

Review of the Control of Obscene and Indecent Articles Ordinance

Focus Group Summary Report – District Council, New Territories

Date: 29 Oct, 2008
Time: 1930-2145
Location: Cultural Activities Hall, 2/F, Sai Wan Ho Civic Center

Attendants:

Shatin District Council	Councilor Ching Cheung Ying, MH
Shatin District Council	Councilor Yu Sau-chu, MH, JP
Tai Po District Council	Councilor Chan Chi-chiu
Tsuen Wan District Council	Councilor Chan Yiu-sing, BBS, JP
Tsuen Wan District Council	Councilor Law Siu-kit
Yuen Long District Council	Councilor Fung Choi-yuk, MH

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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. 6 attendants shared general comments towards COIAO:
 - Changes of information technology and social moral standards lead to numerous problems in the society. However, cases like the Student Press of CUHK and the sex photos of stars could be exaggerations of the media. There may not be such urgency for regulations. Are the

existing problems results of enforcement, sensitivity towards judgments or a moral breakdown in the society? The case of sex photos is a personal matter as the person involved did not intend to distribute them at all, while the porn section in the Student Press is just an exercise of students, the content was even less provocative than the newspapers;

- The government should not provide moral guidance on the kinds of information received by citizens. Instead, they should put more effort into education;
- The society should enjoy freedom of speech; we cannot expect the government alone to shoulder all responsibilities of filtering pornographic information. The society belongs to all of us and different parts of it should serve a different function. With the freedom of speech, people are able to express different opinions. Some people are only expressing their opinions without taking action, if the government supervises too strictly, people might think that they are being prosecuted of speech crime.

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

Opinions raised and areas of concern:

1 Definition

- 1.1 Definition of obscenity and indecency varies from person to person depending on their stance, taste and environment, it is difficult to define clearly;
- 1.2 The definition of obscene and indecent is very subjective, thus the ordinance should remain flexible;
- 1.3 People usually only associate sex with obscenity and indecency, but the ordinance actually regulates also violence, depravity, repulsiveness and brutality, a clearer definition is required;
- 1.4 The government should not complicate the existing definition of obscene and indecent. The basic concept of obscenity and indecency of the general public is that, the display of sex organs or sexual intercourse must be classified as Type III. According to the basic concept, the authority can loosen and tighten the rule occasionally, it is generally clarified and

accepted;

- 1.5 The definition and standard of obscenity and indecency doesn't mean much to the adults, it mainly targets at protecting children and youth from receiving unhealthy information;

2 Adjudication System

- 2.1 Follow the rule of common law and hand over the cases to the courts, then determine whether the article is beyond acceptability of the society according to precedents;
- 2.2 Under the existing adjudication system, only a few number of people will be involved in the decision-making and the mandate isn't sufficient; choosing adjudicators randomly is not a problem, but the authority should not choose people from specific backgrounds;
- 2.3 The number of adjudicators should be increased and include people from different sectors, e.g. culture, education, youth and so on, so that the adjudication would change from subjective to objective;
- 2.4 It is more appropriate to choose adjudicators randomly. Adjudicators from different sectors can be separated into different groups so that the authority would choose people from different groups for adjudication;
- 2.5 If groups are separated according to their sectors, those who are not chosen would think that they are not being recognized; categorization by sectors would also lead to problems of never-ending classifications; yet specifying certain sectors might lead to prejudice; therefore, it should be random and flexible instead of a categorization by sectors;
- 2.6 Although some indecent photos are published in the newspapers these days, they are still within certain standards. If people think that some photos have crossed the line, they can file a complaint to the TELA and the OAT would adjudicate it. Despite the frequent occurrence of indecent content in newspapers, it is impossible to require the press to submit papers for pre-adjudication everyday before publication;
- 2.7 Among the 70,000 cases handled by the OAT last year, most concerned newspapers, magazines and weekly magazines, about 200 ended up with a hearing in courts. Some are over exaggerated. The existing adjudication system can already handle those problems. But the society concern that it is easy for children and youth to get hold of those information, sometimes after

receiving complaints, the sales of those newspapers and magazines would even be increased

3 Classification System

- 3.1 Publications and newspapers are consistently testing the bottom line of the regulation. They will be more constrained while being prosecuted, and repeatedly test the line afterwards, therefore, it is necessary to set up a framework and classifications for the ease of enforcement;
- 3.2 The classification system should replace words like ‘obscene’ and ‘indecent’ with ‘Type I, II and III’ as those terms cannot portray the meanings clearly;
- 3.3 Terms like ‘obscene’ and ‘indecent’ should be changed as people will only associate them with pornography;
- 3.4 Reference should be taken to the classification system of Australia, which classified articles in 3 categories; the second category is called ‘objectionable’ while the third is called ‘entirely objectionable’. Attendants said that the term ‘objectionable’ can better present the meaning of such categories; however, since the term covers more than obscenity, people might associate it with political repression;
- 3.5 The public generally accept the existing classification system of files and articles. There is no need to change something that is currently effective; the publication of pornography in books and magazines is not worsening. The law is always being challenged and there isn’t an upward trend in this, cases like this happen frequently in courts as well;
- 3.6 Publications and films should be classified with the same system, i.e. Class I, II and III. The general public is clear about the differences of the three classes.

4 New Forms of Media

- 4.1 It is good to provide free internet filtering software for parents, but they government should not make installation mandatory;
- 4.2 The website which distributes pornography has their own moral responsibility, they are responsible for identifying their own position, state clearly the class of their site and it should make mandatory for them to verify whether it is appropriate for people below 18 to receive those information;

- 4.3 Lots of parents are unaware of the provision of filtering software by ISP. The government should cooperate with the ISP and strengthen the promotion of that and assist parents in selection;
- 4.4 Filtering software may not 100% filter all unhealthy information, the parents should be informed about it to avoid misleading;
- 4.5 Encourage parents to put computers in the living room in order to increase transparency and enhance self-control of the user;
- 4.6 Popularity of the internet makes it easier for children and youth to receive obscene and indecent information on the internet. It is of utmost importance to screen them from the unhealthy information on the internet, secondly, parents should educate their children about right and wrong;
- 4.7 An attendant worried that the provision of free filtering software will lead to other problems like, over-dependence of the software; if we rely on the ISP to be the information guard, what can we do when they are not doing their job?
- 4.8 It is feasible for the society to take the lead and collect information of websites that distribute unhealthy information; they can set up a database for parents, educators and other people;
- 4.9 The filtering list of different ISP varies, users can select according to their own needs;
- 4.10 Sharing is the essence of the internet world, they may not be doing certain things for profit; therefore, to define 'friends' on the internet fundamentally violate its essence; everybody are friends with each other on the internet, you can name yourself as anything on the net and no actually contact is required to make friends on that level, including actually meetings and talking face to face, therefore it is both impossible and unnecessary to define who is the public;
- 4.11 Lots of existing ordinance can handle cases on the internet if it is not transmitting photos that are related to crime, e.g. children pornography or murder; e.g. copyright law can resolve the arguments of the sex photos;
- 4.12 In special situations, cases should be handled individually and should not be treated with just one way.

5 Enforcement

- 5.1 Adults can have the freedom to view indecent information as they are able to

control themselves; the indecent information can be found on newspapers and magazines these days, some press even describe rape and murder cases in great details, people under 18 can purchase those papers and it is posing great impact to children and youth; therefore the control on newspaper and magazines should be tightened;

- 5.2 Some porn sections in the newspapers include nude photos and price; some even promotes with summer vacation discount and provide telephone number to allure the students. Those advertisements have great impact on children and the youth. The publication of these advertisements is also a test of the bottom line and the responses of the government, however, if the government point out those problems, the media will be discontented. This is a social phenomenon. After the enforcement in these few years, some rampant pornography is under controlled now. E.g. the horseracing page can be separated and taken away by adults. If the government is to ban porn advertisement, it would be hard to list out explicitly what shouldn't be included. Should the photos, names and telephone number of female be banned? It poses certain difficulties to enforcement;
- 5.3 The existing problems can be resolved by amending the enforcement standards of OAT and requesting the police to pay more attention in enforcement process and making public statement;

6 Penalty

- 6.1 During adjudication, the court should also consider the possible profits of the institution, if the institution receives profits by violating the ordinance, all profits should be confiscated;
- 6.2 The existing penalty should be increased;
- 6.3 The government should consider increasing the penalty of repeated offenders.

7 Publicity and Public Education

- 7.1 Publicity and public education should be strengthened;
- 7.2 Children and teenagers are more familiar with computers and the internet than the parents, assistance should be provided to parents in terms of the usage of computer and internet.