

香港互聯網協會關注

政府建議《版權條例》修訂下之服務提供者《實務守則》

對用戶權益及表達自由表示關注

(2011年8月25日)香港特區政府商務及經濟發展局建議修訂《版權條例》，其中包括為網絡服務提供者引入「安全港」概念，即如果服務提供者確切地遵守相關的《實務守則》，「採取措施限制或遏止被指侵權的行為，即視作已...採取合理步驟，以限制或遏止有關侵權行為...便不會只因提供聯線服務或操作有關設施，而須就在其服務平台上發生的侵權行為，承擔支付損害賠償或其他金錢申索的法律責任。」

代表香港互聯網用戶的主要團體之一 – 香港互聯網協會 ("協會", ISOC-HK) – 贊同及支持對這項建議和《實務守則》的執行原則，但對《守則》的部分條文及執行細節表示關注，並擔憂《守則》對資訊自由及用戶個人私隱，可能出現保護不足的問題。

(一) 協會特別關注用戶若否認投訴人指稱的侵權行為，而有權提出的異議通知。首先，協會關注用戶在收到通知後，雖然通知已包括告知其可以提出異議通知及相關時限，但通知內容必須更全面地包括明確指出提出異議通知為用戶的權利，及清楚告知異議通知相關所需格式。協會認為，政府有需要加強公眾教育，令公眾更清楚其擁有的異議權利。

(二) 就異議通知的安排，協會更關注根據《守則》，當服務提供者收到用戶的異議通知後，需要向投訴人發出的通知的內容中，需要包括異議通知的副本；已經有用戶反映，對其身分及相關個人資料就此渠道落入投訴人手中，感到不安，並覺得可能侵犯其個人私隱，協會亦關注這做法會否出現投訴人以不能成立的投訴而獲取用戶身分及資料的情況，建議《守則》需要包括對用戶個人資訊保護的條文，嚴格監控投訴人及服務提供者如何處理這些資料。

(三) 協會亦認為《守則》並未包括對投訴人提出失實或未能成立的投訴的處理方案，對用戶並不公平，亦擔憂可能出現部分投訴人濫用《守則》而令用戶內容不合理被短期或長期被移除，以達到部分投訴人甚至與版權保護無關的目的。協會要求，《守則》有必要加入有效機制，防止失實投訴，甚至向相關投訴人引進罰則，及對被錯誤投訴的用戶的補償機制。

(四) 在網絡 2.0 世界中，誰是服務提供者，或者是版權擁有者 (可能成為《守則》內的投訴人)，並非只限一般互聯網服務供應商或大型內容提供者，任何互聯網用戶或小型提供者，甚至如學校等機構，亦可能同

時成為提供互聯網服務或內容者。協會關注《守則》對他們的影響，小型尤其非商業性機構甚至個人用戶未必能有足夠能力及了解如何執行《守則》對其若身為服務提供者時的責任，令他們可能不能受到「安全港」保障；當然，協會亦同樣關注非商業性內容提供者或個人用戶未必明瞭其可以就《守則》提出侵權投訴的權利。當局有必要加強令《守則》可以同樣包括保障小型或非商業性機構及個人用戶的權利的措施。

協會並要求政府在這就《版權條例》修訂及《實務守則》的最後諮詢階段，更開放給充分包括用戶及代表用戶的各團體，聽取他們的意見。協會主席莫乃光指出：「我們多年來參與政府當局就《版權條例》修訂及《實務守則》的諮詢，我們認同就對付侵權行為修訂法律的需要，亦完全認同為服務提供者引進「安全港」的必要，但我們相信政府在諮詢中必須平衡用戶權利，保障香港的互聯網表達自由及用戶私隱。」

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**Internet Society Hong Kong Expresses Concern
Over Government's Proposed Copyright Ordinance Amendments and
Code of Practice for Service Providers
Regarding Users' Rights and Freedom of Expression**

(August 25, 2011) The Commerce and Economic Development Bureau of the Hong Kong SAR Government is currently consulting the public over the proposed "Code of Practice for Service Providers" as a part of the proposed amendments to the Copyright Ordinance. A "safe harbour" provision is proposed for service providers, "in taking steps to limit or stop an alleged infringement ... it will be treated by virtue of ... having taken reasonable steps to limit or stop the infringement in question." As such, "the service provider will not be held liable for damages or other pecuniary remedy for copyright infringement in a work that occurs on its service platform merely because it has provided or operated facilities for online service."

Internet Society Hong Kong (ISOC-HK), one of the main local Internet user organizations, agrees with and supports the principle of the Code of Practice, but is concerned about certain details within the Code and its execution, especially over its implications on and possible lack of protection for information freedom and user privacy.

- (1) ISOC-HK is concerned about the application of the counter notice, which users are entitled to make after a complainant makes a notice to a service provider. Even though the notice that a user will receive must inform the user of his/her right to make a counter notice and the related time limit, we believe the content of the notice must more clearly inform users of their right and include the necessary format and requirements of information needed to be included in the counter notice. ISOC-HK also believes that the Government must step up public education to better inform the public of its right to make counter notices after they are being complained upon.
- (2) In particular, ISOC-HK is deeply concerned that, under the Code, when a service provider receives a counter notice from a user after a complaint was made, the service provider will have to send a notice back to the complainant, which will include a copy of the counter notice. Users have already expressed distress and concerns that their personal information and identity will be released to the complainant, and believes that this may violate their personal privacy. ISOC-HK is also concerned that some complainants may use unsubstantiated complaints to obtain the identity and information of users, and proposes the Government to include clauses to protect users' information in the Code, and strictly regulate the use of these related information by the complainant and the service provider.
- (3) ISOC-HK also believes the Code has not included safeguards against false or unsubstantiated complaints, and this is unfair to users. We are concerned that some complainants may abuse the Code for reasons that may even be unrelated to copyright, and cause certain user information to be removed temporarily or permanently. We demand that the Code must incorporate effective provisions to prevent such wrongful complaints, and possibly with the introduction of penalties, and reimbursement for users if they are being wrongfully complained against.
- (4) In the Web 2.0 world, it is unclear who are the service providers, and who are the copyright holders (hence the complainant in the Code). Even small, non-commercial organizations – even schools – or individuals can be in certain situations providing Internet services or content. We are concerned about the Code's impact on these organizations and individuals, as many of them may not have the capacity to understand or execute the Code, rendering them unprotected by the "safe harbour." At the same time, we are concerned that non-commercial content owners or individuals may not know their rights to make complaints against infringement. The Government must make the Code more accessible and provide the same level of protection for small or non-commercial organizations and individuals.

ISOC-HK demands that the Government must open up the consultation of the Copyright Ordinance amendments and the Code of Practice for Service Providers to all users and organizations representing users, even in this final stage.

Charles Mok, Chair of ISOC-HK, says, “After years of participating in the Government's consultation process over the Copyright Ordinance amendments and the setting up of the Code of Practice, while we agree with the need to update our law to counter real copyright infringement, and fully support the introduction of “safe harbour” protection for service providers, we also believe that the Government must exercise balance for the rights of users, in order to protect Hong Kong's Internet freedom of expression and privacy for our users.”

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