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To: Office of the Government Chief Information Officer
Commerce, Industry & Technology Bureau
Hong Kong SAR Government
2/F Murray Building, Central, Hong Kong

From: Business Software Alliance, Hong Kong

**Re: Response Document to the Public Consultation on 2007 Digital 21
Strategy consultation**

Date: 18 December 2006

As the voice of the world's leading commercial software publishers and their hardware partners, the Business Software Alliance (BSA) welcomes the opportunity to comment on this important ICT strategy document for Hong Kong. BSA members include Adobe, Apple, Autodesk, Avid, Bentley Systems, Borland, Cadence Design Systems, Cisco Systems, CNC Software/Mastercam, Dell, Entrust, HP, Intel, McAfee, Microsoft, PTC, RSA; A Division of EMC, SAP, SolidWorks, Sybase, Symantec, Synopsys, The MathWorks and UGS.

INTRODUCTION

BSA strongly supports the Government taking the leadership to ensure that Hong Kong remains a world-leading digital territory and to develop the long-term blueprint for ICT strategy. The private sector, academia and the general public all have important roles to build and sustain the local ICT industry so as to position and maintain Hong Kong at the forefront of the digital world. BSA has been actively promoting copyright protection, online security, e-commerce through education and policy initiatives, and other issues that are vital for technology innovation. We are therefore pleased to be able to provide you with the following comments on the consultation.

COMMENTS AND RECOMMENDATIONS

1 Facilitating a Digital Economy

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BSA applauds the Government's continuous leadership and investment in the ICT sector. However, for Hong Kong to reach its goal as a world digital city, we believe that one of the key success factors is having **a good intellectual property (IP) regime**.

We acknowledge that Hong Kong has been active in the protection of IP rights, and BSA has also partnered with the Government in various initiatives, with the latest one being the Genuine Business Software Campaign. It is therefore of concern and disappointment that we found that the piracy rate in Hong Kong has increased by two points from the previous year, reaching 54%, as revealed in the 2005 Global Software Piracy Software Study conducted by IDC (<http://www.bsa.org/globalstudy/>). We believe that apart from educating the public to raise the awareness of respect for intellectual property, having **strong copyright law (discussed further in section 3 below) and effective prosecution of infringers are also critical**. We urge the Government to devote more resources to address this ongoing problem and reverse the negative trend.

Research has also shown that **reducing the piracy rate can have a significant positive impact on local economic development and growth of ICT industries**. Local companies that are involved in the distribution channels, development of add-on components surrounding the core products or industry specific solutions, as well as IT consulting and support services, all stand to benefit from a healthy ICT ecosystem. According to another study conducted by IDC on the economic impact of reducing piracy (<http://www.bsa.org/idcstudy/>), the benefits of reducing 10 points in the piracy rate by 2009 will bring an aggregate of US\$576.3 million of additional local industry revenue to Hong Kong, translating into a total of over 4,600 additional jobs and additional taxes of US\$150 million over the same period.

Effective protection of intellectual property rights is also an essential ingredient for creating the right environment for encouraging innovation that leads to a virtuous circle of technological innovation and development. The Chief Executive has in his Policy Address highlighted the important contributions that the IT and creative industries can bring. **The domestic industries need a good intellectual property regime in order to thrive**. If intellectual property is not respected and valued, and intellectual property protection is not effectively enforced, there will not be an incentive for the domestic industries to invest and create future innovations.

We therefore urge the Government to take even bolder and stronger measures in driving down piracy rates to maintain Hong Kong's competitiveness and reputation as an international city and commercial hub.

2 Promoting Advanced Technology and Innovation

BSA commends the Government's continued focus on investment in R&D, and the promotion of a number of key technologies, including communications technologies, digital content, sensor and identification technologies, software development and packaging, and the next generation Internet (IPv6).

At the same time, we would like to see that the Government continues to foster an environment in which ***the use and adoption of ICT solutions is driven by market forces and principles of neutrality***. These would be consistent with Hong Kong's long history as one of the freest and most open markets in the world. ICT for any project should always be chosen on merit taking into account various factors including functionality, performance, security and value. A territory which actively promotes the use of all types of solutions will lead to more innovation and increase market efficiency. More specifically, the Government and other users of technology should be free to use the software and other technologies that best meet their needs and gives them the best value that they can afford. Software developers, both domestic and international, can freely innovate without being constrained in the way they can commercialize or license their innovations in the future, and would be motivated to compete at delivering maximum value.

Of equal importance as technology neutrality is ***the emphasis on interoperability and technology standards***. We see growing trends in which open source and proprietary software are used together in the same environment by users and interoperability is key to address such demands. Software industry players, regardless of the software licensing or development model adopted, recognize the need for interoperability and are working together to define such standards. A mature and balanced understanding of the purpose and internationally-accepted practice of standards setting is essential for a dynamic marketplace and technology industry. A healthy IT ecosystem based on voluntary standards has proven best to help users achieve their desired goals of interoperability, flexibility and accessibility.

Indeed, at the 18th APEC Ministerial Meeting, Ministers recommended that leaders adopt the "**APEC Technology Choice Principles**" that emphasize on the ***promotion of technology choice in a market-opening, trade-liberalizing manner*** that spurs the cycle of innovation and opportunity, and promotes economic development across the region.¹ The APEC economies agreed, among others, to:

- promote technology neutral policies and regulations, where appropriate, that will allow flexibility in the choice of technologies in order to ensure

¹ We applaud the decision by the Government of Hong Kong SAR to join APEC's Technology Choice Pathfinder initiative.

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- competition, maximize benefits for governments, businesses, and consumers, and bridge the development gap;
- promote the development and use of open, international, and voluntary standards, that are established through a transparent process, in order to facilitate interoperability among diverse hardware and software systems and contribute to the development of the digital economy;
 - refrain from mandating standards that have the potential to stifle innovation, limit technology choice, hinder competition, or serve as a barrier to market access, except where such measures are necessary for legitimate public policy objectives (e.g., health, security, and safety); and
 - promote procurement practices, with respect to the acquisition of technology, that are transparent, non-discriminatory, openly competitive, and merit-based.

The Government should therefore be mindful to ***maintain neutrality in technology adoption, encourage and facilitate such standards initiatives and adoption, and raise the general awareness and incentive for domestic software industry to participate and collaborate with international players in this regard.*** If the Government is successful in playing such a role, it will be a step closer in achieving the goal of Hong Kong being an international IT hub.

3 Developing Hong Kong as a Hub for Technological Cooperation and Trade

3.1 Strength of Hong Kong as a technology hub

The Government has correctly identified the inseparable ties between Hong Kong and Mainland. Hong Kong surely possesses a niche and plays a unique role as a gateway for overseas technology providers to tap into the Mainland market. We are pleased to see that the Government stays close with the development plans of the Mainland. We would like to see more concrete programs undertaken by the Government to facilitate local businesses to tap into the China market, under CEPA or similar initiatives, and to provide more support to local business after they have set up in China, in view of challenges that they may face.

3.2 Vibrant ICT industry

We agree that a vibrant ICT industry must be backed by a knowledgeable and versatile workforce. This is clearly required to maintain Hong Kong's competitive position in the region as a knowledge-based economy. Following the comment above on neutrality of technologies, we would like to see that the set of Specification of Competency Standards to be developed by the Education and Manpower Bureau with the assistance of the ITAC of the ICT industry which

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identifies standards required for different levels of qualifications under the Qualification Framework would not be unnecessarily restricted to any particular technology or development.

3.3 *Creating a conducive business environment*

With regard to the various areas discussed in the consultation, we offer the following observations:

3.3.1 Information Security

BSA would urge the Government to take steps to ensure that the legislative framework of Hong Kong continues to be updated to take into account the technological requirements of business. We are pleased to hear that the Electronic Transactions Ordinance will be considered for updating as part of a 2008 review since it is important that it take into account any developments in relation to ensuring the security of contracts concluded electronically. This will boost the public's confidence in online transactions and encourage more opportunities for e-commerce.

We are glad to see the idea of the publication of risk assessment and electronic authentication framework for public reference in 2008, and look forward to more details in the final strategy and the opportunity to provide input in the making of such framework. **Total security** depends not only on the design of security features, but also how well the software is deployed, configured, updated, and maintained, including whether product vulnerabilities are discovered and resolved through appropriate updates. Suitable education and guidance in this regard will be welcomed by SMEs in particular.

3.3.2 Privacy Safeguards

Privacy is obviously a high concern for any digital society. In recent years, we see the general public in Hong Kong has become more aware of this issue and demanded greater protection of their personal data. Given that the Personal Data (Privacy) Ordinance ("PDPO") was enacted nearly ten years ago, we agree that it is the right time to conduct a comprehensive review of the legislation.

BSA believes that the Government can play a key role in developing a solid information security framework in close partnership with the private sector. We look forward to seeing a **more detailed discussion in the final version of the Strategy on the promotion of cyber-security**, covering areas such as the followings – education and guidelines for the public on how to handle sensitive information and data, training for

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government systems administrators and users, regular consultation and communication channel with the private sector on security-related issues, security requirement in software procurement, and funding of R&D of security-related technologies.

3.3.3 Protection of Intellectual Property Rights

Going forward, Hong Kong IP law must continue to offer at least equivalent legal protection to IP owners as that offered to them in other highly developed territories. We therefore welcome the Government's statement that Hong Kong's infrastructure needs to cultivate a culture that ensures IP rights are protected. While Hong Kong has, in the past, shown leadership in the region in the protection of IP rights, including through education campaigns, legislation, and law enforcement action against infringers, software piracy, and in particular the illegal use of software in businesses, remains a significant concern to our members.

BSA applauds the steps taken in the recent Copyright (Amendment) Bill 2006 and has already provided a submission to the Government detailing our thoughts and concerns in this area. In summary, we were in favour of the Government measures relating to:

- strengthening legal protection for technology protection measures by introducing civil liability for acts of circumvention and criminal liabilities for dealing in circumvention devices or services;
- criminal business end-user liability;
- directors and partners liability; and
- affidavit evidence,

and consider that these will ensure a safer business environment in Hong Kong and give a greater deterrent to breach of the Copyright Ordinance itself. However, BSA made clear its concerns over developments that may significantly reduce the protection that the rights owners now enjoy, such as the new fair dealing exceptions for education and public administration, which are unnecessary and overly broad, and the new express employee defence against end-user criminal liability.

In any case, BSA would urge the Government to constantly monitor the legal situation in the coming months and years and consider whether it needs to take further steps in relation to the above and ICT generally as technologies continue to improve and adapt.

We also look forward to the public consultation on the review of **copyright protection in the digital environment**, which is long overdue. We consider that Hong Kong needs to:

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- ***encourage digital rights management infrastructures*** to ensure that it is a territory where IP rights are respected and illegal downloading and sales are minimized. This requires an increase in the measures that can be taken against those who upload and download such illegal content. Otherwise, it will be challenging to encourage software owners to offer network-offered and pay-as-you go models to drive higher ICT adoption by SMEs.
- ***update and enact laws*** which deal clearly with how copyrighted works can be communicated to the public including as part of new methods of communication such as interactive and non-interactive digital broadcasting, webcasting and cool-streaming.
- ***clarify in statute the law on internet copyright infringement.*** The Hong Kong courts have already indicated their hard line on copyright infringement using digital media through their recent 2005 decision against Chan Nai Ming where the defendant was jailed for three months for using BitTorrent for internet movie piracy.
- ***consider whether it should enact what have become known as “take down provisions”*** as introduced under the Digital Millennium Copyright Act in the United States of America. These provisions allow copyright holders to ask that an online service provider remove access to copyright infringing material if the copyrighted material is made available through their site. In exchange for complying with such notices the online service provider gains some protection from copyright infringement claims by that intellectual property owner. We believe that this type of development should at least be considered and discussed in relation to Hong Kong.
- ***facilitate effective enforcement of any new laws***, since laws without enforcement are vastly undermined.
- ***ensure that there should not be legislation or regulations for compulsory licenses on patents, copyrights, trade secrets and other forms of intellectual property to achieve interoperability.*** Such policies deprive customers of innovative solutions by stifling the incentives to create and invent.

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3.3.4 Tackling unsolicited electronic messages

BSA is glad to see that the Government responded to the voices of the industry and has started the legislative process of putting in place a pragmatic and robust piece of legislation that will significantly strengthen the rights of both businesses and individuals to stop receiving unwanted commercial emails. BSA has already made its submissions in respect of the Unsolicited Electronic Messages Bill.

Having the legislation is only part of the answer to tackle the problem of spam, however. We would like to see in the final strategy paper how the Government plans to **educate and provide prescriptive advice** to businesses as senders and consumers as recipients of electronic messages, leveraging **industry and government collaboration** in effective enforcement of the legislation. Only with the adoption of a holistic approach can the spam problem and related issues such as 'phishing', identity theft, computer viruses and worms be placed under tighter control and thereby increasing consumers and businesses confidence in transacting online.

3.3.5 Development of technology standards

The Government can play an important role in advancing technology standards and interoperability. Government should affirm the principle of technology neutrality and allow public administrations to select software solutions and standards and best serve their needs.

The government should avoid policies that inadvertently discourage the development and adoption of broad-based standards, either by mandating standards themselves or mandating those that have not achieved broad industry support, or by reducing the economic incentives to participate. The government should not pick winners in the marketplace under the guise of interoperability, or regulate technology in the name of interoperability.

Government-mandated standards in the technology industry can often result in a number of unintended consequences. Mandated technologies and compulsory standards tend to freeze innovation and diminish incentives for investment in research and development. Such mandates also tend to "lock in" consumers to specific products that may quickly become outdated.

This deprives consumers of new features, increased functionality and efficiency, and possible benefits from new, lower-cost products. And in failing to fully reap the benefits of such quickly evolving technologies,

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certain market competitors are inadvertently disadvantaged and market acceptance and penetration of these technologies are hindered, preventing the market from developing into a multi-faceted and competitive environment.

In contrast, market-led solutions are those most amenable to innovation and best able to respond rapidly to evolving consumer needs. Industry players should be encouraged to participate in the development of open standards, and to voluntarily contribute their best technology.

The government, in its role as a customer of technology, has legitimate interests in ensuring interoperability between technologies used for e-government. These should be pursued based on the functional goals the agency seeks to meet with a procurement tender, and not as a one-size-fits-all policy. The government should focus on results, and not methods. Decisions must leave room for emerging solutions to develop. Policies should give the government the flexibility to use the full range of standards and interoperability mechanisms available.

Standards are successful when they solve the problem for which they are intended. The development of such standards is achieved through a natural and dynamic process that is voluntary and responsive to market demands. The government should not establish preferences for standards based on whether the standard was developed within or adopted by a formally established standards setting body. The government should focus on open specifications, rather than narrowly defined formally adopted or maintained standards. The goal is interoperability, and open specifications promote that goal. Formality is only a means, as just because formal bodies have participated in the process does not guarantee that technology would promote interoperability.

4 Enabling the Next Generation of Public Services

BSA is pleased to see that the Government is taking the lead to promote ICT adoption within the Government, with the next wave of e-government services being more citizen-centric with increased more private sector participation. The Government has therefore chosen the right course in ensuring that government services and projects are to be developed on an open platform. Please see our comments in section 2 above regarding the **significance of technology neutrality and adoption of technology standards** in this regard. The success of the various e-government projects will in turn depend on how successful the Government is in addressing the various issues discussed in section 3.3 above that will boost confidence in e-commerce and transactions.

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5 Building an Inclusive Knowledge-based Society

5.1 Digital Inclusion

BSA believes the Government has a role to play in addressing telecom issues now so that we can continue to realize the enormous benefits of our digital future. BSA member companies seek a future in which technology users – whether at home, in the office, at school or on the road – possess the ability to access, create, and share information. A digital, portable, and virtual future is closer than ever before. Advances in information technology and the development of the Internet have provided the foundation for such a future and the subsequent creation of millions of websites and the rapid innovation of services, applications and devices have helped make the Web a global platform for connectivity, productivity, creativity and entertainment.

BSA is therefore pleased to note that the Government has the vision of ensuring affordable access to Internet as a utility service available to every Hong Kong resident. In particular, we would like to see more detailed discussion on what action the Government would take in achieving such goal, including the **adoption of new wireless technologies such as HSDPA, WiMax and mesh networking.**

The Government should also be mindful that while options for the initial acquisition costs of software solutions would be an important factor in driving ICT adoption by SMEs, it is the **total costs of ownership** that SMEs should consider in the long run – long term support and maintenance costs, training costs as well as ease of use and productivity gains.

5.2 Bridging the digital divide

BSA is glad to see that the Government understands that to bridge the digital divide, merely providing access to technology is insufficient. The benefits of computers and connectivity would be lost if users lacked the **knowledge to operate those technologies effectively.** It is also encouraging to note that the Government is **working closely with NGOs and private sectors in setting up a special task force** to assess the needs of different under-privileged groups in the community. We would like to see more concrete plans in the final strategy as to the type of resources that the Government will provide to implement the recommendations of the task force.

6 Conclusion

As the Government has already noted, traditional boundaries between different types of media are increasingly converging through digitalization. This makes it very important that the Government should carefully consider any action in the ICT arena and use broad brush techniques to ensure a level playing field for all types of businesses and consumer. Any policy that limits choice or development of new technologies would be a step backwards for a historically very forward thinking territory.

BSA would like to thank the Government for this opportunity to provide input and assist in developing a comprehensive strategy for ensuring a knowledge based economy and a healthy ICT infrastructure in Hong Kong. We look forward to hearing your response to our above comments in due course.

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