

Bills Committee on the Prevention of Child Pornography Bill

Penalty levels

Purpose

In response to queries raised by Members at the first meeting of Bills Committee, this paper seeks to explain the Administration's rationale for proposing the penalty levels for the major offences in the Prevention of Child Pornography Bill (the Bill), and provide Members with a comparison of the penalty levels proposed in the Bill with those in similar legislation of other jurisdictions.

2. The proposed penalty levels of offences in relation to child pornography under the Bill (summarized at **Annex A**) are set with reference to similar offences under Hong Kong laws and relevant legislation in overseas countries.

Local legislation

3. For example, under section 21(1) of the Control of Obscene and Indecent Articles Ordinance (Cap. 390), any person who publishes or possesses for the purpose of publication or imports for the purpose of publication any obscene article is liable to a fine of \$1,000,000 and imprisonment for 3 years.

4. In addition, reference was made to related sexual offences under the Crimes Ordinance (Cap. 200). For example, under section 119, if a person procures another person by threats or intimidation to do an unlawful sexual act in Hong Kong or elsewhere, the imprisonment term on conviction on indictment is 14 years. Under section 120, the maximum penalty for a person who procures another person by false pretences or false representations, to do an unlawful sexual act on conviction on indictment is imprisonment for 5 years. Under section 122, a person who indecently assaults another person shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years. Under section 132, a person who procures a girl under the age of 21 to have unlawful sexual intercourse in Hong Kong or elsewhere, with a third person, shall be guilty of an offence and liable on conviction on indictment to imprisonment for 5 years. Under section 135, a person who causes or encourages prostitution of, intercourse with, or indecent assault on, a girl or boy under 16 for whom that person is responsible shall be guilty of an offence and liable on conviction on indictment to imprisonment for

10 years. Under section 146, a person who commits an act of gross indecency with or towards a child under the age of 16, or who incites a child under the age of 16 to commit such an act with or towards him or her or another, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years.

5. It is also noted that child pornography often involves business transactions and even huge profits in some cases. Therefore, penalties in terms of heavy fines are also necessary to deal with corporate offenders.

6. However, the proposed penalties are only ceilings. The court will decide on the appropriate sentence based on full consideration of the circumstances in each individual case. There is also the usual judicial appeal mechanism available for sentences that may be imposed by the court.

Overseas legislation

7. Heavy penalty levels are imposed on offences relating to child pornography in other jurisdictions. For instance, the Canadian Criminal Code stipulates that any person who possess any child pornography is guilty of an indictable offence and liable to imprisonment for not more than 5 years. The maximum penalty level is also 5 years for possession offences under the Child Pornography Prevention Act 1996 of US. A table comparing the penalty levels among Hong Kong, Australia, Canada, UK and US is at **Annex B**.

8. The production, distribution, possession, and procurement of children for making child pornography are heinous acts which put vulnerable children at tremendous risks. Heavy penalties must be imposed on the offenders to provide sufficient deterrent effect. Having regard to the gravity of the offences and other domestic and overseas relevant legislation, we consider that our proposed penalty levels are appropriate and proportionate.

Security Bureau
May 2002

Prevention of Child Pornography Bill***Section 3 : Offences relating to Child Pornography***

	<u>Proposed Offence</u>	Maximum Penalty	
		<i>Conviction Upon Indictment</i>	<i>Summary Conviction</i>
1.	Printing, making, producing, reproducing, copying, importing or exporting child pornography	8 years and \$ 2,000,000	3 years and \$1,000,000
2.	Publishing child pornography	8 years and \$2,000,000	3 years and \$1,000,000
3.	Possessing child pornography	5 years and \$1,000,000	2 years and \$500,000
4.	Advertising child pornography	8 years and \$2,000,000	3 years and \$1,000,000

Section 138A in Part XII of the Crimes Ordinance : procurement offences relating to pornography and pornographic performances

	Proposed Offence	Maximum Penalty
		(conviction upon indictment)
1.	Using, procuring or offering a person under 16 to be pornographically depicted for making pornography or pornographic performances	10 years and \$3,000,000
2.	Using, procuring or offering a person of the age of 16 or above but under 18 to be pornographically depicted in pornography or pornographic performances	5 years and \$1,000,000

Annex B

**Comparison of Penalty Level
in the Proposed Prevention of Child Pornography Bill
with Overseas Legislation**

<u>Offence</u>	<u>Hong Kong (proposed)</u>		<u>Australia</u> NSW Crimes Act 1900 No.40		<u>Canada</u> Criminal Code		<u>UK</u> Protection of Children Act 1978		<u>US</u> U.S. Code, Title 18, Part 1, Chap. 10, s.2252A,	
	Max. Fine (HK\$)	Max. Imprisonment	Max. Fine	Max. Imprisonment	Max. Fine	Max. Imprisonment	Max. Fine	Max. Imprisonment	Max. Fine	Max. Imprisonment
* Printing, making, producing, or importing	\$2,000,000	8 years (also punishable on summary conviction)	1,000 penalty units for individual and 2,000 penalty units for corporate^	5 years	Fine not specified	10 years (also punishable on summary conviction)	Max. level not specified	3 years (also punishable on summary conviction)	Max. level not specified	15 years (5 to 30 years for 2 nd offence)
Publishing	\$2,000,000	8 years (also punishable on summary conviction)	1,000 penalty units for individual and 2,000 penalty units for corporate^	5 years	Fine not specified	10 years (also punishable on summary conviction)	Max. level not specified	3 years (also punishable on summary conviction)	Max. level not specified	15 years (5 to 30 years for 2 nd offence)

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	Max. Fine (HK\$)	Max. Imprisonment	Max. Fine	Max. Imprisonment	Max. Fine	Max. Imprisonment	Max. Fine	Max. Imprisonment	Max. Fine	Max. Imprisonment
Possession (including possession for publication + mere possession)	\$1,000,000	5 years (also punishable on summary conviction)	<u>Possess for publication</u>		<u>Possess for publication</u>		<u>Possess for publication</u>		<u>Possess for publication</u>	
			1,000 penalty units for individual and 2,000 penalty units for corporate^	5 years	Fine not specified	10 years (also punishable on summary conviction)	Max. level not specified	3 years (also punishable on summary conviction)	Max. level not specified	15 years (5 to 30 years for 2 nd offence)
			<u>Mere possession</u>		<u>Mere possession</u>		<u>Mere possession</u>		<u>Mere possession</u>	
			100 penalty units	2 years	Fine not specified	5 years (also punish- able on summary conviction)	Level 5 fine (£2,000)	6 months	Max. level not specified	5 years (2 to 10 years for 2 nd offence)

Offence	Hong Kong (proposed)		Australia NSW Crimes Act 1900 No.40		Canada Criminal Code		UK Protection of Children Act 1978		US U.S. Code, Title 18, Part 1, Chap. 10, s.2252A,	
	Max. Fine (HK\$)	Max. Imprisonment	Max. Fine	Max. Imprisonment	Max. Fine	Max. Imprisonment	Max. Fine	Max. Imprisonment	Max. Fine	Max. Imprisonment
Advertisement	\$2,000,000	8 years (also punishable on summary conviction)	Offence not provided for		Offence not provided for		Max. level not specified	3 years (also punishable on summary conviction)	Max. level not specified	10 to 20 years (15 to 30 years for 2 nd offence; 30 years to life imprisonment for 3 rd offence)
Use, procurement or offer of children for making child pornography	\$3,000,000	10 years	Fine not specified	7 years (if child under the age of 14); 5 years (if child between the age of 14-18)	Fine not specified	5 years (if child under age of 14) 2 years (if child between the age of 14-18)	No specific offence for this item but covered by sexual offences against children		Max. level not specified	10 to 20 years (15 to 30 years for 2 nd offence; 30 years to life imprisonment for 3 rd offence)

* These offences are provided for in the proposed Prevention of Child Pornography Bill. They, however, may appear in slightly different forms or wording in overseas legislation and comparison is drawn here for broadly similar offences in overseas legislation. Besides, they may not all appear in overseas legislation.

^ 1 penalty unit = A\$110 : See NSW Crimes (Sentencing Procedure) Act 1999, s.17