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By Fax (2869 4420)

20 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

Thank you for your letter dated 18 May 2009.

As I mentioned in my previous letter dated 11 May 2009, an offence is involved under section 119B(1) of the Copyright Ordinance (Cap. 528). In this context, it is important that the persons affected by the provision know exactly what would constitute the offence. Without specifying the method for determining the exchange rate of a foreign currency in the Bill, the persons affected would not know how to convert the price of a book or specified journal denominated in foreign currencies into Hong Kong dollars. Thus, they would not know whether the total value of qualifying copies exceeds \$6,000 and therefore whether an offence would be committed. For the sake of certainty, it appears that it is necessary to specify the method for determining the exchange rate of a foreign currency in the Bill.

In paragraph 2(a) of your letter, it is stated that the exchange rate(s) to be adopted in a particular case is essentially a matter of evidence and the prosecution will have regard to all the relevant circumstances before selecting the most appropriate exchange rate(s) to prove the charge. It would assist members of the Bills Committee if you could provide information as to what are the relevant circumstances and how would the most appropriate exchange rate(s) be selected.

In paragraph 2(b) of your letter, you quoted section 3(1)(c) of the Money Changers Ordinance (Cap. 34) and section 24C(1) of the Organized and Serious

Crimes Ordinance (Cap. 455) as examples where there are no provisions on how the Hong Kong dollars equivalent of a foreign currency is to be calculated. However, it should be noted that exchange or remittance transactions are involved in those provisions. The actual exchange rate that has been used in those exchange or remittance transactions could be used in calculating the Hong Kong dollars equivalent for the purposes of those provisions and it may not be necessary to specify the method for determining the exchange rate in those circumstances. The situation is very different under the present Bill and it appears that it is necessary to specify the method for determining the exchange rate of a foreign currency in the Bill.

It is also noted that there are examples in some ordinances where there are provisions on how the Hong Kong dollars equivalent of a foreign currency is to be calculated for the purposes of those provisions, namely section 34(3B) of the Bankruptcy Ordinance (Cap. 6), section 3B(4) of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330) and section 27(4)(a) of the Deposit Protection Scheme Ordinance (Cap. 581). You may wish to consider whether a similar provision should be included in the Bill.

I shall be most grateful if you could let me have your views in both Chinese and English on the above issue at your earliest convenience.

Yours sincerely,

(Timothy TSO)
Assistant Legal Adviser

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