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By email: slchan@legco.gov.hk

Mr. Paul Woo
Bills Committee on Copyright (Amendment) Bill 2006
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr. Woo

Bills Committee on Copyright (Amendment) Bill 2006

Thank you for your letter of 12 April 2006.

We would like to provide our comments on the major proposals of the above Bill for the consideration of the Bills Committee.

1. Business End-user Possession Criminal Liability

- (a) New Section 118(1)(f) in clause 22(1) – we support the modification.
- (b) New Section 118(2A) in clause 22(3) – we support to maintain the status quo.

2. Business End-User Copying/Distribution Criminal Liability

- (a) New Section 118(1)(g) in clause 22(1)
We prefer the wording of the existing Section 118(f) under which only distribution of infringing copy of a copyright work otherwise than for the purpose of or in the course “any trade or business” will constitute an offence. The proposed amendment will impede normal operation of business. In addition, the wording “affect prejudicially” is too vague.
- (b) New Section 119B(1) and (2) in clause 24
The introduction of this new offence will impede normal business operation. Most of the communication in the banks are made through printed works, such as

circulation of newspaper cutting, information extracted from periodicals, circulation of professional reports, etc. Such distribution might be inadvertently caught under this section. For the avoidance of doubt, we suggest that distribution activities for the purposes of in-house dissemination of information and sharing of learning and resources be specifically exempted from the proposed criminal offence.

3. Directors'/Partners' Criminal Liability

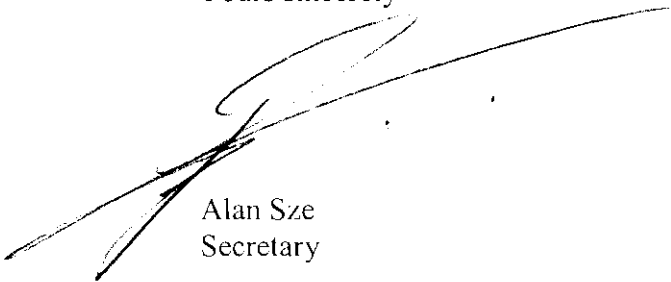
- (a) New Sections 118(2F), (2H) in clause 22(4)
- (b) New Sections 119B(6), (7) and (8) in clause 24

We have reservation about shifting the burden of proof to the directors/partners. Under normal circumstances, most of the directors or partners in a body corporate or partnership are responsible for the "internal management". It does not necessarily imply that they have full knowledge or control of their staff's activities in the course of business, especially for those in large corporations. The defence available in the new sections would be difficult to be raised by the defendant.

4. Defences for Employees and Exemptions for Certain Professionals in respect of Business End-user Criminal Liability

- (a) New Sections 118(3A) and (3B) in clause 22 – we support the defence as proposed.
- (b) New Section 118(2E) in clause 22 – we support the exemption as proposed.
- (c) New Sections 119B(10) and (11) in clause 24 – we support the defence as proposed.

Yours sincerely



Alan Sze
Secretary