

## **Executive Summary**

### **Existing framework for copyright protection in the digital environment**

Our copyright law accords protection to copyright works stored in digital format and on the Internet. In fact, Hong Kong was amongst the first territories in the world to clarify in local legislation the rights of copyright owners in relation to their works made available online.

The existing Copyright Ordinance (Cap. 528) contains provisions dealing with unauthorised uploading and downloading of copyright works over the Internet. Civil remedies and, in some circumstances, criminal sanctions are provided against such unlawful activities.

Our legislative measures are backed by vigorous enforcement action. The Customs and Excise Department monitors the Internet round-the-clock and takes prompt action against suspected piracy activities. We also have an on-going public education programme to promote awareness of and respect for intellectual property rights (IPR) in the community.

### **Why do we need a review now?**

We are committed to maintaining an effective legal framework to protect IPR in Hong Kong. We have undertaken a major exercise in the last two years to review our Copyright Ordinance and an amendment Bill is being scrutinised by the Legislative Council. This Bill, amongst other things, seeks to strengthen protection for copyright owners on various fronts, including measures against business end-user piracy activities, and circumvention of technological measures for copyright protection.

Advances in technology in recent years are such that we see a need to put in motion early a review of the efficacy of our copyright protection regime in the digital environment.

One of the main objectives of our review is to consider whether and if so how protection for copyright should be further strengthened to facilitate the sustainable development of our creative industries in the digital era.

In pursuing this objective, we are mindful of the need to balance competing interests including possible concerns about the adverse implications that enhanced IPR protection may have on the dissemination of information, protection of personal privacy in relation to individuals' activities on the Internet, and the development of Hong Kong as an Internet service hub.

## **Issues for consultation**

### ***Legal Liability for Unauthorised Uploading and Downloading of Copyright Works***

Technological advances in recent years have enabled users to transmit and obtain data files over the Internet in more and more efficient ways (e.g. peer-to-peer (P2P) technology). When copyright works are transmitted, without the authorisation of copyright owners, via these new technologies almost instantaneously across an environment virtually without borders, large-scale infringement is likely to emerge before long. More and more copyright owners are demanding heavier sanctions against unauthorised file sharing of copyright works using P2P technology. It is for consideration whether unauthorised downloading should be subject to criminal liability. If we are to introduce new criminal liability, there could be different extent of criminalisation (Chapter 1).

### ***Protection of Copyright Works Transmitted to the Public via all Forms of Communication Technology***

Thanks to advances in technology including the convergence of different digital media, users may now access digitised materials seamlessly across different media platforms (e.g. television signals can be streamed over the Internet and transmitted to mobile digital devices). It is for consideration whether an all embracing right of communicating copyright works to the public should be introduced into the copyright law of Hong Kong, so as to ensure that copyright works are adequately protected irrespective of what technology may be used to transmit the works now or in the future (Chapter 2).

## ***Role of Online Service Providers in Relation to Combating Internet Piracy***

The cooperation of online service providers (OSPs) is essential for the implementation of expedient and efficient measures to combat online piracy. In some circumstances, OSPs may merely be innocent third parties playing a passive role when infringing activities occur on their service platform. It is for consideration whether a new form of liability for OSPs should be introduced, and if so, whether there should be limitation to such liability under specified circumstances, including the introduction of a system to enable efficient takedown of infringing materials on the Internet, or blocking of access to such materials. Apart from the legislative route, it is also for consideration whether any non-legislative measures (e.g. industry guidelines or codes of practice binding on all OSPs) could be put in place to help combat online piracy activities (Chapter 3).

## ***Facilitating Copyright Owners to Take Civil Actions against Online Infringement***

Some copyright owners claim that it is disproportionately expensive and difficult to gather personal particulars of alleged infringers when they seek to take civil action against infringements occurring in the digital environment. It is for consideration whether a relatively quicker and inexpensive procedure should be provided for copyright owners to assist them to identify online infringers; and whether Internet Access Service Providers (IASPs) should be required to keep records of their clients' online activities for a specified period. Apart from the legislative route, it is also for consideration whether any industry guidelines or codes of practice in relation to record-keeping practices, binding on all IASPs, could be put in place (Chapter 4).

## ***Statutory Damages for Copyright Infringement***

It is also for consideration whether statutory damages should be introduced for copyright infringements to alleviate the burden on copyright owners in substantiating their loss in infringement proceedings (Chapter 5).

## ***Copyright Exemption for Temporary Reproduction of Copyright Works***

The existing copyright exemption provision in the Copyright Ordinance relating to temporary reproduction of copyright works on the Internet may not cover all scenarios of temporary reproduction which occur quite commonly nowadays in the use and transmission of digitised copyright works. We have to examine whether and if so how the existing exemption in our copyright law should be expanded (Chapter 6).

### **Possible options**

For each of the above issues, we have outlined the situations in other jurisdictions (such as the UK, the US, Singapore and Australia). We may draw reference from the experience of different jurisdictions when formulating a solution unique to Hong Kong. This could create a model that best suits Hong Kong's needs. On the other hand, we may formulate our solution based on an existing overseas model. The advantage of the latter approach is that our courts could make reference to the case law of that particular jurisdiction when deciding cases before them. This would result in more certainty and predictability in our law.

At the end of each of the Chapters that follow, we have floated possible options addressing the issues identified, together with the relevant considerations. The considerations and options floated in this document are not meant to be exhaustive. They are drawn up to stimulate informed public discussion.

The Government has an open mind on how the various issues raised in this consultation document should be addressed. We welcome your views. Other options may be formulated in the light of feedback and suggestions from the public.

### **We seek your views**

You are earnestly invited to take time to read this consultation document, and contribute to the discussion.