

## Press Releases

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Government issues second draft of Code of Practice for Online Service Providers for public consultation

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The Government today (January 31) issued the second draft of the Code of Practice for Online Service Providers (OSPs). Members of the public and relevant stakeholders are invited to give their views on the second draft by March 2, 2012.

A spokesman for the Commerce and Economic Development Bureau (CEDB) said, "The Government issued the first draft of the Code of Practice for public consultation in August 2011. Having carefully considered the comments received, the Government proposes certain amendments to the draft Code of Practice with a view to making it more practical and user-friendly."

The key amendments include the following:

(a) Instead of setting a specific time frame within which OSPs must take action to limit and stop a particular infringement, the revised draft Code requires OSPs to act as soon as practicable. Many respondents consider that a standard time frame may not be able to accommodate the different circumstances of individual cases and the operational needs of various OSPs. A more flexible approach is therefore preferred;

(b) In view of the privacy concerns raised by some respondents, we have made changes under which a subscriber may choose to request the OSP not to disclose his personal data when sending a copy of the subscriber's counter notice to the complainant;

(c) OSPs will be required to keep records of the notices of alleged infringement and counter notices received for a period of 18 months. Such records are required for law enforcement purposes; and

(d) Both the complainants and subscribers will be required to provide more information to substantiate their infringement claims and counter claims respectively. This is to facilitate the resolution of disputes in a quicker and more cost-effective manner.

"We believe the revised draft Code of Practice strikes a reasonable balance among the interests of all stakeholders. Views from the public and the industry will help the Government develop a mechanism for combating online piracy that best suits Hong Kong," the spokesman said.

One of the key proposals in the Copyright (Amendment) Bill 2011 is to introduce a statutory "safe harbour" for OSPs so that their potential liability for copyright infringement occurring on their service platforms would be limited, provided that the OSPs meet certain prescribed conditions. The "safe harbour" will also provide a level playing field for OSPs in helping to combat online piracy.


To tie in with the introduction of the "safe harbour", a non-statutory Code of Practice will be formulated to set out practical guidelines and procedures for OSPs to follow when they are notified of infringing activities on their service platforms.

The Code also sets out the procedures for copyright owners to serve notices of alleged infringement and for subscribers to serve counter notices.

The revised draft Code of Practice has been uploaded to the website of the CEDB ([www.cedb.gov.hk/citb](http://www.cedb.gov.hk/citb)). Members of the public are welcome to give their views on or before March 2 to the Assistant Secretary for Commerce and Economic Development (Commerce and Industry) 3A by mail (Commerce, Industry and Tourism Branch, CEDB, 23/F, West Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong), by email ([co\\_consultation@cedb.gov.hk](mailto:co_consultation@cedb.gov.hk)) or by fax (2147 3065).

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