

By Email: slchan@legco.gov.hk

8 May 2006

Mr Paul Woo
For Clerk to the Bills Committee
Legislative Council

Dear Mr Woo,

Submission of Views on Proposals of the Copyright (Amendment) Bill 2006

Thank you for your invitation for our organization to provide views on major proposals of the captioned Bill. Project Management Institute Hong Kong Chapter (PMI HK) supports the protection of intellectual property rights and generally agrees that the amendment can give a more balanced protection of the interests of various concerned parties. We would also like to highlight a few points about the proposed amendments as followings:

	Major Issues	Major Clauses	PMI Views
1	<u>Business end-user liability</u> <i>Business end-user possession criminal liability and business end-user copying/distribution criminal liability</i> <i>Defence for employees and exemptions for certain professionals in respect of business end-user criminal liability</i>	<ul style="list-style-type: none"> • Clauses 22, 23, 24 • Clause 62 • Clauses 28, 29, 30 and 35(4) • Clauses 22 and 24 	<i>Regarding the uploading of an infringing copy onto private network for access, the liability should rest with the person who uploads the copy instead of the organization providing the network access.</i> <i>In addition to lawyers and auditors, the scope of “professionals” may also include Project Management Professionals (PMP), engineers as well as IT & business consultants.</i>
4	<u>Copyright exemptions</u> <i>New permitted act for playing sound broadcast in vehicles</i>	<ul style="list-style-type: none"> • Clauses 18 and 52 	<i>In Clause 18, 81A (2) of C327, please consider if Vehicle’s definition should include vehicles used for other means of transportation (e.g those by sea or by air) besides land-based transportation (including e.g. ferries, ocean liners, helicopters, airplanes, etc.).</i>

	Major Issues	Major Clauses	PMI Views
	<p><i>Fair dealing for education</i></p> <p><i>Improvements to the existing permitted acts for education</i></p>	<ul style="list-style-type: none"> • Clauses 12 and 48 • Clauses 35(3) and 36 • Clauses 13, 14, 15, 49, 50 	<p><i>For Clauses 12, 13, 14, 15, 48, 49 and 50, suggest to expand the definition of “education” to cover speeches, talks, seminars and trainings organized by professional bodies or non-profit-making organizations.</i></p>
5	<p><u>Liberalization in the use of parallel imports</u></p> <p><i>Shorten the criminal sanction period to nine months</i></p> <p><i>Remove the liability pertaining to importation and possession of parallel imported items by business end-users</i></p>	<ul style="list-style-type: none"> • Clause 7(2) • Clauses 8 and 45 • Clause 7(1), 44(1) 	<p><i>Due to the increased globalization of the trading business and increasing popularity of the Internet business, it is hard to define which are parallel imported items especially digital ones. It is justified in removing/lessening the liability of importation and possession of parallel imported items to enhance normal business operations. On the other hand, a new approach on handling “global copyright” shall be considered.</i></p>
6	<p><u>Improving enforcement efficiency and effectiveness and operation of the Ordinance</u></p> <p><i>Vary the time limit for prosecutions</i></p>	<ul style="list-style-type: none"> • Clauses 26, 63 and 64 	<p><i>If the concern is on giving enough time for obtaining evidence, will it be better to change Section 120A to “no prosecution for an offence under the Ordinance shall be commenced after the expiration of three years from the date of commission of the offence or one year from the date of discovery of the offence by the prosecutor, whichever is the later.”?</i></p>

We are sorry that representatives of our organization are not able to attend the meeting on 8 May 2006 (Monday) at 4:45pm in the Chamber of the Legislative Council Building. If you need any more information, or having any questions, please feel free to contact me at 9033 9788.

Thanks and regards.

Yours sincerely,



Sindy Yau
Secretary, PMI Hong Kong