

**Review of the Control of Obscene and Indecent Articles Ordinance
HKITF Forum**

Summary Report

Date: 17 November 2008
Time: 2:30pm – 5:00pm
Venue: Lecture Theatre, 1/F, HKPC Building, 78 Tat Chee Avenue
Attendees:
Commerce and Economic Development Bureau

Mr Gregory So, Under Secretary for Commerce and Economic Development

Mr Kevin Choi, Principal Assistant Secretary for Commerce and Economic Development (Communications and Technology) A

Miss Amy Wong, Assistant Secretary for Commerce and Economic Development (Communications and Technology) A2

Mr Chester Soong, Councillor of HK Information Technology Federation

Mr. Daniel C.S. Ng, President of HK Information Technology Federation

Mr. John Chiu, Chairman of HK Wireless Technology Industry Association

Mr. Simon Lee, CEO of homebloc.com and Founder of Lion Rock Institute

Mr. Charles Mok, Chairman of Internet Society of Hong Kong

Mr. Sang Young, IT Voice

Mr. Daniel Ng, Chairman of Professional Information Security Association

Mr Gregory So, Under Secretary for Commerce and Economic Development introduced the consultation booklet of the Review of the Control of Obscene and Indecent Articles Ordinance (COIAO) and invited the attendees for their comments.

Members expressed their overall comments on the Review of the COIAO:

- Any legislation should take into consideration its impact on the industry.

- The Government should engage the public and focus the discussion on whether it is necessary to impose control on such materials, rather than how to control such materials.
- Methods to protect children are more important.
- One suggested that the Government need to have a holistic view and pay attention to the consultation on digital copyright and the privacy ordinance, which is also relevant to the regulation of the new media.
- The objective of the COIAO should be clarified. Some suggested the Government rethink whether the problem of obscenity and indecency is as severe as it may seem.

Major comments and/or suggestions are summarised as follows:

<p>1. <u>Definitions</u></p> <ul style="list-style-type: none"> • Some expressed that the definition of “obscenity” and “indecency” is problematic. One pointed out that “obscenity” and “indecency” is merely different in severity. Indecency refers to materials that are inappropriate for viewing and obscenity refers to objectionable and repulsive materials. It is pointed out that this standard changes with time. • Some expressed that “obscenity” and “indecency” should not be IT issues. • One suggested that “obscenity” should be related to “lust”.
<p>2. <u>Adjudication System</u></p> <ul style="list-style-type: none"> • Some considered the representativeness of the Obscene Articles Tribunal (OAT) and the views of the society are important. • Some against having the Court to do the classification. Some considered selecting representatives from various sectors from the public and setting up an independent board might be a feasible option. • Echo with Mr Eric Cheung of Law School of University of Hong Kong that enforcement is the major problem. It is pointed out that the OAT did not follow the provisions stated in section 10 of the COIAO. • One suggested that the current consultation would only lead to conservatives and liberals going into two extremes. It is pointed out that it would be highly undesirable if the future OAT

would be dominated by these two groups.

- Some suggested the Panel of adjudicators should be expanded, whereas the number of adjudicators at each hearing should be increased from two to ten.
- The background of the adjudicators is currently not open to the public. The public has no idea on their occupation or age.
- Transparency of OAT adjudication should be improved. It is suggested that the OAT should give reason(s) to classification even in interim hearings.

3. New Forms of Media

- Some emphasized that technology neutrality is important.

Publication

- Some pointed out that the definition of publication is unclear, especially in the environment of the Internet. The case of “Hyperlink Man” is quoted several times as an example to demonstrate the inadequacy of the definition. It is pointed out that the motive of publication should be taken into consideration.
- Regarding the definition of “public”, some suggested that sending information to “unknown” people is considered as publishing.

Filtering

- The example of the Australian Government implementing the filtering option as quoted by the Administration in multiple occasions is unsubstantiated, as the Australian Government has been facing strong opposition against this legislation. Furthermore, the scope and coverage of regulation under the Australian legislation is different from that in Hong Kong.
- Most of the members opposed the mandatory filtering option. Some suggested that this would stifle the development of the industry. Providing this option will increase their cost of operation and it will also put them in a difficult position when they deal with customers.
- The filtering option is also risky from the technical perspective as the filter could be hacked by some other parties. It is also ineffective given the present peer-to-peer transmission technologies or social networking platforms (such as Facebook) and the huge amount of information transmitted across the line. Anonymity also blurs the responsibility of publication among multiple users.

- Filtering may over-block websites which have not violated the law. It will eventually deny access to proper information.
- Some suggested that filtering at the user-end is favourable. The Government should further examine the feasibility of this option and provide more information for the public in this regard.
- It is preferred to have the co-regulatory regime and market-driven approach.
- Parents should be given the choice on whether to use the filtering software. The Government should conduct some research on why parents are not using the existing filtering services – whether it is too costly or they simply lack the information.
- Filtering could be done by indexing. However, one should consider how the index could be done. Internet Service Providers will not provide a blacklist for filtering.

Credit cards

- A credit card as an access control is problematic in terms of security and privacy. This may lead to identity theft and improper use of credit card information.
- The current age authentication system is not effective. By merely requiring the users to indicate their age with a click is ineffective.

4. Enforcement

- Floor participants raised the issue regarding rating and control of games and online games.

5. Publicity and Education

- Members agreed that education is important. However, the Government fails to provide concrete measures on how to improve education.
- One suggested that moral education is needed. The Government should have a holistic view on the entire system.
- One suggested that IT education is also necessary as many young people may not be aware that anonymity on the Internet is a myth.
- Family education is important as parents are responsible for teaching and providing guidance to their own children.