

LS/B/10/05-06

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Secretary for Commerce, Industry & Technology
(Attention: Ms Priscilla TO, PAS(C&I)3)
Commerce, Industry & Technology Bureau
Level 29 One Pacific Place
88 Queensway
Hong Kong

29 June 2006

BY FAX
Fax No. : **2869 4420**

Dear Ms TO,

Copyright (Amendment) Bill 2006

I refer to your letter dated 22 June 2006 and note that you would consider the following—

(a) Clauses 7 and 8

how the drafting of sections 35, 35A and 35B can be improved;

(b) Clause 22

how similar wording can be adopted in new sections 118(2F) and 119B(6);

(c) Clause 24

if amendments to section 119B(1) and (2) are necessary to clearly reflect policy intent; and

(d) Clause 55

how to amend new section 273A(2)(c) to make the intention clear.

On clause 16 (new section 54A), should the Legislative Council and the Judiciary agree to the policy proposed in that provision, would it be better to put the relevant provision in relation to the Legislative Council and the Judiciary under section 54 and adding words to the effect that the new provision is without prejudice to the existing section 54?

On clause 22 (new section 118(1)(f)), you are of the opinion that the wording “by any person” in the proposed section 118(1)(f)(i) includes the person who possesses the infringing copy and intends to sell that copy, as well as any other person who intends to sell that copy. I would like to refer you to the Chinese version of new section 118(2A) which is quite similar to subsection (1). It states that : “在不損害第(1)款的原則下，任何人如未獲…版權擁有人的特許，…管有該作品的侵犯版權複製品，以某人可為該貿易或業務的目的或在該貿易或業務的過程中，使用該侵犯版權複製品，該首述的人即屬犯罪。” The Chinese version suggests that there are two persons and the second person “某人” could not be the same person as the first person “任何人”. Would the addition of the words “by himself or” before the words “by any person” make the intention clearer?

Your early response in both English and Chinese is appreciated.

Yours sincerely,

(Anita HO)
Assistant Legal Adviser

c.c.: DoJ (Attn: Mr Michael LAM, SGC) Fax No. 2869 1302
LA