

# Public consultation on updating Hong Kong's copyright regime launched

The Government launched today (November 24) a three-month public consultation on updating Hong Kong's copyright regime. Members of the public are welcome to offer their views by February 23, 2022.

The Secretary for Commerce and Economic Development, Mr Edward Yau, said, "The copyright system is an important part of the intellectual property (IP) regime. On the one hand, it effectively protects private property rights arising from original works. On the other hand, it allows the public to make reasonable use of copyright works. This is crucial to encouraging creativity, technological development, as well as the dissemination and advancement of knowledge, underpinning the development of a knowledge-based economy. We in Hong Kong have all along been committed to enhancing our copyright regime in order to support our development needs. We aim to strike a proper balance between the legitimate interests of copyright owners and users, and serve the best interests of Hong Kong.

"The Government has since 2006 conducted three rounds of major consultations on strengthening copyright protection in the digital environment, and introduced two amendment bills, in 2011 and 2014 respectively, into the Legislative Council (LegCo). However, the corresponding legislative processes could not be completed before the expiry of the respective LegCo terms. In particular, despite the support by the LegCo Bills Committee, the Copyright (Amendment) Bill 2014 (2014 Bill) met with filibustering by some LegCo Members, resulting in adjournment of the proceedings. It is most unfortunate that Hong Kong's copyright regime is over a decade behind international developments," Mr Yau said.

"In fact, many overseas economies which aspire to leverage innovation and creativity to drive economic growth have taken proactive efforts to keep their copyright regimes robust and up-to-date. The 'Outline of the 14th Five-Year Plan for National Economic and Social Development of the People's Republic of China and the Long-Range Objectives Through the Year 2035' approved by the National People's Congress in March 2021 raises, for the first time, the support for Hong Kong to develop into a regional IP trading centre. We believe that it is high time to revive the copyright review exercise," he said.

The legislative proposals contained in the 2014 Bill are the result of years of deliberations of the Government, LegCo, copyright owners, online service providers (OSPs) and copyright users, representing the consensus and balance of interests of different stakeholders. In this consultation document, the Government proposes to use the 2014 Bill as the basis and starting-point for updating Hong Kong's copyright regime. The key legislative proposals cover the following five areas, on which broad consensus has been reached:

(1) To give copyright owners a technology-neutral exclusive communication right so as to ensure that the protection afforded to them would cover their works communicated to the public through any mode of electronic transmission;

(2) To introduce criminal sanctions against infringement relating to the introduction of the aforementioned exclusive communication right;

(3) To introduce two additional statutory factors for the court to consider when assessing whether to award additional damages to copyright owners in civil cases involving infringement, so as to strengthen protection for them in the digital environment. The two factors are (i) the unreasonable conduct of an infringer after having been informed of the infringement; and (ii) the likelihood of widespread circulation of infringing copies as a result of the infringement;

(4) To introduce "safe harbour" provisions to limit OSPs' liability for their subscribers' copyright infringement acts on their service platforms, provided that the OSPs meet certain prescribed conditions, including taking reasonable steps to limit or stop a copyright infringement when being notified, so as to provide incentives for OSPs to co-operate with copyright owners in combating online piracy and to provide reasonable protection for their acts; and

(5) To provide new copyright exceptions for the use of copyright works for three categories of purposes, namely parody, satire, caricature and pastiche; commenting on current events; and quotation of copyright works; and to revise and expand exceptions on various modes of using copyright works to facilitate online learning; the operation of libraries, archives and museums; and media shifting of sound recordings; so as to maintain the appropriate balance between copyright protection and reasonable use of copyright works.

In addition, the consultation document covers four issues which have generated discussions from different stakeholders in the past and remain relevant today, namely whether the existing exhaustive approach to exceptions should be maintained; whether to continue allowing contracts to override exceptions; and whether there should be specific provisions to deal with illicit streaming devices as well as judicial site blocking. The document also sets out some possible new issues for further studies, with a view to continuously strengthening copyright protection.

The consultation document can be viewed at or downloaded from the websites of the Commerce and Economic Development Bureau ([www.cedb.gov.hk/citb](http://www.cedb.gov.hk/citb)) and the Intellectual Property Department ([www.ipd.gov.hk](http://www.ipd.gov.hk)).

Members of the public may submit their views on the issues set out in the consultation paper on or before February 23, 2022, by:

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