

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
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COMMERCE, INDUSTRY AND TOURISM BRANCH
COMMERCE AND ECONOMIC
DEVELOPMENT BUREAU
GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION
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Our Ref. : CITB 07/09/22
Your Ref. : LS/B/9/08-09

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By Fax

4 June 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 20 May 2009. Our reply to your commentaries is set out in the attached sheets in both English and Chinese.

Yours sincerely,

(Bonnie Yau)

for Secretary for Commerce and Economic Development

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

Copyright (Amendment) Bill 2009

Method for determining the exchange rate of a foreign currency

Under the Copyright (Amendment) Bill 2009 (the Bill), 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 HK\$6,000.

In any legal proceedings involving the copying and distribution offence relating to books or specified journals, the prosecution bears the legal burden to prove beyond reasonable doubt that the relevant numeric limit has been exceeded having regard to all the circumstances of the case. Since the infringing acts constituting the offence may take place over a period of time rather than being one-off in nature, the prosecution will, in determining whether the numeric limit has been exceeded in a case involving books or specified journals with prices denominated in foreign currencies, consider all the evidence available, including the duration in which the infringing acts were committed and the exchange rates prevailing during the material period of time. In cases where the enforcement agency could only determine, by circumstantial evidence, the *period of time* during which the infringing acts were committed (as opposed to the *exact point of time* at which an infringing act was committed), the prosecution would have to use an exchange rate which could withstand legal challenge. In practice, the exchange rate used is likely to be one most favourable to the defendant. Depending on the actual circumstances of individual cases, the method for determining the exchange rate to be used may vary. We do not consider it necessary or desirable to prescribe, in the law, the various methods that may be used in different cases.

Having said the above, we agree that prescribing a *reference exchange rate* published by a defined organization (e.g. the opening indicative counter exchange selling rate published by the Hong Kong Association of Banks) in the Bill would give a greater degree of certainty to both the business end-users and the enforcement agency. We will consider introducing appropriate amendments to the Bill to prescribe the *reference exchange rate* accordingly.