

HGC GLOBAL COMMUNICATIONS LIMITED

SUBMISSION IN RESPONSE TO PUBLIC CONSULTATION PAPER ON UPDATING HONG KONG'S COPYRIGHT REGIME

1. HGC Global Communications Limited (“**HGC**”) welcomes the opportunity to submit its view on the consultation paper titled “Updating Hong Kong’s Copyright Regime” issued by the Commerce and Economic Development Bureau on 24 November 2021 (“**Consultation Paper**”).
2. As a general comment, HGC agrees that the copyright legislation in Hong Kong needs to be updated in order to keep pace with technological development and global trends concerning protection of intellectual property rights.
3. As regards the four issues highlighted in the Consultation Paper to which public views are gauged, HGC is generally supportive of the Government’s proposal in the respective areas.
4. HGC, however, would like to comment on another issue which in our opinion is of more pressing importance to online service providers playing an essential role in the digital environment, namely the Code of Practice (“**COP**”) in relation to the proposed insertion of Safe Harbour provisions in the Copyright Ordinance (Cap. 528) (“**CO**”).
5. The Government had previously pointed out that similar Safe Harbour provisions were prescribed in the US Digital Millennium Copyright Act in 1998 and the respective Copyright Act of Australia and Singapore in 2005. The Government had also acknowledged that in their research at the material time, they did not come across any comprehensive survey on the frequency and instances of invoking the notice and takedown mechanism in these jurisdictions. On the other hand, concerns over abuse and practicality of the noticing mechanism under the COP for purpose of satisfying the Safe Harbour requirements had repeatedly come up in responses received by the Government during public consultation on the first and second draft of the COP.
6. HGC is a licensed fixed telecommunication service provider in Hong Kong and our nature of business primarily concerns operation of a fixed telecom network for voice and data transmission. We do not provide storage or link or refer users to other online locations using information location tools on our service platform. Accordingly, the “Notice and Notice System” set out in Section III of the COP

applies to HGC but not the “Notice and Takedown System (Storage)” and “Notice and Takedown System (Information Location Tools)”.

7. Under the “Notice and Notice System”, when the complainant notifies the service provider of an alleged infringement, the IP address is usually used to identify the relevant subscriber suspected to have been involved in the alleged act of infringement. In real life situation, however, IP address is not an effective tool for purpose of tracing end user location and hence subscriber identity. More than often the IP addresses allocated for use by mass consumers including residential and small enterprise customers are dynamic and on a shared-use basis i.e. a pool of IP addresses for a pool of subscribers, transient in nature and with allocation history stored for very limited period of time. In other words, in most cases the relevant subscriber is not identifiable using IP addresses.
8. If, in the unlikely event that a relevant subscriber is being identified in a complaint case, the service provider will not be able to determine whether the alleged infringement is substantiated. Although the service operators are not obliged to verify the authenticity of the content entered into a notice of alleged infringement by the complainant, the concerned subscriber receiving a notice issued by the service provider may enquire if not contest the service provider with respect to such notice. The consequence of notice issuance is going to backfire on the service providers. The service providers will be compelled to spend extra time and efforts in handling enquiry and complaints from their own subscribers simply because they have a duty to send such notices even in the absence of further details and/or evidences in respect of the alleged infringement.
9. It is also notable that the complainant is not obliged to provide any evidence of copyright infringement when he/she files a notice of alleged infringement with the service provider. This relies on an “honesty” system in reporting which is to certain extent susceptible to abuse. On the contrary, the current practice of copyright owners reporting infringement activities to law enforcement agencies for seeking information and assistance from the service providers has proven to be practical and effective.
10. In order to accommodate the requirement of notification and other requirements under the COP so as to qualify for the limitation of liability under section 88B(1) of the CO, service operators are required to make necessary amendments to their contract terms, including but not limited to service terms and conditions and Personal Information Collection Statement for use of subscriber’s personal data.
11. Paragraphs 7 to 10 stipulate certain drawbacks noted in the COP. While HGC fully supports the introduction of the COP aiming to provide practical guidance to service providers in the context of the new Division IIIA of the CO, we are of the view that a balance should be struck between practicality and resources incurred on the

service providers in compliance with the COP. The outcome resulting from implementation of measures set out in the COP should not be disproportionate to resources to be deployed for such implementation.

12. HGC respectfully submits that further views should be sought from industry stakeholders in respect of implementation of the COP and that HGC would be happy to participate in future engagement exercise for this matter.

Submitted by
HGC Global Communications Limited
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