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Secretariat

Hong Kong Reprographic Rights Licensing Society
802 Stanhope House, 738 King's Road, Hong Kong
Tel: (852) 2516-6268 Fax: (852) 3105-1468
E-mail: info@hkrrls.org Website: www.hkrrls.org

By electronic mail (slchan@legco.gov.hk)

16 June 2006

Ms Sharon Chan
Clerk, Bills Committee
Legislative Council
Hong Kong

Dear Ms Chan

Copyright (Amendment) Bill 2006

HKIPA appreciates this opportunity to supplement its previous submission regarding the Copyright (Amendment) Bill 2006 (the Bill).

Since our previous submission, the Bills Committee has deferred immediate action on the Bill pending further consultation and deliberation by CITB on behalf of the Government. We wish to emphasize a few points of particular importance that we urge the Government to take on board during this period of further study.

1. First, with regard to the proposed new criminal offence for copying or distribution of copyright infringing printed works, it is essential that the revised proposal to be presented to the Bills Committee by the Government include specific and detailed legislative provisions on the so-called "safe harbor" within which criminal liability will not apply. This issue is far too important to be left to subsidiary legislation at some point in the future. Indeed, it is almost impossible to evaluate this proposed offence without knowing the boundaries of the behavior to which it will apply.

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The safe harbor criteria to be proposed by the Government require close scrutiny by your Committee and by the Legislative Council as a whole. These criteria should be presented to you along with and as part of the Bill itself. Any legislative proposal from the Government on this topic which omits these criteria should be treated as incomplete and not ready for legislative action. We refer you to our submission of April 27 for our views on how these safe harbor criteria should be structured.

2. Second, we wish to re-emphasize the importance of maintaining current Section 45(2) of the Copyright Ordinance, which limits the scope of the reprographic copying exception for schools whenever licenses allowing such copying are available. It must be borne in mind that Section 198 of the Ordinance provides a very broad definition of reprographic copying, which includes which “includes, in relation to a work held in electronic form, any copying by electronic means.” The Government’s frequently stated goal of encouraging the development of licensing schemes for electronic dissemination of works, especially in the educational environment, would be completely undermined were Section 45(2) to be repealed, as the Bill now proposes.

3. Finally, with regard to parallel importation, HKIPA strongly requests that the Government withdraw all its proposals on this topic, for the reasons stated in our previous submission and also stated in the submissions of other organizations to the Bills Committee.

HKIPA thanks the members of the Bills Committee once again for their consideration of our views on this important legislation.

Respectfully submitted

Simon Li

Convenor (Hong Kong)

(no signature via electronic transmission)