

LETTERHEAD OF ASIA TELEVISION LIMITED

CB(1) 1250/00-01(08)

**Mrs Florence Lam
Clerks to Subcommittee
Legislative Council Building
8 Jackson Road
Central
Hong Kong**

Date:15 May 2001

By Fax: 2869 6794

Dear Mrs Lam

Bill Committee on the Copyright (Suspension of Amendments) Bill 2001

We refer to the Copyright (Suspension of Amendments) Bill 2001. Enclosed please find our submission on the Bill for the consideration of the Bills Committee.

We shall be much obliged if you could present our submission to the Bills Committee.

Yours sincerely

Kwong Hoi Ying
(Senior Vice-President)

Submissions on the Copyright (Suspension of Amendments) Bill 2000

We welcome the Government's acknowledgement to the problems arisen from the enforcement of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (the "**Amendment Bill**") and the decision to resolve the problem by proposing the Copyright (Suspension of Amendments) Bill 2001 (the "**Suspension Bill**").

Submission on the Suspension Bill

A. Description of Works in Section 2(2)

Section 2(1) of the Suspension Bill proposed to suspend the operation of Sections 2 to 7 and 9 to 18 of the Amendment Bill. Section 2(2) of the Suspension Bill exempted the following works from the operation of Section 2(1):

1. movie;
2. television drama;
3. sound recording;
4. computer program.

We submit that the description of works set out in Sections 2(2) (a) to (d) is not only unnecessary but also causing confusion. For example, Section 2(2)(a) describe a film as "... commonly known as a movie and that has been published or is intended to be published in Hong Kong or elsewhere". Whereas "film" is defined in Section 7 of the Copyright Ordinance (Cap. 528) (the "**Copyright Ordinance**") to mean "a recording on any medium from which a moving image may by any means be produced." (Section 7(1)). Section 7(2) further states that "the sound-track accompanying a film is to be treated as part of the film..."

As "film" is already a defined term in the Copyright Ordinance, we see no reason not to adopt the definition in the Copyright Ordinance. If the Government believes that the definition in the Copyright Ordinance is not correct, the appropriate way should be to amend the definition in the Copyright Ordinance.

By the same token, "broadcast" and "cable programmes" is defined in Section 8 and 9 of the Copyright Ordinance respectively, "sound recording" is defined in Section 6 and "computer program" is defined in Section 4(1)(b). We submit that the definition of different kinds of works in the Copyright Ordinance should be adopted in the Suspension Bill.

B. Exempted Works

Works protected by the Copyright Ordinance include:

1. dramatic works (Section 4, Copyright Ordinance);
2. literary works (Section 4, Copyright Ordinance) (computer program is under this category);
3. musical works (Section 4, Copyright Ordinance);
4. artistic works (Section 5, Copyright Ordinance);
5. sound recording (Section 6, Copyright Ordinance);
6. films (Section 7, Copyright Ordinance);
7. broadcast programmes (Section 8, Copyright Ordinance);
8. cable programmes (Section 9, Copyright Ordinance).

Out of the 8 kinds of work mentioned above, only computer program (which is a kind of literary work under the Copyright Ordinance), sound recording, films, television drama (which only confine to drama but not otherwise) are included in Section 2(2) of the Suspension Bill.

As a broadcasting company, we need to deal with many copyright issues in our daily operation. In the circumstance, we want to seek clarification from the draftsmen of the Suspension Bill that whether it is correct to say that an infringement to any works not included in Section 2(2) of the Suspension Bill (for example dramatic works, literary works, etc.) will not be a criminal offence.

If it is the Government's intention to exclude the other works protected by the Copyright Ordinance, we request an explanation from the Government on its rationale behind exempting the works set out in Section 2(2) of the Suspension Bill only but not the others.

C. Duration of Suspension

Pursuant to Section 3 of the Suspension Bill, Section 2 of the Suspension Bill shall cease to have effect on 31 July 2002. To avoid the "chaotic" effect caused by the enforcement of the Amendment Ordinance, we urge the Government to inform and consult the general public of any proposed amendment at an earlier stage.

D. Balance

We believe in the importance of protecting copyright. We also believe that fair dealing

should be allowed, as timely dissemination of information is important to any fast moving economy. What is meant by fair dealing may be difficult to define but not impossible. A responsible government should not try to avoid difficulties by eliminating all possibilities. We submit that fair dealing should be allowed and the Government should look into the very nature of each copyright work to decide what should amount to fair dealing in each work.

To strike a balance between protecting copyright works and the importance of dissemination of information is the way we believe the Government should be heading for.