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**Submission of Television Broadcasts Limited to the Bills Committee
on the Copyright (Amendment) Bill 2006**

We thank the Bills Committee for the opportunity to present our views and comments on the Copyright (Amendment) Bill 2006 ("Bill").

As a broadcaster, programmes producers, copyright owners and users, the proposed amendment in the Bill will have serious impact on.

First of all, we would like to express our appreciation of the Administration's effort in consulting the stakeholders group and attempting to strike a balance between the interests of copyright owners and the demands of users of copyright works. However, there are certain provisions in the Bill which we feel the users of copyright works have been given more favourable treatments at the expense of copyright owners.

We would like to urge the Bills Committee to reconsider the following provisions in the Bill:

1. Business end-user criminal liability

We are rather disappointed that despite repeated submissions made by us and jointly with other telecasters in the past, the Administration maintains the existing scope of business end-user possession criminal liability to cover only four categories of copyright works, namely, computer programs, movies, television dramas and musical recordings. Non-dramatic television programmes are excluded from such protection.

We have submitted to the Administration that it is wrong to artificially differentiate between dramatic and non-dramatic television programmes for the purpose of according them different protection. The artificial differentiation gives rise to unfairness, uncertainty and anomaly. No other jurisdictions appear to have such a differentiation.

In terms of commercial and appreciation values, non-dramatic programmes are equally, if not more, important as dramatic programmes. The production cost of a variety show such as the annual music or film awards, Miss Hong Kong, and our Anniversary Specials would not be less than that of a dramatic serial. The programming fee of a premium sports programme (for instance, Olympics, Asian

Games, World Cup, English Premium League and NBA) is usually higher than that of a dramatic serial. Likewise, documentaries produced by National Geographic, Discovery and BBC would not cost less than a dramatic serial. All these non-dramatic programmes have substantial viewership.

The artificial differentiation will give rise to anomaly. For example a variety or musical programme consisting of a substantial number of musical works and musical recordings is not accorded with same level of protection as musical recordings. This contravenes the notion that all copyright works should enjoy the same level of protection without differentiation. It will also give rise to a false public perception that certain works are more valuable than the others and the infringement of the copyright of such other works are less serious than the 4 categories of works.

To address the said unfairness and anomaly, the Bill should be amended so that all television programmes have the same protection as a television drama or movie. We believe this will not prejudice the free flow of information in society since the Bill has already included extensive exemptions for education, archive and public administration purposes. In addition, the public is permitted to use our programmes under the fair dealing exceptions.

2. Parallel Importation

We are very disappointed to note that the Bill proposes to shorten the criminal liability period from 18 months to 9 months. We submit that the period of 18 months should be maintained. The proposed period is arbitrary and would further lend support for user groups group to call for complete removal of such liability. From business point of view, it will create real difficulties for copyright owners to grant exclusive licence to distributors just for a period of 9 months. We doubt if distributor would be willing to put much marketing efforts in promoting and selling products which would only be protected from parallel imports for 9 months. If such provision comes into effect, it could also affect our existing exclusive licensing arrangement all of which has a term longer than 9 months.

We may telecast our programmes in Hong Kong first, which is our primary market and main revenue stream, before making them available in other media or format. For different countries, we may have different business models according to the market demands. In some markets, we may release the programmes in video format before or

simultaneously as they are telecast in the local market. If any copies of such programmes are imported into Hong Kong before or while we are telecasting them in Hong Kong, particularly those programmes that have become very popular, our ability to exploit the programmes in Hong Kong will be adversely affected. Our TV audience number will be severely affected and hence revenue from advertising and/or subscriptions. This will create a vicious cycle and curb local TV programme production. Copyright owners' initiatives to produce and create new works would be curbed in view of the increasing risk of potential loss.

It should be noted that the Bill has removed both civil and criminal liability for business end-users in respect of parallel imported copies of copyright works, except for commercial dealing purposes or public showing of movies, TV dramas and musical recordings by entities other than educational establishments and libraries. Hence, the concerns of business end-users and educational sectors have been adequately addressed. We do not see any justification or valid reason to relax the criminal liability period as proposed in the Bill.

The Government should not forget to protect authorized dealers and retailers and the related industries in Hong Kong which represent an important business sector. In particular, we do not see the necessity for enterprises in Hong Kong to use any of the parallel imported films and TV programmes.

In relating to the drafting provision in Clause 8 of the Bill, we suggest that Section 35B(6) of the definition of "deal in" should include "or in manner conflict with a normal exploitation of the work by the copyright owner" at the end of the definition. Similar wordings should be included in Clause 22 of the Bill in relation to Section 118(10) on the definition of "dealing in".

3. Circumvention of effective technological measures

We welcome the proposed introduction of civil and criminal liabilities relating to circumvention of effective technological measures.

We have the opportunity to peruse the submission made by CASBAA and fully support their views. In particular the issue relating to the exemptions in the new Section 273F(12) of Clause 54 of the Bill which exclude effective technological measure which prohibits the making of a recording of a broadcast or a cable

programme upon its reception. We would urge the Bills Committee remove this exclusion for reasons stated in the CASBAA's submission. We also echo the drafting changes proposed.

4. Other drafting points

We suggest to amend the definition of "dealt with" wherever the words appear in the Bill (Clauses 12 and 16 in relation to Section 41A(6) and Section 54A(4) respectively) and in other provisions of the Copyright Ordinance, there should be included "or distribute for profit or reward" at the end of the definition.

Television Broadcasts Limited
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