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Secretary for Commerce and Industry
(Attention: Mr. Kenneth Mak, Deputy Secretary)
Commerce and Industry Bureau
Level 29 One Pacific Place
88 Queensway
Hong Kong

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Dear Mr. Mak,

Copyright (Suspension of Amendments) Bill 2001

I refer to my letter dated 23 April 2001 commenting on the first draft of the Bill. I note that some of my comments such as on providing a cessation of the suspension clause and on the long title have been addressed in this Bill. With regard to the drafting and legal aspects of this Bill, I would be grateful if you could clarify the following.

2. Paragraph 6 of the LegCo Brief states that "the term 'business' as used in the Copyright Ordinance is not confined to commercial activities. It can also cover educational, charitable or government activities". Paragraph 14 of the Brief also explains to the effect that for the expression "in the course of business", it will include teaching activities in educational establishments. May I know on what legal basis that you have arrived at this view?

3. Article 61 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) requires members to "provide for criminal procedures and penalties to be applied at least in cases of wilful trade mark counterfeiting or copyright piracy on a commercial scale". It seems that the criminal offence enacted go beyond what is required under TRIPs. Please comment if you find my observation incorrect.

4. During the meeting of the Bills Committee, members have pointed out that the words "movie", "television drama" used in Clause 2(2) of the Bill are not legally defined and interpretation difficulties may arise. According to the *New Shorter Oxford Dictionary*, "movie" is originally an American word and it is an abbreviation of "moving picture". As for a "television drama", is "a drama-documentary" regarded as a "drama"? In the *New Shorter Oxford Dictionary*, a "drama-documentary" is grouped under the word "drama" to mean "a film, especially for television, dramatizing or based

on real events". Why is television drama excepted and not other television programmes which may also have substantial commercial value?

5. Clause 2(2)(c) specifies a "film the whole or substantial part of which consists of a musical work and any related literary work". Nearly every film has background music or narratives right from the beginning to the end which may fit in this category. Does it mean that every "film", perhaps except a film without sound, is to be within this scope of Clause 2(2)(c)? If it is the policy intent to exclude every "film", I do not see any reason why " a film" appear in three subsections and not just within one category of "film". Please clarify. As for the word "and", it is used in the English version while "或" is used in the Chinese version. Which version is correct? For an electronic book on CD-ROM, it may not consist of musical work but it may be a sound recording the whole or substantial part of which is a literary work. According to the Chinese version, this may be covered under clause 2(2)(c) but may not be covered under the English version. Please clarify.

6. I shall be grateful if you can let me have a reply in both Chinese and English before the meeting on 22 May 2001.

Yours sincerely,

Anita HO
Assistant Legal Adviser

c.c. Department of Justice (Attn: Mr. Jeffrey GUNTER, SALD and
Mr. Michael LAM, GC)

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