

Review of the Control of Obscene and Indecent

Articles Ordinance

Focus Group Summary Report – Youth

Date: 31 Oct, 2008
Time: 1800-2030
Location: Room 229, 2/F, Murray Building, Garden Road, Central, Hong Kong

Attendants:

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Mr. Lam Fai	Chief Officer, Roundtable Community
Ms. Chan Chiu-yung	30s Group
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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. Seven attendants shared general comments towards COIAO:

Purpose of reviewing COIAO

- The review of COIAO aims at protecting children and youth. However, how effective is the protection in the past 21 years? Mainstream opinions

believe that it is useful to set up regulatory protection, i.e. to block unpleasant information and to build walls to prevent children and youth from getting in touch with that information. However, the fact is that such walls do not exist at all. Conversely, this kind of protection will stimulate children and youth's curiosity to get hold of the unpleasant information. The society should rethink an appropriate way of protecting youth – shall it be educational or regulatory? Some think that an open discussion is more instrumental than building walls to build up a healthy atmosphere in the society. Focus of discussions should be the balance between regulation and education;

- There is no ordinance that can guarantee 100% protection for youth and children. In the future, the youth are more likely to receive all sorts of information, whether it is good or bad. Hence the society should consider whether the protection should put emphasis on the sex content or the ideology;
- The review meant really well. However, judging from previous experiences, some articles that were once banned from distribution would be released at the end, reflecting that the society might be over controlling articles that are essentially literature or artistic;
- The establishment of ordinance did not aim at a total prevention of incidents like Edison Chan or Chung Yik-tin, cause there are always some people who would try to challenge the ordinance or the acceptability of the society;
- Self-discipline of the media is far more effective than regulations;
- The society can accept to view sex content with a 16-17 years old teenager and have discussion afterwards, but it would be unacceptable to do the same thing with a P1 or P2 student. Therefore, the ordinance is still meaningful and valuable in the sense that it can protect the youth, especially the children.

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

1 Definition

1.1 *Social change and the alternation of definition*

- 1.1.1 Time changes and the acceptability of the society has increased;
- 1.1.2 If the ordinance finds its basis of review on social morals and consensus, as time goes by, those standards will change and the ordinance will not be applicable to the society many years later.

1.2 *Taking reference to overseas experience – accumulating case laws to supplement the ordinance*

- 1.2.1 European Human Rights Court defines ‘obscene’ and ‘indecent’, as they accumulate case laws, they can further add new illustration and guidelines to it. However, the judgments of OAT in the past 21 years are not serious enough. OAT never explains its judgment and we cannot accumulate experience like our European counterparts, hence lots of decision cannot be abided;
- 1.2.2 Relevant cases should be accumulate and be used as supplement to the ordinance;
- 1.2.3 The ordinance of Canada aims at preventing sex crimes. Sex crime refers to cases in which sex is used as a tool, or another person is being exploited in this aspect. Since each individual may have a different point of view towards repulsiveness, indecency and depravity, the ordinance should specify that the articles should not cause sex exploitation. This definition would have minimum effect on the society, especially the restriction of human rights.

1.3 *How to further improve the definition?*

- 1.3.1 The definition should be flexible and clear so that the general public understands what is obscene and indecent. Controversies will arise if the definition is unclear;
- 1.3.2 The word ‘indecent’ usually associates with sex, yet there should be more points for consideration before defining something as sexually indecent, e.g. repulsive, terrifying or annoying;
- 1.3.3 The background of the articles should be considered. Inmedia once downloaded a nude female photo from FLICKER and posted discussions on the lighting skills and aesthetics next to it. Later the website was warned by the authority. Some said that it shows the

context of articles are important to classification;

- 1.3.4 An objective standard can be applied to the definition, but it is difficult to its ideological impact. For instance, at the beginning of a Japanese movie, a lady was portrayed first resisting rapist, then enjoying the process. Would such ideologies belittle women? Would it have deep impact to the ideology of the youth? Is this discussion about the ideological effect, or just to come up with an objective standard?
- 1.3.5 The public will understand that people are challenging the ordinance in order to clarify it. The CUHK Student Press incident encouraged discussion in the society and thus an effort to review the ordinance, this is a positive development;
- 1.3.6 Some texts on prostitutes websites do not contain sex and all girls in the pictures are not in nudity, however, such content might lead to crimes and affect social moral. Are these articles being covered by the ordinance?
- 1.3.7 Guidelines should be provided to assess whether a publication or an article on the internet is obscene and indecent or not. After consensus is reached on the guidelines, reports on cases should be issued to the public. The public will have more allowance towards it;
- 1.3.8 The OAT can imitate the system of teachers marking public examinations, i.e. to call for a joint assessment meeting to discuss about the reasons why certain candidate should be given an A or B. Process of this kind allows the system to gather opinions of different parties so that the system can be refreshed and updated from time to time

1.4 *Can the definition be specified?*

- 1.4.1 Specific wordings help publishers and internet users understand the ordinance. If the ordinance is unclear, then anyone, especially those who are involved in publication and academics would risk breaking law. Although no specific examples have shown that the current ordinance would affect the academic research, they would worried that future studies might infringe these broadly defined concepts;
- 1.4.2 The ordinance basically intends to control the circulation of information, and would clash with human rights and the rights guaranteed in Basic Law to a certain extent. If the government would like to minimize the

impact of the ordinance, it should be more concrete and specific so that the public would know under which circumstances they can not exercise rights that are promised in laws. However, to be specific doesn't mean to be strict;

1.4.3 Reference can be taken to the Canadian practice. For example, to specify certain considerations like sex exploitation, sex crime, acts of brutality and violence, child employment etc. To a certain extent, these aspects should represent the reasonable moral standard in the mainstream;

1.4.4 Whether it is talking about the members of OAT or its guidelines, people would still challenge what authority they have to establish guidelines or to review the ordinance.

1.5 *Is it necessary to review the COIAO?*

1.5.1 It is more important to supplement and revise the operation procedure than to redefine the ordinance;

1.5.2 Doubt whether it is necessary to redefine obscene and indecent. The more considerations included in the ordinance, the worse it will be in the future;

1.5.3 What is meant by specifying the ordinance? To supplement the ordinance with text and list out all possible considerations? Or to include different cases as supplementary? Some believe no text can clarify all possible situations. Text would lead to controversy, while no single law is perfect. The discussion should focus on perfecting the adjudicating system.

2 Adjudicating system

2.1 *How to separate administrative and judicial function of OAT?*

2.1.1 Suggest to separate the administrative and judicial functions entirely, the articles and publications should be submitted before the execution of the administrative branch;

2.1.2 TELA can provide administrative guidelines for the publishers or to screen out nonsense complaints, the judiciary branch would handle

ambiguous cases or articles that cannot be judged by the administrative branch;

- 2.1.3 An independent agency should be established for the classification. Science, literature, arts and academic should be a standard for consideration. Representative from the society, particular industry or sectors should also be invited to participate in the administrative agency. For judgments we should adopt the jury system;
- 2.1.4 Object to have the administrative agency to classify articles. The incidence of David's statue is one example. As long as the administrative branch is involved, the problem will just repeat itself;
- 2.1.5 Recommend voluntary submission. Such cases should be handled by the administrative branch by offering non-binding recommendations. For disputes, the court should be invited to make the final decision. It is a total separation of administration and judiciary.
- 2.1.6 Recommend to hand over the authority of adjudication to the judiciary while the administrative branch is in charge of law enforcement. If the administrative branch suspect that certain article is obscene and indecent, the articles would be sent to the court and the judiciary would decide on the law enforcement;
- 2.1.7 Suggest to transform the current OAT to a complete judiciary and all classification should be acquired before any prosecution by the law enforcement body;

2.2 *Shall the jury system be adopted?*

- 2.2.1 The representation of 300 people is often challenged. The attendants agreed to adopt the jury system which is practical and widely accepted;
- 2.2.2 The adjudication should imitate that of a jury and the number of members should be increased. Different qualified candidates should be invited to participate;
- 2.2.3 Some object to adopt certain functional constituency or an adjudicating team consists of industry experts.

2.3 Different agencies are responsible for the definition of obscene and indecent in different media, it often causes chaotic situations;

3 Classification system

- 3.1 3.1 Reference can be taken to the Film Censorship Ordinance's I, II, III classification, and to divide the II class into three different categories, IIA is not suitable for children, IIB is not suitable for young persons and children, IIC can only distribute to aged over 18, while III is prohibited for distribution.
- 3.2 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
- 3.3 There should not be any distribution of class III articles in the market. How can the public know whether that article is not suitable for the public or not?

4 New Media

4.1 *Traditional media vs. Internet*

- 4.1.1 The media has to be neutral, i.e. the society will not deal with different media differently. Does our society accept a different set of codes for the use of internet?
 - 4.1.2 The operation of the internet differs from traditional medium. Internet is global hence it is difficult to regulate; different means should be adopted when controlling it. Furthermore, control on the internet are impractical at most of the times;
 - 4.1.3 The ordinance, especially its concepts of distribution, copy and transmission, cannot catch up with the development of the internet. The framework of the real world or printed media cannot be adopted directly to the internet world;
 - 4.1.4 The standard of different media should be consistent. If not, shall we spend resources to establish a new ordinance for each new development?
- 4.2 Considerations shall be paid to the privacy of people, the government should not define all network as public;
 - 4.3 Young people are the major users of new media and their opinions shall be

heard. The change of internet is really rapid and young people might rush into a prohibited area of the ordinance easily;

- 4.4 The ordinance shall not be too strict, it should be as loose as possible;
- 4.5 The concept of internet use changes rapidly. It is hard to draw a line between concepts like friends, P2P, share, public, public distribution that involves PP stream etc. More discussion is required for this part;
- 4.6 How should the sex literature on the internet be regulated? If that is a literal invention, shall the same set of regulations be adopted? Would the ordinance restrict creativity or the freedom of creation?
- 4.7 The ISP should state clearly in the contract that they have the right of immediate deletion if any obscene and indecent message is spotted on the internet;
- 4.8 It is more important to have the parents or caretakers to pay sufficient attention to the use of internet of the youth, than to apply regulations on such activities;
- 4.9 ISP is part of the market and the government has no right to intervene the black list prepared by the ISP. Some attendants challenged at the appeal system of the black list, while the others stressed that as long as the government is not involved, the market will handle it.

5 There was no discussion about Enforcement

6 There was no discussion about penalty

7 Publicity and Public Education

- 7.1 Social education is of particular importance to the youth. Balance should be stroke between control and education. Apart from sex education, media education, critical thinking, media ideology, value judgment and how to deal with sex, e.g. how to respect an opposite sex, are other issues that worth strengthening;
- 7.2 Doubt whether the sex education at school can still shield children from the impact of obscene and indecent articles effectively;
- 7.3 The world is changing rapidly and in a multi-faceted way, added with the diversity of values, all these changes become quite chaotic to educators and social workers. They would feel lost easily. According to a survey, most

parents worry about the long hours of computer use of their children, rather than the possibility of getting in touch with unpleasant information. Under such circumstances, how can the effectiveness of education be enhanced?

- 7.4 The understanding of the internet between parents and children are gapping. Parents are unable to provide any guidance to children in this aspect.

8 Conclusion

- 8.1 The attendants tended to treat the definition with an open attitude, yet no specific recommendations have been made on it;
- 8.2 Agreed that the definition or the ordinance has to be based upon the freedom of speech while providing sufficient control and protection;
- 8.3 Emphasize the importance of education. If education is implemented well, less protection will be required;
- 8.4 Consider to separate the administration and judicial work, attendants voiced out different suggestions on practical arrangement; two principles concerning the use of internet have been raised, first is the freedom of market, and the second is the self-discipline of users. The attendants did not wish to have a central authority to replace the original market operation.