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商務及經濟發展局  
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COMMERCE, INDUSTRY AND TOURISM BRANCH  
**COMMERCE AND ECONOMIC  
DEVELOPMENT BUREAU**

GOVERNMENT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION

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14 March 2012

Ms Yue Tin-po  
Clerk to the Bills Committee on  
Copyright (Amendment) Bill 2011  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong

Dear Ms Yue,

### **Copyright (Amendment) Bill 2011**

At the Bills Committee meeting held on 17 February 2012, the Administration was requested to provide examples of local legislation which is underpinned by a non-statutory code of practice rather than a code that is embodied in a piece of subsidiary legislation. A list of relevant examples is set out at Annex. I should be grateful if you could bring this letter to the attention of Members of the Bills Committee.

Our proposed safe harbour provisions aim to provide an incentive for online service providers (OSPs) to co-operate with copyright owners in combating online piracy. The proposed safe harbour provisions will be underpinned by a voluntary Code of Practice which sets out practical guidelines and procedures for OSPs to follow when being notified of infringing activities on their service platforms. OSPs who comply with the Code of Practice will be treated as having taken reasonable steps to limit or stop the infringement in question.

To accommodate changes in business environment as well as rapid advances in technology, we may need to revise and update the guidelines and procedures set out in the Code of Practice in consultation with stakeholders from time and time. As opposed to prescribing the guidelines by way of subsidiary legislation, a non-statutory Code of Practice allows us to introduce revisions in a more timely fashion. As has been made clear at the Bills Committee meeting, the Administration will engage the Panel on Commerce and Industry of the Legislative Council and other stakeholders before bringing any revised Code of Practice into force.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Patricia So', written in a cursive style.

( Patricia So )

for Secretary for Commerce and Economic Development

c.c.

Director of Intellectual Property (Attn: Mr Thomas Tsang)

### Use of Code of Practice (“the Code”) in Hong Kong Legislation

Examples <sup>1</sup>	Content of the Code	Formality for issuing the Code	Legal Effect
(a) Fire Service (Installations and Equipment) Regulations (Cap. 95B)	Governing the inspection and testing of fire service equipment (Reg.10(1))	By notice in the Gazette (Reg.10(1)&(3))	Any fire service installation or equipment shall be deemed to be in efficient working order if it complies with the Code (Reg.10(2))
(b) Electricity Supply Lines (Protection) Regulation (Cap. 406H)	Providing practical guidance in respect of any requirement under the Regulation (Reg.15(1))	Publish the Code in the Gazette and by notice in the Gazette (Reg.15(2))	Compliance with the Code shall be deemed to constitute the taking of all reasonable steps or measures for the purpose of certain requirements (Reg.10(4))
(c) Builders’ Lifts and Tower Working Platforms (Safety) Ordinance (Cap. 470)	Governing lift work (s.11(1))	By notice in the Gazette (s.11(2))	Lift work carried out in accordance with the Code shall be deemed to have been carried out to the satisfaction of the Director of Electrical and Mechanical Services (s.12(2))
(d) Energy Efficiency (Labelling of Products) Ordinance (Cap. 598)	Providing practical guidance in respect of any requirement under the Ordinance (s.42(1))	By notice in the Gazette (s.42(2))	Compliance or contravention of the Code may be relied upon by any party in the proceedings as tending to establish or negate certain matters in relation to the Code (s.43(2))
(e) Gas Safety Ordinance (Cap.51) and Gas Safety (Gas Supply) Regulations (Cap. 51B)	Providing practical guidance in respect of any requirement under the Ordinance (s.9(1))	By notice in the Gazette (s.9(2))	Compliance of the Code is a defence to certain criminal charges (Reg.49A(1))
(f) Merchant Shipping (Local Vessels) Ordinance (Cap. 548)	Providing practical guidance in respect of any requirement under the Ordinance (s.8(1))	By notice in the Gazette (s.8(2))	Contravention of the Code shall be deemed as contravention of certain requirements unless there is evidence to the contrary (s.9(2))

<sup>1</sup> The examples cited in the table are not exhaustive.