

The University Librarians of the Eight Universities of Hong Kong
香港八間大學圖書館館長

Proposals to Implement Article 23 of The Basic Law:
Consultation Document

We, the University Librarians of the eight University Grants Committee institutions, wish to respond to the *Consultation Document*. In particular, we wish to focus upon proposed provisions under *Chapter 4: Sedition*, and *Chapter 8: Investigation Powers*.

Paragraph 4.17: Re the offence of “dealing with seditious publications”, we wish to state that librarians in universities in democratic countries around the world have no need to resort to any defense of “reasonable excuse” for knowingly or unknowingly displaying material on shelves or in electronic databases which might be regarded in some quarters as having a seditious content. The onus is on the Government under the common law jurisdiction to which Hong Kong is subject.

As professionals in institutions for “academic research”, it is a fundamental principle for librarians that a balanced collection of books, journals and databases, which in total give all sides of an argument, should be available to Faculty and students. If publications are placed in our collections – however unpleasant and full of incitement their content may be perceived – they may have been *specifically* and *deliberately* acquired and made available to students and researchers in order to give a comprehensive view of a given problem. In the light of this:

Paragraph 8.5: The prospect of a university library becoming the focus of a police emergency entry, search and seizure operation is categorically unacceptable, especially as it would seem to depend upon an outside power’s definition of the scale of the emergency (Paragraph 8.3). It is not a satisfactory argument to say that such a scenario may never happen. As Hong Kong Special Administrative Region citizens and public servants, we librarians of course wish to maintain the law and respect the State. However, the thought that our libraries may at some time in the future be subject to a police emergency raid poses threats that are fundamentally problematic and, therefore, not acceptable. Censorship of collections would run counter to every tenet held dear by the library profession in democratic countries.

In the spirit of academic freedom, we do not need to be held in check by a law which requires us to mount a defense of “reasonable excuse” when suspected of dealing with or displaying publications which in some quarters might be classified as seditious or inflammatory. No “excuse” is needed in the context of the continuance of a free flow of information in the academic library environment. What is a “reasonable excuse” will depend on changing circumstances for many years to come, and will be subject to any

prevailing whim on what the definition of 'library and information services' is, or should be in the future. What assurances have we on how the courts will interpret what librarians do? Thus we seek specific exemption from the law on the display of possibly seditious materials in libraries.

The very fact that this statement has to be written and that these fundamental principles of freedom need to be declared by academic librarians in Hong Kong for the first time indicates the future dangers of any limits to those freedoms. We assume that there is no intention to limit such freedoms. Therefore, our viewpoint should give those drafting the legislation serious pause for thought. In particular, we would ask for the following amendments:

Paragraph 4.17: line 11 to end “ ..such as academic research or news reporting (*new wording*) **OR LIBRARY AND INFORMATION SERVICES, THERE WILL BE COMPLETE EXEMPTION**”.

Paragraph 8.5: line 3 “... senior police officer (*new wording*) **IN ACCORDANCE WITH A WARRANT ISSUED BY A MAGISTRATE, (*end of new wording*)** when he reasonably believes that –”.

Yours faithfully,

Colin Storey, The Chinese University of Hong Kong.
Barry Burton, The Hong Kong Polytechnic University.
C.C. Cheng, City University of Hong Kong.
Min-min Chang, Hong Kong University of Science & Technology
Tony Ferguson, The University of Hong Kong.
Shirley Leung, Hong Kong Baptist University.
Lucia Tsui, The Hong Kong Institute of Education.
Tommy Yeung, Lingnan University.

December 2, 2002