

May 2, 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, we would like to express our strong objection to the suggestion that the recent amendments to the Copyright Ordinance via the entry into force of the Intellectual Property (Miscellaneous Amendments) Bill 2000 be suspended as they relate to the unauthorized possession of software in a business environment. Such a step would be inconsistent with Hong Kong's efforts to build itself into a knowledge-based society, inconsistent with international standards of protection and Hong Kong's international obligations, and damaging to Hong Kong's international reputation. It would also not recognize the tremendous efforts that have taken place to make it as easy as possible for companies to comply with the law as it relates to computer software.

Hong Kong has appropriately set its sights on developing itself into a knowledge-based economy that can lead the region in the use and development of information technology. Developing its software industry is central to reaching this goal, something that cannot be achieved when the software piracy rate is well above 50%, where at least one out of every two application programs in use is unauthorized. High business piracy eliminates the economic incentives developers have to invest time, energy and resources into the creation of innovative programs, and is the single greatest barrier to the development of the software industry in Hong Kong. The recent amendment's clarification that business end user piracy could be punished by criminal sanctions under the Copyright Ordinance is of critical importance to addressing this problem. Eliminating this clarification would put the industry in a worse position than it was in before the clarification came into force, taking it "two steps back" in the drive to eliminate software piracy in Hong Kong.

Rolling back the amendment as it relates to software would also be inconsistent with international standards of protection and Hong Kong's international obligations. Article 61 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, administered by the World Trade Organization (WTO), requires WTO members like Hong Kong to criminalize copyright piracy on a commercial scale, which most certainly includes the knowing use of software in a business environment. This international obligation reflects international standards of protection, as nearly every country in this region either criminalizes corporate end user piracy or is actively considering legislation to do so. Hong Kong has long met this standard of protection and the recent amendments were intended to clarify this point; repealing this clarification would call into question whether it actually does meet this international standard of protection.

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Hong Kong has been, and hopefully will continue to be, one of the leaders in the area of intellectual property protection in Asia. It is appropriately regarded as having perhaps the finest laws and best legal system in the region in this area, a distinction that serves it well in terms of being seen as an attractive place for investment, technological development and technology transfer. Rolling back this legislation as it relates to the illegal use of software to operate a business would do serious damage to this reputation. It would also send very unfortunate messages to the region and the world about the appropriateness of intellectual property protection.

Finally, it should be noted that extraordinary efforts have been made to prepare Hong Kong businesses for the entry into force of the amendments as they relate to the unauthorized use of software in a business environment. The Bill was passed last June and did not enter into force for more than nine months. During this 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 Government and the industry have made serious efforts to give Hong Kong businesses the commercial incentives and tools they need to comply with the law. BSA is active in over 65 countries and territories around the world, and can confirm that no government has done more to prepare its businesses to manage their software assets in accordance with the law.

The entry into force on April 1 of the Intellectual Property (Miscellaneous Amendments) Bill 2000 was a critically important step in the development of Hong Kong's software industry. We strongly object to any suggestion that these clarifying amendments be repealed with respect to software. Doing so would call into question Hong Kong's adherence to international norms and damage Hong Kong's international reputation. The Hong Kong Intellectual Property Department, the Commerce and Industry Bureau and the Legislative Council should be congratulated for the passage of these clarifying amendments as they relate to software, and their work should stand.

Sincerely,

Tom Robertson  
Vice President

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## **BSA Supports SME Compliance with the Copyright Ordinance**

### **April 27, 2001**

The Business Software Alliance (BSA) is working hard to support small and medium sized enterprises' (SMEs) compliance with the Copyright Ordinance. The recent clarification of the law by the Intellectual Property (Miscellaneous Amendments) Bill 2000 concerning the unauthorized use of software to run a business enterprise is consistent with international standards of protection and totally in line with what other governments are doing, some for many years. Moreover, as the goal of this law is to tackle once and for all the long standing problem of corporate piracy, it is important to Hong Kong's reputation as a healthy environment for inward investment, technology transfer, and the development of the software industry. To do otherwise would risk Hong Kong's international reputation.

BSA fully and unconditionally supports the recent amendments as they apply to computer software, and wants to help SMEs legalize their software use. As a result, we and our member companies have taken a number of steps to address concerns that have arisen. Software is a legitimate business expense just like any other type of property, and a business should choose to use the software that meets its needs and that it can afford. Stealing software can never be an option. BSA has taken the following steps:

- Software Asset Management Training. BSA, the Intellectual Property Department and the Customs & Excise Department have over the last six months held 27 separate SAM seminars reaching nearly 13,000 business representatives and distributed 20,000 Helpkits. This level of training is totally unprecedented around the world and a clear sign that the government has gone out of its way to prepare companies – particularly SMEs – for the entry into force of this amendment.
- Special Offers. Some BSA members have made special offers for SMEs, making it easier than ever for them to legalize their software use. Microsoft, Macromedia and Symantec are three of these companies. We urge anyone who is interested in such offers to contact all BSA members to find out more what special deals may exist.
- Pricing. BSA members do not control the pricing of their products by retailers. Should users believe that they are being charged unfair prices by any dealer, they should feel free to contact the relevant BSA member, who would be happy to direct them to a legitimate retailer.
- Availability of Software Products. All BSA members report that it is “business as usual” with respect to the availability of software products in the marketplace. The stores are fully stocked at this time and should a business not be able to find a product that it wants, it is urged to contact the member company directly to find out where that product can be found.
- Downgrade Rights. Many SMEs have said that they would like to legalize but continue to use out of date versions of software. To address this problem, nearly every BSA member permits what are known as “downgrade rights”, which permit businesses to purchase a legal copy of software and receive permission to continue to use a previously illegal copy of software. Again, anyone interested in these offers should contact BSA members directly.

- **Certification Program.** BSA launched last November our Certification Program, which grants special commercial privileges to companies that are certified as having established good software asset management practices. Certified companies are given preferential treatment when bidding on contracts with a host of Hong Kong's largest and most influential companies. We urge anyone interested in this program to visit the BSA website ([www.bsa.org/hongkong](http://www.bsa.org/hongkong)) for more information. BSA will waive the registration fee for any SME that applies for certification in the next six months.
- **Legalization Plan Grace Period.** At the end of March, SMEs told us that they wanted more time and more training on software asset management in order to comply with the new law. As a result, we extended our SAM training period through April, training an additional 7,000 company representatives, and noted that we would forward no complaints to Customs during this period. We now understand that some SMEs would like additional time to legalize their software use over time, taking into account their sometimes limited ability to make a one-time legalization purchase. To address these concerns, BSA is inviting any SME to send the following to BSA in writing:
  1. A statement that has a plan for legalizing its software use and will complete that process sometime between now and September 1, 2001
  2. Its contact details (name, address, telephone number), responsible person and number of personal computers in use

**BSA will not file any complaint against any company who makes the above written statement prior to September 1, 2001.** All participants in this program will receive confirmation that we have received your written statements. **Written statements should be sent to BSA on company letterhead (where possible) via fax to: Business Software Alliance Hong Kong at fax number 2833 2961.**

BSA Members contact details:

#### Adobe Systems

Customer Hotline: 2970 2101 Email: [riwong@adobe.com](mailto:riwong@adobe.com) Website: [www.adobe.com/support](http://www.adobe.com/support)

#### Apple Computer

Customer Hotline: 2112 0099 Email: [wchan@asia.apple.com](mailto:wchan@asia.apple.com) Website: [www.appleclub.com.hk](http://www.appleclub.com.hk)

#### Autodesk

Customer Hotline: 2784 2544 Email: [license@autodesk.com.hk](mailto:license@autodesk.com.hk) Website: [www.autodesk.com.hk](http://www.autodesk.com.hk)

#### Logon International Ltd.

Customer Hotline: 2512 8491 Email: [support@logon-int.com](mailto:support@logon-int.com) Website: [www.logon-int.com](http://www.logon-int.com)

#### Macromedia (Asia)

Customer Hotline: 2919 8720 Email: [asiapiracy@macromedia.com](mailto:asiapiracy@macromedia.com) Website: [www.macromedia.com](http://www.macromedia.com)

#### Microsoft Hong Kong Limited

Customer Hotline: 2388 9600 Email: [mconnect@microsoft.com](mailto:mconnect@microsoft.com) Website: [www.microsoft.com/hk](http://www.microsoft.com/hk)

**Symantec**

Customer Hotline: 2973 4438 Website: [www.symantec.com.hk](http://www.symantec.com.hk)

***Software Industry Information Centre:*** Website: [www.siic.org.hk](http://www.siic.org.hk)