

**INFORMATION INFRASTRUCTURE ADVISORY COMMITTEE**

**Commercial Exploitation of  
Government IT Systems and Software**

**Purpose**

This paper seeks Members' views on the proposal to open up for commercial exploitation the intellectual property (IP) in the IT systems and software developed for Government use so as to help create more business opportunities for the local IT industry.

**Background**

2. The Government is a major user of IT in Hong Kong. We have developed many IT systems and software (collectively called "systems" hereafter) for internal use and for implementation of our E-government programme. Many of these systems are of high quality standard as demonstrated by Government IT projects winning prestigious awards in the international IT field, e.g. the Electronic Service Delivery scheme winning the Stockholm Challenge Award, the Multi-media Information System of Central Library winning the Asia Pacific ICT Award, etc. As a result of our vigorous IT outsourcing policy, many of these high quality systems are in fact developed by private sector contractors in the local IT industry. And the IP therein is created jointly by the contractors and the client departments in the course of system development.

3. At present, in most cases the Government owns the IP exclusively and there is no arrangement to license the IP for further use by other parties. The main consideration is to ensure that we can modify, adapt or upgrade the systems to meet operational needs of the client departments, or to make it available for use by other departments, without any hindrance.

However, this exclusive ownership has hindered the full utilisation of such IP, which is a valuable asset and its further exploitation can create new business opportunities for the local IT industry. Moreover, there could be ways for further utilising the IP without compromising Government's own interest for internal use.

### **Benefits of Opening up IP in Government Systems**

4. We have received suggestions from the local IT industry that we should open up for commercial exploitation the IP in the systems developed by contractors for Government use so as to help create more business opportunities for the local IT industry and to foster a strong local industry. It is considered that systems developed for and used by the Hong Kong Government would provide a good track record that would help market and sub-license such systems to other clients, including possibly clients in Mainland China and other parts of the world who are aspire to develop E-government.

5. We accept that opening up the IP in Government systems will help create more business opportunities for the local IT industry. Such an arrangement may also be beneficial to the Government financially if the IP is made available to the IT industry at a fee or by charging a royalty. Opening up the IP in Government systems could also encourage Government contractors and subcontractors to collaborate with other local and overseas developers and service providers to explore further application opportunities. This would help promote the development of the local IT industry. Furthermore, the wider use of systems developed for and used by Hong Kong Government elsewhere will also help enhance our status as a leading digital city and strengthen the international position of the Hong Kong IT industry.

### **Guiding Principles**

6. In view of the potential benefits which may arise as set out in paragraphs 4 to 5 above, we propose to open up for commercial exploitation the IP in the systems developed by contractors for

Government use. However, as the primary objective of Government IT projects is to implement the most cost-effective technology solution to enhance efficiency and effectiveness of Government operation and delivery of services, the arrangements for opening up the IP:

- (a) should not distract client departments from their original business and project objectives, increase project cost or cause delay in the project schedule;
- (b) should not pose security or other risks or concerns to the client departments in respect of their operation;
- (c) should not limit Government's full ownership of the IP so that we can continue to modify, adapt or upgrade the systems to meet operational needs, or to make them available for use by other departments, without any hindrance; or
- (d) should not lead to additional liability for the Government arising from the further exploitation arrangement.

## **Proposals**

7. Having regard to these guiding principles, we have drawn up proposed arrangements for opening up the IP in Government systems, as set out in paragraphs 8 to 11 below.

8. To demonstrate Government's commitment to take this initiative forward, we propose that, as a general rule, the IP in all existing systems as well as new systems to be developed should be opened up, unless the client departments can justify otherwise on security or other valid grounds (for example, opening up the IP of security-related systems or systems that deal with sensitive information might expose the systems and related data to information security risks and compromise the security of Government operation). We also propose that any party incorporated in Hong Kong for three or more years which is interested in exploiting the IP in a system may apply to the client department through the Information Technology Services Department (ITSD). This is to ensure that the local

industry will benefit. Any department that has received such an application but does not intend to open up the IP in its system has to apply to CITB for exemption and we will consider applications for exemption based on security or other justifiable reasons on a case-by-case basis.

9. As has always been the case, the Government will retain the ownership of the IP in the systems. The Government will make the IP available to the interested party by way of a Commercial Exploitation Licence to deliver, use and modify the IP and for the interested party to sub-license any modified version of the IP to other parties. The system and relevant documentation will be made available to the interested party “**as is**” (i.e. the IP as contained in the system and the documentation available at the time the licence becomes effective) and **without warranty**. As the owner of the IP, the Government will retain all rights to the IP for use within any part of the Government. The Commercial Exploitation Licence will be non-exclusive and the Government may further license the right to any other party and/or for other purposes including but not limited to enabling a third party to implement the system for another department.

10. A Standard Commercial Exploitation Licence will be developed for general use with the necessary terms and conditions to declare the absence of warranty, to address liability and indemnity issues (i.e. the Government will not be responsible for any liability arising from the further use of the IP by the licensee or any sub-licensing by the licensee), and to protect the rights of the Government. For new systems to be developed, while interested parties may approach the client departments through ITSD for the granting of the Commercial Exploitation Licences before the systems are delivered, the licences will be granted and become effective only after acceptance by the Government of the satisfactory delivery of the systems by the contractors engaged to develop the systems.

## **Charging Policy**

11. In accordance with Government’s charging policy for the use of Government assets for commercial purposes, the interested party will be required to pay the Government royalties on sub-licensing of the IP to a third party, at a rate to be determined by the client department in

consultation with the interested party on a case by case basis. Also, the interested party will be charged an administrative fee for the granting of the licence on a full cost recovery basis, i.e. recovering the costs incurred by the client department, Department of Justice and Intellectual Property Department in drafting and granting the licence, and the cost for the client department to put together the necessary documentation “as is” for the interested party. The licensee will be fully responsible for all arrangements and costs associated with the further exploitation of the licensed right. The Government will play no part in the process.

## **Way Forward**

12. Members are invited to comment on the proposals set out in paragraphs 8 to 11 above. Members are specifically requested to advise on the pros and cons of –

- (a) opening up the IP to any interested parties incorporated in Hong Kong for 3 years or more;
- (b) granting the Commercial Exploitation Licence to one or more interested parties on a non-exclusive basis instead of granting it to a single party on a competitive bidding basis;
- (b) whether a royalty should be charged for opening up the IP and how this would affect the incentive for participating in such an activity; and
- (c) whether the opening up process is sufficiently simple and user-friendly for interested parties.

We will take into account Members' views before we come to a decision on the way forward.

**Information Technology and Broadcasting Branch  
Commerce, Industry and Technology Bureau  
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