

Code of Practice
Practice Statement on
Regulation of Obscene and Indecent Material

Preamble

1. To protect young people and public morals, this Practice Statement recommends guidelines for Members of the Hong Kong Internet Service Providers Association (“HKISPA”) to follow in their provision of services insofar as the regulation of obscene and indecent material transmitted on the Internet is concerned.
2. For the avoidance of doubt, this Practice Statement does not absolve any Member of the HKISPA from the relevant legislation (including the Control of Obscene and Indecent Articles Ordinance and the Telecommunication Ordinance) currently in force in Hong Kong, and its obligations under the terms of the Public Non-Exclusive Telecommunications Service License granted by the Telecommunications Authority.
3. This Practice Statement shall be reviewed as and when necessary.

Terminology

4. For the purpose of this Policy Statement,
 - “enforcement agencies” means government agencies responsible for the enforcement of the Control of Obscene and Indecent Articles Ordinance, namely the Customs and Excise Department, Hong Kong Police Force (HKPF) and Television and Entertainment Licensing Authority (TELA);
 - “Member” means a Member of the Hong Kong Internet Service Providers Association;
 - “URL” stands for “Uniform Resource Locator” which is the address of a file of content on the Internet;
 - “Web Page” means a file of content accessible on the World Wide Web by a single URL;
 - “World Wide Web” means the network of content accessible on the Internet using the Hypertext Transfer Protocol (“http”).

Conduct

5. Members will take reasonable steps to prevent users of their services from placing on the Internet or transmitting using the Internet, material likely to be classifiable as Class III (obscene) under the Control of Obscene and Indecent Articles Ordinance (“COIAO”) (Chapter 390).
6. Members will advise subscribers that access to the Internet by a person under the age of 18 years needs to be supervised by a person over the age of 18 years.

7. Members will inform their users that material likely to be classifiable as Class II (indecent) under the COIAO should not be published or made available to persons under the age of 18 years.

8. Members will advise local content providers and distributors that all material put up by them which are likely to be classifiable as Class II (indecent) under the COIAO should be accompanied by the following on-screen warning on the Web Page before the content can be viewed:

WARNING : THIS ARTICLE CONTAINS MATERIAL WHICH MAY OFFEND AND MAY NOT BE DISTRIBUTED, CIRCULATED, SOLD, HIRED, GIVEN, LENT, SHOWN, PLAYED OR PROJECTED TO A PERSON UNDER THE AGE OF 18 YEARS.

警告：本物品內容可能令人反感，不可將本物品派發、傳閱、出售、出租、交給或出借予年齡未滿18歲的人士或將本物品向該等人士出示、播放或放映。

9. A Member shall be regarded to have complied with paragraph 5 above if :

(a) the Member has informed its users that they shall not place on the Internet or transmit material likely to be classifiable as Class III (obscene) under the COIAO;

(b) when a Member becomes aware that a user has placed on the Internet or transmitted using the Internet material likely to be classifiable as Class III (obscene) which remains at a Web Site or other content database within its control, the Member :

(i) promptly blocks access to the Web Site or database which contains offending material;

(ii) promptly informs the user that the user's conduct may constitute an offence under the COIAO and if the user is a subscriber, such conduct is a breach of the subscriber's service conditions;

(iii) promptly cancels the account of any subscriber that repeats offending conduct despite being informed that the subscriber's conduct may constitute an offence under the COIAO and is a breach of the subscriber's service conditions;

(iv) reports to the HKISPA on action taken in accordance with paragraph 9b(i) and b(iii) above.

10. When a Member becomes aware that a user has placed on the Internet or transmitted using the Internet material likely to be classifiable as Class II (indecent) without putting up a warning notice in accordance with the requirements stipulated in paragraph 8, the Member shall:

(a) promptly advise the user to place a warning notice in accordance with the requirements stipulated in paragraph 8;

- (b) promptly inform the user that the user's conduct may constitute an offence under the COIAO and if the user is a subscriber, such conduct is a breach of the subscriber's service conditions;
- (c) promptly cancel the account of any subscriber that repeats offending conduct despite being informed that the subscriber's conduct may constitute an offence under the COIAO and is a breach of the subscriber's service conditions;
- (d) report to the HKISPA on action taken in accordance with paragraph 10(a) and (c) above.

11. Members and the HKISPA may seek the assistance of TELA if they have doubt on the classification of material on the Internet.

12. The HKISPA will provide TELA with a monthly report on action taken by Members in accordance with paragraphs 9(b)(i), 9(b)(iii), 10(a) and 10(c) in a format as per Appendix II.

13. Members will encourage Platform for Internet Content Selection (PICS) tagging or tagging using other non-PICS technology having regard to the statutory guidelines on obscenity and indecency as set out in section 10 of the COIAO (at Appendix III).

14. Members will inform parents and other responsible persons of options and precautionary steps they can take to ensure that persons under the age of 18 years are protected from access to Class III (obscene) or Class II (indecent) material on the Internet.

15. Members will make available a URL link to material which is of use in educating Internet users, parents and guardians on the use of filtering software (including a list of such software) to help protect persons under the age of 18 years from accessing Class III (obscene) or Class II (indecent) material on the Internet.

Complaints Handling Procedures

16. Complaints on presence of Class III (obscene) or Class II (indecent) material on the Internet may be lodged with Members and the HKISPA by a member of the public, TELA or HKPF.

17. A Member will notify the HKISPA in writing upon receipt of a complaint by a member of the public, TELA or HKPF. The Member will act promptly and conscientiously on the complaint with a view to resolving the complaint in compliance with the COIAO. The Member will notify the HKISPA in writing as soon as the complaint has been settled (including the means of settlement).

18. Where a complaint is made by a member of the public, TELA or HKPF directly to the HKISPA, the HKISPA will refer the complaint to the Member being complained. The Member will, upon receipt of the complaint, act promptly and conscientiously on the complaint with a view to resolving the complaint in compliance with the COIAO. The Member will notify the HKISPA in writing as soon as the complaint has been settled (including the means of settlement).

19. Where a complaint is made by a member of the public, TELA or HKPF against a Member who has failed to act on a complaint or resolve a complaint in compliance with the COIAO, the HKISPA will take on the complaint and act promptly and conscientiously with a view to resolving the complaint in compliance with the COIAO. The HKISPA will consider the full nature and extent of the complaint and will consult the Member concerned. The Member shall co-operate fully with the HKISPA. The HKISPA shall be entitled to consult relevant parties prior to determining the complaint. The HKISPA shall be responsible for communicating its determination of the complaint to the Member and the complainant.

20. Where despite the conscientious efforts of a Member or the HKISPA a complaint lodged by a member of the public still cannot be resolved, the Member/HKISPA will refer the complaint to TELA who may, in collaboration with the relevant enforcement agencies, consider instituting legal action against the relevant party(ies).

21. Where despite the conscientious efforts of a Member or the HKISPA a complaint lodged by TELA or HKPF still cannot be resolved, the latter may consider instituting legal action against the relevant party(ies).

22. Nothing in paragraphs 16 to 21 above will preclude the enforcement agencies from taking direct enforcement action against a Member if the circumstances so warrant.

23. Members or the HKISPA may refer cases to the Obscene Articles Tribunal established under section 6 of the COIAO for classification advice on whether material transmitted on the Internet is Class III (obscene), Class II (indecent) or neither.

24. The HKISPA will provide TELA with a monthly report on the number of complaints received, number of complaints resolved and the number of outstanding complaints in a format as per Appendix IV.

25. The HKISPA undertakes to provide promptly to the enforcement agencies information on outstanding complaints if so requested.

Sanctions

26. Members must comply with any conclusion reached by the HKISPA, including a decision to promptly block access to a Web Site or database which contains material likely to be classifiable as Class III (obscene), or to impose a sanction on a Member for breach of this Practice Statement.

27. Where a Member is able to act on the advice of the HKISPA but unreasonably refuses to do so, or where a Member is found repeatedly to be in breach of this Practice Statement, the HKISPA will take appropriate disciplinary action against the Member for breach of this Practice Statement.

28. The sanctions to be imposed by the HKISPA shall be regularly reviewed.

Appendices

Appendix I Summary of Main Provisions of the Control of Obscene and Indecent Articles Ordinance

Appendix II Format of Monthly Report on Action Taken by ISP Members in respect of Indecent and Obscene Material on Internet

Appendix III Section 10 of the Control of Obscene and Indecent Articles Ordinance

Appendix IV Format of Monthly Progress Report on Complaints relating to Indecent and Obscene Material on the Internet

**Summary of Main Provisions of the
Control of Obscene and Indecent Articles Ordinance (“COIAO”)
Chapter 390**

1. Articles are classified into three categories : Class I (neither obscene nor indecent); Class II (indecent); and Class III (obscene).
2. Class I articles are for general consumption and may be published without any restriction. Class II (indecent) articles may be published to persons of 18 years old or above with certain restrictions such as a warning notice to the effect that the article must not be made available to persons under the age of 18. Class III (obscene) articles are banned from publication.
3. Publishing or possessing for the purpose of publishing an obscene article is liable to a maximum fine of \$1 million and imprisonment of three years. Publishing or possessing for the purpose of publishing an indecent article without complying with the statutory requirements is liable to a maximum fine of \$400,000 and imprisonment of 12 months; a repeated offender is liable to a maximum fine of \$800,000 and imprisonment of 12 months.
4. “Obscenity” and “indecent” include violence, depravity and repulsiveness.
5. A person publishes an article if he, whether or not for gain, distributes, circulates, sells, hires, gives or lends the article to the public or a section of the public.
6. Articles may be submitted to the Obscene Articles Tribunal (“OAT”), a judicial body, for classification. In making its classification, the OAT follows the statutory guidelines as set out in section 10(1) of the COIAO (at Appendix III).
7. Articles submitted to the OAT for classification are kept in a repository. Members of the public may, upon payment of fees, view articles kept in the OAT repository (Address : 9/F, Eastern Law Courts Building, 29 Tai On Street, Sai Wan Ho, Hong Kong).

Appendix II

Monthly Report on Action Taken by ISPs in respect of Indecent and Obscene materials on Internet

**Month : _____ Year : _____ Name of
ISP : _____**

Summary :	1.	No. of cases handled :	
	2.	No. of cases resolved :	
	3.	No. of cases pending :	

Details of Anomalies & Actions taken :

	Date	Arising from⁽¹⁾	Type of Material transmitted⁽²⁾	Action taken (with dates)⁽³⁾	Case resolved	Other Development (Please specify)
1.					Yes / Pending	
2.					Yes / Pending	
3.					Yes / Pending	

Notes : Please use the following keys for filling in the table.

(1) **S** - Observed by ISP; **T** - Referred by TELA; **A** - Referred by HKISPA; **P** - Referred by the Police; **C** - Complaint from the public.

(2) **N** - Nudity; **S** - Sexual activity; **V** - Violence; **O** - Others (please specify).

(3) **R** - Obscene material blocked; **X** - Subscriber account cancelled by ISP; **W** - Statutory warning added.

(4) Other Developments (e.g. subscriber cancels his account, URL cease to exist etc.)

Responsible Person : _____

**Section 10 of the Control of Obscene and
Indecent Articles Ordinance (Chapter 390)**

10. Guidance to Tribunal

(1) In determining whether an article is obscene or indecent or whether any matter publicly displayed is indecent, or in classifying an article, a Tribunal shall have regard to –

(a) standards of morality, decency and propriety that are generally accepted by reasonable members of the community, and in relation thereto may, in the case of an article, have regard to any decision of a censor under section 10 of the Film Censorship Ordinance (Cap. 392) in respect of a film within the meaning of section 2(1) of that Ordinance;

(b) the dominant effect of an article or of matter as a whole;

(c) in the case of an article, the persons or class of persons, or age groups of persons, to or amongst whom the article is, or is intended or is likely to be, published;

(d) in the case of matter publicly displayed, the location where the matter is or is to be publicly displayed and the persons or class of persons, or age groups of persons likely to view such matter; and

(e) whether the article or matter has an honest purpose or whether its content is merely camouflage designed to render acceptable any part of it.

(2) The opinion of an expert as to any of the matters to which a Tribunal must or may have regard under subsection (1) may be admitted in any proceedings before a Tribunal either to establish or negative that matter.

Appendix IV

Complaints Relating to Indecent & Obscene Materials on the Internet
Monthly Summary of Cases handled by ISPs

Month : _____ Year : _____ From : **HKISPA**

Cases Summary :

	ISP	Action taken by ISP			Action/Recommendation of HKISPA*
	Concerned	Number of Cases reported by the ISP	Number of Cases resolved	Number of Cases pending	
1.					
2.					
3.					
4.					
5.					
6.					

* e.g. Referral of outstanding cases to TELA, other disciplinary action against relevant ISPs such as warning or expulsion from HKISPA.

Responsible Person : _____