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Hong Kong and International Publishers' Alliance

Secretariat

Hong Kong Reprographic Rights Licensing Society
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6 December 2006

Mr Christopher K B Wong
Deputy Secretary for Commerce, Industry
and Technology (Commerce and Industry)
Commerce, Industry and Technology Bureau
Level 29, One Pacific Place
88 Queensway
Hong Kong

Dear Mr Wong

HKIPA appreciates this opportunity to supplement its previous submission regarding the Copyright (Amendment) Bill 2006. Our comments focus mainly on the “new criminal liability for copying or distribution of copyright infringing printed works”.

- a. Coverage of journals It is essential to clarify that “academic journals” includes all professional, technical and medical journals as well. We have added the proposed wording in items (a) and (b) on page 1 of Annex C to the LegCo brief (please see the attached Annex C).
- b. Safe harbor We enclose our revised proposal (please see the attached Annex C) for your consideration. HKIPA continues to object to the government’s decision to withhold from Bills Committee consideration the detailed legislative provisions on the so-called “safe harbor” within which criminal liability will not attach to the copying or distribution of copyright infringing printed works by businesses. The proposal should be considered in its entirety, so that all parties know the boundaries of the behavior to which the new offence will apply.

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c. Statutory defences Criminal liability for intentional, massive copying for business purposes should not be forfeited simply because the copyright owner failed to respond to a licensing request in a fashion later determined to be “timely”, or because the licensing terms that it offered to a user are later deemed not to be “commercially reasonable”. Indeed, a copyright owner must retain the right to refuse to license a particular use at all, and it should not forfeit criminal enforcement for doing so.

Thank you for considering the views of HKIPA on this important legislation.

Respectfully submitted

Simon Li
Convenor (Hong Kong)

(no signature via electronic transmission)

cc : Hon Sin Chung-kai (cksin@sinchungkai.org.hk)
Chairman, Bills Committee
Legislative Council
Hong Kong

Ms Sharon Chan (slchan@legco.gov.hk)
Clerk, Bills Committee
Legislative Council
Hong Kong

Annex C

- (a) For copyright works in newspapers, magazines and periodicals (excluding professional, technical, medical or academic journals), the proposed business end-user copying/distribution criminal offence will not apply if the aggregate number of infringing copies made from all copyright works concerned for distribution or distributed does not exceed 1,000 copies within any 14-day period; and
- (b) For copyright works in books (including professional, technical, medical or academic journals), the proposed business end-user copying/distribution offence will not apply if the total retail value of the infringing copies made for distribution or distributed within a 180-day period does not exceed \$3,000, assuming that one infringing copy of more than 15% of the number of pages of the book concerned (a qualifying infringing copy) only will count for the purpose of calculating the retail value perimeter. Non-qualifying infringing copies will not count for the purpose of retail value calculation except when the cumulative number of copies made/distributed within the 180-day period exceeds 30% of the number of pages of the book concerned, in which case all the non-qualifying infringing copies together will count for the purpose of calculating the retail value perimeter.