

Review of the Control of Obscene and Indecent

Articles Ordinance

Focus Group Summary Report – IT

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Location: Room 229, 2/F, Murray Building, Garden Road, Central, Hong Kong

Attendants:

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Dr. Ng Kit-chi, Johnny	Vice President (External Affairs), Hong Kong Computer Society
Ms. Lam Oi-wan	Editor, In Media
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- I. A briefing on the consultation documents of the Review of the Control of Obscene and Indecent Articles Ordinance (COIAO) by Mr. Gregory So, Under Secretary for Commerce & Economic Development of HKSAR. He also invited all attendants to express their opinions.

 - II. Six attendants shared general comments towards COIAO:
 - Recognized the necessity of review, yet there should be a basic consensus in the society over whether obscene articles ‘should be regulated’ and ‘can be regulated’, then get into the discussion of ‘how to regulate’. The

COIAO is based upon the ‘standards of morality generally accepted by reasonable members of the community’, but attendants doubt whether such standards exist or not;

- The consultative papers emphasized the protection of human rights. If the government genuinely accepts human rights protection as their principle, it should refrain itself from certain measures, e.g. compulsory filtering etc. Censoring personal communication is an infringement of privacy.
- The current review aims mainly at resolving the problem of morals, yet such problems should not be dealt with laws and penalty. The government should not involve too much, especially issues concerning penal code. However, the COIAO is a criminal ordinance;
- The government should listen to the opinions of parties from the new media. For instance, when consulting another ordinance that involves copyright, the government also consulted OSP (Online Services Providers) like Yahoo and other popular websites;
- The ordinance has not been reviewed for a long time hence it is a positive act to evaluate it; yet we should also see whether there is any imminent needs for ordinance review;
- Doubt whether the society’s moral has been deteriorating. Maybe the government is acting more forcefully because of the numerous crimes and domestic conflicts recently. It is necessary to protect children and the youth, but some attendants believed that the review is related to the leak of sex photos earlier last year. In fact, the circulation of obscene photos has taken place for over 5 years, the review becomes imminent only because of that shocking event.
- They believed that the sex photos incident earlier last year is caused by the lack of professionalism of IT personnel and the lack of code of practice of some IT practitioners.

III. Suggestions for the review raised by the attendants are summarized as follows:

Opinions raised and areas of concern:

- 1 There was no discussion about ‘definition’
- 2 Adjudicating system

- 2.1 It is possible for the enforcement departments to submit articles to Obscene Articles Tribunal (OAT) for classification before prosecution. However, some worried if the Judiciary may regard this cases as first priority;
- 2.2 A review should be made on whether guidelines are needed for the composition of adjudicators, e.g. including adjudicators of different age and different background;
- 2.3 The administrative and judicial functions of the OAT should be separated. The Government may draw up guidelines for classification administratively. For judicial functions, The context of the articles may be considered when classifications are made.

3 Classification system

- 3.1 The classification of different media should be consistent, and it is up to them to implement those principles. An article should not be legal to be distributed through one medium and illegal through another, e.g. printed matters;
- 3.2 The classification system can be more concrete and measurable, e.g. to have a score classifying matters suitable for youth below 15, and another indicating matters suitable for youth below 18. Other opinions stated that it is impractical to further classify a division for youth aged 15 and 18 since the controversy will be even greater if so. The maturity of each person is different;
- 3.3 Information on the internet now includes text, pictures and animation. The government should provide guidelines for the tribunal to make decisions for different content combination;
- 3.4 Emphasis on cultural arts and public concern should be raise when judging articles, unless the distributor can prove that the article does not carry the above purpose, it can be judged as obscene or indecent.

4 New media

4.1 *Compulsory filtering by ISP*

- 4.1.1 The papers suggests ISP to introduce compulsory filtering services for parents, yet this will not only affect Hong Kong's reputation of freedom of information, but also increase the cost of ISP. Some ISP will not

provide services to domestic users at all, hence it will be unfair to those ISP and users who have no children at home.

- 4.1.2 Filtering services are now available in the market yet they are not popular among parents. The government should first understand why they are unwilling to adopt those services. There are numerous ways to provide services for parents, e.g. government assisting religious/education groups to cooperate with ISP etc. The government should also ensure that the parents are aware of these services, making it compulsory is not necessary. Government should provide models of other countries for public reference.
- 4.1.3 Parents are probably opting out filtering services because they think that the software is not effective. Therefore, the filtering services should be offered by the ISP for parents' perusal. Making it compulsory might further weaken its efficiency. The government should first understand the reasons of inefficiency, or to consider setting up mechanism like the spam mail regulatory for the parents to identify problematic information and put them in the database.
- 4.1.4 The installation of filtering software should be market-oriented. Legislature is against the principle of free economy thus not being the best way. The government must ensure that those measures are really effective before establishing laws for that.
- 4.1.5 Filtering software is not popular because of its inefficiency. The overseas software may not be able to target on the local markets. Technical problem is another concern. Different login names are required when using filtering services and some ISP do not require a login name at all. All these factors make it difficult for parents to use filtering services. Each person has a different definition of good/bad content. There are numerous free internet services in the market which may not have an age restriction. The cons of compulsory filtering services by ISP will outnumber its pros.
- 4.1.6 A scoring mechanism similar to the spam mail filtering system is technically feasible; it also allows parents to choose an appropriate level of filtering. Such measures can fit the needs of most people. Under this mechanism, parents can report and score different content, while those who adopt such filtering mechanism can choose their own level of filtering. Some attendants pointed out that the filtering program is installed in the computer and the youth are able to uninstall it, making it

useless at the end.

4.1.7 To the society, an official filtering system means that ‘the government is involved in filtering websites’ and it is unconvincing. It will be better if the mechanism allows voluntary participation. Other attendants agree that it is very sensitive for the government to involve in the filtering mechanism. Citizens had doubted about political censorship when search engine was down in the past.

4.1.8 Installing compulsory filtering software will neither be effective in domestic computer nor ISP, it will be more practical to make it commercial.

4.2 *Should personal communications be regulated?*

4.2.1 Some said that looser control should be adopted when regulation P2P personal communications; yet other attendants believed that the standard should be consistent for articles for personal communication and public distribution alike;

4.2.2 Attendants believed that personal communication should enjoy a higher degree of freedom. As for how to identify a ‘personal’ communication, some said that as long as the two parties know each other, that should be regarded as ‘personal’. It should not be identified by the number of people to distribute;

4.2.3 New technology is striking against the definition of ‘friends’;

4.2.4 Recommend the ordinance to regulate only the traditional public distribution channels, because it is difficult to define ‘friends’ and believed that it is better for the rules to be loose than tight. One benefit of the current ordinance is that everything can be included, and leave disputes for the court to judge, hence it is fine not to revise the current ordinance;

4.2.5 In the internet world, there isn’t clear definition for ‘personal’ and ‘impersonal’, the only thing that can be defined as personal are contents that are protected by passwords, but another party can still view it with the code.

4.3 *Regulations of new media*

4.3.1 Some stated that the new media should have their own set of standards

to handle such issues, yet there were also opinions stressing that different media should abide the same set of standards.

5 There was no discussion about Enforcement

6 There was no discussion about penalty

7 Publicity and public education

- 7.1 The reason why the public is unclear about the definition of the law is that, the law enforcement department interprets the ordinance by itself. If there are different standards for different media, the public will have greater difficulty in understanding the ordinance;
- 7.2 It is outdated and inappropriate for the present moral education to assume youth to have no opportunity to view obscene and indecent articles. They should assume all youth to have got in touch with those information and educate youth about appreciating their own body;
- 7.3 Most attendants believed that parents should shoulder most responsibility of educating the youth, while the government should act more actively to assist.