

Review of the Control of Obscene and Indecent Articles Ordinance

Focus Group Summary Report – Internet Services

Date: 24 Nov, 2008
Time: 1830-2030
Location: Room 229, 2/F, Murray Building, Garden Road, Central, Hong Kong

Attendants:

Jonathan Sin	Mobileradio.hk
Park Shum	GdotTV
Chung Ming	GdotTV
Edward Yau	Hong Kong Bloggers Goup
Noelle Tai	General Counsel, Yahoo! Hong Kong
Nelson Tam	Open Radio Hong Kong
Mr. Wong Sai-chak	Hong Kong Internet Youth Group
Mr. Yau Lu-pong	Young Civics
Ms. Tam Sau-Ngor	Student Christian Movement of Hong Kong
Ms. Ip Chor-yan	President, HKBUSU
Mr. Chung Wang-on	IT Voice
Ms. Chan Yuk-ying	IT Voice
Mr. Chu Chun-wah	Yahoo! Hong Kong

-
- 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. Thirteen attendants shared general comments towards COIAO:
 - Attendants agreed that it is time to review COIAO with an open attitude. The discussion should not be focusing on expanding nor narrowing the

regulations without a truly open attitude and confirming future directions. Definition of ‘obscene’ and ‘indecent’ is a direction to for expanding or contracting, while the increase of penalty is just another. Wordings like ‘regulations’ are frequent in the section of new forms of media. While education is a less controversial issue, in the paper only one direction of education is mentioned and lack discussion on issues like parental education. People would easily sense that there is a predetermined direction in the consultation papers. We need to support a more open attitude towards information as time changes, yet the consultation paper is rather conservative;

- It is hoped that the COIAO and the development of Laws of Hong Kong can be developed upon the support of freedom of speech and information as it is of utmost importance; this is especially crucial as Hong Kong is moving along to develop herself into a knowledge-based economy, active development should be supported so that the economy of Hong Kong can be evolved to support a knowledge-based society
- The consultation papers mention about regulations repeatedly as if it has already taken a stance; the overseas examples cited in the papers only discussed about methods of regulation and missed out the fact the many countries have already abolished such ordinance;
- No strong reasons can be found to regulate obscene and indecent articles, most European countries have abolished related ordinance already;
- The issue of protecting the youth is contradictory; the teenagers should be prevent from receiving unhealthy information while they should establish their own stance by receiving numerous information and make their own judgement;
- In Hong Kong, a person will be officially adult at the age of 18, while the legal age for sexual intercourse is 16. It is weird that the COIAO prohibited people from 16 to 18 to view pornography. The consultation paper should provide more relevant information to account for the historical background and development of the ordinance;
- The case of sex photos of the artists may only concern privacy and shall be regulated with relevant ordinance instead of COIAO. The Commerce & Economic Development Bureau should be responsible for economic development, yet the consultation concerns the regulation of

information in Hong Kong; we have been discussing a lot about establishing our economy, however, to reach a consensus upon information circulation would cost a lot and blockade the spread of information in Hong Kong;

- As for as textual arts is concerned, the fewer the regulation, the better;

III. Suggestions for the review, opinions and areas of concerned raised by the attendants are summarized as follows:

1 Definition

- 1.1 Attendant pointed that most existing laws in Hong Kong came from the old versions the British laws and it is not positive to be such; laws of Hong Kong shall be written more explicitly, for instance, clarifications are required for the distribution intention and defence within the definition of obscene and indecent articles, it is entirely different to distribute something for commercial and cultural purpose; framework of the ordinance should also be amended and followed by the Law Reform Commission of Hong Kong. The issue concern is the way such ordinance was written, they might consider altering the use of terms like ‘obscene’ and ‘indecent’. The term ‘objectionable’ was used in New Zealand, indicating that certain articles are obnoxious; some laws still lack correspondent Chinese version, hence the Chinese translation distributed for the public is important, such technical details should be emphasized in the existing consultation paper and the future review alike;
- 1.2 The definition of ‘obscene’ and ‘indecent’ must be explicit, yet it deems to be hard to reach a consensus. Thus it might be wrong to try to work towards a consensus on the definition; it might be easier if the group work towards defining obscene and indecent items.
- 1.3 Attendants have tried to define the terms according to the headings of the papers, yet after rounds of discussions it was found that the terms were impossible to be defined;
- 1.4 Definition of laws must be clear and explicit, if obscenity and indecency could not be defined, it would be difficult to enforce and the public could not make their own judgments;
- 1.5 One has to be clear about the sphere of articles that need to be regulated

when working on the definition, it should also be proved that those articles would cause harm in terms of violence or sex, nevertheless, there is not concrete evidence to support the saying that such articles would pose negative impact on the youth; the general reasonable public mentioned in the definition section is too broad;

- 1.6 The definition section in the papers was obscure, no case study was provided for public reference thus it would be difficult for people to determine whether an article is obscene or indecent; case laws are crucial to judgment, especially in the common law jurisdictions.
- 1.7 The public define obscenity and indecency differently, yet there are only a small group adjudicators in the OAT, which is not representative enough, attendant suggested to refer to the jury system and invite people from various groups, sex, age and sectors, including the minority, to be the adjudicators, ethical standard or opinions of certain people in the society should not be rejected because of their level of education;
- 1.8 To prevent COIAO from becoming a tool for bullying the minority, it should be as objective as possible;
- 1.9 The term 'obscene' and 'indecent' carries ethical judgment, while terms like 'objectionable' do not carry such meaning.
- 1.10 The definition of obscene and indecent is too ambiguous, attendant suggested abolishing such terms and replacing with something more accurate so that the COIAO could be more accurate too.
- 1.11 The name of prohibited class should be named accordingly, e.g. indecent articles should be named clearly that it should be made available only to people aged over 18, attendants suggested to adopt the terms of the three classes of movie censorship, i.e. 'approved for exhibition to persons who have attained the age of 18 years', it is believed that such wordings could convey the meaning more accurately;
- 1.12 The Government can refer to the principle of explicit and real danger of starting revolts in American laws; also referable is the Johannesburg principle in defining the ordinance properly; grounds of defence should be clearly defined also, since many ordinances contain such terms as well, lots of foreign countries established defence principles for literary work as well;

2 Adjudicating System

- 2.1 The existing adjudicating system is outdated and needs to be amended; attendant held reservations over whether the existing adjudicators are able to reflect the opinions of the society; a group of active participants become the adjudicators repeatedly and the same group of people make the judgment most of the time;
- 2.2 Attendants had reservations about the suggestion of adopting the jury list for OAT adjudication. The adjudicators have to view some disgusting articles and they might not be able to accept that, also, they might adjudicate according to their own moral standards, it is inappropriate to share the list, the government could consider to employ trained personnel as adjudicators;

3 Classification System

- 3.1 The existing classification system should be more similar to the Film Censorship Ordinance as such wordings and classification are more explicit and the public can reach consensus on that easier;
- 3.2 Preliminary prosecution is useful in the law enforcement of Class III and IV movies, however, the prolonged judicial procedures after prosecution might have tremendous impact on literary work, it could take more than 1-2 months and the defendant might have to employ a lawyer and take leaves;
- 3.3 Hong Kong is a place with freedom of speech, however, such obscure ordinance stands in violation to business and the freedom of speech, people might violate the law and be penalized unknowingly. Therefore, the categories that are prohibited or allowed for people only aged 18 or above must be written accurately, for example, the article poses harm and threat to the life and assets of the others, the articles are not protected by the freedom of speech etc. Information which pose substantial harm or promote crime should be prohibited entirely. Otherwise, we should follow the principle of freedom of speech and allow distribution of such articles;

4 New Forms of Media

- 4.1 The issue of public distribution involves P2P technology and user might send out some information/parts of the file and not all unknowingly. Under such circumstances, if the user is found guilty of public distribution, the results could be very serious. P2P is highly technical and must be handled

- with great care. Under the existing framework, ordinance must be reviewed, e.g. to provide an operable definition in the ordinance;
- 4.2 Some testing has been done on the filtering software and found that the problem is serious; it can only filter text and not images, pictures and audio visuals items, numerous ridiculous examples can be cited, thus it is meaningless to install filtering software;
 - 4.3 Web master/website owner finds the existing ordinance confusing. If users save certain information in the server (whether in Hong Kong or overseas) and the owner receive complaints, he/she will be uncertain whether such information should be taken away because of the ambiguous ordinance; if they are too cautious and take away such content, clashes between web master and users will be resulted as users might think that their freedom of speech are being limited, overseas users would find it even more obscure because they are unaware of such ordinance in Hong Kong. The regulations in Europe and the States is much looser and they would find Hong Kong overly limiting the freedom of speech; self-censorship of this kind occurs on the internet daily;
 - 4.4 Attendant did not agree that the internet was different from the traditional and other media, especially the addition of the distribution intention in the definition section; attendant also stressed that no guidelines are needed, even if guidelines are to be set, it should not be stated within the legislation and should not be targeted at the internet and any network; the neutrality of the internet is crucial, numerous problems will occur if the internet is collapsed, this is definitely not preferred by the information technology industry;
 - 4.5 For public distribution, private communication and especially P2P connection, distribution intention is obviously important. It is essential to consider whether the distributor intended to gain profits or harm the others by distributing the articles; the issue of public distribution is especially crucial, if a website is defined as a public space, it could be very dangerous; intention of the distributor has to be considered anyway, hence it is accurate to abolish it; if this is to be done, consensus must be reached in Hong Kong and it should be reached upon the principle of distribution intention, a more positive impact would be resulted;
 - 4.6 Jurisdiction is the biggest problem about regulation the internet, if a British citizen distribute articles in Hong Kong via a server in Holland of EU, he might not have violated any laws according to that of Britain, Holland and

EU. However, if he violates certain laws in Hong Kong, an international dispute will occur. Similarly, a EU citizen in Hong Kong would be prosecuted by laws of Hong Kong even if what he did is legal under the laws of EU. If the internet is legislated separately and ambiguity occurs in the jurisdiction section, it might be problematic very easily;

- 4.7 ISP is just a middleman, it will be difficult for them to take on the role of internet cops, and they are unable to censor the content being uploaded by the users; should ISP or OSP be the one who filter information? ISP will follow local laws in different places but there is no government which requires ISP to do the filtering at this moment;
- 4.8 The ISPs are already offering filtering services for parents and it is sufficient. Parents and adults have the rights to access such information, nobody would agree to have mandatory filtering in Hong Kong as a whole;
- 4.9 The suggestion of entering Credit Cards information restricted the rights of those who own no credit cards to certain information; it is also believed that nobody would be willing to enter credit card information when viewing adult-only information online out of concerns of privacy;
- 4.10 Online forum are operated and managed by volunteers and it would be difficult for them to eliminate such information like links of adult-only content immediately and entirely. Attendant worried whether the forum should bear criminal responsibility in this case;
- 4.11 It is common to believe that the publisher owns the publication, yet it is not applicable on the internet. Users are the ones who distribute information, while the platform owner may be unaware of its content. The existing ordinance is built upon traditional printed media, yet the internet is a different world and users should not bear such a heavy responsibility;
- 4.12 The operation of new forms of media is different from publication and television because users take the initiative to search for most information within the new media. There is not regular broadcasting time like television; the government can consider leaving new media alone, even if it is to be regulated, the degree of regulation should be looser than the others;
- 4.13 In the era of web 2.0, many people can distribute content on the internet, it might be for pure sharing and not for profit, therefore attendant objected to increase penalty and worried that it would hindered the citizens' rights of expressing opinions;
- 4.14 The impact of electronic games on the youth can be much greater than the

pornographic movies; some highly controversial games like GTA (Grand Theft Auto) is available in Europe and the US; such games have to be regulated according to COIAO, information that are defined as obscene and indecent should not exist in those games; the European system is worth referring, they have a clearly-defined classification system similar to that of the Film Censorship, games are classified and regulated for appropriate age group; attendants hoped that electronic games could be included and given priority in the review of COIAO;

- 4.15 Some websites in Hong Kong have already posed warnings on their site and stated that it is not recommended for people aged below 18; the government should put more effort into education and do more promotions on the internet or through advertisements; website owners could cooperate with the government and add warnings in the website or when user download information, attendant believed that it is better than amending the law;

5 There was no discussion on Enforcement

6 Penalty

- 6.1 The penalty for internet distribution is too heavy. It is determined for violators who distribute information for commercial purpose, thus it is ordinary to be heavy-handed. However, the distribution on the internet is inestimable and easy to copy, it might not be appropriate to have such heavy penalty if numerous users can copy the article; the ordinance should be reviewed with the distribution intention in mind, if it is commercial or assisting other commercial purpose, such as the prostitution guide, then it should be penalized heavily. For cases like the sex photos early this year (2008), it only involves sending pictures among friends and is not an intentional distribution, offenders of these cases should not be jailed;

7 Publicity and Public Education

- 7.1 The purpose of renewing COIAO is to protect the children and those who are unable to distinguish between right and wrong. Hence education and efforts beyond education should be emphasized to help the children or those in need, this is a more proactive approach;

- 7.2 The government and cooperate with the internet professionals to carry out education. Regulation is not the only way. It is more important to educate the youth about the correct attitude and way of using the internet. The Australian government had cooperated with ISP to provide information to parents or educational institution online; the EU also carry out programs of internet education annually, such as subsidy scheme, parental assistance and suggestion for education etc. The EU approach is more appropriate and is able to balance the degree of openness in European countries. Their approach is more worth referring than that of the American as the American promotions are greatly influenced by particular sects; the model of EU is worth referring as they can uphold internet ethics and tolerate the minority at the same time;
- 7.3 The existing education tends to be anti-ethics and lacks parental education. Legislation is not the only way out even if parents do not want their children to be exposed to adult information. They can discuss with the ISP and move the computer out of their rooms. Such methods are proved to be useful. If they worry that children will imitate what they see in the adult information, they should put more effort into sex education because this is not something that can be prohibited by laws. They can take reference to the sex education in Taiwan. After all, education is more essential than legislation.