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The Secretary for Trade & Industry
(Attn: Mr. Johann Wong - AS(TI)D1)
Trade & Industry Bureau
Level 29 One Pacific Place
88 Queensway
Hong Kong

14 February 2000

By Fax No. 2869 4420
No. of Pages:2

Dear Mr. Wong,

Intellectual Property (Miscellaneous Amendments) Bill 2000

I am scrutinising the legal and drafting aspects of the above Bill with a view to advising Members and should be grateful if you would clarify the following :

Clause 2(c)

In the English version, the term "dealing in infringing copies" in the context of a trade or business can have a broader meaning than just selling and buying as suggested in the corresponding Chinese version ("買賣版權作品"). It can mean trading, trafficking, buying and selling, letting or hiring, supplying, importing etc. If the intention is to confine the term to just buying and selling as in the Chinese version, would you please consider amending the English version? Or if the term is meant to have a broader meaning as suggested in the English version, then please amend the Chinese version accordingly.

Clause 14

In the definition of "place of public entertainment"

- (a) The definition may not cover buildings such as a hotel which may from time to time be made available for the purposes of public entertainment. Please confirm whether this is in accord with the policy intent.
- (b) The "non-inclusion" of a foyer seems to relate to a building described in the proviso only. Shouldn't that apply to buildings under the main body of the definition?

In the definition of "video recording equipment"

The term is defined as "any device that is capable of making a recording, on any medium, from which a moving image may by any means be produced,". The definition may raise doubt as to whether a video recording equipment without battery/tape installed or is just not operational is caught by the definition.

Clause 25

Under proposed section 31C(1), "(a)ny person who, without lawful authority, has in his possession in a place of public entertainment any video recording equipment commits an offence." This appears to be a strict liability offence where the purpose of possessing the video recording equipment is not relevant. It seems that a person, for example, a tourist, may be convicted of the offence of mere possession even though he does not have the intention to record any film or other copyright works, nor commit any other acts of copyright infringement. A person may even be convicted when at the material time, a film is not being shown at that place of public entertainment. As a matter of legal policy in terms of fairness to a person who has no intention of committing any copyright infringement act, should a defence be provided for the proposed offence? Proposed section 31C(3) would not help if the tourist in the example did not know that consent for having a video recording equipment with him in a cinema or theatre is necessary.

Lastly, should there be a requirement for a warning notice to be displayed in the place of public entertainment to the effect that possession of video recording equipment is prohibited unless there is consent from the manager of the place of public entertainment? (In the Smoking (Public Health) Ordinance (Cap. 371) , a manager of a cinema is required to display signs of no smoking area and if he fails to do so, he is liable on summary conviction to a fine at level 4.)

Your early reply in both Chinese and English is appreciated.

Yours sincerely,

(Anita Ho)
Assistant Legal Adviser

c.c. D of J (Attn: Mr. Jeffrey E Gunter, SALD and
Mr. W L Cheung, SGC)

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