

Our Ref : 51/EW/WKC/063
30 June 2003

The Hon Sin Chung Kai
Chairman of the Bills Committee on Copyright (Amendments) Bill 2001 and
Copyright (Amendment) Bill 2003
Legislative Council
Hong Kong
By fax : 2869 6794 (2 pages)

Dear Mr Sin

Copyright (Amendment) Bill 2001 and Copyright (Amendment) Bill 2003

1. The Chamber has considered the Copyright (Amendment) Bill 2003 and would like to offer our comments as follows.
2. The Chamber is a long-time champion of intellectual property protection. When the Intellectual Property (Miscellaneous Amendments) Ordinance went into force in April 2001, with the intention to extend criminal provision to infringing use of software and audio-visual works in the course of business, we would have supported it, had it not been for the fact that the law thus drafted then applied also to casual photocopying and downloading from the Internet, thus making many businesses aggrieved. The Chamber led a campaign to oppose the application of the law to bona fide photocopying and downloading, but we made it clear at the time that we supported the original intention of the law to criminalise infringing use of software and audiovisual works. We were glad that the Administration has obliged with the speedy introduction of the Copyright (Suspension of Amendments) Ordinance 2001, which suspends the amendments but maintains the application of the law on the four specific categories of computer programmes, movies, television dramas and music recordings (“the Four Categories of Works”).
3. The Chamber contributed substantially to the Review in December 2001 of the provisions of the Copyright Ordinance. We acknowledge the complicated nature of the issues and the difficulty in achieving consensus, and we are pleased that a balanced solution is now emerging.
4. By and large, we support the proposals of the amendment bill. Our specific comments are as follows.
5. *Making the suspension permanent.* We agree that the previous suspension, including the exception for the Four Categories of Works, should now be made permanent. This will enable us to revert back to the original intention of providing protection to computer software and audiovisual works, in a more specific and well-defined way. As regards works which will not be covered:

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- i. For reprographic rights, now that two years have passed and the publishers and devised their own system of collective administration of copyrights, their permanent removal from the application of the amended law should not affect their copyright protection in any way.
 - ii. In the same vein, the casual and bona fide copying of television broadcasts or cable programmes or downloading from the Internet for the purpose of timely and convenient information dissemination in the work place will now be permanently exempt from criminal provisions. We should add that this should apply specifically to information dissemination and not to the Four Categories of Works.
6. *New defence for employees.* We have said that employees and employers alike should abide by the law and should be treated alike. Although we understand the employee's concern, it is our view that unlawful coercion by employers should not be a ground for breaking the law. If the defence is to provide an additional ground for mitigation, that would have been available as a matter of course, and we do not see why it is necessary to put that into the law.
7. *Copy-shops.* We agree that the proposals represent a balanced solution to provide more protection in regard to reprographic rights.
8. *Parallel imports.* In general, the Chamber supports the Law Reform Commission recommendations to decriminalise parallel importation, hence we agree with the proposal to remove end-user liability in relation to parallel imports. A possible exception is that of audio-visual products (film and music recording) for which distribution is time-critical. As parallel importation may affect the exploitation of their intellectual property rights drastically, the Chamber remains open on whether the sanctions should continue to apply to film and music recording.
9. *Definition of business.* We agree with the proposed re-definition of "business" to include non-profit organisations. As we said before, every organisation should abide by the law, whether they are profit-making companies, schools or non-profits.
10. Finally, I wish to record once again the Chamber's appreciation of the positive manner in which the government has dealt with the various amendments to the Copyright Ordinance, and the way it has engaged the community in the course of the deliberations. This has demonstrated how fruitful an open-minded and inclusive approach could be for good law-making. The Chamber would be happy to continue to contribute to the development of our intellectual property protection regime.

Yours sincerely

Dr Eden Woon
CEO