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Television Broadcasts Limited
電視廣播有限公司



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5 July 2006

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

By Fax at 2537-1851
 and By Post

Attn.: Ms. Polly Yeung
 Bills Committee Clerk

Dear Ms. Yeung,

Re: Copyright (Amendment) Bill 2006 - Copyright Exemption

We understand the Bills Committee will continue the review on the provision of copyright exemption for education in its forthcoming meeting. While we do not object to the fair dealing provision (Clause 12 of the Bill in relation to section 41A) for the specific purposes specified for the advancement of education in Hong Kong in principle, we are very concerned about the effect of such broad exemption and the removal of sections 44(2) and 45(2) of the Copyright Ordinance in the digital environment. It is clear that the Bill when enacted would enable school, teacher or pupil to download, distribute and communicate all types of copyright works freely on the internet and other new media, which could also be easily accessible and used by other unauthorized persons.

We note that the fair dealing provision is subject to the primary consideration as stipulated in section 37(3) of the Copyright Ordinance and the non-exhaustive 4 factors required to be considered in the new section 41A(2). Nevertheless, we submit that it would be very difficult for the educational sector to decide whether the use of particular part of a work would be exempted in the digital transmission.

With the proliferation of new media and demand on content, copyright owners are no longer only exploiting the work as a whole but are distributing and licensing segments of the work for different media to meet the demands and interests of consumers. For example, different elements or footages from a TV programme, or even a popular phrase, character can be licensed to different persons for various types of distribution such as on mobile, 2G, 3G, Internet TV

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etc.. New channels and means of exploitation would create uncertainty for the educational sector as to whether their use would be in conflict with a normal exploitation of the work or unreasonably prejudice the legitimate interests of the copyright owners. It is highly undesirable and waste of public resources to leave the court to determine whether a particular instance of use is fair dealing or not on a case by case basis.

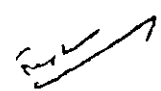
In the absence of a comprehensive copyright protection in the digital environment, we would urge the Bills Committee members and the Administration to consider excluding electronic copy of work from the exemption provision which should be limited to physical copy only.

It is also unfair to copyright owners to repeal sections 44(2) and 45(2) of the Copyright Ordinance. This undermines the existing rights of copyright owners, the existing licensing schemes and arrangements between educational sector and owners. We submit that for reasons given above, it is in fact beneficial for all concerned parties to have definitive arrangement which can avoid uncertainties and litigation.

In fact, we have granted free licences to many educational institutions in Hong Kong with respect to certain of our programmes for many years. The arrangement has worked well and we see no justification to change the law in this respect.

Thank you for your kind consideration.

Yours sincerely,



Stephen Chan

SC/TL/ps