

May 15, 2002

Hon. Mr. Andrew CHENG Kar-Foo
Chairman of the Bills Committee

Dear Chairman,

The Hong Kong Internet Service Providers Association (HKISPA) supports the initiatives the government is taking to tighten the governance and raise the punishment of the Child Pornography Bill. Pornographic materials are flooding various channels of our communication media, and the abuse of children in such acts has increasingly become our concerns. The success of a new legislature or amendment to an existing one depends more than the tighten of punishable measures. It requires the support of the public and specific industry practitioners. In light of the Child Pornography Bill amendment, the HKISPA has some comments pertain to the execution of the bill.

Section 9 and its defense

Section 9 of the amendment bill suggests to create offences of making, producing, publishing, importing, exporting, distributing, advertising and possessing pornography that depicts children under 16 years of age. Internet Service Providers (ISP), in many cases, are defined as the conveyor of information. Bits and bytes of electronic information pass through the electric wires indiscriminately between ISPs all over the world. The association mentioned in previous consultations regarding the COIAO that a ISPs would not have any knowledge the kind of information passes through its network nor uploaded by its customers. We are happy to see that the amendment took into considerations of the special nature of our members, and give the ISPs the rightful defense: “if the ISP did not know or had any reasonable cause to suspect the relevant material to be child pornography, or he had not asked for any child pornography and after it came into his possession.”

However, much of this materials come from all over the world. Some of the “publishers” of such contents are intentionally hiding their places of origin. It is difficult even for ISPs sometimes to trace where the site is physically located. The

difficult task comes in when the ISP has to take **all reasonable steps to ascertain the person's age and ensure that the person was not depicted as a child**. If the ISP has difficulty in finding out the actual source of the publisher, it would suggest that it is almost impossible for the ISP to find out how old the individual in the content of the offensive materials. We understand that we could pass on the judging process to the Obscene Articles Tribunal (OAT) for classification. But the amount and source of these materials are so large that I would say it is difficult for the tribunal to scrutinize every one of them.

Self-regulatory regime between HKISPA, TELA, and law enforcement bodies

Since 1996, the association has been cooperating with TELA and the HK Police Force on the complaint and enforcement of the COIAO. The association will take up complaints and queries of possible obscene and indecent materials, and pass on the complaint to either TELA or the Police after an initial investigation of the case. It has been effective against the suspects within the Hong Kong SAR. We will suggest to ride upon the experience and success of the pass practice to assist the smooth operation of the Child Pornographic Bill. The HKISPA and its members will help with relevant departments in investigations of the HKSAR Government with its technical expertise to a bearable extend.

Conclusion

The HKISPA is in support to the government's initiatives to strengthen the current legislative measures to protect child abuse in any form and shape. The suggestions made to the Child Pornographic Bill are acceptable in general to the association. The details of the operation of the bill must be carefully worked out to make sure the bill is doable and enforceable.

Prepared by



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