

Our ref. : CIB 07/09/6

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6 September 2002

Clerk to Bills Committee
Bills Committee on Copyright (Amendment) Bill 2001
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Sir,

Bills Committee on Copyright (Amendment) Bill 2001

I refer to your letters of 22 and 27 August and 4 September 2002 enclosing copies of 20 submissions to the Bills Committee, and inviting the Government to respond to those submissions.

We welcome the general support for the Bill expressed in those submissions. Our responses to the specific views raised are set out below.

Geographical restriction in end-user licence

Our intent is to remove criminal liability that results from the end user violating a condition in the software licence that has the effect of restricting the geographical area of the software's use in Hong Kong¹. We do not propose to remove civil liability because this will be an intervention into a private contract between the copyright owner and the end user. This is a very serious matter that may not be fully justified at this stage, since there is no evidence that such geographical restriction exists in the market now.

¹ For example, the licence may contain a term that limits the use of the software to a place outside Hong Kong.

We note the view that the wording of the proposed section 118A may affect end-user criminal liability arising from licensing conditions other than those with geographical restrictions. We are considering appropriate wording to amend the section so as to better reflect our intent.

Possible increase in supply of counterfeit or pirated computer software / consumer protection

Parallel imported computer software is made with the licence of the copyright owner, although it is destined for sale outside Hong Kong. It is not a counterfeit or pirated product.

We are committed in combating piracy and counterfeiting through vigorous enforcement by the Customs and Excise Department. In this connection, we look forward to strong support by copyright owners and the public.

We note the concerns over consumer protection against misleading and deceptive practices in the marketplace. The Economic Development and Labour Bureau, which has policy responsibility for consumer protection, will continue to pursue effective measures such as promoting good trade practices, stepping up actions against unscrupulous traders, and enhancing consumer education. The Bureau is working closely with the Consumer Council and other relevant parties on these fronts.

As regards the concern over consumers' difficulty in differentiating parallel imported computer software from pirated software, we recommend consumers generally not to buy from unlicensed hawkers or temporary premises. Through the Consumer Council, the Government will step up efforts on consumer education in relation to parallel imports.

Repackaging of movie products to circumvent exclusion of such products from the liberalisation

The view has been expressed that unscrupulous merchants may break down a movie into several parts each having a short duration of less than 20 minutes, so as to circumvent the exclusion provision in the Bill and thus can lawfully parallel import the movie into Hong Kong.

Parallel imported products covered by the Bill must be made with a licence of the copyright owner. To prevent licensees from unreasonably breaking down a movie into several parts with a view to

defeating the restriction under the Bill, copyright owners can consider to insert appropriate terms in the licence agreement to protect their interests.

Incorporation of other copyright works in computer software

In one of the submissions, the point has been made that unauthorised copies or extracts of musical sound recordings or musical visual recordings may be incorporated into computer software. The submission is concerned that the Bill should not make such copies or extracts lawful. We confirm that any such unauthorised copy, to the extent that it infringes copyright, will remain unlawful under the Copyright Ordinance and the Bill will have no effect on it.

Parallel importation of copyright works other than computer software

Parallel importation of copyright works other than computer software is a matter outside the scope of the Bill, and has been addressed in the recent review of certain provisions of the Copyright Ordinance. In that context, we have informed the Legislative Council that the Government will maintain the status quo except that we will remove the criminal and civil liability for importation and possession of parallel-imported copyright works by end-users.

The Chinese translation of this letter will be sent to you separately.

Yours faithfully,

(Laura Tsoi)

for Secretary for Commerce, Industry and Technology

c.c. IPD (Attn: Miss Pancy Fung)
D of J (Attn: Mr Jonothan Abbott and Mr Sunny Chan)) with letter
C&ED (Attn: Mr Y K Tam)) of 4.9.2002