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From: Betty Law [mailto:betty@chamber.org.hk]

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To: 'cksin@sinchungkai.org.hk'

Subject: Copyright (Amendment) Bill 2001

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The Hon Sin Chung Kai

Chairman, Bills Committee

Copyright (Amendment) Bill 2001

Legislative Council

Dear Mr Sin

Copyright (Amendment) Bill 2001

Thank you for inviting the Chamber to comment on the above Bill. We have considered the Bill and the related papers and would like to submit our comments as follows.

In an earlier letter to the Commerce and Industry Bureau in June last year, the Chamber has already expressed its support for de-regulating parallel importation of computer software. We maintain our position that for computer software, criminal provisions regarding importation should apply only to imports of pirated products, not to parallel importation of genuine products. In other words, the criminal sanctions over parallel importation of copyrighted computer software within 18 months of first publication should be removed. In the same vein, we support the removal of civil liabilities.

Removal of restrictions on computer software

The present bill is to effect the above change in policy, hence it has our support. We agree with the Legislative Council Brief provided by the Administration that the liberalisation of parallel importation of computer software will increase competition and availability of products in the market, possibly resulting in more choices and lower prices for consumers.

Scope of proposed liberalisation

We have pointed out before that problems may arise from the interface between computer

software and other multi-media products. With the rapid development of technology, computer software is increasingly integrated with other content which may be regarded as being of a different kind of intellectual property. This seems to imply a need to define more clearly what computer software is; on the other hand, rapid technological development may render any definition problematic. Given the clear intent of the Amendment, we do not believe it necessary to be overly concerned about the legalistic definition of “computer software” .

As to what would amount to a reasonable limit to film or musical content within the software - the 20 minute limit proposed - we would be inclined towards the more liberal, as opposed to the more stringent, application of the law. The current Amendment deals only with computer software and the regulatory sanctions for other types of copyrighted works will remain intact. On the wider issue of whether film and musical works should be subject to the same liberalisation, we understand this will be taken up in the wider review being undertaken by the Administration, and our position remains open.

Geographical restrictions on use of computer software

We agree with the need to remove the end-user criminal liability relating to geographical restrictions, so as not to defeat the purpose of the Amendment. We would have liked to examine the case for liberalisation of civil liabilities as well; however, in order to expedite passage for the current Amendment, we agree that de-criminalisation of this restriction should first be provided for. The possible liberalisation of civil liabilities should be considered under the bigger review which is going on.

Transitional arrangement

Given the spirit of the amendment, it is reasonable for the liberalisation to be effective retrospectively with regard to criminal sanctions. As regards civil liability, given that the policy for de-regulation has clearly been set out more than a year ago, we are not certain what useful purpose would be served for civil rights to be retained for the transitional period up to the commencement of the amendments.

I hope you will find the Chamber’ s views useful.

Yours sincerely

Eden Woon

CEO

cc : *Ms Laura Tsoi, CITB*

Mr James Tien, Chamer LegCo Rep