

Review of the Control of Obscene and Indecent Articles Ordinance

Focus Group Summary Report – District Council, Kowloon

Date: 14 Nov, 2008
Time: 1930-2130
Location: Meeting Room, 4/F, Administration Building, Cultural Centre

Attendants:

Kwun Tong Council	Councilor Lam Fung
Kwun Tong Council	Councilor Ip Kwok-hing
Sham Shui Po Council	Councilor Chan Tung
Sham Shui Po Council	Councilor Shum Siu-hung
Sham Shui Po Council	Councilor Yan Kai-wing
Wong Tai Sin Council	Councilor Wong Kam-chiu
Yau Tsim Mong Council	Councilor Hung Siu-wah
Yau Tsim Mong Council	Councilor Ko Po-ling
Yau Tsim Mong Council	Councilor Wong Man-shing
Outlying Islands council	Councilor Leung Siu-tong
Eastern District Council	Councilor Leung Siu-sun

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:

- Parents welcome the review of COIAO as it is timely and necessary; women groups think that the existing COIAO is not clear enough and the enforcement fails to deter offenders. Freedom is necessary but too much freedom would influence the atmosphere of the society;
- Teenagers would receive more information than they should because of the overwhelming of obscene and indecent articles;
- Parents said that they have increasing difficulties in educating children;
- The COIAO has been established for 21 years, the society has changed a lot throughout the course, from the point of view of teenagers, it is necessary to review the ordinance;
- Although it is agreed that the government should strengthen the control of obscene and indecent information distributed by the internet and new forms of media, the authority should first fully consult the citizens, including internet users of different levels and the ISP. The government should protect the citizens, especially the teenagers, from being harmed by the obscene and indecent information without hampering the freedom of information circulation in Hong Kong;
- The adjudication system should first be reviewed, then the classification. If the old adjudication system and categorization is not improved, it would be difficult to clarify the standards of classification;
- In face of the current media environment, the government should implement some policies; the ordinance should not aim at controlling, but providing standards and laws for people to follow. If everybody can control themselves, the COIAO shall not be threatening to anyone, meanwhile, it makes those who cannot exercise self-control follow the rule;
- 98% of Hong Kong population are Chinese, the government cannot handle an issue of Hong Kong according to the standards of freedom overseas;
- On many occasions, systems are required to regulate our work, otherwise, it would be difficult to come up with a standard;

- As a responsible government the COIAO should be persistently updated and reviewed, after the consultation next year, amendments might be made, however, as the society changes, it might need to be amended again after 3-4 years;
- Since quite a lot of people object control, shall the government consider changing the policy from control to regulate?
- The definition of obscene and indecent articles is established 21 years ago, however, a lot of current information are intangible and can be understood with some invisible modes, the term ‘articles’ in COIAO misleads people to think that it must be something real, it is also ambiguous that whether the ordinance include virtual media like the internet, hence the wordings like ‘articles’ should be changed;
- Agree that the COIAO should be reviewed, and the government should strike a balance between control and the freedom of speech and information circulation;

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

Opinions raised and areas of concern:

1 Definition

- 1.1 The existing definition of ‘obscene’ and ‘indecent’ in COIAO includes only violence, depravity and repulsiveness, attendants agreed that it should be supplemented, i.e. the major features of the obscene and indecent articles should involve ‘inappropriate use of sex, terror, cruelty and violence’, definition should be clarified so that the ordinance can be enforced at great ease;
- 1.2 As the society change, the definition of obscene and indecent should update from time to time;
- 1.3 The definition of obscene and indecent should be listed out in details, but there were also concerns about the lack of flexibility and the increase of grey areas if more details are given in the ordinance;

2 Adjudication System

- 2.1 OAT can be kept but the number of adjudicators can be increased, e.g. the adjudication is carried out by 1 magistrate and 2 adjudicators; it can be

- replaced by a combination of 1 magistrate and 4 adjudicators; sections like education, cultural, social welfare, women and media can also be added, number of adjudicators shall be distributed according to sexes, i.e. at least 1 woman should be included in every 3 adjudicators, 1 representative from the media should be included in every 4 adjudicators etc, so that voices from different walks of life can be included and balanced in the discussion;
- 2.2 Some ex-adjudicators pointed out that the OAT didn't provide any guidance for them, they are only judging with their own perspective during adjudication; suggested to provide more support for the adjudicators so that they will be more knowledgeable about the adjudication;
 - 2.3 The existing OAT can be retained, but the function of administration and judicial should be separated;
 - 2.4 Support should be provided for the adjudicators so that they will be able to handle the adjudication process, understand the boundaries between arts and pornography, e.g. provision of overseas and local example, arrange for exchange opportunities, so that the adjudicators can master the ways of adjudication;
 - 2.5 The OAT should conduct adjudication with 1 magistrate and 4 adjudicators, among the 4 adjudicators, there should be 1 representative from cultural and arts or social workers;
 - 2.6 Agree to have adjudication with 1 magistrate and 4 adjudicators, while the 4 adjudicators should consist of representatives of different sectors;
 - 2.7 The existing adjudicators volunteered to join the OAT, attendants worried that if people work in particular industry or institution apply for the adjudicators, the results will be affected, it can be avoided if the random selection of the jury system is adopted;
 - 2.8 As an adjudicator, the attendant believed that the definition of obscene and indecent in the existing ordinance matches with the moral standards in the society in general, but he/she failed to fully master the standards of adjudication and they mainly referred to experience of their predecessors, not briefing or guidance were provided to them by the government; some new adjudicators had no idea about obscene and indecent at all. The greatest problem now is the standards of adjudication, the newspaper always criticized the OAT of inconsistent standards. Some suggested to introduce the jury system but the attendant thought that it would only widen the gap of differences in adjudication;
 - 2.9 OAT is the moral court and it should change as time changes, the society is

more open now and guidance is required to support the system, yet too much guidance would make it rigid;

- 2.10 Object to handover the preliminary adjudication to an administrative organ as it will result in even greater deviation in adjudication; attendants agreed to increase the number in preliminary adjudication, i.e. 1 magistrate and 4 adjudicators selected by slot, it is believed that by doing so the classification would be more representative of the society, the second adjudication should be handed to the government, then the general public or the press would think that it is fairer;
- 2.11 The existing OAT should be retained but the number of adjudicators should be increased and its representation should be balanced;
- 2.12 The existing of system of publishers' voluntary submission to the OAT for classification is fine and can be kept;
- 2.13 Number of adjudicator in each case can be increased, e.g. 1 magistrate with 10 or 20 adjudicators, so that the representation of OAT can be enhanced;
- 2.14 OAT has handled 70,000 cases among which only a few have aroused controversies, hence the existing mechanism is still feasible and no fundamental change is needed;
- 2.15 Although the magistrate may not follow the penalty guide, the inclusion of such can provide more indicators for adjudication.

3 Classification System

- 3.1 Lots of opinions, included that of the parents, believed that adults have their own moral standards and are able to judge and make their own choices, thus not much control is needed, however, the concern now are the teenagers who are immature, the classification of the existing Film Censorship Ordinance is worth referring, Class II films are further divided into IIA and IIB, i.e. to add a category which are allowed only to people above 15;
- 3.2 Not many ordinance protect both the adults and the youth simultaneously, Class II of the articles are established especially for people below 18, ordinance targeting at them will usually be handled independently, it will be clearer to further divide it into IIA and IIB;
- 3.3 The existing Film Censorship Ordinance is commonly known by the general public, while the classification is often confused by people, it is suggested that the classification should be changed into 4 classes, Class I being 'not indecent', Class II 'unsuitable for teenagers and children', Class III

‘indecent’, i.e. allowed only for 18 or above, Class IV is prohibited to distribute and view by anybody;

- 3.4 With the Film Censorship Ordinance, films will be shown after censorship yet it might be uploaded or transmitted by people on the internet at a later stage, hence the standards should be the same for all media, regardless the number of classes;

4 New Forms of Media

- 4.1 Citizens are able to get hold of a lot more new information on the internet, the old regulation is now insufficient and failed to satisfied the need of controlling obscene and indecent articles. The existing mechanism of COIAO does not match with the needs of the society, a comprehensive review is required;
- 4.2 It is unnecessary to require mandatory filtering from each ISP, but the government might request them to provide free filtering software to parents so that the parents can choose and control at will;
- 4.3 More freedom is allowed by the new forms of media and the internet, everybody can distribute and collect information, for the industry that develop on this new platform, those are some important resources, it is inappropriate to apply control on this platform, oppose to regulate the internet or to enhance information filtering on the internet, but warnings can be strengthened on websites that are categorized as ‘only allow for people 18 or above’, so that flexibility can be maintained on this platform;
- 4.4 The ordinance should be review with the internet as a major target, the distribution of other media like magazines, books and films requires costs, but people can distribute information on the internet without any costs, international collaboration is a possibility that worth investigating;
- 4.5 The government could research on the possibility of strengthening the liability of internet discussion group or forum, if they can provide more information for investigation, it will help them know better about their own rights and responsibility, e.g. although there are some small words indicating that participants should be responsible for the information they distribute on the adults page of forum, the forum owner and the web owner are also responsible;
- 4.6 Agreed to provide guidance about the internet for people below 18 instead of regulation;

- 4.7 Mandatory provision of filtering software should be required of the ISP so that parents can choose what they need;

5 Enforcement

- 5.1 Limited manpower could be the reason of the poor performance of TELA in law enforcement; people frequently complain about seeing unlawful articles yet the TELA fails to enforce the law, they cannot find the unlawful articles despite the complaints.

6 Penalty

- 6.1 The existing penalty does not carry sufficient deterring effects, penalty should be increased and the authority should consider taking away articles published by repeated offenders, so that they would not ignore the classification control by including the penalty into their budget;
- 6.2 The existing maximum penalty is enough but it lacks factors for progressive calculations; the magistrate would consider about social culture, statements and reasoning of the defendant etc, if the ordinance includes a progressive calculation system, the magistrate can judge directly without considering the numerous factors, e.g. \$5,000 for first offense, \$10,000 for second offense and so on;
- 6.3 It's common for companies to distribute the articles before adjudication, therefore the person in charge might be unaware of the violations, hence the penalty of first-time offender should be lowered, yet it is impossible for the same person to remain unaware of this in the second offense, thus the penalty should be raised.

7 Publicity and Public Education

- 7.1 Education and publicity should be strengthened; the government should establish a systematic plan for promotion and public education, so that cooperation among different sectors can make possible, e.g. information media, IT, parents and youth social workers;
- 7.2 The government can establish a council to follow up and organize the efforts of publicity and public education, so that resources can be focused on regulating the ever-worsening distribution of indecent information;

- 7.3 Public education should begin in families, the educators know clearly that the existence of current problems rooted in problematic families, children are problematic because their families are problematic; parents have the freedom to enjoy pornography in the newspapers, but then children will be exposed to those materials at home easily as well, parents should be educated about the impact of these articles on children and teenagers, the role model of parents are crucial to the growth and education of children;
- 7.4 Publicity should be enhanced and a complaint hotline should be established;
- 7.5 More promotional clips can be broadcasted on TV;
- 7.6 Many people don't know much about COIAO because of the insufficient publicity and education;
- 7.7 Parents education should be strengthened, sex education for children and teenagers should be conducted at an earlier stage so that they will be able to distinguish between right and wrong throughout their development;
- 7.8 The existing control is not a control on the circulation of information, as parents, we support the government to control obscene and indecent articles and provide support to parents, parent-children relationship is often worsened when the parents are trying to prevent children from contacting unhealthy information;
- 7.9 Agree with the consultation papers that parents' involvement should be enhanced, however, simultaneous effort is required of parents, government and the society. Simply promoting the filtering software may not support the parents sufficiently, it might turn out to be the cause of numerous family conflicts; it is recommended that promotional and educational campaign shall be launched together with the provision of filtering software so that the parents can learn more about the internet activities and understand what the children are doing with the computers;
- 7.10 Support and assistance like ways of guiding children and categorization should be provided; lots of parents work very hard in order to raise the family and they are rather weak in the basics of computer, they may not be able to make use of the tools even with the provision of software; meanwhile, they should be educated about the great impact of unhealthy information on the children and thus the necessity of parental guidance.