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11 April 2001

The Hon. Kenneth Ting Woo-shou,
Chairman,
LegCo Panel on Commerce and Industry
Legislative Council Secretariat,
3rd Floor, Citibank Tower,
3 Garden Road,
Central, Hong Kong.

Dear Mr. Ting,

Intellectual Property (Miscellaneous Amendments) Ordinance 2000

We understand that the LegCo Panel on Commerce and Industry will be holding a special meeting on the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (“the Ordinance”) on 12 April 2001.

The Hong Kong Society of Accountants would like to express its concern about the implications of the Ordinance and to suggest that there is an urgent need for clarification and guidance to be given by the Administration on its practical effects. We also believe that consideration should be given to amending the terms of the legislation given that it appears to have significant consequences that may not have been fully appreciated at the time of its passage through the Legislative Council.

In common with a number of other professional and business associations, and non-government organisations (“NGOs”), the Society operates through a network of committees which deliberate on specific issues before making recommendations to the Society’s Council. Issues in which the Society has an interest are often covered in the media and as part of the process of keeping relevant committee members apprised of developments on which they may be asked to make decisions, we sometimes copy newspaper articles and other materials to those members. Further copies may also need to be made for Council members. We are concerned therefore that no agreed licensing arrangements are currently in place and that not all newspapers appear to have been represented at the discussions being convened by the Administration to try to set up such a regime. Thus it is uncertain whether reasonable and convenient arrangements will be introduced in the near future and whether any arrangements that may eventually be in place will cover all the news publications readily available and commonly referred to in Hong Kong. In the meanwhile we must either cease making copies or run the risk of committing a criminal offence under the Copyright Ordinance as amended. This places us, and no doubt many other similar organisations, in an invidious position. The present situation is detrimental to the Society’s work as well as to the economy in general, particularly when Hong Kong is striving to present itself as a world-class city on the basis inter alia of the quality of our communications and the free flow of information that is enjoyed here.

Apart from this specific issue which needs to be resolved urgently, the Society has a more general concern arising from the legislation. As a body that regularly examines and comments on

proposed legislation, consultation papers, etc. through the committee mechanism described above, we often have to copy correspondence from government departments and bureaux (including responses to our own representations), proposals, bills, new ordinances, and a range of other related materials. Government copyright is also protected under the Copyright Ordinance and it seems that following implementation of the Ordinance, we may be in breach of the legislation whenever we copy such materials to our committee members. Our committee members need to be able see these materials and, in practice, need to have individual copies in order that the committee can consider them in detail in an efficient and effective manner. Under the circumstances, if we, and presumably other professional and business associations and NGOs, are to be able to adequately obtain and reflect the views of the constituencies that we represent, and to play an active part in the process of consultation, then the Administration should consider granting a general permission for non-commercial copying of materials issued by or in the name of the Government, in the context of consultation and debate on legislation and policy. Anything less than this would appear to leave the matter in a state of uncertainty and would impede the process of promoting community participation in the development of Hong Kong's legal and policy framework.

We hope that the Panel will be able to consider the Society's views at its meeting and obtain a clear commitment from the Administration to resolve these concerns urgently.

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Yours sincerely,

PETER TISMAN
DEPUTY DIRECTOR
(PROFESSIONAL DEVELOPMENT)
HONG KONG SOCIETY OF ACCOUNTANTS

PMT/ay

c.c. Mr. Eric Li

