

Our Ref. : CIB 07/09/18

Tel No. : 2918 7480
Fax No. : 2869 4420

3 May 2007

Miss Polly Yeung
Clerk to the Bills Committee on
Copyright (Amendment) Bill 2006
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Polly,

**Response to the letter from the Hon Li Kwok-ying
on the Copyright (Amendment) Bill 2006**

I refer to the letter dated 13 April 2007 from the Hon Li Kwok-ying. The Administration was asked to consider whether trainee solicitors should be provided with an exemption similar to section 118(2E)(aa) in the Copyright (Amendment) Bill 2006.

Trainee solicitors are not qualified to act as solicitors under the Legal Practitioners Ordinance (Cap. 159). Hence, they are not allowed by their principals to give legal advice independently to clients. However, they may be asked by their employers to assist in giving legal advice in the course of their employment. When a solicitor is requested by his client to give legal advice pertaining to an infringing copy of copyright work, a trainee solicitor working in the same firm may possess the copy for the purpose of assisting his employer to give legal advice. Under the above scenario, the trainee solicitor shall be regarded as possessing the copy (which was provided to him by his employer) in the course of his employment. Furthermore, the trainee solicitor is not in a position to make or influence the decision of his employer regarding the use of the

infringing copy in the course of provision of legal advice pertaining to that copy. Hence, he should be able to rely on the employee's defence under section 118(3A).

On the other hand, persons serving a pupillage under the Barrister (Qualification for Admission and Pupilage) Rules (Cap. 159 sub. leg. AC) are not employees of their masters. Hence, the employee's defence is not available to such persons. This calls for a separate exemption provision (new section 118(2E)(aa)) for such persons.

We have sent the revised section 118(2E) to the Law Society of Hong Kong for comments. The Law Society has no objection to the revised provision.

Yours sincerely,

(Ms Priscilla To)
for Secretary for Commerce, Industry and Technology