

G.N. 1005

COPYRIGHT PROTECTION IN THE DIGITAL ENVIRONMENT

CODE OF PRACTICE

(published pursuant to section 88J of the Copyright Ordinance (Cap. 528))

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I. INTRODUCTION

- 1.1 THIS CODE OF PRACTICE (“the Code”) is published by the Secretary for Commerce and Economic Development pursuant to section 88J of the Copyright Ordinance (Cap. 528) (“the Ordinance”).
- 1.2 The Code provides practical guidance to service providers in the context of Division IIIA in Part II of the Ordinance, which particularly includes the relevant practices and procedures to be adopted in order to limit or stop copyright infringement on their service platforms upon receipt of a notice of alleged infringement.
- 1.3 Where copyright infringement has occurred on the service platform of a service provider, and the service provider, after receipt of a notice of alleged infringement from a complainant¹, elects to comply with all applicable provisions in Part III, IV or V of the Code (as the case may be), it will be treated by virtue of section 88B(3) of the Ordinance as having taken reasonable steps to limit or stop the infringement in question. Subject to compliance with the other three qualifying conditions in section 88B(2) of the Ordinance, the service provider will not be held liable for damages or other pecuniary remedy for the infringement merely because it has provided, or operated facilities for, online services (see section 88B(1) of the Ordinance). The other three qualifying conditions are:-
 - (a) the service provider has not received and is not receiving any financial benefit directly attributable to the infringement;
 - (b) the service provider accommodates and does not interfere with the standard technical measures that are used by copyright owners to identify or protect their copyright works; and
 - (c) the service provider designates an agent to receive notices of alleged infringements, by supplying through the service provider’s service, including on the service provider’s website at a location accessible to the public, the agent’s name and contact details.

¹ The complainant must be the copyright owner of the copyright work concerned, or his authorized representative. If a person falsely states in a notice of alleged infringement that he is the copyright owner of the copyright work concerned, or his authorized representative, he not only commits an offence but may also be held civilly liable to pay damages to any other person who suffers actual loss or damage as a result of such false statement.

- 1.4 Compliance with the Code on the part of service providers is entirely voluntary. A service provider who has received a notice of alleged infringement may, in any case, qualify for the limitations on liability under section 88B(1) of the Ordinance so long as it can show to the Court's satisfaction in proceedings relating to its liability for copyright infringement on its service platform that it has, *inter alia*, taken reasonable steps to limit or stop the infringement as soon as practicable. In any case, the failure of a service provider to qualify for such limitations on liability has no adverse bearing on the consideration of any defence that may be available to the service provider in proceedings for infringement of copyright (see section 88B(5)(b) of the Ordinance).
- 1.5 For the avoidance of doubt, when electing to implement any procedure and practice to limit or stop any alleged infringement on its service platform (including the removal of any material, or the disabling of access to any material or activity), a service provider should ensure due compliance with all applicable laws, notably the *Telecommunications Ordinance* (Cap. 106) and the *Personal Data (Privacy) Ordinance* (Cap. 486).
- 1.6 The service provider should also ensure that its contracts with subscribers enable it to take appropriate actions in accordance with the Code, including the forwarding of a notice of alleged infringement to a subscriber, and the removal of any material, or disabling of access to any material or activity on its service platform.
- 1.7 The service provider should take reasonable steps to notify individuals who supply their personal data in a notice of alleged infringement or counter notice of its Personal Information Collection Statement (PICS).² It should inform those individuals:-
- (a) that sections 88C(3) and 88E(3) of the Ordinance require the complainant and the subscriber to supply certain specific personal data in a notice of alleged infringement and counter notice respectively;
 - (b) that a notice of alleged infringement or counter notice which does not contain the personal data of the complainant or the subscriber (as the case

² Service providers may wish to refer to the information leaflets published by the Office of the Privacy Commissioner for Personal Data, such as its guide on how to prepare on-line PICS and Privacy Policy Statement at https://www.pcpd.org.hk/english/publications/files/GN_picspps_e.pdf

may be) will be considered as defective and that the service provider is not required to process the same;

- (c) the purpose for which the personal data is to be used;
- (d) the intended recipients of the personal data under subsequent notification steps prescribed in the Code, e.g. onward transmission of (i) the notice of alleged infringement to the subscriber, or (ii) the counter notice to the complainant, as the case may be (please also refer to paragraph 4.24(a) below); and
- (e) the rights of the complainant and subscriber to request access to and the correction of the personal data, and how such request may be made.

1.8 The service provider should take all practicable steps to ensure that the personal data collected from the complainants and/or subscribers are protected against unauthorized or accidental access, processing, erasure, or other uses.

1.9 Separately, a service provider who has not received any notice of alleged infringement may also qualify for the limitations on liability under section 88B(1) of the Ordinance if it has, *inter alia*, taken reasonable steps to limit or stop the infringement as soon as practicable after it either became aware that the infringement has occurred (see section 88B(2)(a)(ii) of the Ordinance), or became aware of the facts or circumstances that would lead inevitably to the conclusion that the infringement had occurred (see section 88B(2)(a)(iii) of the Ordinance).

1.10 Expressions used in the Code have the same meaning as in Division IIIA in Part II of the Ordinance.

II. UNDERLYING OBJECTIVES

2.1 The objectives underlying the formulation of the Code are:-

- (a) to enhance copyright protection in the digital environment, in the interest of providing an environment conducive to the healthy development of the creative and information technology industries in Hong Kong;
- (b) to facilitate a digital economy by promoting the development of advanced technology for creating and disseminating digital content;
- (c) to combat online piracy and free up online resources that would otherwise be taken up by infringing activities; and
- (d) to foster industry cooperation and entrench a culture of respect for intellectual property rights in the community.

2.2 The Code seeks to provide a mechanism through which the Administration, copyright owners, copyright users and service providers may join forces, within the framework of the applicable laws, rules and regulations, to combat online copyright infringement, and promote respect for intellectual property rights.

III. NOTICE AND NOTICE SYSTEM

A. Applicability

- 3.1 Part III is applicable to a service provider who transmits, routes, or provides connections for digital online communications, between or among points specified by a user, of information or material of the user's choosing and who satisfies the conditions set out in paragraph 3.2.
- 3.2 The conditions referred to in paragraph 3.1 are that the service provider:-
 - (a) does not initiate the transmission;
 - (b) does not select the recipient of the transmission except as an automatic response to the request of another person; and
 - (c) does not select or modify the information or material contained in the transmission.
- 3.3 Paragraphs 3.9 to 3.15 below set out the steps to be taken by the service provider following receipt of a notice of alleged infringement from a complainant.

B. Notice of alleged infringement

Issue of notice of alleged infringement

- 3.4 A complainant may send a notice of alleged infringement to a service provider if he believes in good faith that the account of a subscriber to the service provider's online service has been used in activities that infringe the copyright in relation to a copyright work.

Form and delivery of notice of alleged infringement

- 3.5 The complainant shall send a notice of alleged infringement to the service provider in the form specified by the service provider, which for the purposes of the Code shall contain all statements and data fields specified

in Form A in the Annex (hereinafter referred as “the mandatory data fields” in this Part). The complainant shall furnish full particulars as required by the mandatory data fields.³

- 3.6 The notice of alleged infringement shall be signed or otherwise authenticated by the complainant.
- 3.7 The notice of alleged infringement shall be sent to the service provider’s designated agent by the means specified by the service provider, which for the purposes of the Code shall at least include an electronic means.
- 3.8 Failure by the complainant to comply with paragraphs 3.5, 3.6 and/or 3.7 shall render the notice of alleged infringement defective. The service provider is not required to process the same.

C. Receipt of notice of alleged infringement

Receipt of notice of alleged infringement

- 3.9 On receipt of the notice of alleged infringement, the service provider shall acknowledge receipt. An automated response will suffice.

Notice to complainant

- 3.10 The service provider shall notify the complainant as soon as practicable if there are grounds for not processing the notice of alleged infringement, and these grounds may include the following:-
 - (a) the conditions under paragraphs 3.5, 3.6 and/or 3.7 are not met;
 - (b) the information in the notice of alleged infringement does not relate to one of the service provider’s subscribers (e.g. the IP address identified was not allocated to the service provider at the time of the alleged infringement);
 - (c) the notice of alleged infringement refers to an account that is no

³ For the avoidance of doubt, a service provider who specifies a form containing any non-mandatory data field should make clear in the form that a complainant is not obliged to provide any particulars as required by the non-mandatory data fields, and that the complainant’s failure to provide such particulars does not render the notice defective.

longer valid; or

- (d) the subscriber to which the IP address was assigned at the time of the alleged infringement cannot be reliably identified.

3.11 The service provider shall provide the relevant ground(s) for not processing the notice of alleged infringement when notifying the complainant pursuant to paragraph 3.10.

3.12 For the avoidance of doubt, a service provider is not required to verify the authenticity of the content entered into a notice of alleged infringement.

D. Notice to subscriber

Notice to subscriber

3.13 Unless the service provider has notified the complainant pursuant to paragraph 3.10, the service provider shall, as soon as practicable, send a written notice to the subscriber containing the information set out in paragraph 3.14.

Content of notice to subscriber

3.14 A notice sent under paragraph 3.13 shall include/enclose:-

- (a) a statement that the subscriber's account for online services has been identified in connection with an allegation of copyright infringement;
- (b) a copy of the notice of alleged infringement;
- (c) information about the legal consequences of copyright infringement in Hong Kong, together with a reminder to the subscriber that he may seek independent legal advice, if in doubt, and/or contact the complainant direct regarding the alleged infringement; and
- (d) information about the service provider's policy and/or contractual

terms against any use of its online services in breach of copyright, including the consequences of such use.

E. Records

3.15 The service provider shall keep for 18 months a record of the following:-

- (a) any notice of alleged infringement received by the service provider; and
- (b) any notice sent by the service provider pursuant to paragraph 3.13 which shall, amongst others, contain the identity of the subscriber to which the notice was sent.

IV. NOTICE AND TAKEDOWN SYSTEM (STORAGE)

A. Applicability

- 4.1 Part IV is applicable to a service provider who has stored, at the direction of a subscriber, material or activity on its service platform.
- 4.2 Paragraphs 4.8 to 4.14 and paragraphs 4.21 to 4.26 below set out the respective steps to be taken by the service provider following receipt of a notice of alleged infringement from a complainant and a counter notice from a subscriber.

B. Notice of alleged infringement

Issue of notice of alleged infringement

- 4.3 A complainant may send a notice of alleged infringement to a service provider, in relation to material or activity residing on the latter's service platform, if he:-
 - (a) believes in good faith that the material or activity infringes the copyright in relation to a copyright work; and
 - (b) requests the service provider to remove the material or disable access to the material or activity in question.

Form and delivery of notice of alleged infringement

- 4.4 The complainant shall send a notice of alleged infringement to the service provider in the form specified by the service provider, which for the purposes of the Code shall contain all statements and data fields specified in Form A in the Annex (hereinafter referred as "the mandatory data fields in Form A" in this Part). The complainant shall furnish full particulars as required by the mandatory data fields in Form A.⁴

⁴ For the avoidance of doubt, a service provider who specifies a form containing any non-mandatory data field should make clear in the form that a complainant is not obliged to provide any particulars as required by the non-mandatory data fields, and that the complainant's failure to provide such particulars does not render the notice defective.

- 4.5 The notice of alleged infringement shall be signed or otherwise authenticated by the complainant.
- 4.6 The notice of alleged infringement shall be sent to the service provider's designated agent by the means specified by the service provider, which for the purposes of the Code shall at least include an electronic means.
- 4.7 Failure by the complainant to comply with paragraphs 4.4, 4.5 and/or 4.6 shall render the notice of alleged infringement defective. The service provider is not required to process the same.

C. Receipt of notice of alleged infringement

- 4.8 On receipt of the notice of alleged infringement, the service provider shall acknowledge receipt. An automated response will suffice.

D. Takedown and notice to subscriber

Takedown

- 4.9 Upon receipt of a notice of alleged infringement that complies with paragraphs 4.4, 4.5 and 4.6, the service provider shall, as soon as practicable, remove the material or disable access to the material or activity as specified in the notice of alleged infringement.
- 4.10 For the avoidance of doubt, a service provider is not required to verify the authenticity of the content entered into a notice of alleged infringement.

Notice to subscriber

- 4.11 Where the service provider has removed material or disabled access to material or activity residing on its service platform, the service provider shall promptly take reasonable steps to send a written notice to the subscriber who had directed the storage of the material or activity on its service platform containing the information set out in paragraph 4.12.

Content of notice to subscriber

4.12 A notice sent under paragraph 4.11 shall include/enclose:-

- (a) a statement that material or activity stored at the direction of the subscriber has been identified in connection with an allegation of copyright infringement and that the service provider has removed the material or disabled access to the material or activity accordingly;
- (b) a copy of the notice of alleged infringement;
- (c) a statement that if the subscriber wishes to dispute or deny the alleged infringement and/or dispute the removal or disabling, he may send a counter notice to the service provider within 20 working days⁵ after the date of receipt of the service provider's notice;
- (d) information about the legal consequences of copyright infringement in Hong Kong, together with a reminder to the subscriber that he may seek independent legal advice, if in doubt, and/or contact the complainant direct regarding the alleged infringement; and
- (e) information about the service provider's policy and/or contractual terms against any use of its online services in breach of copyright, including the consequences of such use.

4.13 The service provider shall be treated as having complied with paragraph 4.11 if it sends the documents to the subscriber as required.

Notice to complainant

4.14 The service provider shall notify the complainant as soon as practicable if the conditions under paragraphs 4.4, 4.5 and/or 4.6 are not met.

⁵ For the purpose of the Code, "working day" means any day other than:-

- (a) a public holiday within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap. 1); or
- (b) a gale warning day or black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

E. Counter notice

Issue of counter notice

- 4.15 A subscriber who wishes to dispute or deny the alleged infringement, and dispute the removal or disabling may send a counter notice to the service provider within 20 working days after the date of receipt of the service provider's notice.

Form and delivery of counter notice

- 4.16 The subscriber shall send a counter notice to the service provider in the form specified by the service provider, which for the purposes of the Code shall contain all statements and data fields specified in Form B in the Annex (hereinafter referred as "the mandatory data fields in Form B" in this Part). The subscriber shall furnish full particulars as required by the mandatory data fields in Form B.⁶
- 4.17 In any event, the counter notice must allow the subscriber (as long as he is an individual) to opt for or against the service provider's disclosure of his personal data contained in a copy of the counter notice sent to the complainant pursuant to paragraph 4.24(a).
- 4.18 The counter notice shall be signed or otherwise authenticated by the subscriber.
- 4.19 The counter notice shall be sent to the service provider's designated agent by the means specified by the service provider, which for the purposes of the Code shall at least include an electronic means.
- 4.20 Failure by the subscriber to comply with paragraphs 4.16, 4.18 and/or 4.19 shall render the counter notice defective. The service provider is not required to process the same.

⁶ For the avoidance of doubt, a service provider who specifies a form containing any non-mandatory data field should make clear in the form that a subscriber is not obliged to provide any particulars as required by the non-mandatory data fields, and that the subscriber's failure to provide such particulars does not render the notice defective.

F. Receipt of counter notice

4.21 On receipt of the counter notice, the service provider shall acknowledge receipt. An automated response will suffice.

G. Notice to complainant and reinstatement

Notice to complainant

4.22 Upon receipt of a counter notice that complies with paragraphs 4.16, 4.18 and 4.19, the service provider shall promptly send a written notice to the complainant containing the information set out in paragraph 4.24.

4.23 For the avoidance of doubt, a service provider is not required to verify the authenticity of the content entered into a counter notice.

Content of notice to complainant

4.24 A notice sent under paragraph 4.22 shall include/enclose:-

- (a) a copy of the counter notice (where the subscriber expressly in the counter notice opts against the service provider's disclosure of his personal data contained in the counter notice to the complainant, such data must be omitted from the copy of the counter notice); and
- (b) a statement that if the complainant does not, within 20 working days after the date of the service provider's notice sent to the complainant, inform the service provider by way of written notice to its designated agent, that proceedings have been commenced in Hong Kong seeking a court order in connection with any infringing activity that relates to the material or activity as specified in the counter notice,⁷ the service provider will reinstate the material or cease disabling access to the material or activity.

⁷ This includes the commencement of proceedings for a court order requiring the service provider to disclose the identity of the subscriber involved in the relevant infringing activities.

Reinstatement

4.25 Unless the service provider receives a notice from the complainant pursuant to paragraph 4.24(b), the service provider shall, within 25 working days after the date of the notice sent under paragraph 4.22, take reasonable steps to reinstate the material or cease disabling access to the material or activity.

H. Records

4.26 The service provider shall keep for 18 months a record of the following:-

- (a) any notice of alleged infringement received by the service provider;
- (b) any notice sent by the service provider pursuant to paragraph 4.11 which shall, amongst others, contain the identity of the subscriber to which the notice was sent; and
- (c) any counter notice received by the service provider.

V. NOTICE AND TAKEDOWN SYSTEM (INFORMATION LOCATION TOOLS)

A. Applicability

- 5.1 Part V is applicable to a service provider who has linked or referred users to an online location containing infringing material or activity, by information location tools⁸ on its service platform.
- 5.2 Paragraphs 5.8 to 5.12 below set out the steps to be taken by the service provider following receipt of a notice of alleged infringement from a complainant.

B. Notice of alleged infringement

Issue of notice of alleged infringement

- 5.3 A complainant may send a notice of alleged infringement to a service provider, in relation to a link or reference on its service platform, if he:-
 - (a) believes in good faith that the link or reference refers to material or activity that infringes the copyright in relation to a copyright work; and
 - (b) requests the service provider to disable access to the material or activity in question.

Form and delivery of notice of alleged infringement

- 5.4 The complainant shall send a notice of alleged infringement to the service provider in the form specified by the service provider, which for the purposes of the Code shall contain all statements and data fields specified in Form A in the Annex (hereinafter referred as “the mandatory data fields” in this Part). The complainant shall furnish full particulars as required by

⁸ “Information location tools” is defined under section 65A(2) of the Ordinance as tools such as directories, indexes, references, pointers, or hypertext links that link or refer users to an online location.

the mandatory data fields.⁹

- 5.5 The notice of alleged infringement shall be signed or otherwise authenticated by the complainant.
- 5.6 The notice of alleged infringement shall be sent to the service provider's designated agent by the means specified by the service provider, which for the purposes of the Code shall at least include an electronic means.
- 5.7 Failure by the complainant to comply with paragraphs 5.4, 5.5 and/or 5.6 shall render the notice of alleged infringement defective. The service provider is not required to process the same.

C. Receipt of notice of alleged infringement

- 5.8 On receipt of the notice of alleged infringement, the service provider shall acknowledge receipt. An automated response will suffice.

D. Takedown

- 5.9 Upon receipt of a notice of alleged infringement that complies with paragraphs 5.4, 5.5 and 5.6, the service provider shall, as soon as practicable:-
 - (a) disable access to the material or activity as specified in the notice of alleged infringement; and
 - (b) remove or disable access to any material alleged to be infringing or the subject of any infringing activity that has been made and stored by the service provider on its service platform.
- 5.10 For the avoidance of doubt, a service provider is not required to verify the authenticity of the content entered into a notice of alleged infringement.

⁹ For the avoidance of doubt, a service provider who specifies a form containing any non-mandatory data field should make clear in the form that a complainant is not obliged to provide any particulars as required by the non-mandatory data fields, and that the complainant's failure to provide such particulars does not render the notice defective.

V. NOTICE AND TAKEDOWN SYSTEM (INFORMATION LOCATION TOOLS)

5.11 The service provider shall notify the complainant as soon as practicable if the conditions under paragraphs 5.4, 5.5 and/or 5.6 are not met.

E. Records

5.12 The service provider shall keep for 18 months a record of any notice of alleged infringement received by the service provider.

VI. ANNEX

Form A – Notice of Alleged Infringement

To: [Name of service provider]

NOTICE OF ALLEGED INFRINGEMENT

This notice is furnished pursuant to section 88C of the Copyright Ordinance, Cap. 528 and the Code of Practice published by the Secretary for Commerce and Economic Development in February 2023.

1. Particulars of the ** individual / business furnishing this notice (the complainant):-
 - (a) Name:
 - (b) Address for service in Hong Kong:
 - (c) Contact telephone number:
 - (d) E-mail address:

2. Particulars of the copyright work alleged to be infringed (the copyright work):-
 - (a) Name or description of the copyright work:
 - (b) Type of work:
 - (c) Name of owner of the copyright work (the copyright owner):
 - (d) ** Year of creation / first publication of the copyright work:

3. The complainant confirms that he is:-
 - the copyright owner; or
 - an authorized representative of the copyright owner.

4. Identification of the material and/or activity which is the subject of the alleged infringement (the material or activity in question) and its location (please see Guidance Note):-

5. (Applicable only to cases in which the complainant issues a notice under Part V of the Code of

Practice) ** Identification of the link or reference to the material or activity in question and its location:-

6. Description of how the material or activity in question infringes the copyright owner's rights in the copyright work (more than one box may be selected):-
 - the material is a whole or substantial copy of the copyright work;
 - the material has been uploaded to a website accessible to the public without the copyright owner's authorization;
 - others: _____
7. The complainant believes in good faith that use of the material, or conduct of the activity in the manner complained of is not authorized by the law of Hong Kong, the copyright owner or its authorized representative.
8. (Applicable only to cases in which the complainant issues a notice under Parts III or IV of the Code of Practice) ** The complainant requests the service provider to send a copy of this notice to its subscriber whose account for online services has been used or involved in the alleged infringement.
9. (Applicable only to cases in which the complainant issues a notice under Parts IV or V of the Code of Practice) ** The complainant requests the service provider to:-
 - remove or disable access to the material; or
 - disable access to the activity

referred to in paragraph 4.

10. The complainant declares that the information contained in this notice is true and accurate to the best of his knowledge and belief.
11. The complainant understands that it is an offence to make any false statement in this notice (the maximum penalty of which is a fine of \$5,000 and imprisonment of 2 years), and that he is also liable to pay compensation by way of damages to any person who suffers loss or damage as a result of the false statement.

Signed or authenticated by the complainant:

Date:

** Delete if not applicable

Guidance Note

This may, for instance, be provided by way of a reference to one or a combination of the following items:

- the file name, a description of the contents of the file, and the hash code of the infringing material;
- the IP address related to the alleged infringement;
- the port number used to conduct the alleged infringement;
- the website, protocol, via which the alleged infringement occurred.

Form B – Counter Notice

To: [Name of service provider]

Counter Notice

This notice is furnished in accordance with section 88E of the Copyright Ordinance, Cap. 528 and the Code of Practice published by the Secretary for Commerce and Economic Development in February 2023. The purpose of this notice is to request a service provider to either (a) reinstate material that has been removed or (b) restore access to material or activity the access to which has been disabled pursuant to a notice of alleged infringement, on grounds that there has been a mistake or misidentification.

1. Particulars of the ** individual / business furnishing this notice (the respondent):-
 - (a) Name:
 - (b) Address for service in Hong Kong:
 - (c) Contact telephone number:
 - (d) E-mail address:

2. Identification of the material or activity in question:-
 - (a) The material or activity in question involves
 - material that has been removed or to which access has been disabled; or
 - activity to which access has been disabled.

 - (b) Description of the material or activity in question and its location prior to such removal or disabling of access:

3. The respondent believes in good faith on the ground(s) set out in paragraph 4 below, that the removal or disabling of access was the result of a mistake or misidentification.

4. The ground(s) on which the respondent relies in making the statement in paragraph 3 above is/are as follows:-
 - no copyright subsists in the copyright work concerned;
 - the respondent owns copyright in the copyright work, or has been licensed to use the copyright work (Please set out
 - (a) the date of the licence: _____;

(b) the duration of the licence: _____; and

(c) the scope of the licence: _____
_____);

- the material in question does not constitute a whole or substantial copy of the copyright work;
- the respondent is permitted to use the copyright work by virtue of one of the copyright exceptions under the Copyright Ordinance

(Please set out the exception: _____).

5. (Applicable only to cases in which the respondent is an individual) ** The respondent

- agrees; or
- does not agree

to the disclosure of his personal data herein to the complainant.

6. The respondent declares that the information contained in this notice is true and accurate to the best of his knowledge and belief.

7. The respondent understands that it is an offence to make any false statement in this notice (the maximum penalty of which is a fine of \$5,000 and imprisonment of 2 years), and that he is also liable to pay compensation by way of damages to any person who suffers loss or damage as a result of the false statement.

Signed or authenticated by the respondent:

Date:

** Delete if not applicable