



香港工業總會  
FHKI

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Federation of Hong Kong Industries

香港九龍尖沙咀 漢口道 5-15 號

漢口中心 4 樓

4/F, Hankow Centre, 5-15 Hankow Road

Tsimshatsui, Kowloon, Hong Kong

電話 Tel +852 2732 3188 傳真 Fax +852 2721 3494

電郵 Email fhki@fhki.org.hk

8 January 2007

Ms Priscilla To  
Principal Assistant Secretary for  
Commerce, Industry and Technology  
Commerce, Industry and Technology Bureau  
Government Secretariat  
Level 29, One Pacific Place  
88 Queensway, Hong Kong

**CB(1)699/06-07(01)**

Dear Ms To,

### **Proposed Amendments to the Copyright (Amendment) Bill 2006**

Thank you once again for briefing us on the Government's proposed amendments to the Copyright (Amendment) Bill 2006 at our general committee meeting held on 27 November 2006.

#### Copyright infringement of printed works

At the meeting, our members raised a number of concerns over the introduction of business end-user criminal liability in respect of copying/distribution of copyright infringing printed works. In our view, the inclusion of a 'safe harbour' provision in the legislation is not a satisfactory way to address these concerns as it will require very complicated calculations to determine whether an offence has been committed. We are concerned that this would not only create confusion among companies, but might also result in some business end-users breaking the law unknowingly.

As explained in our previous submissions, companies photocopying newspaper/magazine articles for internal circulation, discussion or reference is primarily aimed for timely and speedy dissemination of information, without any wilful intent to mar the legitimate interests of the copyright owners or profit motives. So long as no direct financial gain is involved in such acts, there is no justification for criminalising these *bona fide* business activities.

In fact, under the current legislation, adequate channels already exist for copyright owners of printed works to seek legal redress for any economic loss due to copyright infringement. This can sufficiently safeguard their interests against piracy. It is unnecessary to impose additional criminal sanctions against unauthorised copying of printed copyright works for internal use by business end-users. We strongly urge the removal of the proposed criminal offences on such acts from the Bill.

### Company directors' personal liability

As for the proposed company directors' personal liability, we find it unreasonable for the Bill to presume the director responsible for the internal management of a company to have committed the same offence if the company is found to have done an act attracting business end user criminal liability. It is also unreasonable to require them to bear the burden of evidence to show their innocence in such cases. As we see it, the proposed liability is in stark contravention of the long held common law principle, under which a defendant is presumed innocent unless proven otherwise by the prosecution.

We would like to emphasise that criminal sanctions, being a form of punishment for serious misdeeds, should not be lightly imposed on minor, non-profit motivated copyright infringements. Holding company directors personally liable for such acts is likely to deter investors from investing in Hong Kong to the detriment of our economy. We have strong objections to the proposal regarding personal liabilities for company directors.

### Parallel import of copyright products

We regret that the Government proposes to extend the criminal sanction period for parallel import of copyright products from nine months as originally proposed in the Bill to 12-15 months. We are concerned that a lengthy ban would overly protect the interests of exclusive licensees at the expense of local consumers' interests. Our recommendation is that the ban should be gradually phased out in 18 months, so as to enable consumers to have better choices in purchasing products from overseas at more competitive prices.

We hope the Government will give serious consideration to our recommendations when finalising the Bill with the Legislative Council.

Yours sincerely,



Kenneth Ting  
Chairman

c.c. Legco Bills Committee on the Copyright (Amendment) Bill 2006