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Jon SIN Chung-kai
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Bills Committee Chairman
HONG KONG

By e-mail (slchan@legco.gov.hk)

Brussels, 26 April 2006

Dear Sir,

We thank you for the opportunity to comment on the (Amendment) Bill 2006.

In general we support the submission made by the Hong Kong and International Publishers' Alliance (HKIPA) and commend it to your attention.

In addition, we wish to comment in particular on the proposal to remove the existing stipulations that the permitted acts of reproduction by reprographic means of passages from published works by educational establishments under sections 45 of the Copyright Ordinance is not permitted if there are relevant licensing schemes granting authorizations for the copying concerned (Clause 15(3) of the Bill). We believe that the proposal to repeal this section puts the legislation in Hong Kong out of step with the legislative development in the region as well as in the rest of the world, especially in those countries that wish to be recognised as paying attention to being copyright compliant. In this respect we refer you to submissions made by IFRRO during the Consultations preceding the Bill in which we have commented in particular on this issue.

We are particularly surprised by this proposal in the Bill as it in the "Refined Proposals on Various Copyright Related Issues" to a large extent was substantiated by a reference to the legislation in 3 specific countries. As evidenced in our submission of 6 January 2006, which we annex to this submission, the legislation in the countries referred to support an obligation to take up a license whenever offered rather than the opposite. In 2 of the countries mentioned – Australia and Singapore – there are statutory licenses. This means that educational establishments are granted a statutory right to make copies of published works against an obligation to remunerate the rightsholders, which is done through collective licensing.

Licensing is a smooth, cost-efficient and easy way to get legal access to copyright works. It establishes a mechanism that benefits both users and rights owners, and in the long run also society as a whole. Mechanisms for the collective licensing of reprographic reproduction have already been put in place in Hong Kong. They have functioned well over a number of years and are already an established part of the copyright systems in Hong Kong. Under the current Copyright Ordinance, through licenses offered by the Hong Kong Reprographic Rights Licensing Society (HKRRLS)

educational as well as other institutions are granted the right to use copyright works. We cannot see that any information has been put forward that would justify the interference with a system that already functions well, especially when references have been made to legislation which impose licensing arrangements.

We have understood Hong Kong to seek to be recognised as a country with declared intentions to promote culture, cultural industries and copyright compliance. The proposal to repeal section 45(2) would contribute to sending out the opposite signal. We therefore strongly urge that the Bills Committee revisit and reject the proposal to remove section 45(2) of the Copyright Ordinance.

We thank you for the invitation to attend the meeting of the Bills Committee on 8 May 2006. IFRRO will not be represented in person. Our views will be carried forward by our member organisation HKRRLS and the HKIPA, which will also answer any question that you would have regarding our submission.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Olav Stokkmo'. The signature is fluid and cursive.

Olav Stokkmo
Secretary General

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By e-mail (mary_chow@citb.gov.hk)

Brussels, 9 January 2006

We thank you for the opportunity to comment on the “Refined Proposals on Various Copyright Related Issues”.

In general we support the submission made by the Hong Kong and International Publishers’ Alliance (HKIPA). In addition, we wish to comment in particular on the proposals relevant to section 45(2) of the Copyright Ordinance (7b Educational permitted acts).

The Administration rightfully states that the UK Copyright Act limits the fair dealing in education to when a licence is not offered by the rightsholders. The UK educational institutions are currently licensed by the Copyright Licensing Agency.

This is in line with the European Union Directive 2001/29, which obliges the EU Member States to either remove any exception to the exclusive right in respect of reprography, e.g. fair dealing/fair use/private copying, or alternatively ensure that the rightsholders are guaranteed a fair compensation. Article 5.2b of the Directive states that exemptions to the exclusive right may be granted, “*in respect of reproduction on paper or any similar medium, effected by the use of any kind of photographic technique or some other process having similar effects, with the exception of sheet music, provided that rightsholders receive fair compensation*”.

It is also in line with current legislation in other parts of the world. As a part of the justification for removing the obligation in the HK Copyright Ordinance to take up a licence when offered, the Administration refers to Australia, Canada and Singapore. In Australia there is a statutory licence for the reproduction in educational institutions that covers analogue as well as digital copying. It allows educational institutions the right to make copies and obliges them at the same time to pay



remuneration to the rightsholders. The conditions are set out in licensing schemes offered by the Copyright Agency Limited (CAL), the Australian RRO. For further information we refer you to CAL's web page on http://www.copyright.com.au/educational_institutions.htm, which also contains a link to the pertinent articles in the Australian Copyright Act.

Furthermore, a similar statutory licence for reproduction in educational institutions exists in the Singapore Copyright Act (see for instance information provided by the Singapore government on <http://www.ipos.gov.sg/main/index.html>). Educational institutions are permitted to reproduce portions of works against an obligation to pay equitable remuneration. The licensing schemes are administered by CLASS, the Singapore RRO.

The fair dealing provisions in the Canadian Copyright Act allow use of material, only within certain limits, for research or private study, criticism and review and news reporting. A broad educational exemption is not created under fair dealing. Consequently, educational institutions need a licence to make multiple copies for class room, which can be verified by accessing the web pages of Access Copyright (<http://www.accesscopyright.ca>) and COPIBEC (<http://www.copibec.qc.ca>), the Canadian RROs, which administers these licences in English speaking Canada and Quebec respectively.

Thus, the countries referred to by the Administration in the "Refined Proposals" should be taken as documentation to justify the maintenance of the current obligation of educational institutions to take up a licence when offered, rather than to remove it. Furthermore, we would invite the Administration to visit IFRRO's web page on www.ifrro.org to verify that the common way for educational establishments to reproduce copyright works for educational purposes is through a licence, generally offered by Reproduction Rights Organisation (RRO) such as HKRRLS.

For further information on relevant stipulations in national legislation, we also refer you to IFRRO's web page, and the database with Articles in national copyright legislation relevant to the administration of reprographic rights, available on <http://www.ifrro.org/show.aspx?pageid=copyright/filter&culture=en>

In our view, if the existing obligation to take up a licence, e.g. as offered by HKRRLS in Hong Kong is removed we would claim that this would place Hong Kong out of step with the trends in the region and the rest of the world. We would therefore respectfully request that this proposal is not carried forward by the Administration.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Olav Stokkmo'. The signature is fluid and cursive.

Olav Stokkmo
Secretary General