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Our Ref.: C/EPLM(31), M13809

16 August 2002

Hon. Sin Chung-kai,
Chairman of the Bills Committee,
Room 601, 6/F,
Citibank Tower,
3 Garden Road,
Central, Hong Kong.

Dear Sir,

Copyright (Amendment) Bill 2001

We write in reponse to the letter dated 16 July 2002 from the Bills Committee inviting our views on the Copyright (Amendment) Bill 2001 (the "Bill"), which proposes to remove the civil and criminal liabilities relating to the parallel importation of, and subsequent dealings in, computer software under the Copyright Ordinance.

The Society would like to express its support for the initiative on the part of the Administration to liberalise the current restrictions on the parallel importation of computer software by removing the civil and criminal liabilities in relation to this activity.

In our comments on the Consultation Document on The Review of Certain Provisions of Copyright Ordinance, issued by the Commerce and Industry Bureau in October 2001, we expressed the view generally that civil liability and criminal sanctions against parallel importation of, and subsequent dealing in, all types of copyright work should in principle be removed, subject to certain possible limited exceptions (see our response to Question (a) in paragraph 5.14 of the Consultation Document, extracted at the Appendix).

We note that the Administration already indicated in the Consultation Document that there was overwhelming public support for legalising the parallel importation of computer software and that it intended to legislate separately on this matter. While the present Bill appears to fulfil this commitment, its scope is thus fairly limited. It does not deal with the various other forms of copyright infringements discussed in the Consultation Document and the surrounding issues, including such matters as the civil and criminal liabilities imposed on business end-users, as opposed to importers, of parallel imported copies of other copyright works, as well as copyright infringements unrelated to parallel importation.

With passage of the Copyright (Suspension of Amendments) Ordinance 2001 (Amendment) Notice 2002, the application of the Copyright (Suspension of Amendments) Ordinance has been extended from 31 July 2002 until 31 July 2003. Although this means that all the other provisions introduced by the Intellectual Property (Miscellaneous Amendments) Ordinance 2000, i.e. those unaffected by the Bill, that impose end-user criminal liability on persons who knowingly possess an infringing copy of a copyright work for the purpose of, in the course of, or in connection with, any trade or business, will remain suspended for a further year, in giving support to the present

Bill, the Society would also suggest that action be taken expeditiously to resolve the continuing uncertainty over the long-term position in relation to criminal liability for these various other forms of copyright infringements.

We believe our comments to be self-explanatory and therefore respectfully decline the invitation to make oral representations to the Bills Committee at its meeting to be held on 16 September 2002. However, if you have any questions on this submission, please feel free to contact John Tang, our Assistant Director (Business & Practice) at 2287 7006.

Yours faithfully,

LEE KAI-FAT
REGISTRAR & SECRETARY GENERAL

PMT/JT/ay
Encls.

c.c. Commerce and Industry Bureau (Attn: Ms. Laura Tsoi)
LegCo Panel on Commerce and Industry (Attn: Ms. Connie Szeto)

5. Parallel Importation of Copyright Works Other Than Computer Software

- (a) *The civil liability and criminal sanction against parallel importation of and subsequent dealing in all types of copyright work should be removed without exception.*

In considering the issue of whether to impose civil liability and criminal sanction against parallel importation and subsequent dealing in copyright works generally, it is important to balance the rights of the local copyright owners, exclusive licensees and sole distributors against the rights of consumers. As noted in the Consultation Document, whilst the move to remove the restrictions on parallel importation for all types of copyright work may affect the interests of copyright owners, exclusive licensees and sole distributors, it would facilitate the free flow of goods, increase competition and the availability of products in the market, thus resulting in more choices and lower prices for consumers. In addition, liberalising parallel importation would also be in line with technological and commercial developments in relation to the Internet and e-commerce. The fact that the Administration has prepared the necessary legislative amendments for legalising parallel importation of computer software does lend some support to this approach.

We are therefore of the view that the civil liability and criminal sanctions against parallel importation and subsequent dealing in all types of copyright work should be removed. In principle, we consider that this should be without exception. However, provision could be made for exceptions where the copyright holder can argue specific and exceptional circumstances (e.g. if, for example, prices in an overseas market from which goods are sourced are artificially low because they are specifically mandated or limited by the relevant Government without any significant input from the owner of the intellectual property rights).