

(By Hand)

26th May 2001

The Hon. Mrs. Margaret Ng
10/F New Henry House
10 Ice House Street
Hong Kong

Dear

Re: Copyright (Suspension of Amendments) Bill

We refer to your fax of 23rd May 2001.

In view of the time constraints, the Bar Council is only able to give a very general view on the matter.

On the whole the amendments to the draft Bill is to be welcome. It has the effect of lifting the criminal sanction on certain parallel imports. The recent proposed amendment mainly affects computer programs. In general terms, the effect of subsections 2A & 2B is that those copies which were infringing copies in the country where they were made would of course remain to be infringing copies and the possession of them "for the purpose of, in the course of, or in connection with, any trade or business" would still attract criminal sanction. Likewise for copies which were not infringements in the country where they were made, if the reason for their not being an infringement was that there was no copyright protection in the country of manufacture, or if the copyright protection has expired, then it would still be a criminal offence to possess those copies "for the purpose of, in the course of, or in connection with any trade or business" (subsection 2C).

As an interim measure, the position would appear to be an improvement to the previous proposals. However, the position of the Bar remains to be that there should not be criminalisation of possession of infringing copies other than for the purposes of

trade or business with a view to committing an infringing act. This is a view which has been sent to the Commerce and Industry Bureau and also to the Clerk to the Bills Committee on 14th May 2001.

Yours sincerely,

Edward Chan, S.C.
Vice-Chairman

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