



CB(1)1543/06-07(01)

May 4, 2007

Clerk to the Bills Committee
on Copyright (Amendment) Bill 2006
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

By facsimile (2537 1851) & post

Dear Sirs,

Re: Copyright (Amendment) Bill 2006 (Bill)
Proposed Committee Stage Amendments of the Bill
Section 24(4) Directors'/partners' liability

The Business Software Alliance (BSA) would like to take the opportunity, before the conclusion of this legislative process, to raise one issue in relation to the proposed introduction of directors'/partners' liability under section 24(4) of the Bill.

Importance of the proposed directors' / partners' liability provision

BSA reiterates its support for the introduction of directors'/partners' liability under the Bill. This provision is essential both to address the serious problem of copyright piracy in the workplace and to promote good corporate governance in Hong Kong. BSA's detailed views on the Bill are set out in its submission dated April 27, 2006 and subsequent discussions.

Leaving aside the drafting of proposed section 24(4), one area of concern is the lack of certainty as to the date of commencement for this provision.

Delay in implementation of the directors' / partners' liability provision

The latest draft version of the Bill titled "*Proposed Committee Amendments to Copyright (Amendment) Bill 2006 (revised 30/3/2007)*", provides that section 24(4) will not come into force "until a day appointed by the Secretary for Commerce, Industry and Technology by notice published in the Gazette" under section 2(2) of the Bill.

In this regard, BSA is concerned that any unnecessary delay in implementation of section 24(4) will undermine one of the major objectives of the Bill, being to strengthen copyright protection in Hong Kong.

We understand that the Government intends to delay the implementation of this provision so that it can run public awareness campaigns on the new criminal provision. The BSA appreciates the importance of this exercise and in this regard has communicated to the Government its willingness to support any such campaigns if appropriate.

However, the Committee should bear in mind that details of the proposed directors'/partners' liability have been made public since 2005. During this interim period, there have been significant public debates and publicity on the new provision. In particular, both the Administration and BSA, jointly and independently, have been actively conducting educational activities targeting Small Medium Enterprises on software asset management practices to facilitate compliance with the new copyright law.

BSA notes with concern that, in contrast, the introduction of an employee defense (section 24(8) of the Bill) will commence immediately when the Bill is formally enacted.

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In the circumstances, the commencement of the employees defense without a corresponding commencement of the directors'/partners' liability provision (or a substantial delay in commencement) represents an unfair imbalance and a substantial weakening of copyright protection in Hong Kong.

BSA therefore urges the Committee to consider the reasonable amount of time that may be required to evangelize the new provision within the business community. In our view, and based on past experience, the exercise should not be in excess of 6 to 9 months.

To ensure that there is no unnecessary delay in the implementation of section 24(4), once the Bill is passed, we propose providing a fixed date in the Bill upon which the relevant provision will take effect.

This will provide certainty and set expectations for both the business community and rights owners as to their rights and obligations in this respect.

BSA is happy to further discuss this with the Committee and thanks the Committee for considering this letter.

Yours faithfully,

A handwritten signature in dark ink, appearing to be "C. To", is written over a circular stamp or mark.

Business Software Alliance
 Hong Kong Committee
 May 4, 2007

cc: Mr. Sin Chung Kai
 cc: Mr. Christopher Wong/ Ms. Priscilla To

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