

Review of the Control of Obscene and Indecent

Articles Ordinance

Focus Group Summary Report – Education

Date: 20 Nov, 2008
Time: 1830-2030
Location: Room 229, 2/F, Murray Building, Garden Road, Central, Hong Kong

Attendants:

Ms. Wong
She-lai, Shirley Chairperson, Subsidized Primary Schools Council

Mr. Cheung Chi
Hung Association President, Hong Kong Aided Primary School Heads Association

Mr. Choi
Kwok-kwong Chairman, Education Convergence

Ms. Tsang
Tak-lan Assistant to the Episcopal, Catholic Education Office

Mr. Wong Kwan
Yu Workers Chairman, Hong Kong Federation of Education Workers

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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. Five attendants shared general comments towards COIAO:
- It is necessary to regulate obscene and indecent articles by legislation because the youth have very sophisticated mastery and knowledge of the internet, yet no moral values, boundaries should be drawn;
 - The ordinance is a bit outdated and it should be renewed and perfected;
 - Legislation and execution should weight equal importance, otherwise

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- teenagers will offend it knowingly;
- Articles have even greater impact on primary students and the ordinance should provide sufficient protection for the youth;
 - If we allow human rights override everything and leave it unregulated, the society will go into extremes and become dangerous, people will go into anarchy if so;
 - It is difficult to reach consensus on the means of regulation, reasons of the majority should be dominated in this case. There should be laws and standards regulating it. Thus, collective consensus should be the basis of the ordinance and it should not be biased. Judgments should not be made by two people in a subjective way; the needs of the whole society should be coordinated and balance, opinions of the majority should be catered for; more consultations should be done in order to collect more opinions;
 - There is no statistics proving that obscene and indecent articles will not pose any impact on children and youth, educators will resort to common sense and determine that those articles would influence children and the youth; for example, if children witnessed terrifying injuries in a traffic accident, their immediate reaction would be shocked and cry; the attendants disagreed that obscene and indecent articles would pose no impact on children and youth; it is undeniable that people's ability of enduring annoyance would increase as they grow, however, the government should be cautious when handling obscene and indecent articles or information; it is especially essential to have an ordinance in force to protect them, it is a must to do so.
 - It is easier for the society to reach consensus on the proper standards for people below 18, personal freedom and freedom of information would be stressed in the discussions of people over 18 and it's harder to come up with a set of standards;
 - Education is an aim in long-run, while increasing deterrence is a task in short-run;
 - Ordinances controlling printed media and films work pretty while and it is positive in general despite the rooms for improvement in the execution in some individual cases; experiences can be learnt from them in order to improve the enforcement process.

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

Opinions raised and areas of concern:

1 Definition

- 1.1 The framework should be more specific and it shall no longer leave the decisions to two people only. For instance, different teachers would give different grades of conduct to the same student as it's a personal judgment;
- 1.2 Parts of the ordinance targeting at people over 18 should leave unchanged wherever possible, but the control of people below 18 should be strengthened;
- 1.3 Most attendants agreed that it is difficult to define 'obscene', a set of descriptors can be established so that people can make different decisions under different circumstances;
- 1.4 Pornographic articles are easier to differentiate while it is harder to set up standards for violence and foul languages;
- 1.5 There should be a boundary for articles that are banned from viewing, e.g. animal sex, pederasty, sex violence, sex abuse, rape, over-exaggeration, suicide etc. The ordinance can state explicitly about these and to make it clear that these articles should be prohibited from both distributing and receiving.

2 Adjudication System

- 2.1 The system of Adjudicators:
 - 2.1.1 The decision cannot be made by two people in an subjective way; number of members should be increased to enhance representation, e.g. one representative from below and over 35, one male and one female etc. Judgments should be made according to social standards and the majority rule should applies;
 - 2.1.2 A standard should be set and trainings should be provided to the adjudicators accordingly. E.g. the adjudicators of gymnastic cannot determine the score according to the appearance of a contestant, items of mark deduction should be detailed and trainings must be provided so that they would know the basis of

adjudication and be qualified for the post. The highest and the lowest score would be eliminated and take the average score would be final, this is how the scores become trustworthy; anyone (regardless their occupation) who are educated and cultured to a certain extent should be qualified for the post; people who are lazy should also be screened out during the training period;

- 2.1.3 Objected to provide guidance for adjudicators;
- 2.1.4 The existing mechanism relies on the judgments of the adjudicators and they judge as a normal adult according to the usual adjudicating standards, in other words, it is reinforcing some existed values and it might differentiate from the social standards, the social standards might change and the adjudication system should not rely on a fixed set of rules with which certain people are assigned to execute;
- 2.1.5 Disagreed to increase numbers of Adjudicators for the fear of increased time and cost;
- 2.1.6 Another attendant believed that for the OAT list, the more, the merrier. It gives changes for more people to take part in social affairs and the Adjudicator would not be numb (If they've watched too many obscene and indecent articles, they may think that it's no big deal). The jury list can be adopted'
- 2.1.7 LEGCO and District Council members can take turn to sit on the OAT;
- 2.1.8 The government should not take the initiative to train adjudicators and it should be left to an individual institute like HKIED;
- 2.1.9 Suggested to document all previous cases as reference for adjudicators, the data would be representative enough; though the cases might be directional, the adjudicators should be the ability to judge; as the number of adjudicators would be increased, the provision of reference cases should not be leading them into any directions.

3 Classification System

- 3.1 Descriptors should be added to each class, e.g. student conducts can be graded as A, B or C, teachers of each form will discuss and reach consensus on the grading, then further divide it into sub-grades like A+, A, A-.

Collective opinions should form the basis of the classification.

4 New Forms of Media

- 4.1 Teenagers have sophisticated mastery of the internet, the articles should be regulated and the ordinance should be amended;
- 4.2 There are some websites which only allow browsing of people over 18, yet youth can have free access to it as long as they claim to be over 18;
- 4.3 Suggested mandatory provision of filtering software by the ISPs so that parents would feel free to choose and install; schools can choose to purchase and install the software and set their own criterion for filtering; schools must take the initiative to install otherwise the parents would be irritated;
- 4.4 Educators should have the right to install filtering software while the parents require the same rights in order to protect their young children, they should also be able to choose when to uninstall the software;
- 4.5 The role of the government should be providing various options so that it can be done at ease;
- 4.6 Regulations are necessary for computers in public area if everyone, including youth and children, can have access to it, e.g. some amusement game centers only allow entry of people over 16. Therefore, people below 18 should be banned from pornographic websites;
- 4.7 The extent of filtering relates to the definition of ‘obscenity’, e.g. ‘sex education’ should not be banned when filtering ‘sex’
- 4.8 Unanimity consensus was reached on mandatory provision of filtering software by the ISPs, options should be available so that parents can choose the degree of control they wish to have, different ISPs can also provide software of different levels, some should be more restricted while the others should be looser so that parents and adults can make their own choice when protecting children and teenagers;
- 4.9 Servers of ISPs may not locate in Hong Kong and the ordinance would have no effect on it; however, doesn’t mean that the distributor is not violating laws;
- 4.10 It was stated that it’s hard to define ‘the public’ in the world of internet;
- 4.11 It was stressed distributing obscene and indecent articles on personal websites or blog is also illegal because the internet is a public venue instead of a private home and should be regarded as public distribution;

- 4.12 Another attendant said that the intention and objective of distribution could be taken into consideration, but it was difficult to differentiate between an intended and unintended distribution;
- 4.13 Further consideration should be given to the suggestion of regarding non-membership mode and unrestricted access mode as ‘public members’;
- 4.14 The distribution of emails relates to the Unsolicited Electronic Messages Ordinance and is difficult to regulate under COIAO;
- 4.15 Reference can be taken to bars and amusement game centers, and separate the internet bars into two types, so that people over and below 18 can go to different bars, there should be mandatory filtering for bars entertaining people below 18, even if the internet knowledge of the youth can breakthrough these blockades, it should not be left unregulated.

5 Enforcement

- 5.1 Judging from individual cases, there are rooms of improvement in terms of law enforcement, the departments concerned should learn from experience and improve the enforcement process.

6 Penalty

- 6.1 All attendants agreed to increase the penalty in order to reinforce the deterring effects;
- 6.2 Some attendants agreed to increase penalty for repeated offenders/companies, i.e. progressive penalty rate.

7 Publicity and Public Education

- 7.1 Publicity and education is essential in long run;
- 7.2 The current education reform emphasizes righteousness and courage; however, if the youth apply these principles on the wrongdoings, the results would be unimaginable. All these should be based on appropriate values;
- 7.3 Schools should provide sex education for students so that they can learn more about it under proper structures and teaching objectives;
- 7.4 Different handling will lead to different results – whether people are dealing with it in an obscene or educational way makes a lot of difference. Taking

sexual intercourse as an example, if you portray it in an obscene way, it will aim at stimulating the audience and inspire fantasy, different people will interpret it differently; for education, we should focus on the positive sides but not to indulge them with unlimited viewing;

- 7.5 Education of schools may not reach all parents, the attendants wished that the government could enhance parents' understandings about it through TV commercials so that they can know more and be more aware of it.