To further improve Hong Kong's copyright protection and copyright exemption regimes, the Government today (March 16) announced a package of legislative amendments to the Copyright Ordinance.

"The improvements take into account recent social and technological developments and have taken into account requests from both owners and users of copyright works," a spokesman for the Commerce, Industry and Technology Bureau said.

"It has been our aim to provide Hong Kong with a strong copyright protection system to assist the development of a knowledge-based economy and creative industries.

"Nevertheless, copyright has always been controversial. Copyright owners demand stronger protection through the introduction of new civil and criminal sanctions. On the other hand, the public and business users of copyright works are wary of criminal sanctions and the introduction of new civil law rights for copyright owners for fear that they would hinder dissemination of information and their legitimate use of copyright works.

"We need to ensure that the proposed amendments will meet the reasonable demands of both sides to the greatest extent possible," the spokesman stressed.

Having carefully considered the views received from a public consultation exercise in early 2005 and from extensive discussions with relevant stakeholder groups, the Government proposed a package of changes to the local copyright protection and exemption regimes. The Copyright (Amendment) Bill 2006, which will be published in the Gazette tomorrow (March 17) and tabled at the Legislative Council on March 29 implements these proposals.

On copyright protection, proposals contained in the Bill include:

**Business end-user criminal liability**

The existing scope of the business end-user possession criminal liability would be maintained to cover only "four categories of works" - computer programs, movies, television dramas and musical recordings.
In response to the great concern expressed by the publishing industry, the Bill proposes to make frequent and significant making and distribution of infringing copies of newspapers, magazines, and periodicals and books a criminal offence.

To address concerns about possible adverse impact on classroom teaching and business operation, the Bill proposes to exempt from the proposed criminal offence educational establishments which are non-profit making or subvented by Government, to provide statutory defences and to prescribe by way of regulation numeric limits within which no criminal liability will be incurred (known as a "safe harbour").

**Directors'/partners' criminal liability**

To promote corporate accountability and responsible governance to prevent business end-user piracy, the Bill proposes that if a body corporate or a partnership has done an act attracting the business end-user criminal liability, the directors or partners responsible for the internal management of the company will be liable unless there is evidence showing that they have not authorised the infringing act.

If there is no such director or partner, the person responsible for the internal management under the immediate authority of the directors or partners would be liable.

**Defence for employees and exemptions for certain professionals**

In view of the concern that employees are in a weak position to refuse to commit infringing acts requested by their employers, the Bill proposes new defence provisions for employees who are not in a position to make or influence a decision regarding the acquisition, removal or use of the infringing copy, or the making or distribution of the infringing copies.

The Bill also proposes that the business end-user possession criminal offence would not be applied to certain professionals such as lawyers and auditors who might be required in the normal course of their work to possess/use infringing copies.

**Circumvention of technological measures**

The Bill proposes to include new provisions to provide civil remedies for activities that circumvent technological measures used to protect copyright works. The provisions have taken into account users' legitimate access to copyright works and the importance of scientific research and technological development.
To combat the sale of modified game consoles and other tools which help the public to pirate copyright works, the Bill proposes to make it a criminal offence for a person who makes for sale or hire, imports or exports for sale or hire, or deals in any circumvention tools or provides circumvention services on a commercial scale.

Copyright owners sometimes implement technological measures that have the effect of preventing activities that are lawful in Hong Kong. In order not to affect these legitimate activities, the Government shall exclude from criminal protection technological measures that prevent access to parallel imported copies of copyright works or the recording of a broadcast or cable programme upon its reception.

**Rental rights for films and comic books**

Taking into account the concern of the film, music and comic book industries that the proliferation of rental activities have deprived them of sale and licence revenue, the Bill proposes to introduce rental rights for these works. Copyright owners would be able to obtain civil remedies for violation of the rental rights.

Regarding **copyright exemption**, the spokesman explained that the Copyright Ordinance listed item-by-item specific acts which could be permitted under copyright law. This approach is rather rigid and cannot easily cater for social and technological changes and new circumstances. The Bill therefore contains proposals to introduce more flexibility into our copyright exemption regime. These proposals include:

**Fair dealing for education and public administration**

Today's educational use of copyright works covers not only classroom instruction but also interactive and project-based teaching. Educational use of copyright works will continue to evolve with changes in teaching methods. Likewise, public administration has become increasingly complex, with stress placed on a timely response by the Government. However, the existing permitted acts in the Copyright Ordinance do not adequately cater for new circumstances.

The Bill proposes to supplement our traditional, item-by-item approach with a more general exemption provision, i.e. concept of "fair dealing", for education and public administration purposes.

To determine what sort of dealing is "fair dealing", a list of non-exhaustive factors such as the purpose and character of the dealing have been included for the court to consider. For instance, fair dealing with a work by a teacher or pupil for the purpose of giving or receiving instruction in a specified course of study provided by
an educational establishment would not infringe copyright.

**New permitted acts**

The Bill also provides a new permitted act to meet the special reading needs of persons with a print disability and a new permitted act to play a sound broadcast inside a vehicle for the purpose of affording the driver access to public information.

**Liberalisation in the use of parallel imports**

Under the existing Copyright Ordinance, it is a criminal offence to deal in, or to import otherwise than for private and domestic use, any parallel imported copyright work if the work has been published anywhere in the world for 18 months or less.

Taking into account the Copyright owners’ objection to any liberalisation in parallel imports and the strong wish of many quarters of the community for free use and circulation of parallel imports, the Bill proposes to shorten the criminal liability period from the existing 18 months to nine months. It also proposes to remove the civil and criminal liability associated with business use of parallel imports, except for commercial dealing purposes or for public showing of movies, TV dramas, musical sound/visual recordings by organisations other than educational establishments and libraries.

Furthermore, the Bill proposes amendments that will increase effectiveness and efficiency in the enforcement of the law and the operation of the Copyright Tribunal.

The spokesman stressed, “The Government has the responsibility to ensure that Hong Kong’s intellectual property protection regime is in line with international standards, reflects social and technological developments and takes into account users’ legitimate interest. We recognize, however, that any amendments to the Copyright Ordinance are likely to be controversial as diverging, if not diametrically different, interests are involved.

"We welcome all sectors of the community to give us views on the Bill and will consider making amendments to the Bill if they are considered to be justified in the public interest.”

Ends/Thursday, March 16, 2006

NNNN