

**HONG KONG BROADBAND NETWORK LIMITED  
HKBN ENTERPRISE SOLUTIONS HK LIMITED  
HKBN ENTERPRISE SOLUTIONS LIMITED**

**Submission in response to Public Consultation Paper on Updating Hong Kong's Copyright  
Regime**

**23 February 2022**

**1. Introduction**

- 1.1 Hong Kong Broadband Network Limited, HKBN Enterprise Solutions HK Limited and HKBN Enterprise Solutions Limited (collectively “**HKBN**”) refer to the public consultation paper on Updating Hong Kong's Copyright Regime issued by the Commerce and Economic Development Bureau on 24 November 2021 (“**Consultation Paper**”).
- 1.2 In the Consultation Paper, the Government proposes to use the Copyright (Amendment) Bill 2014 (“**2014 Bill**”) as the basis and starting-point for updating Hong Kong's copyright regime with legislative proposals covering areas including, inter alia:
- 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, safe harbour provisions will be introduced to limit OSPs' liability for copyright infringements on their service platforms caused by subscribers, provided that they meet certain prescribed conditions, including taking reasonable steps to limit or stop a copyright infringement when being notified. The provisions would be underpinned by a voluntary Code of Practice which sets out practical guidelines and procedures for OSPs to follow after notification.

**2. Safe harbour**

- 2.1 Under the 2014 Bill, there will be a safe harbour from liability for infringement of copyright in a work that occurs on the OSP's platform merely because the OSP provides or operates facilities for online services.
- 2.2 All four of the following conditions must be satisfied for the OSP to enjoy the safe harbour.
- (1) The OSP has taken reasonable steps to limit or stop the infringement as soon as practicable after the OSP:
    - Received a notice of alleged infringement; or
    - Became aware that the infringement has occurred; or
    - Became aware of facts or circumstances that would lead inevitably to the conclusion that the infringement has occurred; and
  - (2) The OSP has not received and is not receiving any financial benefit directly attributable to the infringement; and
  - (3) The OSP accommodates and does not interfere with standard technical measures that are used by copyright owners to identify or protect their copyright works; and
  - (4) The OSP designates an agent to receive notices of alleged infringements, by supplying publicly on its service and on its website the contract details of the agent.
- 2.3 We welcome the clarification provided in the 2014 Bill that the OSP is not required to monitor or police its service, in order to qualify for the safe harbour.

### 3. Notice of alleged infringement

3.1 Under the 2014 Bill, a complainant in response to infringement of copyright on an OSP's platform may give a notice of alleged infringement to the OSP.

3.2 A notice of alleged infringement must:

- be in writing;
- be in the form specified by the OSP;
- be signed or authenticated by the owner of the allegedly infringed copyright or its authorized representative; and
- be provided to the OSP's designated agent by electronic or other means.

3.3 In addition, the notice of alleged infringement must:

- contain the name and address and contact details of the complainant;
- substantially identify the copyright work(s) alleged to have been infringed;
- identify the material or activity (or link or reference to such material or activity) alleged to be infringing;
- contain information sufficient to enable the OSP to locate the material, activity, link or reference;
- contain a description of how the material or activity infringes the rights of the copyright owner;
- contain a statement that the complainant believes in good faith that the use of the material or conduct of the activity is unauthorized;
- contain a request to the OSP to:
  - send a copy of the notice to the subscriber concerned, and
  - if applicable, remove the material or disable access to the material/activity to which the infringement relates
- contain a declaration that:
  - information in the notice is true and accurate to the best of complainant's knowledge and belief;
  - complainant is copyright owner or is authorized to act on his behalf; and
  - complainant understands it commits an offence for any false statement.

### 4. Code of Practice

4.1 One way where the safe harbour's reasonable steps can be satisfied by the OSP, is if the OSP complies with the Code of Practice to be established under the 2014 Bill, which will set out suggested practices and procedures for OSPs to follow in limiting or stopping infringement.

4.2 A draft Code of Practice ("**Draft CoP**") has been formulated by the Government after taking into account views received in two rounds of consultation in 2011 and 2012 respectively.<sup>1</sup>

#### Notice and Notice

4.3 Under the Draft CoP's "Notice and Notice" procedure, OSPs would forward to subscribers notices of alleged infringement that they receive from complainants.

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<sup>1</sup> Draft Code of Practice, March 2012, [https://www.cedb.gov.hk/assets/resources/citb/\(Eng\)%20Draft%20Code%20of%20Practice%20\(March%202012\).pdf](https://www.cedb.gov.hk/assets/resources/citb/(Eng)%20Draft%20Code%20of%20Practice%20(March%202012).pdf).

### Notice and Takedown

- 4.4 Under the Draft CoP's "Notice and Takedown" procedure, OSPs would forward to subscribers notices of alleged infringement that they receive from complainants and, in addition, take down or disable access to material or activity alleged to be infringing.

### Counter Notice

- 4.5 In the Draft CoP's "Counter Notice" procedure, where the subscribers subject to "Notice and Takedown" wish to deny the alleged infringement and request reinstatement of the material or cessation of disabling access to the material or activity, they could do so by issuing a 'counter notice' to the OSP. On receiving the counter notice, OSPs would forward the counter notice to the complainants and reinstate or cease disabling access to the material or activity alleged to be infringing.

## **5. Comments**

- 5.1 HKBN welcomes the Government's effort to update the copyright regime and is generally supportive of the initiative and the Draft CoP. However, HKBN is very concerned about the implementation of the procedures suggested in the Draft CoP and the associated costs that would be borne by OSPs in order to implement the Draft CoP and the on-going administration of the procedures.
- 5.2 The Draft CoP would require OSPs to establish a contact point for receiving complaints, as well as deploy labour and resources to forward complaints to subscribers, carry out the complainants' takedown requests and carry out subscribers' counter notice requests. The associated administrative and cost burden to OSPs could be substantial if the volume of notices received is significant. It is impossible to estimate the likely volume of notices of alleged infringement and counter notices that would be received and therefore impossible to plan for the required resources.
- 5.3 HKBN proposes that OSPs should be fairly compensated for the costs borne for their efforts. The Government should consider a user pays principle, whereby an administrative charge is introduced by OSPs and paid by the respective complainants / subscribers to OSPs for implementing notice and notice, notice and takedown and counter notice requests.

Submitted by  
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23 February 2022