

TVB's Supplemental Submission on the Copyright (Suspension of Amendments) Bill 2001

We refer to our submission made to the Bills Committee on the Copyright (Suspension of Amendments) Bill 2001 (the "Bill") on 9 May 2001 and would like to make further representations to the members of the Bills Committee.

General

It is of crucial importance to note that all television programmes are intellectual properties and copyrighted material. Therefore, **ALL** copyrighted programmes, regardless of types and genres, must be protected equally. One important basic protection of any copyrighted television programmes is that its signals cannot and should not be redistributed by any means (including but not limited to tapes or via closed-circuit television) without the licensor's approval. That is why we as copyright holder of our own productions have always charged every schools a pro-forma licence fee.

Non-Dramatic Television Programmes

1. The Government proposes to suspend the application of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 ("the Amended Ordinance") to all copyright works except movies, television dramas, visual or audio recordings of music or songs and computer programs. The reasons given are that the works excluded from the suspension generally have substantial commercial value, are not normally information disseminated in enterprises or schools and piracy of these works in Hong Kong and elsewhere is rampant.
2. We submit that the reasons given do not only apply to our television dramas. All our television programmes, not only television dramas, have substantial commercial value. For example, we have invested substantially in the production of many of our documentary series, news and public affairs programme, entertainment programmes such as Miss Hong Kong Paegiant, the costs of which are comparable to a television drama if not more. We have also from time to time gained international awards and recognitions for many of our non-dramatic television programmes. These programmes have a high commercial value as in television dramas and should be given the same level of protection as that given to television dramas, movies and other works listed in Section 2(2) of the Bill. We see no justification to give different treatment to different types of television programmes.
3. Further, we do not see how other non-dramatic television programmes are information normally required to be disseminated in enterprises or educational establishments. In the case of enterprises in particular, we do not believe it is the general practice of enterprises to record television programmes on a continuing basis for dissemination internally. It is questionable whether they have the television and recording equipment to record television broadcast at their premises and to circulate recordings internally for review. We believe the greatest pressure from the community to suspend the Amended Ordinance is in relation to the printed media which can be easily copied and circulated internally. In any case, we could not see what further general information the business community

could gain from recording television programmes as they could have already obtained sufficient if not more information from the printed media.

4. As to the recording of television programmes by education institutions, we would like to point out that Sections 41 to 45 of the Copyright Ordinance have specifically permitted copying of works by education institutions. In particular, Section 44 further allows the recording of a whole broadcast or cable programme. There is no restriction that programme can only be recorded to "a reasonable extent". We would also refer to paragraphs 8 and 9 of our submission below as to how any organization can easily obtain appropriate licences from TVB.
5. We would also like to emphasize that not only television dramas have encountered piracy problems, some of our non drama programmes have faced with similar problems overseas.
6. We are also concerned that by singling out television dramas would give a wrong impression to the public that all other television programmes have lesser value and could be freely copied.
7. Further, inclusion of movies and visual or audio recordings of music or songs in Section 2(2) of the Bill but excluding other television programmes would also give rise to an anomaly that other television programmes which contain some music or songs would not have the same level of protection as a product which contains wholly or substantially musical works. It appears that musical works have been treated differently depending on in which media they are being carried or incorporated.

A Convenient Licensing mechanism does exist

8. One of the main concerns of the Government and the business community is that there is no convenient mechanism to obtain the required authorisation and this would hamper their dissemination of information. We believe this concern is directed at the printed media. For many years, TVB has been granting licences to educational institutions and government departments for them to record our programmes from time to time.
9. We have a well established and published clear channel of communication. In addition to our widely publicised hotline, our official web site has also provided email address and point of contact. The public has been well informed of how they may contact TVB for any enquiries, including the application for any licence to copy our programmes. There is no reasonable justification to say that there is an absence of a convenient mechanism for the public to obtain licence from TVB.

Conclusion

10. For the reasons stated above, we strongly submit that all television programmes must be included in Section 2(2) of the Bill. The reasons given by the Government are not justified in the case of television programmes as the economic and commercial value of all types of television programmes are equally substantial and important. Further, the

concerns of the public have already been addressed with the presence of an existing licensing mechanism which are easily accessible by the public.

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