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By Fax (2869 4420)

11 May 2009

Ms. Bonnie Yau
Prin AS for Commerce & Econ Dev
(Commerce & Industry)³
Commerce and Economic Development Bureau
Level 29, One Pacific Place
88 Queensway
Hong Kong

Dear Ms. Yau,

Copyright (Amendment) Bill 2009

I am scrutinizing the legal and drafting aspects of the above Bill. I would be most grateful if you could clarify the following matter.

Under section 3 of the proposed new Schedule 1AA, section 119B(1) of the Copyright Ordinance (Cap. 528) (the copying and distribution offence) does not apply to the distribution or the making for distribution by a person, within any period of 180 days, of infringing copies of books or specified journals if the total value of qualifying copies distributed or made by the person within that period does not exceed \$6,000. "Qualifying copy" is defined in section 1(1) of the proposed new Schedule 1AA in relation to books and specified journals. The detailed methods for determining the value of qualifying copies made from books and specified journals are set out in sections 5 to 8 of the proposed new Schedule 1AA.

It is anticipated that the prices (which are taken to determine the value of qualifying copies) may be denominated in foreign currencies. However, it is noted that there is no provision in the Bill or the Copyright Ordinance for determining the exchange rate of a foreign currency that will be used in calculating the total value of qualifying copies. The Legal Service Division is not aware of any provision in other ordinances which is of general application for determining exchange rate. As an offence is involved under section 119B(1) of the Copyright Ordinance (Cap. 528), would it be more certain if the method for determining the exchange rate of a foreign currency is stated in the Bill?

I shall be most grateful if you could let me have your response in both Chinese and English on the above query at your earliest convenience. You may wish to note that a Bills Committee has been formed to consider the Bill. The first meeting is to be fixed. It would be convenient for members if your reply could reach me before the first meeting of the Bills Committee.

Yours sincerely,

(Timothy TSO)
Assistant Legal Adviser

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