

Review of the Control of Obscene and Indecent Articles Ordinance

Focus Group Summary Report – Press and Publication

Date: 30 Oct, 2008

Time: 1830-2030

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

Attendants:

Dr. Cheung Kwai-yeung	Vice Chairman, Hong Kong Press Council, Vice Chairman, Hong Kong Federation of Journalists
Ms. Cheung Shin-yee	Editor in Chief, The Commercial Press
Mr. Tang Kong-fai	Vice Chairman, Hong Kong Journalist Association
Mr. Kwong Chi-tak	Director and General Manager, Department of Animation and Comics Production, Jade Dynasty Publication Ltd _
Mr. Chan Man-keung	Editor in Chief, Culturecom Holdings Ltd _
Mr. Kwan Wai	Chairman, Hong Kong News Executives' Association

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- 1 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.
 - 2 General comments of the attendants concerning the review of COIAO:
 - A review is needed as the ordinance is too out-dated. Since moral standards change from time to time, it was suggested that the ordinance should be reviewed regularly, e.g. one minor review should be conducted every three years, and one major review every five years;
 - The review of government appears to be non-biased yet numerous suggestions in the consultation papers indicate that the government attempts to restrict the freedom of speech, press and publication. He pointed out that citizens should enjoy the freedom the information but the suggestions outlined in the documents restricted such rights, hence this

consultation is stirring great reaction among those who concern about freedom of speech, press and publication;

- Fewer restrictions would be beneficial to freedom of speech and enhance the supervision of the civil society on the government.

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

Opinions raised and areas of concern:

1. Definition

- 1.1 The ordinance should only deal with ‘obscene’ articles and leave the ‘indecent’ articles alone. Whether something is indecent or not is just a matter of taste and it is hard to define. Great controversies occurred when the HK Press Council attempted similar cases. He believed that the definition of ‘obscene’ is clear and suggested that the government should be more strict on the definition of ‘obscenity’ and control no more the indecent articles so that people would not accuse the government as violating the freedom of press, academic and creation, parents should bear the responsibility of controlling indecent articles;
- 1.2 Previous judgments of OAT reflects an emphasis on the obscenity or indecency of the article only visually and it was difficult to penalize articles that mainly present by texts, this review should focus more on the text medium and related articles;
- 1.3 A loose definition without guidelines would make it difficult for the adjudicators to enforce the ordinance; the attendant stated that more concrete guidance can be provided for the adjudication of texts, e.g. to ban animal sex. He believed that the loss of the government in the case of CUHK Student Press is just a technical one and the judgment did not target at its content;
- 1.4 Opinions agreed that the OAT only focuses on the handling of pictures since the processing of such would be much faster. He cited Japan as an example where numerous publications contain obscene ideas, he believed that the ordinance should pay more attention to text articles;
- 1.5 One attendant illustrated his/her viewpoints with a case. An occult comics was published last year, 3 out of the 12 issues were being persecuted by the TELA. As far as he knew, the judge had great authority during adjudication and the penalty would be more lenient if they admit it, while the judge would be more heavy-handed if they apply for appeal. They finally decided not to publish occult comic books anymore. He thought that this was the reason why there’s no occult comic in the market. He further explained that they knew very well about the boundaries of other publications but that of the occult comic books were unclear.

2. Adjudication System

- 2.1 Adjudicators should reside in Hong Kong, able to understand Chinese and

English and the approval of Judge of the Court of Final Appeal is required in order to join the OAT. Such requirements make it difficult for adjudicators to reach consensus. Nevertheless, if the definition of law can be clarified and if the adjudicators understand the content of the ordinance, they would have an easier time reaching consensus. The attendants did not agree to handle all adjudications to the judges;

- 2.2 Further dividing indecent articles into a class for age below 15 and 18 would create even more grey areas;
- 2.3 Publicity should be strengthened and invite citizens to apply for the position of adjudicators, because many people thought that adjudicators were appointed by the government;
- 2.4 The government should find out the reasons why some adjudicators are unable to attend the adjudication;
- 2.5 Regarding specific qualifications or the understanding of laws of adjudicators, an attendant stated that it is, indeed, more ideal to have such requirements, yet setting those criteria would further hinder public participation in the adjudication. Especially when the society requires higher transparency in the adjudication system, it implies that the adjudicators should be able to explain why an article is classified as indecent or obscene, and the adjudicators should understand deeply about the ordinance;
- 2.6 Most attendants agree to increase the number of adjudicators of each case so that the standards would be more balanced;
- 2.7 The government can consider to hand the administrative adjudications to professionals from academia or arts or full-time adjudicators; as for the judiciary, the jury and magistrate system can be adopted. Some attendants doubted that the professional may not be able cater for the moral standards of the general public;
- 2.8 Increase the number of adjudicators of each case, e.g. 5-7 adjudicators each time;
- 2.9 An attendant learned from the adjudicators that it was usually the magistrate who dominated the adjudication, e.g. they would tell the adjudicators that some articles cannot be sued 'technically' and hence it should be innocent. He believed that the magistrate should guide the adjudicators legally, but they should not dominate the results of the adjudication. Adjudicators represent the viewpoints of the society and should be given more rooms.

3. Classification System

- 3.1 Attendants suggested that during adjudication, the publishers should be allowed to provide profession advice even for the first adjudication. Otherwise, the OAT should seek professional advice on certain article. There is only a thin line between pornography and arts, in the past, even the statue of David had been classified as indecent and obscene. He pointed that the publishers should be notified if their publications are being adjudicated and they should be allowed to provide professionals' explanations on the source of certain pieces of arts;
- 3.2 The adjudication system should be highly transparent, e.g. in the judgment,

there should be explanations about why certain article is classified as Type II or Type III. He suggested that even a preliminary adjudication should include such explanations so that the industry would understand the rationale.

4. New Forms of Media

- 4.1 An attendants emphasized that the organizations he represented (Hong Kong Press Council and Hong Kong Federation of Journalists) objects any supervision of the internet because it is not only unfeasible, but also bringing great impact to the international reputation of Hong Kong. Despite its good intention, it will leave Hong Kong as a place where freedom of speech is being hampered. It would be better to handle this matter by publicity and public education;
- 4.2 Another attendant agrees that the implementation of internet supervision would be difficult, but if it is single out and be freed from control, the results would also be unimaginable. He stressed that the government should strike a balance between control and the implementation difficulties;
- 4.3 Measures raised in the consultation papers would hinder the freedom of speech, press and publication. The industry doubt if the ordinance needs to be reviewed and regulate also the internet since the existing ordinance works pretty well. He believed that a mandatory provision of filtering software is an equivalent of self-censorship;
- 4.4 The international reputation of Hong Kong will be hampered if the government carries out measures that affect freedom of information in order to control the new media. Therefore it should be handled with great care. He believed that standards should be set to prevent the internet from being exploited. The government should find out a balanced point which will neither affect freedom of information nor have the internet exploited. He pointed out that the internet had great influence on the youth and it must be regulated;
- 4.5 The government has strict control over free TV because of its great impact. However, TV audience is dropping from day to day, especially teenagers below 25. To them, the power of internet is tremendous since children now have more opportunity to get in touch with it. If there are too many pornographic and violent articles on the net, the next generation would be affected. However, the society cannot ban teenagers from using the internet as it is essential to their learning, and even the government is promoting electronic books. He thought that the two sides would be balanced and the society should not only leave the responsibility of filtering to the parents;
- 4.6 Background of each family varies and parents should be the one who care for their children and choose the suitable information for them. However, some attendants disagreed and said that if there's classification for magazines and requires some to be wrapped by plastic bags, it would be unreasonable to have no 'plastic bags' for the internet. The internet is so accessible that there cannot be not standards of it;
- 4.7 Parents lack computer knowledge and will not be able to install filtering

software in household computers effectively. Therefore, an attendant believed that it is impractical to rely only on parents, teachers and parents are unable to control teenagers;

4.8 The suggestion of credit card verification would cause some citizens their freedom of information as adults who have no credit cards would not be able to browse certain websites.

5 There was no discussion about Enforcement

6 There was no discussion about Penalty

7 Publicity and Public Education

7.1 It would be more ideal to have the parents to bear more responsibility in publicity and public education. They should also be educated about what software is available and the ways to protect their kids. He believed that it is better to have the parents to monitor it than the government;

7.2 As long as the parents have options to choose, control of the freedom of speech would be out of question. Yet he doubted if parents have the rights to filter the kinds of information that children should receive;

7.3 Government publicity is unattractive.