

香港特別行政區政府

商務及經濟發展局  
工商及旅遊科

香港金鐘道八十八號  
太古廣場第一期二十九樓



COMMERCE, INDUSTRY AND TOURISM BRANCH  
COMMERCE AND ECONOMIC  
DEVELOPMENT BUREAU

GOVERNMENT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION

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By Fax

18 May 2009

Mr Timothy Tso  
Assistant Legal Adviser  
Legislative Council Secretariat  
Legal Service Division  
Legislative Council Building  
8 Jackson Road  
Central, Hong Kong

Dear Mr Tso,

### **Copyright (Amendment) Bill 2009**

Thank you for your letter of 11 May 2009. You sought our views on whether it would be more certain to state in the Copyright (Amendment) Bill 2009 a method ("Method") for calculating the total value (in Hong Kong dollars) of qualifying copies of books and specified journals with prices denominated in foreign currencies.

The Administration had carefully considered this issue in the course of drafting the Bill. It was (and remains) our considered view that it may not be necessary or desirable to prescribe the Method in the Bill after taking into account the following factors: -

- (a) Under criminal law, the burden of proving different elements of the copying and distribution offence rests with the prosecution and the standard of proof is beyond reasonable doubt. Accordingly, in a case involving books or journals with their prices denominated in foreign currencies, the prosecution has to prove beyond reasonable doubt that the cumulative value of the qualifying copies so made or distributed has exceeded the prescribed numeric limit, i.e. equivalent to \$6,000 in Hong Kong dollars. The exchange rate(s) to be adopted in a particular case is essentially a matter of evidence. In practical terms, the prosecution will

have regard to all the relevant circumstances before selecting the most appropriate exchange rate(s) to prove the charge.

- (b) We also draw support from the fact that there are certain offences in the laws of Hong Kong involving conversion of foreign currencies into an amount equivalent to the local currency where the relevant Ordinances contain no provision on the method of calculation. Some examples are given below :

- (i) Money Changers Ordinance (Cap. 34)

A money changer being required to do certain acts and prohibited from doing certain acts under sections 4, 6, 7, 8 and 10 of the Ordinance commits an offence if he contravenes any of those sections. Under section 3(1)(c), the Ordinance does not apply to an exchange transaction if the amount of the currency tendered for exchange exceeds \$100,000 or an equivalent amount in a foreign currency. The Ordinance contains no provision on how the Hong Kong dollars equivalent of a foreign currency is to be calculated for the purposes of section 3(1)(c).

- (ii) Organized and Serious Crimes Ordinance (Cap. 455)

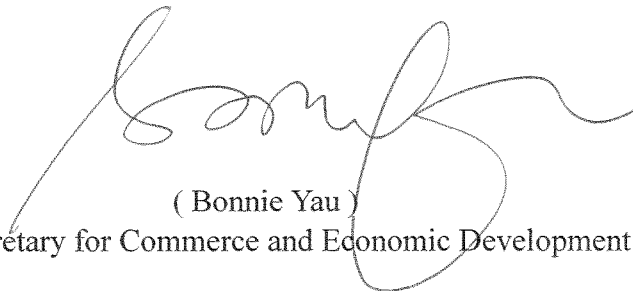
A remittance agent being required to do certain acts and prohibited from doing certain acts under section 24C(2) of the Ordinance commits an offence if he contravenes that subsection. In addition, a money changer being required to do certain acts and prohibited from doing certain acts under section 24C(3) commits an offence if he contravenes that subsection. Under section 24C(1), section 24C does not apply to a remittance transaction or exchange transaction that is less than \$8,000 or an equivalent amount in a foreign currency. The Ordinance contains no provision on how the Hong Kong dollars equivalent of a foreign currency is to be calculated for the purposes of section 24C(1).

- (c) One of the salient features of the copying and distribution offence is that the act which constitutes the offence is committed on a “frequent” or “regular” basis. As such, the offence would most likely take place over a span of days, weeks or even months. In most instances, we reckon that the enforcement agency by circumstantial evidence would only be able to determine the *period of time* in which the offence was committed rather than identifying the *exact day and exact timing* during which a particular book or specified journal was copied, or an infringing copy distributed. Hence, any standardized Method (which is likely to refer to a prescribed

and time-specific exchange rate), if prescribed at all, may not be able to accommodate the circumstances of individual cases.

Criminal liability aside, we wish to reiterate that copying a copyright work or distributing its copies to users without the authorisation of the right-holder and without any lawful excuse is of itself an infringement of copyright that would entail civil liability. Business end-users are always encouraged to respect intellectual property rights and refrain from any such activity or conduct, regardless of the extent of infringement.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Bonnie Yau', written in a cursive style. The signature is positioned above the printed name and title.

( Bonnie Yau )

for Secretary for Commerce and Economic Development

c.c. Director of Intellectual Property (Attn: Ms Ada Leung)  
Department of Justice (Attn : Mr Michael Lam, Mr Richard Turnbull)