

LATEST DRAFT VERSION
(MARCH 2012)

COPYRIGHT PROTECTION IN THE DIGITAL ENVIRONMENT

CODE OF PRACTICE

published pursuant to Section 88I of the Copyright Ordinance (Cap. 528)

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I. INTRODUCTION

Editorial note: the cross-references to the provisions of the Copyright Ordinance herein will be updated upon the enactment of the Copyright (Amendment) Bill 2011.

1.1 THIS CODE OF PRACTICE (“the Code”) is published by the Secretary for Commerce and Economic Development pursuant to section 88I of the Copyright Ordinance (Cap. 528) (“the Ordinance”).

1.2 ~~¶The Code~~ provides practical guidance to service providers; ~~complainants¹ and subscribers~~ in the context of Division IIIA of the Ordinance, which particularly includes the relevant practices and procedures to be adopted ~~by service providers in order~~ to limit or stop copyright infringement on their service platforms upon receipt of a notice of alleged infringement.

1.3 ~~1.2~~Where ~~a service provider, in taking steps to limit or stop an alleged infringement, duly complies with this Code~~ 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 ~~copyright~~the infringement ~~in a work that occurs on its service platform~~ 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

¹ ~~For the avoidance of doubt, a The~~ complainant, ~~in accordance with section 88C(3)(g)(ii) of the Ordinance,~~ must ~~confirm that he is~~ be the copyright owner of the copyright work concerned, or ~~is authorized to act on behalf of the copyright owner. his authorised representative. A complainant~~ ~~If a person falsely states in a notice of alleged infringement that he is the copyright owner of the copyright work concerned, or his authorised representative, he not only~~ commits an offence ~~if he makes any false statement in a notice of alleged infringement, and he is also~~ but may also be held civilly liable to pay damages to any other person who suffers actual loss or damage as a result of ~~the such~~ false statement.

financial benefit directly attributable to the infringement;

- (b) the service provider accommodates and does not interfere with 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 infringement, by supplying through the service provider's service, including on the service provider's website in a location accessible to the public, the agent's name and contact details ~~of the agent~~.

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 limitation of 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 limitation of liability has no adverse bearing on the consideration of any defence that may be available to the service provider in proceedings for copyright infringement (see section 88B(5)(b) of the Ordinance).

1.5 ~~1.3~~ For the avoidance of doubt, when electing to implement any procedure and practice to ~~stop or 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 ~~1.4~~ The service provider should also ensure that its contracts with subscribers ~~do~~ 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 or disabling of access to any material or activity on its service platform.

1.7 ~~1.5~~ The service provider should take reasonable steps to notify any prospective complainants or subscribers (who are a living individual) of the following 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 88D(5) of the Ordinance require the complainant and the subscriber ~~in question~~ 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 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 ~~(ai)~~ the notice of alleged infringement to the subscriber, or ~~(bii)~~ the counter notice to the complainant, as the case may be (please also refer to paragraph 4.~~2324~~(a) below); and
- (e) the ~~complainant's or subscriber's~~ rights of the complainant and subscriber to request access to and the correction of the personal data, and how such request may be made.

~~1.6 The service provider should keep records of the following documents for 18 months after the date of receipt or issuance:-~~

- ~~(a) a true copy of any notice of alleged infringement received by the service provider;-~~
- ~~(b) if applicable, a true copy of any notice sent by the service provider to its subscriber which should, amongst others, contain the identity of the subscriber to which the notice was sent; and~~
- ~~(c) if applicable, a true copy of any counter notice received by the service provider.~~

1.8 ~~1.7~~ The service provider should take all practicable steps to ensure that the

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 Statements at http://www.pepd.org.hk/english/publications/files/pic_pps_e.pdf.

personal data collected from the complainants and/or subscribers are protected against unauthorised or accidental access, processing, erasure, ~~loss~~ or other use.

1.9 Separately, a service provider who has not received any notice of alleged infringement may also qualify for the limitation of 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 becomes aware that the infringement has occurred (see section 88B(2)(a)(ii) of the Ordinance), or becomes aware of facts or circumstances that would lead inevitably to the conclusion that the infringement has occurred (see section 88B(2)(a)(iii) of the Ordinance).

1.10 ~~1.8~~ Expressions used in ~~this~~ the Code have the same meaning as in Division IIIA of the Ordinance.

II. UNDERLYING OBJECTIVES

2.1 The objectives underlying the formulation of ~~this~~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 ~~:(a) offers transmission, routes, ing; and/or (b) provides connections for digital online communications, between or among points specified by a user, —of material of the user’s choosing and who has satisfied~~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 material contained in the transmission.

3.3 Paragraphs 3.49 to 3.1415 below set out the steps to be taken by the service provider ~~may take for forwarding notices to its subscribers~~ 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, ~~on reasonable grounds, in good faith~~ that the account of a subscriber to the service provider’s online service has ~~infringed the owner’s been used in activities that infringe the~~ copyright by means of the online service 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 ~~accordance with~~ the form ~~designated~~specified by the service provider, which for the purposes of ~~this the~~ Code shall ~~be~~ contain all statements and data fields specified in Form A ~~as set out~~ 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 complainant shall provide the full particulars as required by Form A which~~ The notice of alleged infringement should be signed or otherwise authenticated by the complainant.
- ~~3.7. Where a complainant elects to file a notice of alleged infringement, his failure to provide all the required particulars may render the notice defective and the service provider is not required to handle a defective notice.—~~
- 3.7 ~~3.8~~The notice of alleged infringement shall be sent to the service provider’s designated agent by ~~electronic or other the~~ means designatedspecified by the ~~agent~~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.

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.

Notice to complainant

3.10 The service provider shall ~~send a written notice to~~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 notice of alleged infringement does not comply with 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 longer ~~active~~valid; or
- (d) the subscriber ~~using 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 ~~shall be stated on a notice sent under~~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. ~~It will be further processed as long as the notice contains all the particulars required by Form A.~~

D. Notice to subscriber

Notice to subscriber

3.13 Unless ~~a notice the service provider has been sent to~~notified the complainant ~~under~~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 ~~that can be accessed by a user through the Internet.~~
- 4.2 Paragraphs ~~4.38~~ to ~~4.24~~14 and paragraphs ~~4.21 to 4.26~~ below set out the respective steps ~~a to be taken by the~~ service provider ~~may take for removing material or disabling access to material or activity that are identified as infringing~~ following receipt of a notice of alleged infringement from ~~the 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 ~~a~~ material or ~~an~~ activity residing on itthe latter's service platform, if he:-
- (a) believes, ~~on reasonable grounds,~~ in good faith that the material or activity infringes the copyright ~~of the~~ in relation to a copyright ~~owner's~~ work; and
 - (b) ~~wishes~~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 ~~accordance with~~ the form ~~designated~~specified by the service provider, which for the purposes of ~~this the~~ Code shall ~~be~~ contain all statements and data fields specified in Form A ~~as set out in the Annex-~~ (hereinafter referred as "the mandatory data fields in Form A" in this Part). The complainant shall furnish full

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particulars as required by the mandatory data fields in Form A⁴.

~~4.5 The complainant shall provide the full particulars as required by Form A which~~The notice of alleged infringement should be signed or otherwise authenticated by the complainant.

~~4.6 Where a complainant elects to file a notice of alleged infringement, his failure to provide all the required particulars may render the notice defective and the service provider is not required to handle a defective notice.~~

4.6 ~~4.7~~The notice of alleged infringement shall be sent to the service provider's designated agent by ~~electronic or other the~~ means designatedspecified by the ~~agent~~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 ~~to which~~as specified in the notice of alleged infringement ~~relates~~.

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.

IV. NOTICE AND TAKEDOWN SYSTEM (STORAGE)

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. ~~It will be further processed as long as the notice contains all the particulars required by Form A.~~

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 ~~a~~ material or ~~an~~ 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;

⁵ ~~In this~~ 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).

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- (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 ~~send a written notice to~~ notify the complainant as soon as practicable if the ~~notice of alleged infringement does not comply with conditions under~~ paragraphs 4.4, 4.5 ~~and/or 4.6 are not met.~~

E. Counter notice

Issue of counter notice

4.15 A subscriber who wishes to dispute or deny the alleged infringement, ~~and/or~~ 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 ~~accordance with~~ the form ~~designated~~ specified by the service provider, which for the purposes of ~~this the~~ Code shall ~~be contain all statements and data fields specified in~~ Form B ~~as set out 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 B⁶.

4.17 In any event, the counter notice must allow the subscriber (as long as he is a livingan individual) to opt for ~~either disclosure or non-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)1.

~~4.18 4.17~~The subscriber shall provide the full particulars as required by Form B which The counter notice should be signed or otherwise authenticated by the subscriber.

~~4.18 Where a subscriber elects to file a counter notice, his failure to provide all the required particulars may render the counter notice defective and the service provider is not required to handle a defective counter notice.~~

4.19 The counter notice shall be sent to the service provider's designated agent by ~~electronic or other the~~ means designatedspecified by the ~~agent~~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.

F. Receipt of counter notice

~~4.21 4.20~~ On receipt of the counter notice, the service provider shall acknowledge receipt. An automated response will suffice.

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.

G. Notice to complainant and reinstatement

Notice to complainant

~~4.22~~ ~~4.21~~ ~~Except in the case of~~ Upon receipt of a counter notice ~~which does not comply~~ that complies with paragraphs ~~4.15~~ 4.16, 4.18 and ~~4.17~~ 19, the service provider shall promptly send a written notice to the complainant containing the information set out in paragraph ~~4.24~~ 3 ~~upon receipt of the counter notice.~~

~~4.23~~ ~~4.22~~ For the avoidance of doubt, a service provider is not required to verify the authenticity of the content entered into a counter notice. ~~It will be further processed as long as the counter notice contains all the particulars required by Form B.~~

Content of notice to complainant

~~4.24~~ ~~4.23~~ A notice sent under paragraph ~~4.22~~ 4 shall include/enclose:-

- (a) a copy of the counter notice (where the subscriber expressly in the counter notice opts ~~for non~~ 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, inform the service provider by way of written notice to its designated agent, that proceedings have been commenced in Hong Kong ~~for seeking a court order~~ for the purpose of or in connection with ~~a view to restraining the subscriber from engaging in any~~ infringing activity ~~relating that relates~~ to the material or activity ~~on the service provider's service platforms~~ specified in the notice of alleged infringement⁷, the service provider will reinstate the material or cease disabling access to the material or activity ~~to which the alleged infringement~~

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.

~~relates.~~

Reinstatement

~~4.25~~ ~~4.24~~ Unless the service provider receives a notice from the complainant pursuant to paragraph 4.24(b)~~3~~, the service provider shall, within ~~{25}~~ working days after the date of the notice sent under paragraph 4.22~~1~~, 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 ~~a~~ an online location ~~on the Internet~~ containing infringing material or activity, by information location tools⁸ on its service platform.
- 5.2 Paragraphs ~~5.38~~ to ~~5.41~~12 below set out the steps to be taken by the service provider ~~for disabling access to such infringing material or activity 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, ~~on reasonable grounds,~~ in good faith that the link or reference refers to material or activity that infringes the copyright ~~of their~~ relation to a copyright ~~owner's~~ work; and
 - (b) ~~wishes~~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 ~~accordance with~~ the form ~~designated~~specified 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.

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the service provider, which for the purposes of ~~this the~~ Code shall ~~be~~ contain all statements and data fields specified in Form A as set out 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 ⁹.

~~5.5 The complainant shall provide the full particulars as required by Form A which~~The notice of alleged infringement should be signed or otherwise authenticated by the complainant.

~~5.6 Where a complainant elects to file a notice of alleged infringement, his failure to provide all the required particulars may render the notice defective and the service provider is not required to handle a defective notice.~~

~~5.6~~ ~~5.7~~The notice of alleged infringement shall be sent to the service provider’s designated agent by ~~electronic or other the~~ means designatedspecified by the ~~agent~~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:-

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)

- (a) disable access to the material or activity ~~to which~~ has specified in the notice of alleged infringement ~~relates~~; 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. ~~It will be further processed as long as the notice contains all the particulars required by Form A.~~

5.11 The service provider shall ~~send a written notice to~~ notify the complainant as soon as practicable if the ~~notice of alleged infringement does not comply with 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 on [date of publication].

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: Additional information (if any):
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) Date** Year of creation ~~or~~ first publication of the copyright work:
3. The complainant confirms that he is:-
 - the copyright owner; or
 - ~~the-an~~ authorised 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 reference or link 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 authorisation;
 - 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. 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 ~~the material~~; ~~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.

~~Signature~~ 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 88D of the Copyright Ordinance, Cap. 528 and the Code of Practice published by the Secretary for Commerce and Economic Development on [date of publication]. The purpose of this notice is to request a service provider to either (a) reinstate ~~a~~-material that has been removed or (b) restore access to ~~a~~ material or ~~an~~-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 grounds set out in paragraph 4 below, that the removal or disabling of access was the result of a mistake or misidentification.

4. The grounds on which the respondent relies in making the statement in paragraph 3 above are as follows:-
 - no copyright subsists in the copyright work concerned;
 - the respondent 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 ~~a livingan~~ 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.

~~Signature:~~ Signed or authenticated by the respondent:

Date:

** Delete if not applicable