

Ref: AM 12/01/11 (12-16)

**Report of The Legislative Council Commission  
on the use of mobile applications and social media websites to  
disseminate information on the Legislative Council**

**Purpose**

1. This report contains a summary of the deliberations of The Legislative Council Commission ("the Commission") on the proposal to launch mobile applications ("Apps") and to use social media websites to disseminate information of the Legislative Council ("LegCo"). The report is submitted to the Legislative Council for assisting Members in considering the proposed resolution in **Appendix I** to be moved by Hon Andrew LEUNG, Deputy Chairman of the Commission, at the Council meeting of 8 January 2014.

**Background**

2. At its meeting on 19 November 2013, the Commission approved in principle the proposal to launch Apps and to use social media websites (e.g. setting up of YouTube and Flickr accounts) to disseminate information of LegCo. In recent years, much effort has been spent by the Commission in improving LegCo's channels of disseminating information to the public, including revamping the LegCo Website and introducing live and recorded webcasts of meetings. These on-line improvements have been well received by the public, who is reportedly spending more time on the Internet, using traditional computing devices as well as smartphones, tablet computers and other mobile devices. In fact, a number of LegCo Members are already using video and picture sharing sites as well as other social media platforms to communicate and interact with their constituents.

3. The Commission notes that some of the more technically savvy overseas legislatures, such as the United Kingdom ("UK") Parliament, the United States Congress as well as the Canadian and Australian Parliaments, are very proactive in using on-line media, including third-party websites to reach out to the public<sup>1</sup>.

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<sup>1</sup> Details of using Apps and social media websites in overseas legislatures are summarized below:

Overseas legislatures	Apps	YouTube	Flickr	Facebook	Twitter
United Kingdom	Yes	Yes	Yes	Yes	Yes
United States	Yes	Yes	No	Yes	Yes
Canada	No	Yes	No	Yes	Yes
Australia	No	No	No	Yes	Yes

## **Proposal on the use of Apps and social media websites**

4. In response to emerging on-line trends locally, the Commission recently considered a proposal on making documents, video recordings of meetings, photos of events and activities and other information already available on the LegCo Website and LegCo Webcast available via Apps, as well as popular video and picture sharing sites, so as to enhance LegCo's on-line presence as well as to facilitate Members' own on-line activities.

5. As the first step of the enhancement measures, the Commission has considered the following proposals:

- (a) launching LegCo Apps to disseminate various types of information, including LegCo calendar, Members' contact directory, and LegCo photo gallery;
- (b) setting up a YouTube channel for posting video records of meetings of the Council; and
- (c) setting up a Flickr account for posting photos of Members' official events and activities.

Details of the above enhancement measures are set out in the ensuing paragraphs.

### **LegCo Apps**

6. Apps are mobile software applications designed to run on smartphones, tablet computers and other mobile devices. The Secretariat has commenced in-house development and testing of a mobile application for LegCo for some time. Various types of information, including LegCo calendar, Members' contact directory, and LegCo photo gallery will be made available through the LegCo Apps.

7. In view of the popularity of iPhones and Android phones, Apple App Store's iOS platform and Google Play's Android platform will be used to offer the LegCo Apps for free download by the public.

### **LegCo YouTube channel and Flickr account**

8. There are various video and photo sharing sites, the most prominent of which are YouTube and Flickr respectively. These two content sharing websites offer videos/photos hosting services to content providers wishing to connect with people of similar interests. The Secretariat has completed a working prototype on YouTube to share videos of Council meetings that are

currently broadcast through the LegCo Webcast and on Flickr to share photos of Members' events and activities that are uploaded onto the LegCo Website as well as the Intranet accessible in-house.

9. To preserve the integrity of meeting records, meeting videos will be uploaded in their entirety to Youtube. However, as the length of uploaded video has to be less than 11 hours due to Youtube's current technical limitations, the Secretariat will work out the most logical and user-friendly arrangements to upload the meetings by segments (e.g. by agenda items) as needed.

10. Both YouTube and Flickr will provide user-friendly tools for Members and their assistants as well as members of the public to share LegCo videos and photos.

11. The Commission will consider developing a presence in other prominent social media platforms, such as Facebook, Twitter and Weibo, later after the Secretariat has gained further experience in disseminating information on LegCo to the on-line community, and with suitably qualified staff recruited and/or developed.

### **Relevant legal issues**

12. The Commission notes that different forms of registration agreements need to be entered into for the deployment of the LegCo Apps and setting up of accounts with YouTube and Flickr. Furthermore, if LegCo or the Commission decides to use the services, it has to accept all the terms and conditions contained in the relevant agreements and terms of service. In this connection, the Commission has considered the relevant legal issues raised by the Legal Service Division ("LSD") of the LegCo Secretariat on the launch of the LegCo Apps and setting up of accounts with YouTube and Flickr as detailed in **Appendix II**. The nature of these issues is as follows:

- (a) issues relating to ownership of copyright in the materials to be included in the LegCo Apps and uploaded to YouTube and Flickr (paragraphs 2 to 4 of Appendix II);
- (b) the implications for LegCo and the Commission as copyright owners for granting to the service providers licences relating to the use, reproduction, distribution, etc. of the content provided by LegCo and the Commission (paragraph 5 of Appendix II);

- (c) potential legal liabilities for distributing webcast and videos of Council proceedings through Apps and YouTube (paragraphs 6 and 7 of Appendix II); personal data privacy issues relating to information contained in Members' contact directory proposed to be included in the LegCo Apps (paragraph 8 of Appendix II); and
- (d) the application of foreign laws to the registration agreements and the requirement for parties to submit to the exclusive jurisdiction of a foreign court to resolve legal matters arising from the agreements (paragraph 9 of Appendix II).

### **Development of LegCo Apps**

13. The Commission considers that the legal risks in the use of LegCo Apps that it might have to bear should be less when compared to the use of social media websites as the development of the LegCo Apps merely involves the transfer of some of the existing data from LegCo Website to the LegCo Apps and the service providers for the LegCo Apps, i.e. Apple Apps Store and Google Play Store, will not edit the contents of the data so transferred. The Commission supports the launch of the LegCo Apps and has already authorized Secretary General ("SG") to sign the registration agreements with Apple App Stores and Google Play. The two service providers are reviewing the Apps to ensure that they are reliable and free of offensive materials. Depending on the feedback from the service providers, the LegCo Apps may be formally deployed for use by the public in early 2014.

14. On LSD's advice on personal data privacy issues relating to the launch of the LegCo Apps (paragraph 8 of Appendix), the Secretariat is inviting Members to indicate whether they agree to include in the LegCo Apps their contact directory which is currently uploaded onto LegCo Website as the directory contains Members' personal data.

### **LegCo YouTube channel and Flickr account**

15. The Commission has made reference to the experience of the UK Parliament in taking forward the proposal to enable video clips of parliamentary proceedings to be placed on YouTube and similar social media websites. In the report on "Review of the Management of Parliamentary Copyright" published by the House of Commons of the UK Parliament in 2009, the Review Group which conducted the review acknowledged that allowing video clips of Parliamentary proceedings to be more widely available on the internet carries a risk of reputational damage to the House but also provides an opportunity for

those proceedings to be seen more and understood more generally<sup>2</sup>. In its view, given the way technology works, the ability to enforce copyright in this area is virtually non-existent. The Review Group therefore recommended that the proposal for placing video clips on YouTube and similar social media websites be endorsed by both Houses of Parliament.<sup>3</sup>

16. As the provisions on LegCo copyright under the Copyright Ordinance (Cap. 528) in Hong Kong are modelled on parliamentary copyright provisions in the relevant UK statute, and given that the proposed use of social media websites involves the dissemination of LegCo proceedings through third-party websites over which LegCo or the Commission would have little control, the Commission considers that it would be prudent to seek the endorsement of the Council of this proposal through a debate on a proposed resolution to direct the Commission to do so under section 17(2) of The Legislative Council Commission Ordinance (Cap. 443)<sup>4</sup>. Subject to passage of the proposed resolution in Appendix I, the Commission will authorize SG to enter into the relevant registration agreements and agree to the terms and conditions with the service providers for the setting up of YouTube channel and Flickr account on behalf of the Commission.

17. The Commission considers that users of social media websites should be alerted by a notice to the potential risks involved, such as legal liability arising from infringement of third party copyright, and to seek their own legal advice, if necessary, when they redistribute meeting videos and photos on LegCo YouTube channel and Flickr account. The Disclaimer and Copyright Notice (**Appendix III**)<sup>5</sup> currently posted on the LegCo Website will be suitably adapted for posting on and uploading to LegCo Apps and social media websites.

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<sup>2</sup> Report on "Review of the Management of Parliamentary Copyright", House of Commons, July 2009, p. 6. Members may visit the following link for the full version of the Report:

<http://www.parliament.uk/documents/upload/ParliamentaryCopyrightReport090714.pdf>

<sup>3</sup> Ibid, p. 6.

<sup>4</sup> Section 17(2) of The Legislative Council Commission Ordinance (Cap. 443) provides that the Council may by resolution give directions of a general or specific character to the Commission in relation to the performance of its functions or the exercise of its powers and the Commission shall comply with those directions.

<sup>5</sup> The Disclaimer and Copyright Notice currently posted on the Website sets out the ownership of copyright of materials and contents found on LegCo Website (including webcast of meetings) and the terms of use or reproduction of such materials or contents. In brief, reproduction of the copyright protected materials or contents found on the LegCo Website is permitted free of charge for non-commercial purposes provided that the materials are accurately reproduced and LegCo or the Commission is acknowledged as the copyright owner of these materials or contents.

18. The Commission also notes that sections 3 and 4 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382)<sup>6</sup> only protect Members against legal proceedings instituted in Hong Kong for words spoken before the Council and its committees. Based on the courts' decisions, whether this protection will continue to apply when the words are repeated through the distribution of the webcast and videos of LegCo proceedings via the new platforms of LegCo Apps and YouTube would depend on the courts' view as to whether the occasion in which these words are repeated remains privileged<sup>7</sup>.

19. The Commission is of the view that whilst there are certain legal risks involved in the use of social media websites to disseminate information on LegCo, the benefits of so doing may outweigh those risks.

### **Briefings on the use of LegCo Apps and social media websites**

20. The Secretariat earlier conducted four briefing sessions to demonstrate the operation of LegCo Apps, LegCo YouTube channel and LegCo Flickr account to Members and their staff. A total of three Members and 40 Members' staff attended the briefings. They in general welcomed these proposed new initiatives as they provided user-friendly platforms for Members and their staff to access and share information of LegCo. Some Members' staff suggested including LegCo Webcast and voting results in the LegCo Apps, and videos of committee meetings in the LegCo YouTube channel. Other suggestions such as deploying the LegCo Apps in other platforms (such as Blackberry and Window phones) were also received. The Secretariat will take these suggestions into account in the future enhancement of these services.

Legislative Council Secretariat  
January 2014

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<sup>6</sup> Sections 3 and 4 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) provide that:

**"3. Freedom of speech and debate**

*There shall be freedom of speech and debate in the Council or proceedings before a committee, and such freedom of speech and debate shall not be liable to be questioned in any court or place outside the Council.*

**4. Immunity from legal proceedings**

*No civil or criminal proceedings shall be instituted against any member for words spoken before, or written in a report to, the Council or a committee, or by reason of any matter brought by him therein by petition, Bill, resolution, motion or otherwise."*

<sup>7</sup> *Prebble v Television New Zealand Ltd* [1994] 3 All ER 407, Privy Council; *Buchanan v Jennings* [2005] 1 AC 115, Privy Council; *Attorney General and Gow v Leigh* [2011] NZSC 106, Supreme Court of New Zealand.

**The Legislative Council Commission Ordinance**

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**Resolution**

(Under section 17(2) of The Legislative Council  
Commission Ordinance (Cap. 443)

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**Resolved** that this Council directs The Legislative Council Commission to use social media websites to share information contained in records of the proceedings of the Council for the purpose of enhancing the public dissemination of such information.

### **Relevant legal issues relating to the use of mobile applications and social media by the Legislative Council and The Legislative Council Commission**

#### **Purpose**

This paper sets out some of the legal issues relating to the use of mobile applications and social media by the Legislative Council ("LegCo") and The Legislative Council Commission ("the Commission") which have been identified by the Legal Service Division ("LSD") based on available information.

#### **Copyright issues**

2. By virtue of section 184(1) of the Copyright Ordinance (Cap. 528), LegCo is the first owner of the copyright in any works made by or under the direction or control of LegCo. Section 184(4) provides that for the purposes of the section, such works include (a) any works made by an officer or employee of LegCo in the course of his duties; and (b) any sound recording, film, live broadcast or live cable programme of the proceedings of LegCo.

3. LSD considers that section 184(4)(a) of Cap. 528 should be read together with Rule 6 of the Rules of procedure ("RoP") in ascertaining the scope of works made by an officer or employee of LegCo in the course of his duties. This construction is consistent with the examples given in paragraph 1 of the circular dated 17 September 1999 (Ref: AM12/02/03) issued by the Secretariat on "Legislative Council Copyright" (Circular No. 9/99) ("the 1999 Circular") (**Annex I**) and the scope of the Clerk's duties prescribed in Rule 6 of the RoP. Section 184(4)(a), when read together with Rule 6 of the RoP, would suggest that the section covers only works (e.g. papers, reports, Hansard, agenda, minutes, etc.) that are made by the clerks for the purposes of the proceedings of LegCo (including the proceedings of any of its committees). On the basis that the webcasting of Council meetings is under the direction or control of LegCo, videos of the webcasted Council meetings proposed to be uploaded to the LegCo YouTube channel may be regarded as films under section 184(4)(b) of Cap. 528, and as such, the copyright in such videos is owned by LegCo. In relation to materials other than those relating to proceedings of LegCo (e.g. photos of Members' activities proposed to be uploaded to the Flickr account and information other than Webcast to be included in the LegCo Apps), LSD considers that section 184(4) of Cap. 528 does not apply to confer LegCo copyright on such materials. In such case, the question of copyright ownership should be dealt with in accordance with other provisions of Cap. 528.



4. In relation to LegCo copyright, section 186(1) of Cap. 528 provides that for the purposes of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright, LegCo is to be treated as having the legal capacities of a body corporate, which is not affected by the dissolution of LegCo. Under section 186(2), the functions of LegCo as owner of copyright are exercisable by the President of LegCo ("PLC") on behalf of LegCo and PLC may in turn authorize SG to discharge those functions. According to the 1999 Circular, PLC has authorized SG to exercise the functions of LegCo as owner of copyright. On the basis that the materials not relating to proceedings of LegCo are produced by an employee of the Commission in the course of his employment, by virtue of section 14(1) of Cap. 528, the Commission as the employer is the first owner of any copyright in such materials subject to any agreement to the contrary<sup>1</sup>.

5. For the implementation of LegCo Apps and the setting up of the LegCo YouTube channel and a Flickr account for LegCo, it is necessary to enter into registration agreements with Apple App Stores ("the Apple Agreement"), Google Play ("the Google Agreement") and Yahoo ("the Yahoo Agreement"). Under clause 11 of the Apple Agreement, Apple will be free to use any information, suggestions or recommendations provided to Apple pursuant to the Agreement for any purpose, subject to any applicable patents or copyright. Under Clause 5 of the Google Agreement, Google is to be granted a non-exclusive and royalty-free licence to distribute the content in accordance with the Google Agreement while the users would be granted a non-exclusive, worldwide and perpetual licence to perform, display and use the content so distributed. Regarding the setting up of the LegCo YouTube channel, members may note that under clause 6C of the YouTube's standard terms of service, YouTube is to be granted a worldwide, non-exclusive, royalty-free, sublicenseable and transferable licence to use, reproduce, distribute, prepare derivative works<sup>2</sup> of, display and perform the content in connection with the YouTube service and its business. Each user of the service will also be granted a non-exclusive licence to access the content through using or visiting the YouTube website, and to use, reproduce, distribute, display and perform such content as permitted through the functionality of the YouTube website. Under the Flickr's Terms of Use, Yahoo is granted a world-wide, royalty-free and non-exclusive licence to use, distribute, reproduce, modify, adapt, publicly perform and publicly display the content on the service solely for the purpose for which such content was submitted or made available while users are granted the right to access such content.

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<sup>1</sup> The *Memorandum on Conditions of Service in the Legislative Council Secretariat* provides that any documents and materials produced by the employee in his official capacity shall be the property of the Commission

<sup>2</sup> A parody of a copyrighted work is an example of derivative works.

## **Potential liabilities for distributing webcast or videos of Council proceedings through Apps and YouTube**

6. Sections 3 and 4 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) protect Members against legal proceedings instituted in Hong Kong for words spoken before the Council or committees. Based on the courts' decisions, whether this protection will continue to apply when the words are repeated through the distribution of the webcast and videos of LegCo proceedings via the new platforms of LegCo Apps and YouTube would depend on the courts' view as to whether the occasion in which these words are repeated remains privileged<sup>3</sup>.

7. By virtue of section 10 of the Defamation Ordinance (Cap. 21), any person who publishes a report of LegCo<sup>4</sup> by order or under the authority of LegCo is protected against civil or criminal proceedings under Cap. 21. Under section 14 of Cap. 21, the publication of reports of LegCo is privileged unless the publication is proved to be made with malice. Under section 22, broadcasting is treated as a publication in permanent form. However, in view of the definition of "broadcast" and "broadcasting" in Cap. 21<sup>5</sup>, it is unlikely that the showing of Council meetings through Apps and YouTube would be covered by sections 10 or 14 of Cap. 21. This would leave the service providers open to legal action for defamation. Regarding the potential legal liability of the service providers, members may wish to note that under the Apple Agreement and Yahoo Agreement, there is a clause on disclaimer or limitation of liability whereas under the indemnity clause under the Google Agreement, the account holder is required to defend, indemnify and hold harmless Google, its affiliates and their respective directors, officers, employee and agents, and authorized mobile network operators from and against any and all third party claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs and expenses arising out of or accruing from the use of its services. A similar indemnity clause is also found in the Terms of Use of Flickr.

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<sup>3</sup> *Prebble v Television New Zealand Ltd* [1994] 3 All ER 407, Privy Council; *Buchanan v Jennings* [2005] 1 AC 115, Privy Council; *Attorney General and Gow v Leigh* [2011] NZSC 106, Supreme Court of New Zealand.

<sup>4</sup> Under section 2 of Defamation Ordinance (Cap. 21), "report of the Legislative Council" includes any report, paper, vote or other proceedings of the Council.

<sup>5</sup> Under section 2 of Cap. 21, "broadcast" or "broadcasting" means, inter alia, "publication for general reception, as part of any programme or service provided through a broadcasting station within Hong Kong, by means of telecommunications, within the meaning of the Telecommunications Ordinance (Cap. 106)". The term "broadcasting station" is defined to mean any station operated by Government or in respect of which a licence granted by the Governor in Council or the Authority under the Telecommunications Ordinance (Cap. 106) is in force, being a licence which (by whatever form of words) authorizes the use of the station for the purpose of providing broadcasting service for general reception".

## **Personal data privacy issues**

8. Information contained in the Members' Contact Directory ("the Directory") proposed to be included in the LegCo Apps contain Members' personal data. According to Principle 3 of the data protection principles ("DDP3") in Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486), personal data shall not, without the prescribed consent of the data subject, be used for a new purpose. For the purposes of DDP3, "new purpose", in relation to the use of personal data, means any purpose other than (a) the purpose for which the data was to be used at the time of the collection of the data; or (b) a purpose directly related to the purpose referred to in (a). Whether the inclusion of the Directory in the LegCo Apps would constitute a new purpose would depend on the purpose for which the data now contained in the Directory was to be used at the time of the collection of the data. It is noted that Members were informed that the personal data provided by them for compiling the Directory would be uploaded to the LegCo Website at the time of collecting the data. As such, the proposed inclusion of the Directory in a new platform, namely, the LegCo Apps, which would allow the service providers as well as their users to use, reproduce, distribute, etc. personal data under the relevant agreements, could be regarded as a new purpose under DDP3. It is therefore advisable to seek Members' written consent in accordance with DDP3.

## **Governing laws of registration agreements**

9. Under the Apple and Google Agreements and the Terms of Use of Flickr, the laws governing the agreements and the Terms of Use are those of the State of California without regard to its conflict of laws provisions and the parties agree to submit to the exclusive jurisdiction of the courts located within a specified county in California to resolve any legal matter arising from the agreements. As the governing laws of the agreements are non-Hong Kong laws, LSD considers that it would be prudent to seek advice from qualified lawyers of the relevant foreign jurisdictions to ascertain the legal position of LegCo and the Commission.

Prepared by

Legal Service Division  
Legislative Council Secretariat  
15 November 2013

**Legislative Council Secretariat Circular No. 9/99  
(To All Staff)**

**Legislative Council Copyright**

**Legislative Council Copyright**

Sections 184-186 of the Copyright Ordinance (Cap 528) are on Legislative Council copyright. Under the provisions in these sections, the Legislative Council is the first owner of any copyright in the work made by or under the direction or control of the Council. Such work includes any work made by an officer or employee of the Council in the course of his duties (hence including any papers, reports, Hansard etc.) and any sound recording, film, live broadcast or live cable programme of the proceedings of the Council.

2. Legislative Council copyright subsists until the end of the period of 50 years from the end of the calendar year in which the work was made.

3. Any person who, without the consent or licence from the Legislative Council, copies the copyright work, issues copies of the work to the public, rents copies or makes available copies of the work to the public, or who performs in public, broadcasts, or makes any adaptation of such work, infringes the Legislative Council copyright.

4. Section 186 of the Copyright Ordinance provides that "the functions of the Legislative Council as owner of copyright are exercisable by the President of the Legislative Council; and if so authorized by the President, or in case of a vacancy in the office of President, those functions may be discharged by the Secretary General of the Legislative Council Secretariat". In this connection, the President has decided that the copying or broadcasting of the work made by or under the direction or control of the Council should not be prohibited or discouraged. There should also be no objection to extracts from or copies of the copyright work being issued or made available to the public by a third party as long as no profit can be derived from doing so.

5. The President has authorized the Secretary General to exercise the functions of Legislative Council as owner of copyright. Therefore any request for the use of the work made by or under the direction or control of the Council should be referred to the Secretary General for consent.

Copyright not infringed by anything done for the purposes of Legislative Council proceedings


6. Section 54 of the Copyright Ordinance states that -

- “(1) Copyright is not infringed by anything done for the purposes of the proceedings of the Legislative Council or judicial proceedings.
- (2) Copyright is not infringed by anything done for the purposes of reporting such proceedings; but this is not to be construed as authorizing the copying of a work which is itself a published report of the proceedings.”

7. Very broadly speaking, materials used in Council proceedings can be copied and reproduced without infringing other person's copyrights so long as they are for the purposes of the proceedings of the Council and its committees. This permitted act also applies to reports of such proceedings, so that the document can be reproduced if that is done as part of a bona fide report.

8 To sum up, no copyright infringement action against the Legislative Council may be raised on any reports or petitions submitted to the Council or its committees since these reports are for the purposes of the proceedings of the Council. If a person submits a document to the Council and wishes to retain its copyright, he should be reminded of the provisions in section 54 of the Copyright Ordinance.

9. However, legal advice has been given that as activities of the Complaints Division may not be regarded as "proceedings of the Council" within the meaning of section 54 of the Copyright Ordinance, any copying of an incoming letter should only be done with the permission of the author. However, if it is clear from the conduct of the author or the content of the letter that such permission has been impliedly given, the letter may be copied to the extent necessary for processing the complaint in accordance with established practice and procedure of the Complaints Division.



(Ricky C C Fung)  
Secretary General

Date : 17 September 1999  
Ref : AM12/02/03

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