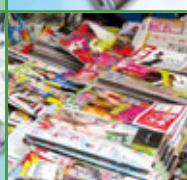
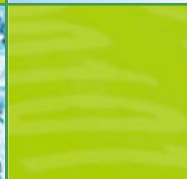
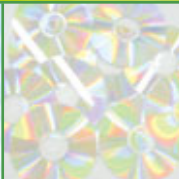


5. Enforcement



5. Enforcement



(A) Division of Labour among the Enforcement Departments

A1. Main Issue

Some members of the public wish to have a clear understanding of the division of labour among the enforcement departments.

Focal Questions:

What roles should the three enforcement departments (i.e. TELA/Police/C&ED) play in the enforcement of the COIAO? How could their roles be identified by the public more easily?

A2. Detailed Discussion on the Division of Labour among TELA/Police/C&ED

(1) Existing Arrangement

1.1 At present, three Government departments, TELA, Police and C&ED are responsible for the enforcement of the provisions under the COIAO. The division of labour is as follows -

TELA Focuses on the sale of **indecent** articles in the market by conducting inspections in sales outlets and monitoring publications on sale in the market; and also deal with **indecent** articles transmitted on the Internet through monitoring of sites and following up on complaints.

Police Focuses on the sale of **obscene** articles in the market and conducts joint operations with TELA from time to time; and also deals with **obscene** articles transmitted on the Internet.

C&ED Tackles **obscene** and **indecent** articles at entry points.

(2) Areas for Improvement

Retaining the existing division of labour with improvements

2.1 The existing division of labour is cost-effective and generally in line with international practice, where the Police are responsible for handling more serious crimes including publication of obscene articles. TELA, Police and C&ED have been co-operating effectively in dealing with suspected breaches of the COIAO.

2.2 One possible option is simply to allow TELA/Police/C&ED to continue with their respective enforcement work but introduce improvement measures. Of the three enforcement departments, only TELA is not a disciplined force. To strengthen this arm, we may enhance training for TELA's enforcement staff, for example, by organising refresher courses to enrich their understanding of prosecution procedures and to strengthen their investigation skills. We may also consider empowering TELA staff to seize obscene articles so that TELA may conduct its own enforcement operations where appropriate. *The challenge is how to step up public education to let members of the public have a clearer picture of the division of labour.*

TELA to set up a special team to deal with all Internet cases

2.3 Some members of the public are particularly concerned about the division of labour between TELA and the Police on the handling of Internet cases. One option is to set up a special team in TELA to deal with all Internet cases. Efficiency would be enhanced and public misunderstanding minimised if all cases, whether obscene or indecent, are to be dealt with by the same enforcement agency. Consistency in taking enforcement action would also be enhanced if all cases are dealt with by TELA.

2.4 However, given the lack of expertise and resources in conducting investigations and taking enforcement action, TELA would have to allocate significant additional resources in staff recruitment/training and in the procurement of the required equipment if this approach is adopted. *A major consideration is how to address the duplication of resources between TELA and the Police as there is a need for the Police to retain its existing team to deal with other computer related crimes. This*

also raises the question as to whether it is appropriate to give various investigative powers to TELA inspectors, who are not disciplined staff. We should bear in mind that TELA staff may not be able to uncover associated crimes such as theft and making forged document.

Reference Question:

What roles should the Police and TELA play in regulating the Internet?

Enforcement by the Police

2.5 Another possible approach is for the Police to be responsible for enforcement against both obscene and indecent articles at wholesale and retail outlets and on the Internet, and TELA to focus on monitoring publications.

2.6 The Police are well trained and equipped to carry out enforcement operations. This approach would be easier for the public to understand. *The major point for consideration is whether the Police should focus on dealing with more serious crimes, and the need for additional resources for the Police to take on this expanded role.*

Reference Questions:

What are the advantages and disadvantages of having one single enforcement agency to be responsible for enforcement against both obscene and indecent articles? If so, which department would be more suitable for this role?



(B) Enforcement Approach

B1. Main Issue

Some members of the public would like to see all offending articles in the market be identified and enforcement action be taken by the enforcement departments.

Focal Question:

How can you step up enforcement while not overburdening the enforcement departments?

B2. Detailed Discussion on Enforcement Approach

(1) Existing Arrangement

1.1 Owing to the broad coverage of “articles”¹ under the COIAO and the large number of outlets available, it is impossible to monitor the publication of all articles in the market. Hence, while TELA adopts a proactive approach in monitoring selected priority areas, such as local newspapers and magazines, VCDs/DVDs and comic books, it adopts a complaint-driven approach for articles which are less common to the general public, such as imported newspapers/publications, postcards, bookmarks etc.

(2) Areas for Improvement

Retaining existing approach with improvements

2.1 One option is to maintain the existing approach with TELA stepping up education work to publicize the COIAO so as to enhance public participation through lodging complaints on dubious articles. Proactive monitoring of the articles in the priority

¹ Under the COIAO, an “article” is defined as any article that consists of or contains material to be read or looked at or to be read and looked at. It also means a sound recording or a film, video-tape, disc or other record of a picture or pictures (i.e., including printed materials, recordings, films, video-tapes, record discs and publications distributed by electronic means, etc.)

areas while responding to public complaints about articles in other areas generally meet the community's expectations. It is also imperative to educate retailers about the need to comply with the COIAO.

Reference Question:

What do you think are the advantages and disadvantages to continue the existing approach with improvements?

Proactive monitoring of all articles

2.2 Another option is for TELA to conduct proactive monitoring of all articles, including those which are less accessible to youngsters and the general public. *The major point for consideration is whether it is an appropriate use of public resources given the wide variety of articles under the broad statutory definition and some of which have relatively limited circulation.*

Reference Question:

How would you step up enforcement in a reasonably cost-effective way?

Complaint-driven

2.3 Some members of the public suggest that we should adopt an entirely complaint-driven approach, without proactive monitoring and inspection of retail outlets so as to be in line with the practice in certain open and liberal jurisdictions. Only articles which are the subject of a complaint from members of the public will be sent to the OAT for classification. *The challenge is that the deterrent effect may be weaker and hence it is likely that there may be more obscene or indecent materials available in the market.*

Reference Question:

Do you think there should be greater involvement of the public in the enforcement of the COIAO?



(C) Enforcement Priorities

C1. Main Issues

Some members of the public have expressed the view that greater attention should be placed on new forms of publication which have growing popularity among youngsters, for example, electronic game products, computer games, etc.

Focal Questions:

Should more attention be placed on new forms of publication? If so, what are your major considerations?

C2. Detailed Discussion on Enforcement Priorities

(1) Existing Arrangement

1.1 TELA has a practical need to focus its limited enforcement resources on priority areas. The existing enforcement priorities are on VCDs/DVDs, comic books, local newspapers and entertainment magazines. Electronic game products, computer games, etc. which are considered by some to pose high risks to young people are not on the priority list. As a result of persistent joint operations by TELA and the Police, the number of shops selling obscene VCDs/DVDs in the market has substantially decreased.

(2) Areas for Improvement

2.1 One option is to ask TELA to closely monitor areas of public concern and deploy resources to cover these areas. For example, the resources released from monitoring of VCDs/DVDs can be deployed to monitor electronic game products, computer games etc. We may also ask TELA to closely monitor public views on priority areas so as to redeploy resources to meet changing community concerns.

Reference Questions:

What should be the priority areas to be monitored by TELA? What are your major considerations?