

LegCo Secretariat
No 8 Jackson Road
Central
Hong Kong

LC Paper No. CB(2)667/01-02(08)

28 November 2001

Dear Sir / Madam,

I am writing on behalf of the Executive Board and membership of *The Society of Publishers in Asia* (SOPA), which is based in Hong Kong and represents more than 100 local, regional, and international publications.

In November of 1999, during the period of public comment on the *Consultation Papers on Civil Liability for Invasion of Privacy and The Regulation of Media Intrusion*, SOPA submitted a letter of comment stating that our organization “*objects to the creation of a statutory body to regulate the press in Hong Kong.*” We supported the action taken at that time to establish a voluntary Press Council, rather than a statutory one.

It has come to our attention that a private member’s bill has been proposed to the Legislative Council, which would confer statutory status on the Press Council. The draft bill would give the Press Council the statutory power to investigate any publication upon complaint, or of its own volition. In the event of a finding by the Council against a respondent newspaper, the Council would have the power to censure the respondent newspaper; the power to require that the respondent newspaper publish the censure; and the power to require that the respondent newspaper publish an apology and correction in such manner and form as the Council considers appropriate. Further, the draft bill would grant the Press Council a qualified privilege whereby the publication or broadcasting of any council finding or decision against any press organization would be exempt from liability for defamation, unless it is made with malice.

The result of this proposed legislation would clearly be a statutory Press Council with many of the powers we had opposed back in 1999. As a result, we feel compelled to reiterate our opposition to this approach to the regulation of Hong Kong media.

We strongly oppose granting the Press Council the status or powers of a statutory body. Neither the Legislative Council nor the Executive Authority of the Special Administrative Region should involve itself in regulation of the media in the manner envisioned in the draft bill.

Beyond these general misgivings, we would like to note two specific provisions of the draft bill that cause serious concern. First, we oppose the concept of compelling publications to publish censures, apologies, or corrections. In addition, we believe that the same defamation laws and regulations governing all media enterprises, should also apply to the Press Council. To carve out a qualified privilege for only one entity would be inappropriate.

SOPA recognizes the importance of professional conduct among publishers, and supports efforts to foster higher professional and ethical standards. This commitment is stated in our "Publishing Code of Conduct" and we have frequently referred to this Code of Conduct, specifically at the time of our 1999 comment on the Law Reform Commission's Consultation Papers(attached).

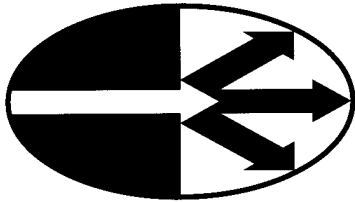
A statutory Press Council is not the proper way to achieve these goals. We believe the provisions outlined in the proposed bill may have a chilling effect on freedom of speech and may undermine the values and functions of freedom of expression, for which Hong Kong is respected internationally. Let us not erode our core strength as a free society through legislative fiat.

Thank you for your consideration.

Yours sincerely,

Cyril Pereira
Chairman
Encl.

c.c. Mr W. K. Lam, Secretary for Home Affairs



S O P A

The Society of Publishers in Asia

**Position Paper on
the Consultation Papers on "Civil Liability for Invasion of Privacy"
and "The Regulation of Media Intrusion"**

1. The Society of Publishers in Asia (SOPA) recognizes the importance of respecting the privacy of individuals. This recognition is enshrined in the Society's long-standing "Publishing Code of Conduct." (Attached).
2. The Society of Publishers in Asia notes with concern the conclusions of the recent Consultation Papers on Civil Liability for Invasion of Privacy and The Regulation of Media Intrusion. These Consultation Papers conclude that a Press Council for the Protection of Privacy, with the power to impose sanctions including monetary fines, should be created by law in Hong Kong
3. The Society believes that the creation of such a Council may inhibit free speech or have a chilling effect on the exercise of free speech. Further, it may undermine the values and functions of freedom of expression.
4. Therefore, the Society of Publishers in Asia objects to the creation of a statutory body to regulate the press in Hong Kong. There should not be any involvement of the HKSAR Government in sanctioning the media.
5. Instead, the Society supports the following:
 - A self-regulatory approach, such as establishment of a non-statutory, independent press council, which could address privacy concerns without adverse implications for press freedom. The Government should have no role to play in any such body.
 - Enforcement of current privacy and libel laws so that redress through the court system is accessible to all;
 - For civic groups and publications to play an active "press-monitoring" role.

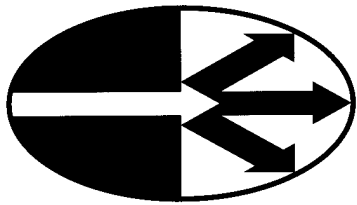
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Submitted by The Society of Publishers in Asia on November 30, 1999.

The list of Hong Kong members of SOPA is attached herewith.

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FIPP



S O P A

The Society of Publishers in Asia

Publishing Code of Conduct

Preamble

The Society of Hong Kong Publishers believes in the principle of a free, independent and uncensored Press, regulated only by the competitive market place for ideas and information, and tempered by respect for fair play and the rule of law.

The exercise of such freedom places responsibilities on the Press toward society. This Code of Conduct is an expression of the principles that guide the Society of Hong Kong Publishers and its members in exercising that responsibility.

1. Accuracy and Truth

- i) Publishers shall strive to ensure that the information they disseminate is fair and accurate. Falsification by distortion, selection or misrepresentation shall be avoided.
- ii) Whenever it is recognised that a significant inaccuracy, misleading statement or distorted report has been published, it should be corrected promptly and with due prominence.

2. Confidentiality

- i) Unless there is a clear and pressing need to maintain confidences, sources of information should be identified. But, when given, pledges of confidentiality must be honoured at all costs.

3. Privacy

- i) The privacy of individuals shall be respected, but matters of public interest shall prevail if there is a question whether a particular enquiry constitutes an invasion of privacy. Intrusions into an individual's private life generally proscribed include:
 - The use of long-lens photography to take pictures of people on private property without their consent.
 - The use of clandestine listening devices to obtain information.
 - The identification of children involved in cases concerning sex offences.
 - The identification of victims of sex offences.
- ii) Publishers should neither obtain, seek to obtain nor instruct other to obtain information or pictures through intimidation, harassment or bribery.

4. *Discrimination*

- i) Publishers should avoid prejudicial or pejorative reference to a person's race, colour, religion, sex or sexual orientation or to any physical or mental illness or handicap.
- ii) They should avoid publishing details of a person's race, colour, religion, sex or sexual orientation unless these are directly relevant to the story.

5. *Conflict of Interest*

- i) Publishers must avoid impropriety and the appearance of impropriety as well as any conflict of interest or the appearance of conflict. They should neither accept anything nor pursue any activity that might compromise or be seen to compromise their integrity.
- ii) Even where the law does not prohibit it, publishers should not use for their own profit financial information they receive in advance of its general publication, nor should they seek such information from their employees nor pass such information to others.
- iii) They should neither instruct others to write nor themselves write about shares or securities in whose performance they know that they or their close families have a significant financial interest.
- iv) They should not buy or sell, either directly or through nominees or agents, shares or securities about which they intend to initiate stories in the near future.

6. **The Public Interest**

- i) Clause 3 invokes the "public interest". For the purposes of this code, that is defined as :
 - (a) Detecting or exposing crime or serious misdemeanour.
 - (b) Protecting Public health and safety.
 - (c) Preventing the public from being misled by some statement or action of an individual or organisation.

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