



**Business Software Alliance**

May 17, 2001

The Honorable Sin Chung Kai  
Chairman of the Bills Committee to Study the  
Copyright (Suspension of Amendments) Bill 2001  
Legislative Council

Dear Mr. Sin:

On behalf of the software industry in Hong Kong, I would like to supplement our May 2<sup>nd</sup> letter regarding the protection of intellectual property rights in software in Hong Kong. As stated in that letter, the Business Software Alliance remains strongly supportive of the Intellectual Property (Miscellaneous Amendments) Bill 2000 and opposes any attempt to broaden the scope of the Copyright (Suspension of Amendments) Bill 2001 to include software within the scope of the suspension. Two issues have arisen since our May 2<sup>nd</sup> letter to you that we would like to address.

Parallel Importation of Software Products into Hong Kong

It has been proposed that Hong Kong law be reviewed with a view to eliminating criminal and possibly civil penalties for the importation, trade in and/or possession in the course of a business of parallel imported software. This proposal is at least in part based on the view that there is a shortage of software products in the marketplace and that permitting the parallel importation of software products would lower the price of those products in Hong Kong.

We believe that it is important to clarify three points with respect to this issue:

- First, while BSA members did see a shortage of their products in late March and the first part of April this year because of unexpected demand, all BSA members confirm that stocks of their products are up to normal levels in Hong Kong. Should anyone not be able to find a product they are looking for, they should contact the BSA member involved to find out where they can purchase that product.
- Second, BSA understands that its members generally apply universal pricing for individual products to distributors around the world, and that differences in the price of a particular product from market to market are for the most part due to the differences in the cost of doing business in different markets (e.g., advertising, distribution, storage) and differences in margins for resellers and distributors from market to market. One should not assume, therefore, that allowing parallel importation of software will have a significant affect on the price of software to consumers.
- Third, BSA members do not support price gouging in the marketplace. Should any consumer feel that they are being offered an unfair price, they are urged to contact the BSA member involved, which can give them the names of reputable dealers.

Because BSA members for the most part have universal pricing around the world, the BSA supports an expedited review of the parallel importation provisions of Hong Kong law as they

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related to software. BSA Hong Kong does not oppose the elimination of criminal sanctions for the importation, trade in or possession of parallel imported software in the course of running a business, and will not file criminal complaints with Customs & Excise that it knows are based on the importation, trade in or possession of parallel imported software in the course of running a business.

Our only caution on this point is to suggest that the Government and Legislative Council seek the views of distributors and resellers of software in Hong Kong because they are the parties that would be most affected by a change in the law with respect to the parallel importation of software products. We have provided contact details for some of these parties to the Government to assist in this process.

Public Awareness of the Intellectual Property (Miscellaneous Amendments) Bill 2000

We would like to take this opportunity to re-emphasize the phenomenal efforts that were taken to prepare companies in Hong Kong for the entry into force of these amendments. As we have previously said, in the months preceding the entry into force of the legislation time the Government kicked off a massive public educational campaign. It also cooperated with the software industry to hold a record-breaking series of free seminars on how to manage software assets in a business, and helped distribute tens of thousands of free software asset management "help kits" to any business that asked for one. The government also participated in the launch of the BSA Certification Program last November, which provides companies certified as having proper software asset management practices competitive advantages when bidding on contracts with leading Hong Kong companies. The educational efforts that have taken place and continue to this day are, in a word, unprecedented. No other government has done more to prepare its businesses to manage their software assets in accordance with the law.

In closing, let me reiterate that Hong Kong can achieve its goal of becoming a regional power in the IT industry. The Intellectual Property (Miscellaneous Amendments) Bill 2000 was the most important step the government could take to create a healthy environment for the development of the software industry here because it addresses the greatest barrier to the development of the industry: corporate end user piracy. Suspending this legislation would take Hong Kong several steps back in achieving its IT goals, call into question its compliance with international norms and obligations, and significantly damage its international reputation.

We respectfully urge the members of the Bills Committee to review our earlier submission on this important issue to ensure they have all the relevant information we can provide.

Sincerely,



Tom Robertson  
Vice President