

For information

Legislative Council Panel on Commerce and Industry

**Leakage of personal data uploaded to the Internet by
the Intellectual Property Department :
report on follow-up actions**

Purpose

This paper informs Members of the actions taken by the Intellectual Property Department (IPD) since the incident of leakage of personal data uploaded to the Internet came to light in early April 2007, including the remedial measures immediately taken, discussion with the Office of the Privacy Commissioner and steps taken to prevent recurrence of similar incidents in future.

Background

2. In a report on 1 April 2007, the Sunday Morning Post reported that some personal data, including a photocopy of a passport, as well as what might be 'sensitive business information' was uploaded through IPD's system to the Internet where the public can read them. IPD immediately blocked the access to all trademark documents available for public inspection including opposition and counter-statement documents. On the same date, a press statement was issued in which IPD apologized for not having done more to avoid unsolicited personal or business information submitted by the public being published on the Internet without their full knowledge.

3. At the Panel meeting on 17 April 2007, Members discussed the incident. Members were informed of the measures already taken to block access to the personal data in question as well as measures that IPD was contemplating to avoid publication in future of unsolicited personal data on the Internet, following discussion with the Office of the Privacy Commissioner.

4. The Administration was asked at the meeting to -

- (a) apprise the Panel of the outcome of its investigations into the causes leading to the online data leakage;
- (b) simplify Form T6 (the notice of opposition) and Form T7 (the counter-statement) relating to the trade marks opposition process so that members of the public could more easily ascertain the information required when

filling in those forms to avoid providing unsolicited information to the Trade Mark Registry in future, and provide the Panel with copies of the duly revised forms for reference; and

- (c) after IPD had contacted all the affected individuals about the disclosure of their data and notified them of their rights, etc, apprise the Panel of the response of those individuals.

5. An account of the follow-up actions taken by IPD is given below.

Notifying persons affected by the incident

6. IPD issued a total of 143 letters to the individuals whose personal data had been published on the Internet on 27 April 2007. The addressees were informed of the data leakage, and were notified of their legal rights under the Personal Data (Privacy) Ordinance (Cap. 486). As at early July 2007, IPD had received 11 telephone enquiries about the contents of the letter. The addressees' questions related to which of their personal data items had been disclosed, how they were disclosed, what remedial actions IPD had taken and whether these personal data would be blocked before the relevant documents were open for public inspection in future. Those who telephoned appeared satisfied with IPD's written (vide letter dated 27 April 2007) and oral explanation. There was one caller who said that she would seek legal advice to ascertain her position; but so far IPD has not received further communication from her. There was also one written reply to IPD's letter, in which the affected person indicated that he had no objection to his personal data being disclosed.

Measures to prevent recurrence

7. Public inspection of trademark documents via the Internet was suspended for two months from 1 April 2007. All notices of opposition and counter-statements and pleadings for similar proceedings filed before 1 April 2007 have been cleansed by obscuring personal data relating to personal identity card and number, passport data and number, personal telephone number, personal mobile phone number, personal fax number, personal e-mail address, personal bank account number and date of birth. All documents that are filed after 1 April 2007 are subject to the same cleansing arrangement before they are made available for public inspection via the Internet. The operation of IPD's facilities for public inspection of trade mark documents via the Internet was restored on 1 June 2007.

8. IPD has drawn up and published at its website a new Privacy Policy Statement ("Statement") as from 1 June 2007. In preparing this IPD had

taken account of the best practices in both the government and the private sector for ways to improve on its privacy policy. The first part of the Statement (namely, the “Personal Information Collection Statement”) informs users that the provision of their personal data is strictly on a voluntary basis. It also sets out the purposes of collection of the personal data, the parties to whom personal data collected may be disclosed, and the right of data subjects to request for access to and correction of their personal data. In the second part of the Statement, there is a notice warning against any subsequent use of the personal data for purposes other than those for the collection of the data. A copy of the Statement is at

A Appendix A.

9. IPD has revised all the forms used by the Trade Marks Registry by including a more prominent and informative notice on the use of personal data and other information (including business information) submitted in the forms or any documents attached to them. The notice sets out the possible use of the information submitted. It makes reference to the provisions in the Trade Marks Ordinance, Cap 559, and its subsidiary legislation concerning the Registrar’s duty to make available the information submitted for public inspection upon request. The notice also provides the website at which the Personal Information Collection Statement referred to in paragraph 8 above could be obtained. There is a clear warning in the notice that the information may be accessed through the Internet. In addition, there is a warning alerting filers not to include personal data which are not specifically required to be submitted. A

B copy of the notice is at Appendix B.

10. As stated in paragraph 4(b) above, the Administration was asked at the Panel meeting to simplify Form T6 (the notice of opposition) and Form T7 (the counter-statement) relating to the trade marks opposition process so that members of the public could avoid providing unsolicited information to the Trade Mark Registry in future. Having carefully considered this question, IPD has come to the view that the information now required under these forms is the minimum necessary to meet the statutory obligations under the Trade Marks Ordinance (Cap. 559) and its subsidiary legislation.

11. In the light of the advice of the Panel on the possible disclosure of certain sensitive business information, IPD has included a written warning in its notice on the use of personal data and other information (including business information), referred to in paragraph 9 above. This warning alerts filers not to include any business information of their own or that of third parties which they consider to be confidential or commercially sensitive, as such information may be accessed through the Internet. IPD had earlier consulted representatives from the legal profession, namely the Law Society of Hong Kong, the Asian Patent Attorneys Association Hong Kong Group and the Hong Kong Institute of Trade Mark Practitioners, on this approach. Those consulted had given their endorsement, and agreed to remind their members to advise their clients not to

include in their pleadings, any of their sensitive business information or that belonging to third parties.

12. To ensure that a party who seeks to inspect a trade mark document made available for inspection online is aware of the terms under which the inspection facilities are made available, IPD has modified the online search functions to the effect that before a party can gain access to the document, he has to first signify his agreement to the “Notice against subsequent use” in the Privacy Policy Statement referred to in paragraph 8 above.

Departmental guidelines

13. IPD has conducted investigation into the cause leading to the online data leakage. The outcome of the investigation is that staff in IPD have in the past only focused on the need to meet the requirement to make information available to the public pursuant to Rule 69 of Trade Marks Rules (Cap 559A) (Inspection of documents) and on ensuring that the documents filed with the Trade Marks Registry were filed within the statutory time limits and contained the particulars as prescribed by the relevant legislation. In this respect, IPD has found no evidence for taking formal disciplinary action against any individual staff. Nevertheless, we have reminded staff in IPD to be discreet in processing personal data. IPD has now recognized that it is possible and necessary to reconcile the IPD’s duties under the Trade Marks Rules, with personal data protection obligations.

14. IPD has strengthened its departmental guidelines based on the lessons learnt from the incident. To raise the level of alertness among staff to personal data protection, IPD has published on the Department’s intranet a new set of internal guidelines on personal data privacy. These guidelines set out the practice of IPD on the collection, retention, processing, and use of personal data, and the handling of requests for access to and correction of personal data. They are supported by procedural notes on specific areas of IPD’s business. To familiarize IPD staff with the new procedures, training sessions have been held. IPD will continue to arrange refresher training sessions at regular intervals to help maintain vigilance.

Communications with the Office of the Privacy Commissioner

15. The Director of Intellectual Property had reported to the Privacy Commissioner on the above actions taken by IPD. In his letter dated 28 June 2007, the Commissioner confirmed that IPD had completed all the actions that it had undertaken to take in its earlier correspondence with the Office of the Privacy Commissioner. As it is important that IPD will continue to observe the requirements of all the data protection principles, IPD will be meeting the Office of the Privacy Commissioner to learn further the best practices on personal data

protection.

Presentation

16. Members are invited to note the contents of this paper.

Intellectual Property Department
July 2007

PRIVACY POLICY STATEMENT

1. Personal Information Collection Statement

1.1 The provision of your personal data is voluntary. However, the Intellectual Property Department will be unable to handle your application, filing request or notice if you do not provide sufficient information.

Purposes of Collection

1.2 Personal data provided in any form or document filed with the Intellectual Property Department will be used by the Intellectual Property Department for one or more of the following purposes:

- (a) to administer the Copyright Ordinance (Cap. 528), the Trade Marks Ordinance (Cap. 559), the Patents Ordinance (Cap. 514) and the Registered Designs Ordinance (Cap. 522) and the subsidiary legislation of such ordinances;
- (b) to allow parties to conduct the relevant proceedings under the legislation referred to in paragraph (a) above; and
- (c) to allow public inspection for the purposes of -
 - (i) identifying the subject matter of applications and/or registrations of trade marks, published standard patent applications, granted patents and registered designs;
 - (ii) identifying the conditions that the registrations of trade marks, patents, and registered designs may be subject to;
 - (iii) identifying the owner, licensee, assignee, transferee, or the holder of a security interest and/or other interest, in relation to any applications and/or registrations of trade marks, patents and registered designs or any right in or under such applications and/or registrations; and
 - (iv) permitting persons with a potential interest in proceedings to ascertain the pleadings relating to those proceedings.

Classes of Transferees

1.3 Personal data collected by the Intellectual Property Department may be disclosed -

- (a) to any agent, contractor, sub-contractor and third party who provides any administrative, computer, information technology or other services to the Intellectual Property Department in connection with the operation of its business;
- (b) to parties to relevant proceedings and their agents; and
- (c) where public inspection is allowed pursuant to Rules 68 & 69 of the Trade Marks Rules, Cap 559A, section 147 of the Patents Ordinance, Cap 514 and section 70 of the Registered Designs Ordinance Cap 522 and section 55 of the Registered Designs Rules, Cap 522A, to any member of the public for the purposes set out in paragraph 1.2(c) above. Personal data disclosed to the public may be by open inspection on the Internet.

Enquiries and Access

1.4 Subject to the requirements of the Copyright Ordinance (Cap. 528), the Trade Marks Ordinance (Cap. 559), the Patents Ordinance (Cap. 514), the Registered Designs Ordinance (Cap. 522) and the subsidiary legislation of these Ordinances, individuals have a right to request access to and correction of his or her personal data held in the registers of the Trade Marks Registry, the Patents Registry, the Designs Registry and the Copyright Licensing Bodies Registry pursuant to sections 18 and 22 of the Personal Data (Privacy) Ordinance, Cap 486 (PDPO). Any such request for access to and correction of personal data may be made to Personal Data (Privacy) Officer at Intellectual Property Department, 24/F Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong.

2. Notice against subsequent use

2.1 The provisions of the PDPO apply to the use (including transfer and disclosure) of personal data contained in the registers of the Trade Marks Registry, the Patents Registry, the Designs Registry and the Copyright Licensing Bodies Registry or other personal information collected by such registries. Any person who uses the personal data for any purpose other than the purposes stated in paragraph 1.2 above may be in contravention of the requirements of the PDPO and may render himself/herself subject to legal action and liability to pay compensation.

Important Notes

1. Use of Personal data:

- a. The provision of your personal data is voluntary. However, the Trade Marks Registry may be unable to handle your application, filing request or notice if you do not provide sufficient information.
- b. The Trade Marks Registry will use any personal data provided in this form and any document(s) filed in relation to it for processing your application, request or notice, as well as for the purposes of collection set out at www.ipd.gov.hk/eng/home.htm. **Any of the information provided may be made available for public inspection, in full or in part, pursuant to Rules 68 and 69 of the Trade Marks Rules, Cap. 559A. Such information may be accessed through the Internet.**
- c. The Trade Marks Registry may redact unsolicited personal data included with this form or any document(s) filed in relation to it before making them available for public inspection. Please **DO NOT provide any personal data (including personal data relating to third parties) which are not specifically required to be submitted.**
- d. Subject to the requirements of the Trade Marks Ordinance, Cap. 559, any person has the right to request access to and correct his/her personal data held in the trade mark records maintained by the Trade Marks Registry, pursuant to sections 18 and 22 of the Personal Data (Privacy) Ordinance, Cap. 486.
- e. For further details, please see the Personal Information Collection Statement at www.ipd.gov.hk/eng/home.htm.

2. Use of Other Information:

- a. The Trade Marks Registry will use any information relating to any commercial enterprise or entity provided in this form and any document(s) filed in relation to it for processing your application, request or notice, and for the purposes of collection set out at www.ipd.gov.hk/eng/home.htm. **They may be made available for public inspection, in full or in part, pursuant to Rules 68 and 69 of the Trade Marks Rules, Cap. 559A. Such information may be accessed through the Internet.**
- b. **DO NOT include any business information of your own or that of third parties which you consider to be confidential or commercially sensitive.** Where such information is included in this form or any document(s) filed in relation to it, the Registrar will treat it as an express and voluntary consent given by you and any such third party to disclosure of all such information for the purpose of public inspection.