

## **Government moves to strengthen copyright protection in the digital environment**

The Government today (April 15) released preliminary proposals for strengthening copyright protection in the digital environment to further consult the public before firming up legislative proposals.

Speaking at the meeting of the Legislative Council Panel on Commerce and Industry today, the Secretary for Commerce and Economic Development Mr Frederick Ma reiterated the Government's commitment to ensuring the efficacy of the copyright protection regime amid advances in technology.

“In formulating the preliminary proposals, the Government has taken into account the results of a public consultation exercise in 2007. The Government is mindful of the need to balance competing interests, including the need to provide an environment conducive to the sustainable development of creative industries in Hong Kong, protection of personal data privacy, and the development of Hong Kong as an Internet service hub,” Mr Ma said.

“The preliminary proposals will form the basis of our next round of engagement with stakeholders and the public for building consensus on the way forward. Subject to the outcome of further public consultation, we intend to firm up the legislative package in late 2008 or early 2009.”

The Government's preliminary proposals include:

- Introducing a right of communication covering all modes of electronic transmission for copyright works, with related criminal sanctions against the breach of this right in specific circumstances. It is believed that such a right could facilitate copyright owners in exploiting their works in the digital environment and help provide an environment conducive to the development of digital content and advance technology in digital transmission. On the other hand, as regards what criminal sanctions should be brought in against the breach of this right, the Government is mindful that a blanket criminalisation of all unauthorised communication might cast the net too wide and entail far-reaching unwanted implications. It is proposed that criminal sanctions should be introduced against acts of making/initiating unauthorised communication to the public in defined

circumstances (i.e. where communication is made for the purpose or in the course of business, or otherwise where the communication is made by “ streaming ” the copyright work to the recipients and the communication is made to such an extent as to affect prejudicially the copyright owner).

- Introducing a copyright exemption for temporary reproduction of copyright works by online service providers (OSPs), which is technically required for (or enables) the transmission process to function efficiently. This exemption will cover the “ caching ” activities undertaken by OSPs, which help save bandwidth and are indispensable for efficient transmission of information on the internet.
- Facilitating the drawing up of a voluntary code of practice for OSPs in combating internet infringements. Compliance with the code of practice or otherwise will be prescribed in law as a factor that the court shall take into account when determining whether an OSP has authorised infringing activities committed on its service platform.
- Prescribing in law additional factors to assist the court in considering the award of additional damages, in recognition of the fact that the process of proving the extent of actual loss, particularly in the digital environment, is often fraught with difficulties.

Apart from the preliminary proposals, the Government also stated its position on other key issues raised in the consultation document hitherto presented to the public. In its paper to the panel, the Government explained why it did not favour (a) introducing an alternative infringer identity disclosure mechanism which may compromise the protection of personal data privacy but is not subject to scrutiny by the court and (b) introducing new criminal liability pertaining to unauthorised downloading and peer-to-peer file-sharing activities.

Furthermore, in launching the next round of public engagement, the Government proposed to take the opportunity to consult the public on the possible introduction of a media shifting exception, which would provide greater flexibility and convenience for the private use of copyright works to general users.

“The Government welcomes views from stakeholders and members of the public on the preliminary proposals. We hope that following full and informed discussions, we could build a broad consensus within the community

that helps us strike a reasonable balance between competing interests,” Mr Ma said.

The preliminary proposals can be found in the website of the Commerce, Industry and Tourism Branch (CITB) of the Commerce and Economic Development Bureau, [www.cedb.gov.hk/citb](http://www.cedb.gov.hk/citb). Views should be sent to CITB on or before August 31, 2008 by email: [co\\_consultation@cedb.gov.hk](mailto:co_consultation@cedb.gov.hk), by fax: 2869 4420, or by post to Level 29, One Pacific Place, 88 Queensway, Hong Kong for attention of Division 3, Commerce, Industry and Tourism Branch.

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