

Comprehensive and All-out Review of Control of Obscene and Indecent Articles Ordinance

Gregory So, Under Secretary for Commerce and Economic Development

(Published by SCMP on 27 October 2008)

We recently launched a consultation exercise on a review of the Control of Obscene and Indecent Articles Ordinance (the Ordinance). Our objective is simple: to engage the community in a debate on the protection of impressionable young people. This exercise has been launched in response to public calls for a review of our existing system. I am pleased to say that there have already been considerable discussions on some of the issues set out in the consultation booklet. One area in particular has sparked an interesting debate, regarding the regulation of obscene and indecent materials over the Internet. The Government welcomes the feedbacks received and is monitoring the debate very closely.

We note that some people have accused the Government of attempting to restrict the freedom of expression on the Internet through this review exercise. Some respondents are particularly concerned that the reference in the consultation booklet to systems that exist elsewhere, which mandate the provision of filtering software is tantamount to allowing the Government or the Internet Service Providers to censor online content available for general Internet users. There are also criticisms of references to systems that require verification of the age of Internet users through for example the use of credit cards. I want to address these two points in particular.

First and foremost, I must state clearly and unequivocally that the Government has absolutely no intention to censor online content. This is a serious misunderstanding of Government's position, one that has been inflated by ill-informed comments. The guiding principle in this consultation exercise is merely to list out issues that have been raised by the community and to draw attention to measures that other communities have taken to tackle some of these issues. The purpose is to engage the public on different aspects of the Ordinance as widely as possible.

The free flow of information and freedom of expression are core values of Hong Kong, which the Government will defend and safeguard robustly. Protection is expressly provided under the current legislation. We do not intend to change these core values in any way as a result of this consultation. Quite the contrary, our aim is to reinforce them. And we will never deviate from our well-established policy of not

mandating prior censorship on distribution of information or published content.

Now let me turn to the key messages that we have received so far. There are calls for Government to take some responsibility for providing appropriate safeguards to protect youngsters in this new cyber world. Currently, the Television and Entertainment Licensing Authority and the Hong Kong Internet Service Providers Association co-operate to implement a co-regulatory framework, where web hosts or concerned persons would be advised to remove materials on their websites that are found to be indecent. This system is working but there are views that it does not provide adequate protection.

Another existing practice involves quite a number of Internet Service Providers, whereby they provide filtering software services to their clientele on their own volition. The database of websites that are filtered by such software is compiled by internationally recognised organisations and the Government has no role to play at all in this arrangement. The key is that the end users always have the final say on whether or not to install and use the filtering software. However, to take this approach further, governments and regulators of some liberal western countries such as Australia and France impose an obligation on Internet Service Providers to provide filtering services, software or relevant information to their users. We have included this model in the consultation document for reference and discussion. In all cases, however, the final choice whether or not to use the software remains with the end user, governments do not interfere with this personal choice.

Verifying the age of users accessing adult-only web pages also poses challenges to many overseas regulators. Some are relying on self-declaration by the Internet users before entering the warning cover-pages, but others such as Australia and Germany require the web hosts to verify their users' age by such documents as credit cards, driving licences or other official identification. Noting the operational concerns and challenges on age verification in Hong Kong, we are keen to seek views from the public and the industry on overseas practices in order to consider whether or not to pursue such an approach in Hong Kong. We are of course very much aware of issues such as data and privacy protection. Any proposals on this type of approach must have regard to the local social and legal situation.

To conclude, our policy objectives are clear: to safeguard the free flow of information and freedom of expression on one hand, and to provide parents and guardians with the means to protect minors from harmful obscene and indecent materials on the other.

We must strike a careful balance as we work to plan the way ahead in consultation with all sectors of the community. The consultation document we have prepared therefore contains a wide array of discussion areas, including statutory definitions, new media and publicity and public education. The measures listed for discussion also range from more liberal to conservative ones. None of these measures are such that the Government has already committed to implement, but rather they are set out in our consultation document so as to provide a starting point for comments and deliberation by the public. We are fully aware of many of the pros and cons behind each measure, and have no preconceived position on any of them.

The consultation will last for four months until 31 January 2009. We will closely follow our policy objectives and actively engage all sectors of the community to listen their views. To this end, we are arranging focus group discussions and townhall meetings, and we have set up an online discussion forum. Taking into account all the feedbacks received, we will map out possible improvement measures for a second round consultation within 2009. I welcome all comments, positive or negative as we work together to improve the control of obscene and indecent articles in our society.
