

WOMEN'S COMMISSION

Review of the Control of Obscene and Indecent Articles Ordinance

PURPOSE

This paper informs the Women's Commission of the progress of the review of the Control of Obscene and Indecent Articles Ordinance (the Ordinance) (Cap. 390) and seeks views on how to improve the operation of the Ordinance.

BACKGROUND

2. Government's long-standing policy in respect of published articles is to reflect standards of public decency, as they should apply particularly to articles intended for young and impressionable people. Central to this policy is the preservation of the free flow of information and protection of the freedom of expression. There is no compulsory pre-censorship before the publication of an article, but the publisher has the responsibility to ensure that the publication is in compliance with the law. The Ordinance reflects this policy.

3. We conduct review of the operation of the Ordinance from time to time in order to ensure that the changing needs and expectations of the community are properly taken into account. The last review was conducted in 2000 when an extensive public consultation exercise was carried out. As diverse public views were received, the Administration decided not to pursue the proposals set out in the review.

4. In the last few years, newspapers and entertainment magazines have time and again published articles and photos that have subsequently been ruled to be indecent or worse. Members of the public have also expressed concern about the dissemination of obscene and indecent materials over the Internet. The Secretary for Commerce and Economic Development undertook

to conduct a comprehensive review of the Ordinance.

REVIEW OF THE ORDINANCE

Public Consultation

5. We have embarked on a comprehensive review of the Ordinance and will conduct two rounds of public consultation. In the first round, we aim to engage members of the public extensively to discuss the main issues relating to the operation of the Ordinance and possible improvement measures. At this stage the Government does not have any pre-conceived views about the direction of the review. The Government wishes to hear from the community on measures to improve the existing regime. We aim to draw together the public views and, as far as possible, come up with more concrete proposals for a second round of public consultation.

6. We launched the first round of consultation on 3 October 2008, which will last for four months until 31 January 2009. We have published a user-friendly and easy to digest booklet, covering various aspects of the Ordinance. The booklet offers a wide range of possible improvement measures for public consideration and deliberation. Most improvement measures are modeled on the practices of developed countries overseas. They are set out in the booklet to provide a starting point for comment and deliberation by the public. Each measure has its own pros and cons, and we have no preconceived position on any of them.

7. In this round of consultation, we will consult extensively in different formats through different media as follows –

- (a) Focus group discussions: These aim to engage representatives from various sectors, including women, youth, information technology, education, press and publication, culture and arts, legal, civic rights, social morals, etc in the discussion. To strengthen the representativeness of the focus groups, we have invited about 200 representatives of different groups and organisations and academics of different backgrounds to join the focus group meetings. ;

- (b) Town hall discussions: We are organising six discussion forums at town halls, inviting District Council members and the public to attend. To encourage greater public participation, we have publicized the holding of the forums widely;
- (c) Internet: We have set up a thematic website to provide the public with relevant consultation materials and an online discussion forum as a platform for exchange of views. We also keep track of public views expressed in major discussion forums on the Internet;
- (d) Engagement of youngsters: With the support of youth organisations, a series of activities will be organised to seek the views of youngsters regarding the review of the Ordinance; and
- (e) Public opinion survey: At a later stage of the consultation exercise, we will conduct a public opinion survey.

8. Many associations and organisations in different sectors are arranging meetings and seminars to discuss the review of the Ordinance. We welcome such initiatives and have been attending such meetings upon request. Members of the public are also encouraged to send us their written comments.

Major areas of discussion

9. The review covers various aspects of the Ordinance which are grouped into seven sections in the consultation booklet:

- (a) Definitions;
- (b) Adjudication System;
- (c) Classification System;
- (d) New Forms of Media;
- (e) Enforcement;
- (f) Penalty; and
- (g) Publicity and Public Education.

(a) Definitions

10. Currently, the Ordinance provides that “obscenity” and “indecent” include “violence, depravity and repulsiveness”. Section 10 of the Ordinance provides a list of factors for determining whether an article is

obscene or indecent. In this regard, we wish to seek views on whether there is a need for expanding these definitions, taking into account the challenge of striking a fine balance between flexibility to keep pace with changing social needs and clarity to provide the necessary regulatory certainty. We also need to consider if guidelines, statutory or administrative, are necessary to supplement the definitions in the legislation.

(b) Adjudication System

11. Currently, the Obscene Articles Tribunal (OAT), a judicial body presided by a magistrate and comprising adjudicators appointed by the Chief Justice, carry out dual administrative and judicial functions when classifying articles. Those who are ordinarily resident in Hong Kong and have so resided for seven years and proficient in written English or Chinese are eligible for appointment as adjudicators. There are now around 300 adjudicators. We wish to seek public views on how to increase the representativeness of the OAT, and whether we should consider introducing an independent classification board or abolishing the OAT and replacing it by the ordinary court in view of the current dual role of the OAT, and how consistency in classification decisions could be enhanced.

12. Under the current system, only enforcement departments (Television and Entertainment Licensing Authority (TELA), the Police Force and Customs and Excise Department) as well as persons who intend to publish an article may submit an article to the OAT for classification. We wish to seek public views on whether we should open up the arrangement to seek OAT classification, taking into account the possible increase in caseload. We also wish to seek public views on whether enforcement departments should be required to seek OAT classification ruling before laying charges for prosecution, taking into account the need to maintain enforcement efficiency and to avoid overburdening the OAT.

(c) Classification System

13. Currently, articles can be classified as Class I (neither obscene nor indecent), Class II (Indecent) and Class III (Obscene). Class I articles may be published without restriction. Class II articles must not be published or sold to persons under the age of 18 and publication of such must comply with statutory requirements including sealing in wrappers and displaying a warning notice. Class III articles are prohibited from publication at all. We wish to seek community views on how to improve the classification system to

ensure that it would not unduly restrict what adults are allowed to receive while affording appropriate protection to children and young people, e.g., whether there is a need to sub-divide Class II, and whether we should abolish the classification system altogether and replace it by the ordinary court.

(d) New Forms of Media

14. We also wish to seek public views on the regulation of obscene and indecent materials transmitted on the new media, including the Internet. Currently, TELA adopts a complaint-driven approach to deal with indecent content online and works closely with the Hong Kong Internet Service Providers Association (HKISPA) to implement a self-regulatory code of practice. The code was promulgated in 1997 following industry and public consultation. There have been calls for reviewing this arrangement.

15. This area of discussion has attracted much public attention. Some people have alleged that the Government has intended 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 to general Internet users.

16. The guiding principle in this consultation exercise is to list out issues that have been raised by the community and to draw public attention to measures that other jurisdictions have taken to tackle some of these issues. The free flow of information and freedom of expression are core values in Hong Kong. We do not intend to change these core values in any way as a result of this consultation. We will not deviate from our well-established policy of not mandating prior censorship on the dissemination of information or published content.

(e) Enforcement

17. We seek to seek public views on whether we need to step up and reprioritize enforcement activities taking into account the latest trend of publication (e.g., new forms of publications such as electronic game products and computer games which have growing popularity among youngsters). At the same time, comments are sought on the current division of labour among TELA (which focuses more on indecent articles), the Police (which focuses

more on obscene articles) and Customs and Excise Department (which focuses more on articles found at entry points).

(f) Penalty

18. There have been criticisms from the public that the Ordinance does not provide adequate deterrent effect, especially against repeat offenders. We wish to seek public views on whether there is a need to raise the maximum penalty under the Ordinance and to set out a list of factors which the court should consider for determining the appropriate penalty.

(g) Publicity and public education

19. Publicity and public education are of utmost importance. We consider that the Government should co-ordinate the efforts of various sectors of the community, including the IT sector, the education sector, parents and social workers targeting at youth-related matters, etc. to work on publicity and public education in the long run, especially in promoting the healthy use of new forms of media as well as stepping up sex and media education among young people. Public education should also cover parents in order to enhance their knowledge so that they could educate their children on the healthy use of the new media.

WAY FORWARD

20. 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. We note that the public is participating actively in the public consultation exercise, and we welcome the feedback received so far. During the rest of the consultation period, the Government will continue to use different means and channels to consult the public extensively and monitor the discussions closely. The views received by the Government will be documented in a report on this consultation exercise for public information. Taking into account all the views received, we will map out possible improvement measures for a second round consultation within 2009.

21. You are invited to comment on the review of the Ordinance as well as the various possible improvement measures outlined in the consultation booklet.

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