

CB(1)1794/05-06(03)

二零零六年六月十五日

致 2006 年版權（修訂）條例草案委員會：

我們謹向立法會版權（修訂）條例草案委員會提交以下陳述：

下列聯署的本港版權工業成員均強烈反對版權條例（修訂）法案中草擬豁免的修訂及處理法案的方式，若修訂獲得通過，將無可避免摧毀行業賴以維生的營商環境及商業市場。

包括：

1. 放寬平行進口，將構成刑責的平行進口期限的由現時的 18 個月縮短。
2. 豁免教育機構使用平行進口侵權物品作為教育用途。
3. 免除教育機構透過平行進口使用侵權物品的刑責，變相容許教育界使用海外製作的盜版物品。
4. 對商業用戶使用平行進口侵權物品的刑責只針對公開廣播，變相容許用家使用海外製作的盜版物品。
5. 豁免數碼權管理系統(DRM)中區域限制系統(Region coding system)受版權條例管制。
6. 對教育互動數碼環境或任何牽涉龐大數目版權持有人及作品行業的最有效教育方法，是「集體牌照」(Collective licence)，但法例提議撤銷特許計劃 44(2)及 45(2)的附注，違背奉行註冊及發牌的國際做法及慣例。

我們懇切要求立法會議員重新檢視以上各項豁免對法例的影響。我們樂意向閣下解釋對社會最有利的建議，以避免將香港由一個版權製造地區變為用家地區。

本人謹代表業界呈上我們的理據以供閣下參考，詳情請參看附件。

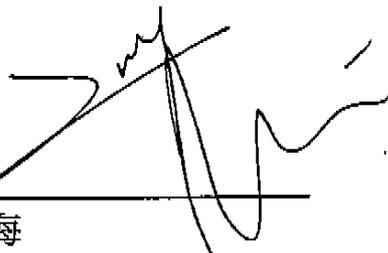
敬祝

工作愉快

聯署人：



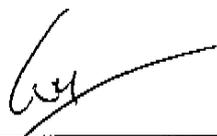
洪迪  
國際唱片業協會(香港會)有限公司主席



朱鳳梅  
香港影視發展基金有限公司副主席



黎筱婷  
洲立集團有限公司總裁



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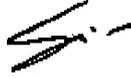
鄧永雄  
香港動漫畫聯會有限公司理事

31051468  
FAX NO. :

FROM : OXFORD

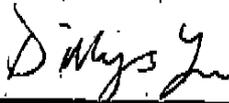
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香港及國際出版聯盟



召集人(香港) 李慶生

香港版權影印授權協會



總經理 余家寶

下列出版商會亦支持本陳述書：

Association of American Publishers (USA)

香港出版總會

中英文教出版事業協會

香港教育出版商會



致 2006 年版權(修訂)條例草案委員會：

本會是由香港電影導演會、香港電影編劇家協會、香港專業電影攝影師學會、香港電影美術學會、香港電影製作行政人員協會、香港演藝人協會、香港電影燈光協會、香港動作特技演員公會及香港電影剪輯協會聯組而成的香港電影工作者總會，涵蓋超過 1,800 名本地電影工作者。

就版權條例(修訂)法案中，草擬豁免的修訂及處理法案的方式，本會支持文件“Attachment for Copyright Industry Petition Letter on 15 June, 2006”的意見。懇請各委員詳細考慮業界的理據。

此致



*Lichun*  
*For*  
吳思遠會長

香港電影工作者總會

二零零六年六月十六日

**電影工業應變小組**  
**Film Industry**  
**Response Group**  
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**致 2006 年版權(修訂)條例草案委員會：**

就版權條例(修訂)法案中，草擬豁免的修訂及處理法案的方式，電影工業應變小組支持文件“Attachment for Copyright Industry Petition Letter on 15 June, 2006”的意見。懇請各委員詳細考慮業界的理據。

此致



召集人陳嘉上  
電影工業應變小組  
二零零六年六月十六日

**小組成員**

- \* 九間主要電影公司
  - 中國星集團有限公司
  - 東方娛樂控股有限公司
  - 邵氏兄弟(香港)有限公司
  - 星皓娛樂有限公司
  - 英亞娛樂資訊集團有限公司
  - 美星電影(香港)有限公司
  - 遠禾娛樂事業(集團)有限公司
  - 寰宇娛樂有限公司
  - 壹亞綜藝集團有限公司
  
- \* 六個電影團體
  - 美國電影協會
  - 香港電影工作者總會
  - 香港電影製作發行協會
  - 香港影視發展基金
  - 香港影業協會
  - 香港戲院商會

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## Attachment for Copyright Industry Petition Letter on 15 June, 2006

### 1. Fair Dealing – Meaning for Education

Educators have traditionally brought copyrighted books, video/audio copyrighted materials, and other media into the classroom. We do value and appreciate the value and importance of and the role played by the existing copyrighted materials for the advancement of learning in our school system and for fostering the dissemination of new knowledge and technology so that the quality of our education can be maintained. However, we must point out that just because we support our education system is a worthy cause does not mean that some form of blanket exception to copyright should be allowed.

Hong Kong has created a lot of copyrighted materials catered for our own education. Hong Kong has created a lot of meaningful TV series, films and other documentary which are of value for teaching purpose. A wide exception would therefore undermine the value of the works in the market and the end result is that there is no incentive for Hong Kong creators/investors of copyrighted materials and the school will use all the imported copy of teaching materials which may or may not share the value of our educational objectives.

### 2. Fair Dealing in Education in Other Jurisdictions

In U. S., a crucial point is that an educational purpose alone does not make a use fair. The purpose of the use is, in fact, only one of four factors that users must analyze in order to conclude whether or not an activity is lawful<sup>1</sup>.

In Australia, school may use copyright material for educational purpose without any permission from the copyright law but payment must be made to Copyright Agency Limited.<sup>2</sup>

In U.K. exceptions allowing the recording by schools of broadcast or cable programmes and the reprographic copying of works does not apply if or to the extent that there is a licensing scheme<sup>3</sup>.

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<sup>1</sup> Section 107 of the US Copyright Act 1976

<sup>2</sup> There are two schemes in the Copyright Act 1968 of Australia which deal with the reproduction of literary, dramatic, artistic and musical works Part VA of the Copyright Act was modified to allow schools to copy transmissions (such as wireless broadcasts or cable televisions transmissions) subject to the payment of remuneration. Part VB provides schools with a statutory licence to make copies of works subject to the payment of equitable remuneration. **These provisions do not allow educational institutions to copy commercially produced copies of films** ( for example to convert VHS to DVD). (Australia Copyright Council Information Sheet G 48)

<sup>3</sup> Section 35 (2) and 36 (3) of the U.K. Copyright Designs and Patents Act. Also see Recital 45 of the E.U Directive 2001/29/EC which provides that “ The exception and limitations referred to in Article 5 (2), (3) and (4) should not, however, prevent the definition of contractual relations designed to ensure the fair compensation for the right holders insofar as permitted by national law.”

### **3. Our Position On the Licensing Schemes For Education**

We are of the strong view that there must be appropriate licensing schemes in place for our educational establishments **in order to comply with the international norms and obligations. The proposed deletion of sections 44 (2) and 45 (2) are misconceived and new licensing scheme catered for use of copyrighted materials in the digital environment should be introduced in order to facilitate the use of the advanced digital technology in our school system.**

**We note that from the reply of CITB, they do not have any objection for the schools to negotiate licensing arrangement with copyright owners. We are perplexed as why can't they do it in a licensing scheme which is more effective and efficient and is subject to the control of the Copyright Tribunal.**

**This is not the case if the school has to negotiate with each and every copyright owner which is time consuming and tedious and the terms and condition of the licence are not subject to the jurisdiction of the Copyright Tribunal.**

### **4. The Use Of Digital Right Management Systems In The Digital Learning Environment**

We do not agree with CITB's view that DRM is not available. In fact, encryption and password protection technology have been widely used in our commercial transaction. We do not ask for the perfect protection of the copyrighted materials used by the schools in the digital learning environment but we only ask for an adequate protection which means that whatever DRM is available for education sector<sup>4</sup>. Otherwise what happens if there is a widely available DRM for school one week after the enactment of the proposed amendment.

The reply from CITB on this issue confirms our worry and concern that Hong Kong school will become the safest haven of on-line piracy in the world. The student's parents will be laughed at by their children as being stupid when they buy the genuine copy of a copyright work to home as our school culture does not respect copyright.

The school must have the control over whatever copyrighted materials used for teaching purpose in the digital environment.

### **5. The Exception for the Use of Infringing Copy in Our School System**

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<sup>4</sup> We understand that Cyberport has been commissioned to create a suitable DRM for our school system. There are also a number of administrative requirement for electronic use scheme in Australia (Australia Copyright Council Information Sheet G 48).

We strongly oppose any exception for the use of parallel imported copy of a copyright work in our school. **The use of parallel imported copy must be subject to commercial availability test.**

For the avoidance of doubt, parallel import restriction only applies if there is a person who has an exclusive reproductive right in Hong Kong and there is a different person who has copyright of that work in the other jurisdiction, say United Kingdom, from where the copies of that work are lawfully made by that different person and exported to Hong Kong.

**This amounts to the exception of the use of infringing copy in teaching.** We maintain that, as for all intents and purpose, the parallel imports are infringing copies as the making of these copies in Hong Kong would have constituted a copyright infringement of that work in Hong Kong. Who is going to enforce if there is any copyright infringement of the copy of parallel import of a copyright work, say the school may reproduce the work substantially and distributed to its students in large number, copyright owner in Hong Kong or Copyright owner in other jurisdiction? One must bear in mind that our copyright law only protects a person who has the exclusive reproduction right in Hong Kong.

Furthermore, the use of parallel imports by the school exposes the risk of using the pirated copy as it is difficult, even for copyright owner in Hong Kong, to differentiate a parallel imported copy to an imported pirated copy which is disguised as a parallel imported copy.

#### **6. The Exemption of the Criminal Liability for the Use of the Parallel Import By School**

As a matter of principle, we strongly object that school be exempted from any criminal liability of any sort. If it is a permitted act, the criminal sanction will not apply in any event and there is no need to spell it out.

Any use of infringing copy in School should not be condoned but must be condemned. The source of the problem of our school system is its illiteracy in intellectual property right and our children will never learn how to respect intellectual property right under that system as proposed by CITB.

#### **7. The Exemption of Region Coding**

We submit that as the copyright owners of all categories of works except computer program and computer game have the exclusive rights to exploit their rights by different geographical regions<sup>5</sup>. Any geographical region coding system must be within the definition of technological measures as it enforces the terms and conditions of the use of the work under the licence of the copyright owner in the digital environment.

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<sup>5</sup> Section 194 (1) and section 101 (2) of the Copyright Ordinance.

For purpose of illustration, the local film industry is of the view that it does not object for a person to acquire the appropriate DVD player from the market as long as such a DVD player is in compliance with sections 273B 2 (b) and (c) of the proposed amendments, namely it is not only for a limited commercially significant purpose or use, or no such purpose or use other than the circumvention or facilitate in the circumvention of a technological protection measure. This covers most of the multifunction or multi-zones DVD players or DVD player as one of the components of a computer in Hong Kong.

**8. Others**

We suggest to delete the “dealing in provision” for offence related to the possession of the corporate end user of parallel imports as the words “in the course of any trade or business” does not cover the business end-user who possesses a copy of an infringing work in question “incidental to the business” of that business end-user. This limits the scope of the offence.