Bills Committee on the Copyright (Amendment) Bill 2011 Comments by the Public on the Code of Practice

Purpose

In order to implement the safe harbour provision under the Copyright (Amendment) Bill 2011, the Administration issued a draft Code of Practice for public consultation in August 2011. This paper summarises comments made by the public on the Code of Practice (see Annex).

Background

2. The safe harbour provision is one of the major proposals in the Copyright (Amendment) Bill 2011. To provide incentives for online service providers (OSPs) to cooperate with the copyright owners in combating online piracy, and to provide sufficient protection for their acts, we propose to introduce the safe harbour provision. In brief, OSPs' liability for copyright infringement occurring on their service platforms will be limited, provided that they meet certain prescribed conditions, including taking reasonable steps to limit or stop a copyright infringement when being notified.

3. This safe harbour provision will be underpinned by a voluntary Code of Practice which sets out suggested practical guidelines and procedures for OSPs to follow when notified of infringing activities on their network or service platform. An OSP who complies with the Code of Practice will be treated as having met one of the qualifying conditions for the safe harbour, i.e. taking of reasonable steps to limit or stop the copyright infringement as soon as practicable.

4. During the consultation, some netizens are concerned that personal data of subscribers received by the complainants under the notice and takedown system, could be subject to abuses. Having taken into account the advice of the Privacy Commissioner, we are considering appropriate revisions to address the concerns raised by individual respondents. The revisions will go into the second draft of the Code of Practice.

Conclusion

5. We have completed the public consultation on the first draft of the Code of Practice. We are carefully reviewing the views received, and revising the Code of Practice in response to concerns expressed by the public. We plan to consult the public again on the revised Code of Practice in early 2012.

Commerce and Economic Development Bureau December 2011

Comments by the Public on the	he Code of Practice and the Administration'	's Response
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	Organisations/Individuals	Views/Concerns	Administration's Response
1.	China Mobile Hong Kong	(i) Online Service Providers (OSPs) should be allowed to impose a reasonable charge on copyright owners.	 (i) Under our proposal, individual copyright owners and OSPs will each bear their own costs in implementing the safe harbour provisions. This is similar to the arrangements in Australia, Singapore and the US where there is no statutory cost-sharing mechanism. The proposed safe harbour provisions take into account the special role of the OSPs and provide them, through a limitation of liability regime, with an incentive to help copyright owners fight online piracy. More and more copyright owners and OSPs (some of them being developers of digital content themselves) recognise that it is in their mutual interest to work together in developing successful business models and building an online environment that provides strong protection for copyright. In working out the safe harbour provisions, we have borne in mind the importance of striking a reasonable balance between the interests of copyright owners and OSPs. We consider it reasonable to ask the parties concerned to bear their own costs in implementing the system.

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Organisations/Individuals	Views/Concerns	Administration's Response
	 (ii) The government may nominate an independent committee to set a standard service charge for all OSPs. 	 (ii) Please see our response to item 1(i) above. Compliance with the Code of Practice (Code) is voluntary. Individual copyright owners and OSPs may freely enter into their own agreements for fighting online piracy.
	(iii) Suggest providing a mechanism to avoid possible abuse.	(iii) The safe harbour provisions contain a built-in mechanism that seeks to deter abuses. Under our proposal, a person commits an offence and is liable to pay compensation by way of damages to any person who suffers loss or damage as a result of any false statement made by him in a notice of alleged infringement/counter notice (see the new sections 88E and 88F in Clause 45 of the Bill).
	(iv) OSPs should have no obligation to verify the authenticity and content of a notice.	(iv) The draft Code clarifies that OSPs are not required to verify the authenticity and content of a notice of alleged infringement/counter notice as long as the notice has prima facie complied with the requisite requirements.

	Organisations/Individuals	Views/Concerns	Administration's Response
2.	Hong Kong Internet Service Providers Association	 Propose amending the Bill to clarify that an OSP would not be liable even if the removal or disabling of access inadvertently impacts other unrelated services of the subscriber or a third party. 	 (i) It is our intent that an OSP who removes materials or disables access to materials/activities in good faith will not be liable for any claim in relation to the removal or disabling of access so long as the OSP has followed the relevant steps outlined in the Bill (see the new section 88G).
		(ii) Propose setting up a mechanism to update the Code.	(ii) Noted. It is our intent that the Code will be reviewed and updated from time to time.
		(iii) Propose incorporating a mechanism that can be utilised when an OSP considers that compliance with the Code is technologically impractical or impossible.	 (iii) To qualify for protection under the safe harbour, OSPs are required to, among other things, take reasonable steps to limit or stop the infringement in question as soon as practicable (see the new section 88B(2)(a)). The Code provides practical guidance on the steps that may be taken to limit or stop an infringement in question. Compliance with the Code is voluntary. An OSP who does not fully comply with the Code may still qualify for protection under the safe harbour if the OSP can show to the Court's satisfaction that it has taken other steps that fulfill the requirements under the new section 88B(2)(a).
		(iv) Propose establishing a mechanism for OSPs to recover their costs.	(iv) Please see our response to item 1(i) above.
3.	Federation of Hong Kong Filmmakers	(i) Support the Code which is balanced and neutral.	(i) Noted.

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	Organisations/Individuals	Views/Concerns	Administration's Response
4.	Internet Society Hong Kong	(i) Suggest stepping up public education to better inform the public of its right to make counter notices.	 (i) Noted. The Government will launch a public education program before the provisions related to the Code come into force.
		(ii) Concerned that the identity of alleged infringers will be disclosed to copyright owners by sending a copy of the counter notice.	 (ii) Having taken into account the advice of the Privacy Commissioner, we are considering appropriate revisions to address the concerns raised by individual respondents. The revisions will go into the second draft of the Code.
		(iii) Propose having a mechanism to prevent abuses by copyright owner, e.g. compensation for wrongful allegations.	(iii) Please see our response to item 1(iii) above.
		(iv) Concerned that small or non-commercial organisations may not have the capacity to understand or execute the Code.	(iv) The safe harbour provisions protect an OSP from pecuniary liabilities regardless of its size or whether the nature of its activities is commercial or otherwise. Compliance with the Code is voluntary. An OSP who does not fully comply with the Code may still qualify for protection under the safe harbour if it can show to the Court's satisfaction that it has taken other steps that fulfill the requirements under the new section 88B(2)(a).
		(v) Request to consult users and organisations for the Code and the Bill, even in this final stage.	 (v) The Administration completed consulting the public and stakeholders on the draft Code in September 2011. We will soon release the second draft of the Code for another round of public consultation.

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	Organisations/Individuals	Views/Concerns	Administration's Response
5.	HUCOM Task Force on Copyright in Education	 (i) The Government should consider whether a charge should be imposed on copyright owners based on the volume or frequency of complaints. The recovery of costs should be more fairly apportioned between the parties involved. 	(i) Please see our response to item 1(i) above.
		 (ii) Concerned about what protection the OSPs may have against the damage claims from subscribers associated with unjustified complaints. 	(ii) Please see our response to item 2(i) above. In addition, the OSP may seek compensation from the complainant for any loss or damage suffered as a result of any false statement made by the complainant in the notice of alleged infringement (see the new section 88F).
		(iii) It is hard to achieve automated response since Form A may be received via different channels, such as email, letter, etc.	(iii) We are considering the comments received and will strive to ensure that the Code and other requirements are as practical and user-friendly as possible to facilitate compliance.
		(iv) Suggest including "information in Form A is not adequate for further processing" as a reason for not processing a notice of alleged infringement.	(iv) Noted. The new section 88C and the draft Code make it clear that an OSP will not be required to process a defective notice of alleged infringement not meeting the statutory requirements.
		 (v) Prefer to set one standard "relevant timeframe" (5-10 working days) for OSPs to issue notices. 	 (v) The draft Code sets out, among other things, the proposed timeframes for parties to observe. We have received divergent comments on this (e.g. many have reservations on setting a "standard timeframe" as what is appropriate would depend on the circumstances of individual cases. The same may also change in the course of time due to, say, evolution of technology.). We are considering an

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	Organisations/Individuals	Views/Concerns	Administration's Response
			alternative approach in response to the comments received.
		(vi) Suggest some personal particulars of the complainant be masked to comply with Personal Data (Privacy) Ordinance.	(vi) Please see our response to item 4(ii) above.
6.	Online Service Providers Alliance	 (i) Suggest C&ED or IPD assuming the role of agent to handle all complaints. If not, an individual OSP should only be required to provide one electronic contact method, e.g. email address. 	 (i) The safe harbour provisions create a platform for copyright owners to enlist OSPs' assistance in combating online piracy occurring on their platforms. This is similar to the arrangements in overseas jurisdictions including Australia, Singapore and the US. Compliance with the Code is voluntary. We do not consider it appropriate for the Government to centrally process referrals/complaints from copyright owners, or for that matter meddle with the contractual relationship between the OSPs and the subscribers of their services. Please also see our response to item 5(iii) above.

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Organisations/Individuals	Views/Concerns	Administration's Response
	(ii) Copyright owners should bear the costs.	(ii) Please see our response to item 1(i) above.
	(iii) While agreeing to remove the infringing materials, do not agree to remove or block the "access" (path) to the materials or activity since the materials at the path can be changed anytime.	(iii) Noted. Our proposal is consistent with the approach adopted under the corresponding mechanisms in Australia, Singapore and the US. The idea is to enlist OSPs' assistance in combating online piracy occurring on their platforms. OSPs who remove infringing materials or disable access to them according to the Code would be regarded as having fulfilled one of the necessary conditions for protection under the safe harbour. OSPs are not required to track whether certain alleged infringing materials have been moved to other online locations.
	(iv) The procedure of notice and takedown system is too complicated. Do not agree to set different timeframes for handling released or newly released/pre-release works. Suggest stating the timeframe as "appropriate" and "reasonable".	(iv) Please see our response to items 5(iii) and 5(v) above.
	 (v) Concerned that the Code does not state the liability of abusing the system. Consider that criminal liability should be imposed on such abuses. 	(v) Please see our response to item 1(iii) above.
	(vi) Concerned that the identity of alleged infringers will be disclosed to copyright owners by sending a copy of the counter notice.	(vi) Please see our response to item 4(ii) above.
	(vii) OSPs should be allowed to review and amend the Code regularly.	(vii) Please see our response to item 2(ii) above.

	Organisations/Individuals	Views/Concerns	Administration's Response
7.	CY Mak	(i) Strongly oppose the Code as it will create "white terror" and affect parody and mash-up works.	 (i) The legislative proposals do not alter the existing legal principles in determining what constitutes a copyright infringement. A parody or mash-up work that does not amount to copyright infringement under the existing copyright law will remain so under the Bill. Please also refer to the Administration's papers on <i>Copyright and Freedom of Expression</i> and <i>Copyright Exception for Parody</i> submitted to the Bills Committee. Separately, we wish to point out that the proposed notice and takedown system has been implemented in overseas jurisdictions including Australia, Singapore and the US for some years.
		(ii) The Code will lead to unnecessary litigation.	 (ii) The safe harbour aims to protect an OSP from pecuniary liabilities if it has taken reasonable steps to limit or stop online infringement by following the Code. This will provide certainty for OSPs. We fail to see how it will lead to more litigation than would otherwise be the case.

	Organisations/Individuals	Views/Concerns	Administration's Response
8.	Sam Kong	(i) Concerned that OSPs will have to bear the extra costs, which will affect the subscribers eventually.	(i) Please see our response to item 1(i) above.
		(ii) Concerned that OSPs will remove materials even without receiving any notice, and that the freedom of expression will be suppressed.	 (ii) Under our proposal and as expressly provided for in the Bill, OSPs are not required to police their service or positively seek facts that indicate infringing activities (see the new section 88B(5)(a)(i)). However, we could not rule out the possibility of circumstances under which an OSP, though not notified by a third party via a notice of alleged infringement, becomes aware that an infringement has occurred/is occurring or becomes aware of facts or circumstances that would lead inevitably to the conclusion that an infringement has occurred/is occurring. In such circumstances, we consider it reasonable for the OSP to take steps to limit or stop the infringement. We wish to stress that, at the end of the day, if the removal of materials or disabling of access is not done in good faith or not in accordance with the relevant steps outlined in the Bill, the OSP will not be able to benefit from the exemption of liability provided under the new section 88G.
		(iii) Concerned that the identity of alleged infringers will be disclosed to copyright owners and they will take extra-legal actions.	(iii) Please see our response to item 4(ii) above.

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Organisations/Individuals	Views/Concerns	Administration's Response
	 (iv) Suggest the complaints must be initiated by copyright owners (or their agents) or the Government, with solid evidence of infringement provided. 	 (iv) Noted. Our proposal provides that notices of alleged infringement are to be filed by copyright owners and their authorised representatives. False statements made by a complainant in a notice of alleged infringement may attract civil and criminal liabilities. Please see our response to item 5(iii) above.
	(v) Request to exempt mash-up works.	 (v) Hong Kong is obliged to ensure that all copyright exceptions meet the test stipulated in the Agreement on Trade-related Aspects of Intellectual Property Rights of the World Trade Organization. The proposal to bring in a copyright exception for mash-up works is liable to change substantively the balance of interests between copyright owners and users. Meanwhile, a widely accepted approach for dealing with matters including the definition of mash-up works and the qualifying conditions for granting an exception is yet to emerge. The Government considers it prudent to conduct thorough deliberations and public consultation before deciding whether a legislative proposal on copyright exception for mash-up works ought to be put forward. Please also refer to the Administration's paper on <i>Copyright Exception for Parody</i> submitted to the Bills Committee.

	Organisations/Individuals	Views/Concerns	Administration's Response
9.	Hong Kong and International Publishers' Alliance	 (i) Disappointed that the Code provides no mechanism for identifying repeat infringers. It should be amended to require OSPs to: retain information and records to facilitate the identification of repeat infringers; notify a subscriber that he/she has been identified as a likely repeat infringer, and warn him/her of potential consequences; establish and maintain a database of all notices received and sent, including the identity of the subscriber receiving the notice, and the number of notices received; and preserve a record of all repeat notices for a specified, reasonable period. (ii) More expeditious timeframes for removing or disabling access to infringing materials should be set. 	 (i) The safe harbour aims to provide incentives for OSPs to work with copyright owners to build an online environment that provides strong protection for copyright. We note that some copyright owners and OSPs in the US have recently come to a voluntary agreement on enhanced co-operation in combating online infringement, including measures against repeat infringers. We will continue to monitor the latest international developments with a view to drawing reference from them in mapping out further possible measures to enhance copyright protection in the digital environment. (ii) Please see our response to item 5(v) above.

	Organisations/Individuals	Views/Concerns	Administration's Response
10.	Ivan Yeung	(i) Concerned that OSPs will have to bear the extra costs, which will affect the subscribers eventually.	(i) Please see our response to item 1(i) above.
		(ii) Concerned that OSPs will remove materials even without receiving any notice, and that the freedom of expression will be suppressed.	(ii) Please see our response to item 8(ii) above.
		(iii) Concerned that the identity of alleged infringers will be disclosed to copyright owners and they will take extra-legal actions.	(iii) Please see our response to item 4(ii) above.
11.	International Federation of the Phonographic Industry (Hong Kong Group) Limited	(i) Consider the proposed timeframes for OSPs to take action too long.	(i) Please see our response to item 5(v) above.
		(ii) Suggest the counter notices be sent within 7 days.	(ii) Please see our response to item 5(v) above.
		 (iii) Suggest extending the timeframe for copyright owners to commence legal proceedings to 21 days. 	(iii) Please see our response to item 5(v) above.
		(iv) Request introducing a graduated response system (GRS).	 (iv) The concept of GRS is controversial and its implications have to be carefully considered. Many consider it disproportionate to deprive users' Internet connection based on claims of copyright infringement. We remain of the view that it is not an opportune time to consider introducing a GRS system in Hong Kong, especially when its implications are yet to be fully tested in overseas jurisdictions. Separately, we note that some copyright owners and OSPs in the US have recently come to a voluntary agreement on enhanced co-operation in combating online infringement, including measures against repeat infringers.

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	Organisations/Individuals	Views/Concerns	Administration's Response
			We will continue to monitor the latest international developments with a view to drawing reference from them in mapping out possible further measures to enhance copyright protection in the digital environment.
		(v) OSPs should be obliged to keep record of infringement up to a prescribed period.	 (v) Please see our response to item 9(i) above. While we need to avoid imposing undue administrative burden on OSPs, it is noted that well-kept records would facilitate law enforcement by the relevant authority.
		(vi) Other technical measures should be considered as well.	(vi) Please see our response to item 9(i) above.
12.	Chan Sik Yuet	(i) Concerned that OSPs will have to bear the extra costs, which will affect the subscribers eventually.	(i) Please see our response to item 1(i) above.
		 (ii) Concerned that OSPs will remove materials even without receiving any notice, and that the freedom of expression will be suppressed. 	(ii) Please see our response to item 8(ii) above.
		(iii) Concerned that the identity of alleged infringers will be disclosed to copyright owners and they will take extra-legal actions.	(iii) Please see our response to item 4(ii) above.
		(iv) Creation of mash-up works will be stifled.	(iv) Please see our response to item 7(i) above.

	Organisations/Individuals	Views/Concerns Administrat	ion's Response
13.	International Intellectual Property Alliance	(i) The notice and notice system will not be effective. (i) Please see our respo	onse to item 9(i) above.
	-L. 2	 (ii) Request the Code to have provisions to identify repeat infringers. OSPs should be required to: correlate the IP address provided by the right holder with the subscriber whose account was assigned that IP address; maintain a database of all notices received and sent, including the identity of the subscriber receiving the notice; notify a subscriber that he/she has been identified as a repeat infringer; and maintain and preserve such data for a specified period for litigation and enforcement purposes. 	onse to item 9(i) above.
		 (iii) Suggest requiring the OSPs to announce and implement a policy to deal with repeat infringers and set and enforce terms and conditions of service that prohibit repeated use of services for infringing activities. 	onse to item 9(i) above.
		 (iv) Suggest incorporating the requirement that OSPs need to act when they become "aware of facts or circumstances that would lead inevitably to the conclusion that the infringement has occurred" in the Code. (iv) This has already be Code. 	en incorporated in the draft
		 (v) Suggest counter notice should only be made by subscribers who "wish to dispute or deny the alleged infringement," and only on the grounds stated in Form B. (v) Noted. Please see above. 	our response to item 5(iii)

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	Organisations/Individuals	Views/Concerns	Administration's Response
		(vi) Suggest requiring OSPs to verify the authenticity and content of a counter notice before acting upon it.	(vi) Please see our response to item 1(iv) above.
		(vii) Request to shorten the timeframes for OSPs to take action.	(vii) Please see our response to item 5(v) above.
		(viii) Suggest that the particular reasons for not processing a complaint based on non-compliance with para. 2.2 be stated so that a complainant can rectify any incompliance.	(viii) Please see our response to item 5(iv) above.
14.	Joey Nasai	 (i) Some people may abuse the system by demanding a high licence fee from Internet users even though these people may not be the true copyright owners. 	 (i) The systems proposed under the safe harbour provisions and the Code aim to enlist OSPs' assistance in combating online piracy occurring on their service platforms. Whether and how a licence fee should be charged is a separate matter to be resolved by the parties involved. Please also see our response to item 1(iii) above.
15.	The Law Society of Hong Kong	(i) Consider newly released and older works should be treated on equal footing, and that one standard timeframe should be set.	(i) Noted. Please see our response to item 5(v) above.
		(ii) OSPs should be required to at least verify the personal particulars of the subscribers sending counter notices since only they know whether the information is accurate.	(ii) Noted. Please see our response to item 1(iv) above.
		(iii) Suggest setting 7 working days and 20 working days as the respective timeframes for OSPs to take action and subscribers to send counter notices.	(iii) Noted. Please see our response to item 5(v) above.

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	Organisations/Individuals		Views/Concerns		Administration's Response
16.	New World Telecommunications Limited	(i)	On the notice and notice system, inquire whether an OSP taking an extra step to disconnect data connection to the subscriber would still be treated as having taking reasonable steps to stop the infringement and protected by the new section 88B(3), and whether the protection under the new section 88G would apply in respect of potential claims from the subscriber.	(i)	The notice and notice system under the Code requires an OSP to, among other things, forward a copy of notice of alleged infringement to a subscriber. An OSP who complies with the Code will be treated as having complied with the requirement under the new section 88B(2)(a) and met one of the qualifying conditions for the safe harbour. Under the notice and notice system, the OSP is not required to make any data disconnection.
		(ii)	Consider the period of 20 working days for sending a counter notice too long.	(ii)	Please see our response to item $5(v)$ above.
		(iii)	Suggest the grounds for not processing the notice should also include that the service provider cannot reliably identify the alleged infringing material.	(iii)	Please see our response to item 5(iv) above.
		(iv)	Consider the provision of internet data centre (only "providing spaces for storage of customers' servers") does not fall within the scope; suggest clarifying for avoidance of doubt.	(iv)	Noted. The draft Code provides further guidance on the application to different types of OSPs and the steps of limiting or stopping an infringement that should be followed. Please also see our response to item 5(iii) above.
		(v)	If a complainant complains to an OSP without using the prescribed form of notice, the OSP would in such circumstances be aware of the infringing material and hence "shall" remove such materials. This might defeat the purpose of the prescribed form of notice which requires the complainant's declaration.	(v)	Please see our response to items 5(iii) and 5(iv) above. If a notice does not contain the requisite information, it will be treated as a defective notice. A defective notice will not be taken into account in determining whether the OSP has the requisite awareness or not.

	Organisations/Individuals	Views/Concerns Administration's Response
		 (vi) Inquire if an OSP still needs to process a notice when the complainant does not provide a Hong Kong address. (vi) Noted. Please also see our response to item 5(iii) above.
		 (vii) Prefer adopting the formulation of the new section 88C(3)(d) in lieu of paragraph 7 of Form A so that sufficient details of the alleged infringement will be provided. (vii) Noted. Please see our response to item 5(iii) above.
17.	Entertainment Software Association	 (i) Suggest the Code should require OSPs to adopt and implement, as part of their terms of service, a policy to deter users from engaging in repeat infringements. (i) Please see our response to item 9(i) above.
		(ii) OSPs should be required to, at least, keep track of the number of notices each subscriber received.(ii) Please see our response to item 9(i) above.
		(iii) Suggest setting 3 working days for OSPs to take action for both newly released and older works.(iii) Please see our response to item 5(v) above.
		 (iv) Recommend amending section 8.1 of the Code to read: "Consistent with section 88B(2)(ii) and (iii) of the Ordinance" in order to clarify that section 8 applies to both actual knowledge and red-flag knowledge. (iv) Noted. Please see our response to item 5(iii) above.

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	Organisations/Individuals	Views/Concerns	Administration's Response
18.	IFPI Asian Regional Office	(i) Urge the Government to implement a GRS.	(i) Please see our response to item 11(iv) above.
		(ii) Suggest requiring OSPs to retain data sufficient identify repeat infringers for at least 1 year.	o (ii) Please see our response to item 11(v) above.
		(iii) Consider the timeframes for OSPs to take action too long. They should be required to a "immediately" or "expeditiously".	
		(iv) Suggest that substantial compliance with th "notice of alleged infringement" form (Form A should already be sufficient.	
		 (v) Suggest the Code should explicitly clarify th Internet account holders are considered a "subscribers". 	•
		(vi) Suggest the Code should establish a mechanism resolve disputes arising from counter notices.	o (vi) Noted. We will strive to ensure that the Code and other requirements are as practical and user-friendly as possible to facilitate compliance. Under our proposal, an OSP should reinstate the materials only if the copyright owner does not indicate objection to the reinstatement by way of instituting proceedings with a view to restraining the subscriber from engaging in infringing activity in relation to the material in question. We believe that this strikes a reasonable balance between the interests of all the parties concerned. Please also see our response to item 5(iii) above.

Organisations/Individuals	Views/Concerns	Administration's Response
Hong Kong Copyright Licensing Association	 (i) Request to provide guidelines on how the complainant can determine which category the OSP belongs to, and list out examples of OSPs that are applicable under each system. 	(i) Please see our response to item 16(iv) above.
	 (ii) Suggest that the notice should include content asking the subscriber to cease the infringing activity, to remove the infringing materials, and to undertake in writing to refrain from infringing copyright in the future etc. 	(ii) Noted. Please see our response to items 5(iii) and 9(i) above.
	(iii) Suggest setting 1 working day and 7 working days as the respective timeframes for sending notices in relation to newly released and older works.	(iii) Please see our response to item 5(v) above.
	(iv) Suggest the counter notices be sent within 10 days.	(iv) Please see our response to item 5(v) above.
	(v) Request to require OSPs to acknowledge receipt of the notice within a certain number of hours and to send notice to notify the complainant the takedown/disabling "as soon as practicable but in any event within 7 working days of the relevant date of notice".	(v) Please see our response to item 5(v) above.
	(vi) Consider the timeframe for copyright owners to commence legal proceedings too short.	(vi) Please see our response to item 5(v) above.
	(vii) Suggest that reinstatement must not take place before the deadline given to the complainant.	(vii) Please see our response to item 18(vi) above.
	Hong Kong Copyright	 Hong Kong Copyright Licensing Association (i) Request to provide guidelines on how the complainant can determine which category the OSP belongs to, and list out examples of OSPs that are applicable under each system. (ii) Suggest that the notice should include content asking the subscriber to cease the infringing activity, to remove the infringing materials, and to undertake in writing to refrain from infringing copyright in the future etc. (iii) Suggest setting 1 working day and 7 working days as the respective timeframes for sending notices in relation to newly released and older works. (iv) Suggest the counter notices be sent within 10 days. (v) Request to require OSPs to acknowledge receipt of the notice within a certain number of hours and to send notice to notify the complainant the takedown/disabling "as soon as practicable but in any event within 7 working days of the relevant date of notice". (vi) Consider the timeframe for copyright owners to commence legal proceedings too short. (vii) Suggest that reinstatement must not take place

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	Organisations/Individuals	Views/Concerns	Administration's Response
		(viii) Suggest amending the wording in Form B from "the respondent believes in good faith that" to "the respondent provides reasonable proof and grounds that".	(viii) Please see our response to item 1(iii) above.
20.	Yung Man Hung	(i) Oppose the Code, particularly the notice and takedown system.	 (i) The legislative proposals have been carefully formulated with a view to striking a reasonable balance between the free flow of information across the Internet and the freedom of expression on the one hand, and enhancing copyright protection in the digital environment on the other hand. The proposed safe harbour provisions and Code aim to enlist OSPs' assistance in combating online piracy occurring on their platforms. Our proposal is consistent with the approach adopted under the corresponding mechanisms in Australia, Singapore and the US. Under our proposal, if the removal of materials or disabling of access is not done in good faith or not in accordance with the steps set out in the Bill, the OSP will not be able to benefit from the exemption of liability provided under the new section 88G. The safe harbour provisions also provide a mechanism for a user to seek reinstatement of removed materials. Please see our response to item 1(iii) above.

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	Organisations/Individuals	Views/Concerns	Administration's Response
21.	徐氏	(i) The Bill would affect mash-up works and parody, request to provide relevant exemptions.	(i) Please see our response to item 8(v) above.
		(ii) Oppose the notice and takedown system.	(ii) Please see our response to item 20(i) above.
		(iii) Concerned that the identity of alleged infringers will be disclosed to copyright owners by sending a copy of the counter notice.	(iii) Please see our response to item 4(ii) above.
		(iv) Suggest educating the people to respect intellectual property rights.	(iv) IPD is committed to promoting awareness of and respect for intellectual property rights in the community. IPD will continue to organise public education activities such as seminars, campaigns, school visits as well as produce promotional and educational materials to educate the public about intellectual property rights. We will also conduct public education activities after the passage of the Bill to raise awareness.

	Organisations/Individuals		Views/Concerns		Administration's Response
22.	Hong Kong Recording Industry Alliance Limited	(i)	Urge to require the OSPs to take action against repeat infringers, e.g. by implementing a GRS.	(i)	Please see our response to items 9(i) and 11(iv) above.
		(ii)	Consider the timeframes for OSPs to take action too long. They should be required to act "immediately" or "expeditiously" within a few hours; for pre-release or new release content, the timeframe should be set within 3 hours.	(ii)	Please see our response to item 5(v) above.
		(iii)	Request to introduce in the Code a new provision that an OSP failing to respond to a notice for 2 times or more would be deemed to have taken no reasonable step to stop the infringement.	(iii)	Under the new section 88B(3) of the Bill, if an OSP follows the Code, it will be deemed to have complied with one of the qualifying conditions under the new section 88B(2)(a) for obtaining the protection under the safe harbour provisions. We do not consider it necessary to introduce the proposed additional requirement in the Code.
		(iv)	Urge the Government to take further steps to facilitate cooperation between right holders and OSPs, e.g. to establish administrative accounts for right holders to remove infringing contents.	(iv)	Please see our response to item 9(i) above. The Administration will continue to facilitate co-operation between copyright owners and OSPs.

	Organisations/Individuals	Views/Concerns Administration's Response	
23.	Cable and Satellite Broadcasting Association of Asia (CASBAA)	 (i) Request to require the OSPs to set terms of service that prohibit the use of the service for copyright infringement. (i) Please see our response to item 9(i) about the service for copyright infringement. 	ve.
		(ii) Request to have a policy to discourage repeat (ii) Please see our response to item 9(i) about offenders.	ve.
		 (iii) Prefer to require OSPs to act expeditiously instead of setting specific timeframes. Also, there is no need to set dual deadlines for newly released and older works which might place additional burden on OSPs and copyright owners. (iii) Please see our response to item 5(v) about the set of the set	ove.
		 (iv) Consider the Code places too little responsibility on users who file counter notices and that the proposed criminal liability on false statement may not be able to deter false counter notices; suggest imposing an administrative fee for filing counter notices. (iv) Please see our response to items 1(5(iii) above. 	iii) and
		(v) Suggest requiring OSPs to retain data of notices received and sent etc. for 1 year.(v) Noted. Please see our response to ite above.	m 11(v)
		(vi) Agree that copyright owners will not be asked to pay OSPs for processing the complaints. (vi) Noted.	

	Organisations/Individuals	Views/Concerns	Administration's Response
24.	Motion Picture Association (MPA)	 (i) Suggest requiring OSPs to act "expeditiously" (but in no event later than 1 working day) instead of setting specific timeframes. Also, there is no need to set dual deadlines for newly released and older works which might place additional burden on OSPs and copyright owners. 	
		 (ii) Consider the Code places too little responsibility on users who file counter notices; suggest imposing an administrative fee for filing counter notices. 	5(iii) above.
		(iii) Suggest setting 5 working days as the timeframe for sending counter notices, while extending the timeframes for raising objection to counter notices to 20 working days and reinstating the materials to 20-25 working days.	
		 (iv) The notice and notice system will not be effective. Other technical measures should be considered (such as site blocking) for dealing with repeat infringers. 	
		 (v) Request to require OSPs to preserve information of notices received and sent, including the identity of the subscriber receiving the notice, for 12 months. 	
		(vi) Suggest requiring OSPs to adopt and implement terms of service that expressly prohibit the use of the service for copyright infringement.	

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	Organisations/Individuals	Views/Concerns	Administration's Response
		(vii) Suggest the notification procedures can and should be electronically automated by using ACNS (Automated Copyright Notice System).	(vii) Please see our response to item 9(i) above.
		(viii) Agree that copyright owners will not be asked to pay OSPs for processing the complaints.	(viii) Noted.
		(ix) A unique identifier should be required for Form A and Form B to facilitate administration of record.	(ix) Noted.
25.	International Federation against	(i) Endorse the views of MPA.	(i) Noted.
	Copyright Theft – Greater China	(ii) Request termination provisions for repeat infringers.	(ii) Please see our response to item 9(i) above.
26.	Yeung Hiu Kin)李沛悅,) TheseFong Yun Fu,) responsesSpringback,) areJacki Dominic Lee,) submittedFred Choi,) using the一名香港市民,) sameCandy Chong,) template.夏明,)靈,)鄭樂恆,)Stephen Lui)陳俊安,)李耀宗,)Anny Cheng,)Cotton,)	(i) Request withdrawal of the Code and re-consultation of the public.	 (i) The Administration conducted two rounds of public consultation in 2006/2007 and 2008/2009. The legislative proposals have been carefully formulated with a view to striking a reasonable balance between the free flow of information across the Internet and the freedom of expression on the one hand, and enhancing copyright protection in the digital environment on the other hand. The proposed safe harbour provisions and Code aim to enlist OSPs' assistance in combating online piracy occurring on their platforms. We will soon release the second draft of the Code for another round of public consultation.

	Organisations/Individuals	Views/Concerns	Administration's Response
	潘子揚,) 小郎,) 同人空港,) 蘇石,) 二次創作權關注組,) 香港 Out of CASH 作曲家及作 詞家協會,)	 (ii) It is unjustified to remove the alleged infringing materials solely based on copyright owners' complaints and without the court's judgment; this is against the presumption of innocence. Removal of materials should only be carried on court order. Request not to implement the notice and takedown system. 	(ii) Please see our response to item 20(i) above
	 詞豕励曾、) 丹羽真、) 香港 blogger) 	(iii) The Code will adversely affect mash-up works and stifle creativity since OSPs will tend to remove all materials even though they might not infringe copyright in reality; request to provide relevant exemption in the Bill for mash-up works.	(iii) Please see our response to items 7(i), 8(ii) and 8(v) above.
		(iv) The Code places heavy administrative burden on OSPs, particularly the small-scaled ones; request OSPs should be given at least 30 working days for each action.	(iv) Please see our response to items 1(i), 4(iv) and 5(v) above.
		(v) Concerned that the identity of alleged infringers will be disclosed to copyright owners by sending a copy of the counter notice.	(v) Please see our response to item 4(ii) above.
		(vi) For some small OSPs, it should be clearly defined in the Code who should be the recipient of notices, e.g. the hosting server or the administrator of a site.	(vi) A notice should be sent to OSPs whose subscriber uploads/provides the alleged infringing material.
27.	Keyboard Frontline	 (i) Concerned that the identity of alleged infringers will be disclosed to copyright owners by sending a copy of the counter notice, thus creating a chilling effect. 	(i) Please see our response to item 4(ii) above.

	Organisations/Individuals	Views/Concerns	Administration's Response
28.	Hong Kong General Chamber of Commerce	(i) Suggest amending the Bill to require SCED to undertake consultation with relevant parties before issuing any such code of practice.	(i) Noted. Please see our response to item 2(ii) above.
		(ii) Suggest requiring overseas complainants to either have a presence or representation in Hong Kong so that they can be held liable to the sanctions against false complaint.	(ii) Noted. Please also see our response to item 5(iii) above.
		(iii) Suggest explicitly stating whether the designated agent is a member of staff of the OSP or a third party.	 (iii) Under our proposal, OSPs have the right to decide if they wish to appoint a staff member or a third party as its designated agent. Similarly, the corresponding mechanisms in Australia and the US also do not prescribe which party should be appointed as the agent. We do not see strong justification for making such a prescription.
		(iv) Suggest providing a model compliance form at the annexes to the Code.	(iv) Please see our response to item 5(iii) above.
		(v) The notice and notice system will not be effective without a policy to deal with repeat infringers.	(v) Please see our response to item 9(i) above.
		(vi) Suggest requiring OSPs to set legally binding policy to terminate or suspend accounts of repeat infringers.	(vi) Please see our response to item 9(i) above.
		(vii) Suggest requiring OSPs to act "expeditiously" instead of setting specific timeframes.	(vii) Please see our response to item 5(v) above.

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	Organisations/Individuals	Views/Concerns	Administration's Response
		(viii) Suggest clarifying in the Code that OSPs are not required to filter or monitor Internet traffic to qualify for the safe harbour protection.	
29.	Asia Internet Coalition	 (i) Suggest using the phrase "within a reasonable amount of time" for any set timeframes, and adding that failure to act on a notice within the timeframe shall not, in and of itself, have an adverse bearing on whether the OSP qualifies for the limitation of liability. An OSP may still provide evidence that they have acted "as soon as practicable". 	In any case, an OSP may still qualify for protection under the safe harbour if it is able to show to the court's satisfaction that it has, among other things, taken reasonable steps to limit or stop the infringement as soon as
		(ii) Request to provide an exemption for OSPs from liability for takedown.	(ii) Please see our response to item 2(i) above.
		 (iii) Do not agree to classify copyright works as newly released or pre-release since this may create uncertainty and confusion. 	
		(iv) Suggest clearly set out what kinds of OSPs the notice and notice system would apply to.	(iv) Noted. Please also see our response to item 16(iv) above.
		(v) The requirement for acknowledging receipt of notices is unnecessary and poses significant administrative burden on OSPs.	

Organisations/Individuals	Views/Concerns	Administration's Response
	(vi) Senders should be encouraged to keep records of the notice of alleged infringement sent.	(vi) Noted.
	(vii) Consider it unnecessary to send notices of alleged infringement to subscribers which will also create additional administrative burden.	(vii) Please see our response to item 5(iii) above.
	(viii) Request clarifying the requirement that OSPs should keep materials or activities not subject to alleged infringement intact. Concerned whether incompliance with this advice be treated as incompliance with the Code.	(viii) Please see our response to items 2(i) and 5(iii) above.
	(ix) Concerned the privacy issue of sending the counter notice; suggest removing the requirement that a copy of counter notice be sent to the complainants.	(ix) Please see our response to item 4(ii) above.
	 (x) Consider it unnecessary and superfluous to provide in the Code the detailed process of takedown taken out of OSPs' volition. 	(x) Compliance with the Code, which provides the recommended course of action that may be taken by OSPs where it takes down material on its own volition, is voluntary. OSPs who do not follow the Code may still qualify for protection under the safe harbour if it can show to the Court's satisfaction that it has, among other things, fulfilled the condition under the new section 88B(2)(a). Please see our response to item 5(iii) above.
	 (xi) Suggest amending the wordings about sending notice by designated agents "by electronic or other means" to "by email, registered post or other means as stipulated by the service provider". 	(xi) Please see our response to item 5(iii) above.

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	Organisations/Individuals	Views/Concerns	Administration's Response
30.	Inmediahk.net	(i) Concerned that the notice and takedown system would be abused; suggest the existing notice and notice system used by OSPs would be enough.	(i) Please see our response to items 1(iii) and 20(i) above.
		(ii) The Government can help reduce copyright owners' cost of litigation by helping them to get a court order expeditiously.	(ii) Noted. During earlier rounds of public consultation, some copyright owners demanded the provision of a simpler and more expedient mechanism, such as the subpoena system in the US. We however consider the existing "Norwich Pharmacal" mechanism a more balanced approach. We stand ready to further discuss with stakeholders to explore opportunities for streamlining the disclosure mechanism, with our baseline being that any such mechanism should be subject to the court's scrutiny.
31.	Leung Po Shan, Anthony	(i) The Code/Bill would place heavy burden on OSPs and adversely affect the free flow of information.	 (i) The legislative proposals have been carefully formulated with a view to striking a reasonable balance between the free flow of information across the Internet and the freedom of expression on the one hand, and enhancing copyright protection in the digital environment on the other hand. Please also refer to the Administration's paper on <i>Copyright and Freedom of Expression</i> submitted to the Bills Committee.
		(ii) The Administration should adopt a liberal approach toward mash-up works.	(ii) Please see our responses to items 7(i) and 8(v) above.

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	Organisations/Individuals	Views/Concerns	Administration's Response
32.	News Corporation	 (i) Concur with the views of MPA and CASBAA. (ii) Consider the notice and notice system will not be effective; urge to have a system to deal with repeat infringers. 	(i) Noted.(ii) Please see our response to item 9(i) above.
33.	Hong Kong Human Rights Monitor	 (i) Concerned that freedom of expression will be suppressed as OSPs will remove all alleged materials even though they might not infringe copyright in reality. 	(i) Please see our response to item 8(ii) above.
		(ii) Any protection on copyright should also be subject to human rights.	 (ii) The legislative proposals have been carefully formulated with a view to striking a reasonable balance between the free flow of information across the Internet and the freedom of expression on the one hand, and enhancing copyright protection in the digital environment on the other hand. Please also see our response to items 1(iii) and 20(i) above.
		 (iii) Consider the notice and takedown system unfair as the removal of materials is solely based on copyright owners' complaints; suggest adopting the existing notice and notice system used by OSPs. 	(iii) Please see our response to item 20(i) above.
		(iv) Concerned the privacy issue of sending the counter notice; suggest not providing the part of personal particulars in the counter notice to the complainants.	(iv) Please see our response to item 4(ii) above.

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	Organisations/Individuals		Views/Concerns		Administration's Response
34.	凌穎櫻	(i)	Mash-up works help promote creativity and nurture talents; concerned that the Bill/Code will suppress mash-up works/cosplay.	(i)	Please see our response to item 7(i) above.
35.	Hiram Chan	(i)	Consider the Code/Bill may violate the basic rights of the people.	(i)	Please see our response to item 33(ii) above.
36.	Eugene T.	(i)	Oppose the Bill and the Code; worried that they might suppress mash-up works and parody, and stifle freedom of expression.	(i)	Please see our response to items 7(i) and 8 (v) above.
		(ii)	Concerned that the notice and takedown system would be abused.	(ii)	Please see our response to items 1(iii) and 20(i) above.
		(iii)	Concerned that the identity of alleged infringers will be disclosed to copyright owners by sending a copy of the counter notice.	(iii)	Please see our response to item 4(ii) above.
37.	Composers and Authors Society of Hong Kong Ltd	(i)	Suggest requiring the subscriber to provide proof when filing the counter notice.	(i)	Please see our response to item 1(iii) above.
		(ii)	Suggest the OSPs should not reinstate the materials without seeking further response from the copyright owners.	(ii)	Please see our response to item 18(vi) above.

	Organisations/Individuals	Views/Concerns	Administration's Response
38.	Business Software Alliance	 (i) Disappointed that there is no policy to deal with repeat infringers; suggest requiring OSPs to set legally binding policy to terminate or suspend accounts of repeat infringers. 	
		 (ii) Prefer requiring OSPs to act expeditiously for all kind of works instead of setting specific timeframes. 	
		(iii) Urge the Administration to confirm in the Code that monitoring/filtering is not a prerequisite to the safe harbour.	
39.	Hong Kong Motion Picture Industry Association	(i) Consider the notice and takedown system ineffective.	(i) Please see our response to item 9(i) above.
		(ii) Request the Administration to study the feasibility of adopting a GRS.	(ii) Please see our response to item 11(iv) above.
		(iii) The cost of implementing the notice and takedown system or a GRS should not be borne by the copyright owners.	
		(iv) Request to require OSPs to retain subscribers' infringing records for at least one year.	(iv) Please see our response to item 11(v) above.

	Organisations/Individuals	Views/Concerns	Administration's Response
40.	Hong Kong Cable Television Limited	(i) The cost should not be borne by OSPs; request to have the right to charge the complainant a reasonable fee.	(i) Please see our response to item 1(i) above.
		(ii) Consider the criminal and civil liability against making false claim ineffective; request the notice should be made in the form of affidavit mirroring the requirements under section 121 in order to minimise abuse.	(ii) Under the new sections 88E and 88F, making a false statement in a notice may attract civil and criminal liability. The maximum level of penalty is a fine of HK\$5,000 and imprisonment of 2 years. Given that the proposed safe harbour aims to help parties resolve their copyright disputes in a quick, simple and cost-effective manner, we do not consider it proportionate to request copyright owners and subscribers to use an affidavit to substantiate their rights/claims.
		(iii) Suggest imposing a fee for filing a notice or counter notice.	(iii) Please see our response to item 1(i) above.
		(iv) Request to have a prescribed or standardised form for the notice.	(iv) Please see our response to item 5(iii) above.
		(v) Request to clarify upon receiving an invalid notice, the OSP can disregard it or has to send notice to the complainant.	(v) Please see our response to item 5(iv) above.
		(vi) Consider the timeframes too short; suggest changing the wordings to "as soon as practicable".	(vi) Please see our response to item 5(v) above.
		(vii) Suggest defining "newly released" works as works published for less than 1 month.	(vii) Noted. Please see our response to item 5(iii) above.

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	Organisations/Individuals	Views/Concerns	Administration's Response
		(viii) Suggest clarifying whether the designated agent can be an actual person or a company or simply an email.	(viii) Please see our response to item 28(iii) above.
		(ix) Consider automated response to any party relevant to the Code should suffice.	(ix) Please see our response to item 5(iii) above.
		(x) Consider the requirement of ensuring "materials or activity not subject to alleged infringement remain intact and unaffected" impractical and request to remove it.	(x) Noted. Please see our response to items 2(i) and 5(iii) above.
		(xi) Consider the part "Steps to be taken other than following notice of alleged infringement" is not congruous with the rest of the Code and might run against the principle that OSPs only act in response to the notices sent by the complainants.	(xi) Please see our response to items 8(ii) and 29(x) above.
41.	SmarTone Mobile Communications Limited	 (i) The notice and notice system should not put undue burden on OSPs to find out the alleged infringer. Information about the infringement such as the IP address concerned and the exact time should be provided by the complainant. 	 (i) Noted. Please see our response to item 28(viii) above. Separately, the Bill and the first draft of the Code clearly stipulate the information that is to be included in a notice of alleged infringement.
		(ii) There should not be any specified timeframes for OSPs to send out notices.	(ii) Please see our response to item 5(v) above.
		(iii) Request to clarify what is meant by "the service provider accommodates and does not interfere with standard technical measures that are used by copyright owners to identify or protect their copyright work".	(iii) The term "standard technical measures" is defined in the new section 88A under the Bill.

Organisations/Individuals	Views/Concerns	Administration's Response
	(iv) It may not be practicable to identify the infringer even with IP address and to ensure that the blocking of access is always targeted at the infringing materials since the material owner can change the location of the infringing materials at anytime.	 (iv) In compliance with the Code, an OSP may disable access to the material or activity that is <i>identified</i> in a notice of alleged infringement. Please also see our response to items 5(iii) and 6(iii) above.
	 (v) Consider that the disabling of access to a particular material or link at a website would likely affect access to other content on that website. 	(v) Noted. Please see our response to item 2(i) above.
	(vi) Concerned that passing the subscriber's information to the complainant through the counter notice would be contradictory to the data privacy protection principle and lead to abuse.	(vi) Please see our response to item 4(ii) above.
	(vii) Concerned that requiring OSPs to take action where it becomes aware of infringing material or activity on their service platform would put an undue responsibility on OSPs in policing their network/platforms. Consider the term "become aware of" too vague.	(vii) Please see our response to items 5(iii) and 28(viii) above.
	(viii) OSPs should be fully indemnified by copyright owners for cost incurred or any damages suffered arising from implementing the system.	(viii) Please see our response to items 1(i) and 5(ii) above.
	(ix) There should be criminal sanctions against false statements made by copyright owners.	(ix) Please see our response to item 1(iii) above.