to think it through to defy the record companies by ignoring copyright constraints and thus attract a lot of young people to use the software.

Having looked at these examples, of course the more recent technology is Bit Torrent technology. Now, Bit Torrent, as I believe some of you know, is a peer-to-peer file distribution and sharing protocol. In the system, files are broken into smaller fragments which are distributed to peers in a random order and reassembled in a requesting machine.

This scheme is particularly useful in trading large files such as videos and software source code. Whilst high demand leads to bottleneck, such as demand surges for bandwidth, from the whole server in conventional downloading, bit torrent increases throughput as more bandwidth and additional seats of the completed file become available.

The Bit Torrent system starts with the uploader putting a file onto a computer link to the internet. He creates a torrent file on the seeder computer which contains the contact information of the seeder computer, which is the IP address. The exis-

tence of the torrent file would then be published on the internet, for example, amongst a news group.

The uploader then activates the Bit Torrent, the torrent file by connecting the computer to a tracker server which links the downloaders to the seeder computer and each other. The first loader then downloads the torrent file to its computer and downloads the subject file by activating the torrent file and connecting to the seeder computer accordingly. The seeder computer must remain connected to the internet until the first loader finishes downloading the whole file. Then the second and subsequent downloaders will receive packs of data from the seeder computer, the first downloader and from each other.

### Distinction between primary and secondary infringement

So are these electronic copyright and file sharing acts dealt with under the existing law in Hong Kong? In Hong Kong, the "Copyright Ordinance" is the principal piece of legislation on the subject. It provides for both civil and criminal liabilities for copyright infringement. On the civil side, a distinction is made between primary and secondary infringement.

Section 23 of the Copyright Ordinance provides that any kind of copying of the work is an act restricted by copyright and copying is given a very wide meaning. It means reproducing the work in any material form and includes storing the work in any medium by electronic means. You can see that there is no requirement that the act is for a commercial purpose. Making a download necessitates reproducing or storing the work by electronic means, therefore downloading music or any other file which has copyright from the internet is caught by this section. It is also not necessary that the whole entire copyright work is copied. Copy of a substantial part is sufficient to constitute infringement. Normally a qualitative assessment is applied.

Another act of primary infringement is by making available copying to the public. Under section 26, making available copies of a work to the public by wire or wireless means in such a way that members of the public in Hong Kong or elsewhere may access the work from a place and a time individually chosen by them, such as through the internet, is distribution or making available copies to the public.

So talking about the digital environment, a person who uploads a file for others to download, that is making available copies of a work to public via the internet, would thus be caught by this section.

Such as offering for sale or hire, distributing for the purpose of trade or to extent as to affect prejudicially the owner of the copyright constitutes infringement.



## Section 121 of the "Copyright Ordinance"

Ask: What is your opinion on Ordinance 121 of the CR Ordinance that one legitimate product is required to submit it to defence council if the legitimate video product had not been launched in the market, yet pirate syndicate may make use of the legitimate products to replicate them?

MS ANNE CY CHOI: As for Section 121 of the "Copyright Ordinance", this presumption that an affidavit can prove that an independent company is the copyright holder. This is actually a procedural tool in the court. It does not mean that the affidavit is sacrosanct. In fact, the defendant can still be challenged and interrogated. In particular, if the copyright holder is not in Hong Kong, prosecution in court is a more convenient tool to prove the copyright.

Now, a person does not have to copy or issue copies of a copyright work to infringe. Authorising others to do any of what prohibited by copyright is also an act of infringement. This is provided under section 22.

So in general, a Bit Torrent user who, without licence, uploads a file serving as a seed to other users would be violating sections 23 and 26, and probably section 22(2) as well.

Downloading a file, he will be violating section 23. Providing the subject file for others to download, that again would be an infringement under section 26. And acquiring a full copy of the subject file and staying in the system, allowing others to download the file would again be caught under section 26, which you have just looked at.

So what is secondary infringement? Section 23 deals with possessing or other kinds of dealing with infringing copy as secondary infringement, such as offering for sale or hire, distributing for the purpose of trade and even distributing other than for the purpose of trade but to such an extent as to affect prejudicially the owner of the copyright constitutes infringement.

In the BT scenario, a person, whether a seed provider or a mere downloader, who with actual or constructive knowledge, possesses an infringing copy in the course of trade would certainly be liable for secondary infringement. For example, a person A puts an infringing copy on the internet and makes it available for other persons to download. He does not actively send copies to others but passively lets others

download with no idea when, by whom and whether it will be downloaded – is he distributing a copy?

### Infringement is also a criminal liability

Now on the criminal side, as I said, copyright infringement can also be a criminal liability and section 118 deals with this. Essentially, it means that making for sale, possessing, exporting for the purpose of trade with an infringing copy of a work attracts criminal liability. But I think the most important section also probably –one section that has caught the public's attention these days would be subsection (f) where it provides that: "Distributes (otherwise than for the purpose of, or in the course of, or in connection with, any trade or business) to such an extent as to affect prejudicially the owner of the copyright" would attract criminal sanction.

Now, set against this legal background, we now turn to examine a very recent decision in Hong Kong concerning a BT user, which I think most of you have read about in the newspaper recently. In this case, the defendant installed three films on his computer in Torrent files and he emphasised the existence of the torrent files through news groups on the internet through the name of Big Crook and enabled others to download them. This caught the attention of the Hong Kong Customs and Excise department which is the department responsible for criminal enforcement under the "Copyright Ordinance". So one of the customs officers downloaded and activated the .torrent file and obtained the IP address of the seeder computer. The officers, as a result of investigations of the IP address, the customs officers came to know the name, the Hong Kong ID card number and subscription address of the defendant and obtained a search warrant for that address. During the search, a camera and three discs containing the subject files were also seized, in addition to the computer. After being cautioned, the defendant acknowledged that he was known as "Big Crook" on the internet and that he alone was responsible for uploading the bit torrent files to the internet from genuine copies of the films.

The defendant was charged with three charges under section 118(1)(f) of the "Copyright Ordinance", that is the subsection I just referred to, attempting to distribute an infringing copy of a copyright work other than for the purpose, or in the course of, any trade or business to such an extent as to affect prejudicially the right of the copyright owner. In addition, he was also charged with three alternative charges obtaining access to a computer with dishonest intent contrary to the Crimes Ordinance. For the purpose of this presentation, I will only concentrate on the charges under the "Copyright Ordinance".

Copying of a substantial part is sufficient to constitute infringement. Normally a qualitative assessment is applied.



The main argument of the defendant is that there is no distribution between meaning of section 118 and even if there were, there is no evidence of any prejudicial effect on the copyright owners.

The magistrate held that there was no ambiguity in the provision and that the acts of the defendant amounted to distribution within the ordinary meaning of that word. The defendant activated the torrent file enabling others to download. His acts were an essential part of the downloading process and integral part of the enterprise of downloading infringing copies to other computers and this amounted to distribution.

Given that the intention of the defendant was to distribute infringing copies and his acts were more than merely preparatory to such a distribution, he was at the very least attempting to distribute. These were positive acts by the defendant leading to the distribution of the data and it did not matter whether the recipients of the packets of the data may have received it by indirect means.

On the meaning of prejudice, whilst the defendant argued that there would be no prejudicial effect on the copyright owners, the magistrate held that in addition to potential sales, the movie rental market has also to be looked at. The magistrate considered the defendant's distribution to be a distribution in a public where anyone with appropriate equipment could obtain an infringing copy from the defendant. It was not a distribution of an infringing copy amongst a few friends. On this basis, the defendant was convicted and actually, at the beginning of this week, was sentenced to three months' imprisonment. Now this case, the fact that this case is so significant is that whilst the other earlier cases I have looked at all concern corporations, big organisations and syndicate operations, this is the first one that concerns a common user.

However, one thing to note is that the three charges in question were attempting to distribute. So what that magistrate has held in this case is that, by sharing or making available infringing copies, does it amount only to attempting to distribute to themselves?

Furthermore, in relation to the effect, the prejudicial effect required under the section, the magistrate did make a comment that the defendant's distribution was a public distribution instead of a distribution amongst a few friends. These leave open the question whether one has prejudicially affected a copyright owner by dis-



tributing copyrighted works amongst a few friends or a group of friends. So how far can you go? I mean I have a circle of friends, 20 friends, so how far do you have to go before it can be held that the copyright owner's interests would be prejudiced?

Also, the successful conviction in this case does not mean that the future prosecution in similar cases will be made without difficulty, there are technical difficulties attached. For example, how to identify the

defendant? How to obtain evidence? How to ascertain whether the registered owner is in fact the infringer?

Normally the internet service provider may not be willing to provide information regarding the registered users based on privacy grounds. So all these questions remain to be answered and we will see how the law evolves in this regard.

In particular, in the case that I just mentioned, the defendant has indicated he would appeal against the conviction. If that again is filed, it will be interesting to see how the High Court would interpret the relevant provisions and whether the present decision would be upheld. Thank you very much.

Section 23 of the "Copyright Ordinance" provides that any kind of copying of the work is an act restricted by copyright.



# Building a Career out of an Interest or Talent

People do have different expertise and different interests. How can we develop our own interests and our expertise? Then when we go out into the market, can we find out whether we can develop our talent to such an extent that we can develop a certain product or build up a certain business?

K C SIU

Managing Director, Hong Kong Record Ltd

PROFESSOR CHAN WING WAH:

Good morning, ladies and gentlemen, welcome back. This is the second session of this morning and the speakers of this particular session have chosen to deliver their speech in Cantonese. Let us welcome Mr Siu.

MR K C SIU:

Professor Chan, ladies and gentlemen, distinguished guests, welcome to this forum today. Thank you for taking time out of your hectic schedule to come here. Today my topic is "Building a career out of an interest or talent". The talent I am talking about is someone's attributes, someone's character. Let us say someone has a photographic memory and he can remember everybody he met and three years down the line, he can still remember the name of someone he met some time ago; or someone may be very good at sums or mathematics and he can work out the sum almost immediately as you are struggling over it. These people can be really interested in maths and he can develop himself to a certain extent that he can become an accountant or a financial controller.

There are many, many examples of this. The reality is that if you are interested in something, it would be so much easier for you to get to grasp it. You would accumulate a lot of expertise. Expertise to my mind is a knowledge at a professional level. Let us say we are playing piano: if I am in grade 8 or have the recital certificate, I would be at a level, at a professional level. People do have different expertise and different interests. Some are visible and some not so visible, and some are yet to be identified. How can we develop our own interests and our expertise? How can we identify our best talents in ourselves? Then when we go out into the market, can we find out whether we can develop our talent to such an extent that

we can develop a certain product or build up a certain business? We also have to bear in mind that in the market out there and in the community out there, the product or the businesses that we are passionate about will have any room for expansion or any potential for development.

### Business: depending on the supply-demand relationship and the passions

Here lies an important factor that cannot be ignored and that is the supply-demand equilibrium. This is a broad subject and would be very difficult for us to encapsulate in a few words. But in reality, there are many examples that would make it easier for us to understand the question of supply and demand. Let us take fruits as an example, if we are interested in litchi and if we want to buy the best of litchi called "lor mai chi", it can be \$10 per pound or \$20 per pound. You do not get to buy them everywhere and every season. But when you have a bountiful harvest –I remember there was a year when this was a bountiful harvest of litchi fruit, not only could you buy good ones but they were also very, very fresh. When the market was really bad, you could get three pounds for \$10, previously they were selling for \$25 per pound. And you notice that the difference is not just 5 to 10%.

If you take the litchi as the backbone of the economy, then you will be in deep trouble. You have to face the risk and you have to ask questions to yourself whether you will be able to shoulder the risk or whether you would like to see a similar risk coming about every year. In other words, you have to be put to the test every single year without knowledge of the outcome. The climatic condition, the soil condition would be the determining factors of the harvest for the year. Be that as it may, there are still people who are interested in this kind of business. We are still pining for more or better litchi harvest every year.

To cut a long story short, if we can tease out our own expertise or our own talent, if we can match our talent with the market after some analysis, then we can identify a certain product, a certain business or a certain trade that we would like to make a foray into and then you have to make a start. And at the very beginning, the key thing, the most important thing is to have nothing by passion. In many trades, many people are so successful – I think they all are it is all down to a bountiful supply of passion and involvement. As the Cantonese often say, we have to throw ourselves wholeheartedly. As long as there is a clear objective, we do not have to be timid or hesitant about the situation.

We have to throw ourselves whole heartedly. As long as there is a clear objective, we do not have to be timid or hesitant about the situation.

Of course, at the very beginning, we have to bear in mind that we may be aware of the petty details. But if we are just motivated by profit, if we look at everything from the angle of the dollar sign then we may not be able to see the benefits. If we are not passionately involved in a certain cause, then the chance of success would be a little bit dicey. On the other hand, if we can devote ourselves completely to it, if we go full steam ahead without any consideration about the gains and losses, then certainly, you would be able to get some response from the market. If the response you get from the market is positive, then you would be able to make some profit and the dollars would be rolling in.

### Employees: to create more, to study more

After saying so much, we need a good business environment at the same time. In Hong Kong, we have all along been commended for our good business environment. On retail record, if pirated CDs can be purchased everywhere on our streets, the record industry would be suffocated. Fortunately, in the past decade or so, the Hong Kong Government, the Customs and Excise department and relevant authorities have spared no effort in combating piracy. Sometimes even laws were amended to facilitate law enforcers to pinpoint criminal activities. As a result, not just piracy activities were curbed, the awareness of the public on copyright was also enhanced. Mr Selby, director of Intellectual Property, mentioned in a forum that the detection rate on piracy had increased from 55.2 % in 1999 to 71.2 % in the year 2000. In the market, our operations have become easier and smoother. It can be said that a sound foundation has been laid for our business and sufficient protection, or rather sound protection has been offered to us.

In the past, and in the future, we would be happy to see a staff members being involved in audiovisual businesses. Some of our employees were engaging themselves in bands, in all sorts of music playing. That is also a means of enhancing their professional knowledge. Some of our colleagues were continuously receiving training. Some learn music composing, others in other fields. It is helpful to their work, of course. These efforts are encouraging.

Sometimes we help them publish records. We sometimes sell records for them as well. Enthusiasm for music is a common phenomenon among our employees. I hope that this spirit can be sustained.

### Cooperation: win-win and mass recognition

To us, we do not just promote major brands or well-known brand names. We are willing to cooperate with smaller companies as well. For example, we would allow them to show their whole series of productions in our premises, such that these products will have an opportunity to meet the public of Hong Kong. Since there are not great brand names, the repertoire and production may relate to surprising pleasure on the part of our patrons. So we would try to facilitate smaller companies to develop their business.

At the same time we are very aware of one aspect. We emphasise on co-operation with the operators of shopping malls. We produce a wide variety of performing arts with them and we would like to turn shopping malls into venues for cultural and art activities as well. We would like to add a touch of culture to these shopping malls. Fortunately, we have obtained a great deal of effort from parties concerned, record companies, performing troupes, landlords, et cetera. So this is a tripartite relationship; artists, performing companies, landlords, shopping malls, we ourselves all benefit. So it is a three-win situation, so to speak. We have also solicited support from the most famous artists in Hong Kong, like Mr Andy Lau, Mr Li Yundi, Maxim, Vienna Children's Choir, et cetera, et cetera. If you saw Mr Li Yundi perform in Festival Walk, if you saw the Vienna Children's Choir perform on stage with happiness and pleasure among the audience, you would smile from the heart. This is the kind of satisfaction. Public response is a kind of intangible reward to you. It is nothing comparable to materialistic rewards or rewards in money terms.

### Training: human resources and management

Finally, I would like to say a few words about the training programme of our company. How can we allow a business or a company to maintain its competitiveness in the market? In our opinion, training programmes are very important arrangements. Training programmes are important because we would like to achieve one thing; that is to provide quality service to our customers, to provide good quality and professional service to our customers. This is not just my firm belief. I believe that in a competitive market, this is the best weapon and foundation. Today, I am still not satisfied with our service but we will continue to work hard.

Service is important. May I quote a few examples from our daily life. We call government departments or power companies to complain about power failure, et cetera. Usually the other party will give you a sound record and lead you round and round without leading you into your answer or your question. Of course, they do

Passion is the prerequisite.

We should have the passion for it as we get excited about traveling or camping. I would be thinking over something to take with me and hardly fall to sleep overnight.



not know your question actually so you are very agitated. Before 911 incident, I stayed for a few days in a hotel opposite the World Trade Center. It is a famous chain hotel, a big hotel, but in the lobby, you could not find even one chair. If you would like to make an appointment with somebody, in the lobby, then you could only stand. You can never patronise the same hotel again next time.

London is not much better. A few years ago, I went to London almost twice every year because of various reasons. I was used to certain hotels. There was one near Hyde Park. I have been there several times and every time, I discovered that they were reducing the number of staff members. There is a coffee shop in the lobby with not many tables, about a dozen or so small tables. When you sit for a cup of coffee, the person serving you is actually the one who takes money, and also makes coffee. He is a jack of all trades, I mean, he is dashing back and forth, in and out and you want a cup of coffee. In the coffee shop if there are three tables which are occupied, if there are five or six people drinking coffee there, you are given a short shrift, you see him dashing back and forth and you do not get anything from him because you order the coffee and it never arrives. What you get in your tummy is nothing but resentment. So what you can see is that wherever you are, whenever you are, service always has a value in the market.

Service is the most valuable commodity because of the value of services. If we can do a good job, as far as rendering services is concerned, then I am sure that you would be invincible. Hong Kong has witnessed many changes over the years. The general phenomenon is that many companies, many organisations find it hard to recruit but on the other hand, there are many people who are out of a job. Why the mismatch? I do not propose to analyse it or do not have the capability of analysing the situation. With these people, many of them are actually university graduates, maybe there are some of them in the audience today. These university graduates who are waiting for jobs are valuable talent in the market. For these people, if we do not channel them or absorb them into the mainstream, it would be a criminal waste.

I discussed this with my colleagues and we have come up with a plan with specific emphasis on these university graduates; we would like to give them some training. If you want to become a shopkeeper at Hong Kong Record, you need to have English proficiency and you also need to have some knowledge about pop songs. If you do not know anything about English you must know something about local pop songs like Jay Chou. Even if you do not know anything about songs, you have to be aware of films. If someone wants "The Godfather" you might say, "I have got Godfather myself", then you will be in trouble. So we would remove all the fundamental entry requirements. All we are


asking of them is just a strong passion for them. If they are interested in music, if they are interested in movies, all the better. Passion is the prerequisite, how do I interpret passion? In my younger days, when I knew that I was going to go to camp the next morning, I would be really, really excited, so excited I could not really sleep. I would try to remember what I had to bring and had a hard time falling asleep all night. You have that kind of passion and if you have this kind of impulse about music, I am sure you are a perfect choice for my industry.

Once you have been recruited, you are not trained to be a shopkeeper alone because that would be very much a waste. So in many ways, through actual operation, you have to face the market, you have to face the customers, you have to face the distributors. Now for the general sales people, they do not have to face the suppliers but we are expanding the portfolio of the sales people and they have to know about the distribution chain, how much they should order and so on. In some older record companies, this phenomenon is really happening. They may be able to make a profit, yes. They would be stuck with a whole wide array of products. We have to teach them how to face the suppliers, how to face the different pop idols or the maestros, for that matter. They have to face good and bad times, they also have to grapple with the ever-changing market. At the beginning of the racing season or during the football season, I may be doing worse; if there is a market crash, I may be doing worse. So I have to let them know how to face the different market situations. They may be asked to listen to the radio and be sensible for the stock market to know what may affect our business.

We have to teach them how to cooperate with the distributors, how to market the products and so on. We have to teach them how to get along with their colleagues and how they can get on with the jobs in different departments. So all these would require training. In the training process, they would be equipped with the ability to face all these scenarios. So they would be able to have the capability and knowledge to handle this business. They are the future stars who would participate in society by market.

In our society, we have become very much a service-oriented economy and these are the key people in the system. They are very much in demand in the job market. This kind of training will be not only good for them, but also the customers and the trade, it is going to be a win-win situation. Thank you all very much.





# The Ideals and the Reality of a Composer

Cantonese pop songs in Hong Kong started in the 1970s. Joseph Koo, a well-known composer in Chinese circle for <Shanghai Bund>, signed a lot of agreements randomly and was treated unfairly, and even lost a lot of money because he knew nothing about copyright laws then.

Joseph KOO Composer

Elton YEUNG CEO, Composers and Authors Society of Hong Kong Ltd(CASH)

PROFESSOR CHAN WING WAH:

Cantonese pop songs in Hong Kong started in the 1970s. The one you heard was actually the <Shanghai Bund>. This is a very popular song even to this day among the Chinese community. The composer of the song is Mr Joseph Koo, who is sitting next to me. He was educated in the US and came back to Hong Kong and made a lot of music for Shaw studio and Golden Harvest, including Bruce Lee's movies. In 1973, he wrote a theme song for TV series which was the first Cantonese song for TV series in the history of Hong Kong. We call Mr Joseph Koo "Brother Fai".

Joseph had been honoured much. He got the Bauhinia Award and also an MBE from the Queen. Joseph has also got the Lifelong Award for his achievement.

Together with Mr Joseph Koo is Mr Elton Yeung for the discussion. Elton started off his career in a European bank in Hong Kong and Canadian. Elton admires Elton John very much. He decided to give up his banking career to join the composing industry.

## Popular songs in the Chinese circle

MR ELTON YEUNG:

Mr Joseph Koo, or "Fai Gor, "Brother Fai" a founding director of CASH. There have been 1,200 songs or items that have been registered under CASH other than the <Shanghai Bund> and Mr Koo has also produced many popular songs, <Under the Lion Rock> and also the ever popular <Day After Tomorrow> and also some children's songs like "Hopscotch". Where there are Chinese people, where there are Chinese communities, nobody would never have heard of Mr Joseph Koo.

PROFESSOR CHAN WING WAH:

Welcome, Mr Koo.

MR JOSEPH KOO:

Hello, ladies and gentlemen.

PROFESSOR CHAN WING WAH:

Mr Koo, your topic today is "Ideal and Reality", what sort of ambition do you have?

MR JOSEPH KOO:

First of all, thank you for the kind words. I feel ashamed because my ambition has yet to be achieved or fulfilled. As someone in the music industry, I like to create good music or the best music. As a good musician, I think there are three points that are terribly important. First you have to be strongly passionate about music and you are really into music. If you are not into music, if you are passionate about it you cannot have music as your lifelong career. Second, I do not think you should get into music for money. You have to do it for interest because only for interest, will you be able to sustain your path and you can get through the whole process. However how hard it is, it would be an enjoyment. If you are just working for money, then you would be better to speculate in the property market or the stock market. Thirdly, you must work hard and have perseverance, you must not be afraid of hard work. Only by doing so you can make achievements.

My first work was "Dream" TV 1962. The title "Dream" seems to tie in with today's theme very much. I started to pursue my dream, then I started to compose a lot of songs. I composed a lot of theme songs for TVB dramas and then I was known to the public. Later, we had CASH. We were then better protected, so that we can concentrate on music composing.

### Protect the interest of composers and authors

PROFESSOR CHAN WING WAH:

CASH, is the Composer and Authors Society of Hong Kong. It was founded in 1977. Its theme is to protect the benefits of composers and authors, thereby protecting intellectual property. Under the appeal of the Hong Kong Government, we also tried to move towards a knowledge-based economy.

MR JOSEPH KOO:

As a result of the establishment of CASH, I also became a beneficiary. 28 years

CASH signed a reciprocal agreement with 75 other organisations. Together with them, we are the authorised dealers for 1,65 million authors and composers all over the world.



ago, a group of enthusiastic and active composers like Mr Huang Zhan, Mr Lin LePei, a few others like me founded CASH. I think the best person to introduce CASH is our CEO, Elton.

MR ELTON YEUNG:

We are now celebrating its 28th anniversary this year. When CASH was first founded there were just a few members and now we have 2,700. As a perfect IP protecting institution, we must spare no effort in protecting the benefits of our members such that Mr Koo and our 2,700-odd members persist can concentrate on their creative work. We signed a reciprocal agreement with 75 other organisations. Together with them, we are the authorised dealer for 1,65 million authors and composers all over the world, including the Bee Gees, Michael Jackson and John Lennon.

Apart from intellectual property protection, we also facilitate music composing. We have raised a CASH fund which we hope will be able to support local creation including traditional music and pop music. Every year, we fund a number of potential artists to receive training overseas. CASH members, all of you here, all the members of the public of Hong Kong and the Hong Kong Government are expected to contribute to our mission. We hope that by protecting intellectual property, we will be able to foster culture so that creative culture can be sustained forever.

MR JOSEPH KOO:

Yes, CASH has allowed us to have our benefits protected so that we can concentrate on creation. As regards how to realise my ideal, you just heard the song <Shanghai Bund>. In the year 2000, <Shanghai Bund> was chosen as one of the golden anniversary songs of Hong Kong. In 1983, among the RTHK Awards, five of the ten award-receiving works were written by me. I would like to mention this because this is my pride. Thank you very much. Talking about music, I actually started very late. I started to play piano at 17. To me, nothing is too late. Even today, my enthusiasm for music has not subsided in any way.

### Sign agreements casually, treated unfairly

PROFESSOR CHAN WING WAH:

Mr Koo, behind anybody's success there is a great deal of hard work. Do you have any sad and difficult stories to encourage us?

MR JOSEPH KOO:

Well, I believe everybody has difficult stories to tell. I remember when I started to learn to play piano, I did not learn it in the traditional way. I learned it myself. Fortunately, I was employed by nightclubs to play the piano but I could not cope with a number of works. I discovered that just passion alone would not suffice. I must receive training and continue to work hard. So I got a tutor to teach me piano as well as traditional music theories. So during the day I learned the piano; at night, I played in nightclubs. However, I was still fired eventually. Fortunately, by coincidence, I obtained a scholarship to receive further training in the United States. I got married when I was very young so I had a family with me at that time and that decision was difficult. Eventually, I made the bravest decision in my life, that is to leave my family here and go to the United States. I had to maintain my living in the United States so I served as a waiter in a restaurant as well. In fact, I was not even qualified as a waiter. I was only employed as a young boy who brought the dishes out to the customers. And my family suffered as a result also. So that is the difficult story behind me. But my belief is that anything that I cannot cope with, I have to try my best to overcome it.

PROFESSOR CHAN WING WAH:

Just now, Ms Choi mentioned a number of court cases in relation to intellectual property copyright. Do we have to develop a sense of law nowadays?

MR JOSEPH KOO:

Yes. Back in those years, most of us knew nothing about copyright laws. In particular, I wrote so many songs, but also signed a lot of agreements randomly and

We hope that by protecting intellectual property, we will be able to foster culture so that creative culture can be sustained forever.

## Protected without the umbrella of big company

Ask: I am an independent creator of music. My worries are that before I publish, before I market my works, there will be no protection. I mean I do not really have any big company backing me up. What protection is there for me?

MR ELTON YEUNG: As for independent creation, we are going to be putting forward new criteria next year. Previously, if you have only one song which has been licensed, you would be entitled to join. Now with internet music and handset music being all the rage, we will be revising our criteria for admission. We will be informing those who are interested later on. Once you become a member of CASH, you register your song, the lyrics and the music will have to be registered, otherwise we have no idea who the lyricist was. You give us a song, but if you do not have a song with you, I am sure we can get access to the songs from the record company.

## Good songs judged only by the listening public

Ask: How can someone compose good music? What is your definition of good song? And also, in the music scene in Hong Kong, can the songs be described as good songs?

MR JOSEPH KOO: Well, this is a very difficult question for me. How can someone compose good music, good songs? I have been looking for an answer, I have been looking for it for many years. A good song is not really subjective or subjectively judged. You can compose something and they call it good. It is really for the listening public to determine whether something you have created is good or not. This is an impossible question to answer.

casually, so I was treated unfairly. I actually lost a lot of money. We are talking about money. Elton, you said that throughout the world where there are Chinese, there are my songs. How much money have you actually collected on my behalf? As much as Elton John?

### Enjoy the music legally

MR ELTON YEUNG:

Well, I cannot disclose this. I absolutely cannot disclose your income in CASH. You understand this. But Fai Gor, you can rest assured that apart from Hong Kong, throughout the whole world, as I said, we have signed agreements with 75 associations which strive very hard to protect the benefits of their members. I cannot disclose your income through CASH but I can share with the audience our total copyright revenue in 2004. According to PriceWaterhouse, last year our total income was \$117 million. In the United States, they have two major music copyright associations. Either from BMI or ASCAP, I mean the records, the average income was US\$700 million last year. In the Asia Pacific region, Japan achieved most in protecting copyright. Their income actually decreased a little bit when compared with the past two years, but still, it exceeded US\$950 million. KOMCA in Korea earned US\$53 million; CASH, US\$50 million equivalent; Singapore COMPASS, US\$5.4 million; Malaysia MACP, US\$5 million. Hong Kong is a city with a population of less than 7 million people. I think our performance is satisfactory and envisage our income will exceed US\$12.5 million this year.

MR JOSEPH KOO:

I feel very comfortable to hear what you said. Recently there were cases concerning the downloading of music from the internet. Is there anything you have in this regard to protect us?

MR ELTON YEUNG:

Yes, five years ago we already tried to do something about the internet. And earlier this year, in February, we formally became the first institution in Asia to issue a licence on music downloading. This has actually broadened the scope of our business and all of you here, those who love music, can now lawfully enjoy digital music. We hope that music will not just contribute to creative industries but satisfy the theme of today and become a brand name in Asia.

MR JOSEPH KOO:

I hope that the people in Hong Kong will learn to respect copyrights. Walt Disney said: "If you can dream it, you can do it." And this is the saying I would like to share with you.

(After the session, on behalf of the organiser, the Home Affairs Bureau, the moderator explained that everything will be duly recorded for a report and be put together for publication. All the details will be available on the website: <http://www.accfhk.org>)

