

4. New Forms of Media





4. New Forms of Media

(A) Regulation of Obscene and Indecent Materials

A1. Main Issue

Given the emergence of new forms of media, particularly the growing popularity of the Internet, members of the public consider it important that measures are taken to protect youngsters from the dissemination of obscene and indecent materials on such new media systems.

Focal Questions:

To what extent should new media systems, in particular the Internet, be regulated? Is this practicable? How can this be done?



A2. Detailed Discussion on the Regulation of Obscene and Indecent Materials on the Internet

(1) Existing Arrangement

- 1.1 TELA adopts a complaint-driven approach to deal with obscene or indecent Internet content. TELA works closely with the Hong Kong Internet Service Providers Association (HKISPA) to implement a Code of Practice which was promulgated in 1997 following public and industry consultation. TELA normally does not take prosecution action against publishers of indecent articles on the Internet, but asks the webmaster to add the required statutory warning, or to remove or block access to the indecent articles. If the content under complaint is likely to be obscene, TELA will refer the case to the Police for follow-up enforcement action, including prosecution.
- 1.2 The large volume of transient information transmitted on the Internet poses more challenges than ordinary printed materials in terms of investigation and law enforcement. In addition users can disguise their identities when distributing information on the Internet, leading to practical difficulties in uncovering their true identities. More importantly, as materials transmitted on the Internet are often extraterritorial in nature, regulating local websites would not serve any useful purpose since youngsters can continue to access obscene or indecent materials through overseas websites, which are not subject to the laws of Hong Kong.
- 1.3 Other developed economies also tend to rely on the self-regulatory approach by the industry to deal with the problem.

(2) Areas for Improvement

Retaining the existing co-regulatory regime with the introduction of additional administrative measures

2.1 One possible option is to retain the existing co-regulatory regime with the industry while strengthening public education and putting in place additional measures to improve the regime, for example, by encouraging Internet service providers (ISPs) to:

- (a) develop good industry practice for protection of youngsters and children;
- (b) tighten up their service contracts with subscribers by incorporating specific clauses which prohibit subscribers from publishing obscene or indecent articles, and seeking subscribers' prior agreement to the course of action that ISPs may take in response to notices of contravention of the COIAO;
- (c) formulate measures against repeated offenders, which may involve limiting the bandwidth made available to such offenders or imposing temporary suspension or termination of service in case of contravention of contractual terms;
- (d) implement a voluntary labelling system and encourage webmasters to label their websites to indicate whether they are suitable for children and youngsters; and

(e) provide filtering services to subscribers for the purpose of filtering out web content which is not suitable for children and youngsters.

2.2 This approach of co-regulation is largely in line with overseas practices. In support of this approach, the Government needs to step up public education in order to enhance the capability of the public to deal with obscene and indecent material on the Internet.

2.3 *As co-regulation relies heavily on the self-discipline and voluntary support of the ISPs, webmasters and web users, the challenge is how to ensure their co-operation.*

Reference Questions:

Should we continue with the co-regulatory approach in regulating the Internet? What are the advantages and disadvantages of this approach?

Making it a legislative requirement for ISPs to provide filtering software

2.4 In addition to the administrative measures set out in paragraph 2.1 above, another alternative is to make it mandatory for ISPs to provide filtering service to their subscribers so that children and youngsters will be protected from web content not suitable to them. This would enable filtering of content from both local and overseas websites. Upstream control carried out by the operators would be more

effective than the use of domestic filtering software. Since the filtering software is installed in the server-end rather than in the computer on the client side, it is less likely to be circumvented by children and youngsters. Updates to blocking database can be carried out automatically for the convenience and at the option of the users. Under this approach, it would be the parents' responsibility to decide whether to accept the protection provided by ISPs or to set up other measures to safeguard their children against harmful online materials.

2.5 The challenge is that some small-sized ISPs may face business difficulties to give effect to this requirement. It is also necessary to address a number of technical issues in relation to the use of filtering service or software, including, for example, how to avoid blocking of websites that are neither obscene nor indecent, how to avoid circumvention and how to prevent the software used from interfering with the operation of other computer programmes.

Reference Questions:

Should ISPs be required to provide filtering software?
What are the advantages and disadvantages?

Tightening statutory controls

2.6 Another possible option is to introduce more statutory requirements to regulate the publication of obscene and indecent materials on the Internet, including, for example:

- (a) websites are required to provide warnings if they display indecent materials;
- (b) an access control system is to be established to authenticate the age of the web users. For example, web users are required to input their credit card data before getting access to webpage containing indecent materials to ensure that they have attained the age of 18;
- (c) empower enforcement agencies, upon receipt of a judicial warrant, to issue a “take-down notice” to the indecent websites or the ISPs concerned; and
- (d) prosecute content providers who fail to comply with the statutory requirements.

2.7 *The major challenge is that obscene or indecent materials can continue to be accessed through overseas websites, which are not subject to the laws of Hong Kong. Considerable manpower and financial resources would be incurred under this approach in view of the large volume of transient information transmitted on the Internet, but this may not serve much useful purpose given the extraterritoriality issue. Another challenge is how to avoid regulation overkill so that the local Internet industry would not lose its competitiveness to other economies.*

Reference Question:

Is it practical to impose additional statutory requirements on local ISPs regarding the dissemination of information on the Internet?

Tightening statutory controls on obscene articles on the Internet only

2.8 To reduce the manpower and financial resources required under the approach described in paragraphs 2.6 and 2.7 above, an alternative is to focus the statutory regulation on obscene materials on the Internet only while leaving online indecent material to be dealt with under the existing co-regulatory approach. Resources can be utilised in a more cost-effective manner if regulation focuses on online obscene materials only. This would also partially address the concern of stifling the development of the Internet industry as raised in paragraphs 2.6 and 2.7 above.

2.9 *The major challenge is that obscene materials can still be accessed through overseas websites. We would also need to address whether it would be fair to exempt online indecent materials from statutory controls while materials of the same nature found in other articles in the market are under regulation.*

Reference Questions:

Should we focus on regulating obscene materials on the Internet only? What are the advantages and disadvantages?



(B) Definition of “public”

B1. Main Issue

The public wish to know if the COIAO is sufficiently all encompassing and is able to respond to new developments in public communication (be it on the Internet or in other forms of media) without compromising the free flow of information.

Focal Questions:

How can new forms of public communication, particularly those on the Internet, be regulated? How would you do it in a practical way?

B2. Detailed Discussion on the Definition of “Public”

(1) Existing Arrangement

1.1 Communication on the Internet can be classified into public communication and individual-to-individual communication. Public communication is that through which members of the public can have access to without obtaining prior permission. Under the COIAO, the definition of “publication” includes transmitting articles to the public or a section of the public or among individual users. While the term “public” is not defined in the COIAO, it stipulates that “public” include the members of a club. For example, it would be an offence to publish obscene or indecent materials through online discussion forums. There is also growing public concern on how to deal with cases of publication of obscene or indecent materials through the peer-to-peer (P2P) software on the Internet.

(2) Areas for Improvement

Regulating public communication but leaving communication among individual Internet users unregulated

2.1 One possible option is to regulate public communication but leave communication among individual users unregulated. This would address

the concern about proliferation of obscene and indecent material published or posted on popular Internet platforms, and will not hinder the free flow of information among individuals on the Internet. *The major point for consideration is that leaving the transmission of information among individual Internet users unregulated may create a loophole, where obscene and indecent material could be distributed very quickly under the auspices of communication among individual Internet users.*

Reference Question:

Do you agree that only public communication should be regulated under the COIAO?

Regulating both public communication and communication among Internet users

2.2 Another alternative is to regulate both public communication and communication among individual Internet users. This would generate deterrent effect and discourage distribution of obscene and indecent articles through any form of communication on the Internet. Inadvertent violation of the law can be avoided through a clearer definition, for example, on “public” or

“individual users”. The major challenge is how wide we should cast the net of control on communication among Internet users, how this could be done without being too intrusive into private communication among individual Internet users.

Reference Questions:

How wide should we cast the net to subject the communication of Internet users under the COIAO? Should the P2P network be considered as public? Should the initiator only or all the participants be held responsible?

