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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 24 March 2004

**Proposed resolution under
the Copyright (Suspension of Amendments) Ordinance 2001**

I forward for Members' consideration a proposed resolution which the Secretary for Commerce, Industry and Technology will move at the Council meeting of 24 March 2004 under the Copyright (Suspension of Amendments) Ordinance 2001. The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The speech, in both English and Chinese versions, which the Secretary for Commerce, Industry and Technology will deliver when moving the proposed resolution, is also attached.

(Ray CHAN)
for Clerk to the Legislative Council

Encl.

COPYRIGHT (SUSPENSION OF AMENDMENTS) ORDINANCE 2001

RESOLUTION

(Under section 3 of the Copyright (Suspension
of Amendments) Ordinance 2001 (Cap. 568))

RESOLVED that the Copyright (Suspension of Amendments) Ordinance 2001
(Amendment) Notice 2004, made by the Secretary for Commerce, Industry and
Technology on
3 March 2004, be approved.

**COPYRIGHT (SUSPENSION OF AMENDMENTS)
ORDINANCE 2001 (AMENDMENT)
NOTICE 2004**

(Made under section 3 of the Copyright (Suspension of
Amendments)
Ordinance 2001 (Cap. 568) subject to the approval
of the Legislative Council)

2. Lifting of suspension

Section 3(1) of the Copyright (Suspension of Amendments) Ordinance 2001 (Cap. 568) is amended by repealing "2004" and substituting "2006".

Secretary for Commerce, Industry and
Technology

3 March 2004

Explanatory Note

This Notice amends the expiry date under section 3(1) of the Copyright (Suspension of Amendments) Ordinance 2001 (Cap. 568) from 31 July 2004 to 31 July 2006.

**Speech by the Secretary for Commerce, Industry and Technology in
the Legislative Council on 24 March 2004 in moving the Resolution
to approve the Copyright (Suspension of Amendments) Ordinance
2001 (Amendment) Notice 2004**

Madam President,

I move that the motion, as printed on the Agenda, be passed. The motion approves the Copyright (Suspension of Amendments) Ordinance 2001 (Amendment) Notice 2004 made by the Secretary for Commerce, Industry and Technology.

2. In April 2001, the coming into effect of criminal liability for possessing pirated articles in the course of business (“end-user liability”) aroused wide public concerns about possible adverse impact on the dissemination of information in enterprises and teaching in schools. In view of this, the Government suggested suspending the implementation of the criminal provisions. But the provisions were still applicable to four categories of works, namely computer programs, movies, television dramas and musical sound and visual recordings. The relevant law, the Copyright (Suspension of Amendments) Ordinance 2001 (“Suspension Ordinance”), was passed in June 2001 by the Legislative Council.

3. The relevant provisions under the Suspension Ordinance originally expired on 31 July 2002. Under section 3 of the Suspension Ordinance, the Secretary for Commerce, Industry and Technology may, by notice published in the Gazette before the expiry date, amend that date. Such a notice is subject to the approval of the Legislative Council. In July 2002 and 2003, the Government proposed and the Legislative Council approved respectively twice the extension of the effective period of the Suspension Ordinance, until 31 July this year. This is to facilitate the preparation by the Government and the scrutiny by the Legislative Council of legislative proposals on the long term solution for the suspension measures.

4. Last February, we introduced the Copyright (Amendment) Bill 2003 to the Legislative Council. The Bill proposes, among other things, to continue with the current arrangements under the Suspension Ordinance, i.e. to confine the scope of end-user liability to the four categories of works.

5. During the subsequent scrutiny of the Bill by the Bills Committee, we understood that there was new progress on the discussion between the publication sector and the relevant copyright works user on

the scope of end-user liability, in particular the implementation of the fair use principle. However, the discussion cannot come to a conclusion in a short period. As such, having consulted the Bills Committee, we proposed to remove provisions relating to end-user liability under the Bill to provide more time for the relevant parties to continue the discussion. Based on the outcome of the discussion, the Government will review the scope of end-user liability and introduce relevant legislative amendment proposals. The Bills Committee supports the proposal.

6. The Government will continue to discuss with the copyright work owners and users to explore the possibility of extending the scope of end-user liability and other relevant issues. Pending the outcome of the discussion, we propose to extend the effective period of the Suspension Ordinance, which is due to expire on 31 July 2004, for two years, ending on 31 July 2006. During the extended period, the end-user liability under the existing Copyright Ordinance as read together with the Suspension Ordinance will remain intact.

7. We propose to extend the effective period for two years because we expect the discussions with copyright owners and users to be lengthy and complicated. The discussion will cover the issue of defining the scope of fair use of copyright works, including the adoption of the fair use provisions of the United States ("US"). On this, we will need to consult not only the publishing industry but also copyright owners and users in other areas. Besides, the adoption of the US fair use provisions may require an overhaul of the structure of our Copyright Ordinance as the US open-ended approach to exempting copyright infringement is very different from the current exhaustive approach under our Copyright Ordinance. In fact, the target of drawing the discussions with owners and users to a conclusion, submitting a fresh bill to the Legislative Council and having the bill enacted within two years is a very ambitious one. However, provided that there is best endeavour and compromise on the part of all parties concerned, we feel that the target is still a feasible one.

8. The Copyright (Suspension of Amendments) Ordinance 2001 (Amendment) Notice 2004 now I introduce is made to extend the effective period of the Suspension Ordinance for two years. The proposal has also received the support of the Bills Committee.

9. Thank you, Madam President.