

立法會
Legislative Council

LC Paper No. CB(1)249/06-07
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by the Administration)

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Panel on Information Technology and Broadcasting

Minutes of special meeting
held on Monday, 11 September 2006, at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon SIN Chung-kai, JP (Chairman)
Hon Albert Jinghan CHENG (Deputy Chairman)
Hon Fred LI Wah-ming, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Ronny TONG Ka-wah, SC

Members attending : Hon James TIEN Pei-chun, GBS, JP
Hon Margaret NG
Hon James TO Kun-sun
Dr Hon KWOK Ka-ki
Hon TAM Heung-man

Members absent : Hon Jasper TSANG Yok-sing, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP

Public officers attending : Agenda Item I
Mrs Marion LAI, JP
Acting Permanent Secretary for Commerce, Industry
& Technology
(Communications and Technology)

Ms Lorna WONG
Commissioner for Television and Entertainment
Licensing

Mr Bob TONG
Chief Executive Officer (Licensing)
Television and Entertainment Licensing Authority

Mrs Carrie LAM, JP
Permanent Secretary for Home Affairs

Miss Joanna C H CHOI
Principal Assistant Secretary (Home Affairs)(2)

**Attendance by
Invitation**

: Agenda Item I

Anti-Pornographic and Violence Media Campaign

Mr LAM Keung
Convener

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Hong Kong Journalists Association

Ms WOO Lai-wan
Chairperson

Hong Kong Performing Artistes Guild

Mr SHAM Kin-fun
Vice-president

Mr CHAN Kwok-sun Dennis
Committee Member

Hong Kong Press Council

Dr CHEUNG Kwai-yeung
Convener
Education and Publicity

Ms LI Yee-lee, Janice
Executive Manager

Hong Kong Sex Culture Society

Mr MAK Pui-chuen, Matthew
Project Director

Hong Kong Women Development Association

Ms AU YEUNG Po-chun
Convener
Social Policy Committee

Kowloon Women's Organizations Federation

Ms LEUNG Fu-wing
Vice-president

Ms ZHENG Zhen
Chairperson

New Century Forum

Miss Scarlett PONG Oi-lan
Director

The Society for Truth and Light

Mr CHOI Chi-sum
General Secretary

Ms CHAN Yin-ping
Project Officer

Women Affairs Committee,
The Hong Kong Federation Of Trade Unions

Ms LAI Chui-hung
Deputy Director

Ms LEUNG Fung-hing
Member

Women's Commission,
Kowloon Federation of Associations

Ms SO Lai-chun
Chairman

Ms LEE Wing-chu
Secretary

Women's Right Association

Ms Yolanda NG
Deputy Director

Clerk in attendance : Mr Paul WOO
Chief Council Secretary (1)7

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Ms Debbie YAU
Senior Council Secretary (1)1

Miss Erin TSANG
Senior Council Secretary (C)4

Ms Guy YIP
Council Secretary (1)1

Ms Sharon CHAN
Legislative Assistant (1)6

Action

I Issues related to the regulation of pornographic and violent materials transmitted through the mass media and protection against intrusion of privacy by the mass media

LC Paper No. CB(1)2175/05-06(01) -- Information paper on "Protection of Privacy" provided by the Home Affairs Bureau

LC Paper No. CB(1)2174/05-06(01) -- Information paper on "Enforcement of the Control of Obscene and

Indecent Articles Ordinance"
provided by the Commerce,
Industry and Technology Bureau

LC Paper No. CB(1)2174/05-06(02) -- The Chief Executive's statement made on 29 August 2006 (Chinese version only)

LC Paper No. CB(1)2174/05-06(03) -- Executive summary of the Law Reform Commission's Report on "Privacy : The Regulation of Covert Surveillance (March 2006)"

Meeting with the Administration and deputations

The Chairman welcomed representatives of the Administration and deputations to the meeting. He requested the deputations to provide their written submissions to the Panel after the meeting, if they had not already done so.

2. Members noted that written submissions had also been provided by two other deputations not attending the meeting, namely, the Association of Chinese Authors and Publishers in Hong Kong and Macau, and Shatin Women's Association (LC Paper Nos. CB(1)2175/05-06(03) and 2183/05-06(04)).

(Post-meeting note: Another written submission received after the meeting from Privacy Hong Kong, a deputation not attending the meeting, was circulated to members vide LC Paper CB(1)2192/05-06(08) on 12 September 2006.)

Anti-Pornographic & Violence Media Campaign (APVMC)

(LC Paper No. CB(1)1863/05-06(01) -- Submission

LC Paper No. CB(1)2192/05-06(01) -- Submission)

(tabled at the meeting and subsequently issued on 12 September 2006)

3. Mr LAM Keung said that APVMC had noticed that some media operators had abused the publication of Class I magazines by including objectionable materials such as photographs exposing female bodies and articles with crude language. He opined that such kind of publications would create serious adverse effect on the healthy development of the younger generation. The recent incident of Easy Finder's publication of photographs secretly taken of a local female pop singer changing dress backstage during a concert in Malaysia (the incident) had drawn a huge public outcry, which clearly showed that the public could no longer condone such kind of intrusive acts committed by the media. He said that the incident had evidently revealed that:

- (a) Some unscrupulous media operators were persistently ignoring the public sentiment and demand on them to exercise restraint so as not to

intrude into personal privacy. They had been using freedom of press and expression as a pretext for disseminating repulsive articles and pictures with a view to reaping profits from sale of the publications; and

- (b) The existing regulation mechanism for intrusive media was ineffective. Self-regulation of the media industry and regulation by the Hong Kong Press Council (HKPC) without a statutory basis had also proven to be ineffective.

4. Mr LAM further said that APVMC did not subscribe to the comment made by the Hong Kong Journalists Association that public discussions in the heat of the incident had been too emotional. On the contrary, APVMC took the view that more stringent control and regulation of the activities of intrusive media should be exercised. He advised members that in June and July 2006, APVMC had relayed its concerns to the Secretary for Commerce, Industry and Technology and the Chairman of this Panel, and urged the Television and Entertainment Licensing Authority (TELA) to tighten enforcement actions. Coupled with stricter enforcement activities, TELA should also enhance the transparency of the enforcement of the Control of Obscene and Indecent Articles Ordinance (COIAO) (Cap. 390) such as publishing details of convictions to facilitate public monitoring.

Hong Kong Journalists Association (HKJA)
(LC Paper No. CB(1)2178/05-06(01) -- Submission)

5. Ms WOO Lai-wan, Chairperson of HKJA, highlighted HKJA's views as follows:

- (a) HKJA had all along maintained its stance against intrusive media reporting encroaching on personal privacy and deplored such conduct.
- (b) The incident had triggered renewed demand for tightening the control of the mass media, about which HKJA had serious reservations. Under the COIAO, elaborate offence and sanction provisions had been provided. The maximum penalty for publication of an indecent article in breach of the COIAO was a fine of \$400,000 and imprisonment for 12 months on a first conviction, and a fine of \$800,000 and imprisonment for 12 months on a second or subsequent conviction. For the publication of an obscene article, the punishment was even more severe, with the maximum penalty being a fine of \$1,000,000 and imprisonment for three years. Notwithstanding these provisions, according to TELA's statistics for the first seven months of 2006, the penalties actually imposed only ranged from \$800 to \$15,000 for fines and from 6 days to 6 months for imprisonment. As such, HKJA held the view that rather than amending the COIAO to provide for stricter regulation of the media, punishment of the violators could in fact be tightened by imposing heavier penalties under the existing

provisions of the COIAO.

- (c) In addition to statutes, the common law also provided for protection of privacy. An example was a case handled by the House of Lords of the United Kingdom in 2005, in which a famous international model had succeeded in action taken against the media's infringement of her privacy.

6. Ms WOO opined that as the existing legislative framework already provided adequate protection, further legislation was unnecessary. It would be a matter for the community and the Administration to discuss and achieve a consensus as to how the existing legislative safeguards could be most effectively enforced to deal with non-compliances.

Hong Kong Performing Artistes Guild (HKPAG)
(LC Paper No. CB(1)2175/05-06(02) -- Submission)

7. Mr SHAM Kin-fun, Vice-president of HKPAG, said that whilst freedom of press and freedom of expression were fundamental rights, they should not be exercised to the detriment of respect for personal privacy. He said that it was sad to see that many intrusive acts committed by entertainment magazines, which involved no public interest at all, had trespassed into the private life of the victims and done great damages to them. This had also sent a wrong message to the community and the young generation about respect for privacy. Regrettably, existing legislation and the enforcement of which had failed to afford adequate protection to guard against media's infringement of people's privacy. Regulation of the media by the HKPC, which was operating on a voluntary basis, was ineffective. He added that given the light penalties actually handed down by the court for breaching the COIAO, which were normally within a few tens of thousands of dollars, an adequate deterrent effect could hardly be achieved. Mr SHAM urged the media industry and the Administration to vigorously consider how a right balance could be struck between press freedom and right to privacy, taken into consideration the views and concerns of the community.

Hong Kong Press Council (HKPC)
(LC Paper No. CB(1)2192/05-06(03) -- Submission)

LC Paper No. CB(1)2192/05-06(07) -- Submission)
(*tabled at the meeting and subsequently issued on 12 September 2006*)

8. Dr CHEUNG Kwai-yeung, Convener of HKPC, commented that in recent years, there were increasing cases of the media violating the COIAO by committing acts which infringed on personal privacy. HKPC considered that there were two contributing factors:

- (a) As compared with the standards adopted by the HKPC, those followed by the Obscene Articles Tribunals (OATs) in assessing whether an

article submitted for classification was obscene or indecent were too loose. Although the COIAO required OAT adjudicators to classify an article having regard to the standards of morality, decency and propriety that were generally accepted by reasonable members of the community, some OAT adjudicators, in making their decisions, might have deviated from the standards generally accepted by the ordinary members of the public. In this connection, HKPC welcomed the Administration's proposal to enlarge the panel of OAT adjudicators.

- (b) The penalties for breaching the COIAO imposed by the court were too lenient to achieve sufficient deterrent effect. Hence, HKPC had urged that in cases where the fines levied were considered to be insufficient, the TELA, in consultation with the Department of Justice (DOJ), should request that the cases be reviewed.

9. Referring to the Law Reform Commission (LRC)'s Report on Civil Liability for Invasion of Privacy released in December 2004, Dr CHEUNG said that apart from regulation by non-media authorities, enhanced self-regulation within the media industry should be explored. In this connection, he advised that a conference on protection of privacy was recently hosted by six media groups, the record of the views expressed had been provided for the Panel's consideration (LC Paper No. CB(1)2192/05-06(03)). He urged media practitioners to strive to enhance professionalism in their work while at the same time give due regard to their social responsibility and the need to maintain a high level of moral standard and public credibility.

Hong Kong Sex Culture Society (HKSCS)

(LC Paper No. CB(1)2192/05-06(04) -- Submission)

(tabled at the meeting and subsequently issued on 12 September 2006)

10. Mr Mathew MAK Pui-chuen, Project Director of HKSCS, said that the media, while holding on to press freedom, should also respect people's fundamental right to privacy. He pointed out that according to Article 17 of the International Covenant on Civil and Political Rights (ICCPR), every citizen should be protected from arbitrary or unlawful interference with his/her privacy, family, home or correspondence. Referring to the incident in question, HKSCS considered it necessary to strike an appropriate balance between press freedom and protection of personal privacy. It was an alarming fact that the intrusive acts of the media not only often infringed the personal privacy of celebrity figures but also the public at large. As evidenced by the some 300 cases stated in the LRC Report on Privacy and Media Intrusion released in December 2004, the victims of most of the cases were ordinary members of the public. While some of them had lodged complaints with regulators such as HKJA and HKPC, their complaints were often not satisfactorily resolved due to the lack of statutory power conferred to the regulatory bodies. The effect of self-regulation within the media industry was therefore gravely in doubt. Referring also to Article 19 of the ICCPR, Mr MAK said that the right to freedom of expression was subject to restrictions including, among

others, respect of the rights and reputations of others. Display of secretly taken clandestine photographs in publications and articles which revealed the bodies of the persons or their private activities were serious disrespect for the people's rights to privacy and reputation. Mr MAK further commented that previous rulings and penalties imposed by the court had fallen short of the public's reasonable expectation about decency and moral standards. He considered that the COIAO should be amended on the basis of the LRC's relevant reports on protection of privacy.

11. Mr MAK advised that the HKSCS would like to propose the following improvement measures:

- (a) to make it an offence for taking and/or publishing unauthorized clandestine photographs in private premises or of a naked person in any shower/bathing facilities, toilets and changing rooms. However, it should be a defence for legitimate news gathering to safeguard public interest or for the prevention, detection or investigation of crime;
- (b) To increase the penalties on repeated offenders violating the COIAO; and
- (c) to provide for victims of privacy intrusion to recover losses from the intruders through civil remedies.

Hong Kong Women Development Association (HKWDA)
(LC Paper No. CB(1)2183/05-06(01) -- Submission)

12. Ms AU YEUNG Po-chun of HKWDA opined that given the ineffectiveness of voluntary media self-regulation, regulation by non-media bodies should be introduced. She highlighted HKWDA's views as follows:

- (a) It was evidently clear that many clandestine photo-taking cases concerning popular artistes did not involve any public interest issues but done for the purpose of business gains for the media operators. More stringent administrative and statutory controls should be exercised to regulate such conduct effectively. In this regard, the community should engage in active discussion on the need for implementing new regulatory measures taking into account the recommendations of the LRC, such as those contained in its Report on Regulation of Covert Surveillance published in March 2006.
- (b) Personal privacy was increasingly at stake with the advent of technology and the production of advanced equipments for taking peep photographs. The act of peep photo-taking was not criminalized at present, although it might be partially dealt with, in appropriate circumstances, by the offences of loitering, disorderly conduct in

public place or sexual harassment. To enhance safeguard of personal privacy against intrusive acts, the Administration should conduct a comprehensive review on the existing legislative framework, including criminalization of clandestine photo-taking.

- (c) The level of penalties actually imposed by the court for publishing obscene and indecent articles should be significantly increased to achieve effective deterrent effect.
- (d) Publicity should be stepped up to educate the media to espouse social morality and responsibility.

Kowloon Women's Organizations Federation (KWOF)

(LC Paper No. CB(1)2192/05-06(05) -- Submission)

(tabled at the meeting and subsequently issued on 12 September 2006)

13. Ms ZHENG Zhen, Chairperson of KWOF, said that personal privacy and the safety and welfare of females should not be sacrificed in the name of press freedom. To protect women's rights and to free them from the threats of intrusive media, KWOF urged that the legislation be amended to provide for more statutory safeguards. KWOF's suggestions were summarized as follows:

- (a) Magazines containing obscene and repulsive materials, particularly those published by blatant offenders, should be banned. Social pressure could also be brought to bear on the unscrupulous media operators, such as campaigns calling for boycott of their publications and the goods and merchandises advertised therein.
- (b) The level of statutory penalties and the penalties actually imposed by the court should be critically reviewed.
- (c) New legislative safeguards should be implemented with due consideration of the recommendations in the LRC Reports. A licensing regime for the publication industry based on a merit system should also be considered.
- (d) Civic education should be stepped up to promote core moral values and social responsibilities and self-discipline in the media industry.

New Century Forum (NCF)

(LC Paper No. CB(1)2178/05-06(03) -- Submission)

(tabled at the meeting and subsequently issued on 12 September 2006)

14. Miss Scarlett PONG Oi-lan of NCF supported the public condemnation of the intrusive act involved in the incident, pointing out that it had long been a tactic used by some media operators to publish obscene or offensive articles to attract buyers. According to a survey conducted by NCF, despite nearly 60% of the

respondents were in opposition to such promotional tactic, and 90% of the respondents considered that the Easy Finder's issue should not be sold to people below the age of 16, 30% of the respondents admitted that they were interested in reading the issue in question. The survey also found that 30% of the respondents would purchase magazines based on what were displayed on the cover pages. To eliminate the harmful effect that pornographic and repulsive media articles would bring to the community and to rebuild social morality, the Administration should adopt a multi-pronged approach, including more stringent and transparent enforcement actions to regulate objectionable articles, enhancing protection of privacy and morality through civic education and publicity etc.

The Society for Truth and Light (STL)

(LC Paper No. CB(1)2192/05-06(06) -- Submission)

(tabled at the meeting and subsequently issued on 12 September 2006)

15. Mr CHOI Chi-sum, General Secretary of STL, said that STL had noted with concern that although extensive discussion had taken place in recent years on the LRC's recommendations on protecting personal privacy and regulating media covert surveillance, concrete solutions to deal with dissemination of indecent and objectionable materials by the media had yet to become available. He urged that swift remedial actions should be taken without delay by all quarters to rectify the problem.

16. Declaring herself as a member of the panel of OAT adjudicators, Ms CHAN Yin-ping, Project Officer of STL, said that OATs were only responsible for the classification of the articles submitted to them, while judicial ruling and imposition of penalties were matters for the court. Given the commonly held view that the fines actually imposed by the court were too lenient to deter repeated offences, she suggested that the Administration should seek, in appropriate cases, sentencing guidelines from a higher court and review the penalties. She further explained the STL's position as follows:

- (a) The penalty for breaching the COIAO should be increased and might be pegged with the profits generated from sale of the objectionable publications concerned. The imprisonment provision should be invoked when the imposition of a fine could not achieve any deterrent effect. STL, however, did not support banning publication as a deterrent because of the need to uphold the freedom of press.
- (b) Personal privacy should be protected by legislation. It should be a statutory defence, however, if the intrusive act in question was necessary in the public interest and for the prevention, detection or investigation of crime. When formulating legislative proposals, the recommendations made in the relevant LRC Reports should serve as useful reference.

- (c) Clear and comprehensive guidelines on avoidance of intrusive acts which might constitute improper invasion of privacy should be drawn up and promulgated by the media industry.

Women Affairs Committee, The Hong Kong Federation of Trade Unions (WAC/FTU)

(LC Paper No. CB(1)2183/05-06(02) -- Submission)

17. Ms LAI Chui-hung, Deputy Director of WAC/FTU, said that the community could not tolerate acts that trampled on women's dignity, social morality and propriety. While press freedom and the right to know should be protected, the mass media should find a right balance in conducting their activities. The problem of obscene and indecent materials persistently being published in the mass media had demonstrated that public opinion, self-regulation of the media and Government enforcement actions had failed to bear fruit. She also pointed out that apart from those appearing in the print media, objectionable materials were also rampant on the Internet. She highlighted the views of WAC/FTU on the measures that should be taken as follows:

- (a) The Administration should implement more effective control of clandestine photo-taking and peeping acts through legislative means, including a clear definition of the scope of the offences, more proactive prosecution and heavier penalties for breaches.
- (b) The scope of the Personal Data (Privacy)(Cap.486) Ordinance should be expanded to cover prosecution of unwarranted acts of invasion of privacy through various intrusive means.
- (c) The COIAO should be amended to increase the levels of penalty for non-compliance.
- (d) The procedure for classification of articles by the OATs should be streamlined and expedited.
- (e) Detailed guidelines and proper training on avoidance of unwarranted intrusive acts and inclusion of pornographic and violent materials in media articles should be provided to media employees. Civic education to cultivate public awareness should also be strengthened.

Women's Commission, Kowloon Federation of Associations (WC/KFA)

(LC Paper No. CB(1)2178/05-06(02) -- Submission)

18. Ms SO Lai-chun, Chairman of WC/KFA, stated the Federation's strong protest against Easy Finder for its intrusive acts in the incident, and urged the Administration to critically review the existing legislation with a view to tightening the regulatory framework. Echoing other deputations' views, Ms SO considered

that the fines imposed by the court for violating the COIAO fell far below the maximum levels prescribed under the law. She pointed out that although Easy Finder had previously been convicted 14 times of breaching the COIAO, the maximum penalty actually levied by the court had never exceeded \$50,000 for each conviction. To enhance the deterrent effect, therefore, the fines should be increased, particularly for those repeated offenders. Moreover, the scope of obscenity and indecency defined under the law should be widened.

19. Ms SO added that WC/KFA supported the Administration's move to recruit adjudicators to enlarge the panel of OAT adjudicators and the proposal to upload onto the Internet the referrals to OATs and the convictions in order to enhance the transparency of the enforcement of COIAO.

Women's Right Association (WRA)

(LC Paper No. CB(1)2183/05-06(03) -- Submission)

20. Ms Yolanda NG of WRA said that subsequent to the incident, WRA had taken a series of actions, including lodging a complaint with the TELA, to show its strong opposition against the intrusive act of Easy Finder which was a sheer affront to females. She added that WRA was seriously concerned about increasing display of obscenity and indecency in media publications and concurred that it was high time that the regulation be tightened. WRA's proposals were as follows:

- (a) Enforcement actions including inspections and prosecutions should be more proactively pursued. In addition, TELA should enhance enforcement transparency by publishing the criteria for submission of obscene and indecent articles to the OATs for classification and the relevant procedures. To enhance deterrent effect, compulsory submission of articles to OATs for scrutiny might also be considered.
- (b) The COIAO should be amended to introduce new provisions to tighten the regulation of media publications containing obscene and indecent elements.
- (c) In addition to expanding the panel of OAT adjudicators, consideration should be given to increasing the number of adjudicators on an OAT from two to three. At least one of the adjudicators should be a female person.
- (d) The penalties for breaches of the COIAO should be increased. Repeated offenders, in particular, should be liable for more severe punishment.
- (e) In deliberating legislative proposals for improving the regulatory mechanism, due reference should be made to the recommendations made in the LRC Report on Regulation of Covert Surveillance.

Hong Kong Human Rights Monitor (HKHRM)

(LC Paper No. CB(1)2192/05-06(02) -- Submission)

(tabled at the meeting and subsequently issued on 13 September 2006)

21. Mr LAW Yuk-kai, Director of HKHRM, cautioned that in the consideration of public interest, it was not easy to strike a right balance between safeguarding press freedom and the right to privacy. He opined that in Hong Kong, the lack of democratic development under “One Country, Two Systems” as well as vulnerability of the free press necessitated enhancing the safe protection of freedom of expression. While acknowledging that privacy rights should be respected, Mr LAW considered that the discussions and public outcry triggered by the incident were too emotional. In his view, in considering whether a stricter regulatory regime should be introduced, the community should guard against uncalled-for measures prompted by isolated incidents and sensational sentiments, which might do damage to press freedom and the public interest. In this regard, Mr LAW did not agree that there was an urgent need to amend the existing legislation, pointing out that both existing statutes and the common law had provided for means to deal with obscene and indecent media publications as well as safeguard against intrusion of personal privacy, and that experience in other jurisdictions had shown that stringent regulation of the media would run serious risks of curbing freedom of expression. On the view that the fines and penalties imposed by the court had failed to produce any deterrent effect on offenders, Mr LAW considered that the concern should be addressed by the court and DOJ in the context of due administration of justice and legal proceedings.

Preliminary response by the Administration

22. The Acting Permanent Secretary for Commerce, Industry and Technology (Communications and Technology) (PSCIT(CT) Atg) thanked the deputations for their views. She said that the Administration was very concerned about the incident in question and had condemned it sternly. The Administration had also sent the article in question for classification by an OAT in the first instance. The Secretary for Commerce, Industry and Technology had also undertaken to review the COIAO, in particular the penalty provisions for repeated offenders, to consider whether there was a case for legislative amendment to increase the statutory penalties or to enhance the deterrent effect. PSCIT(CT) Atg said that the Administration had commenced the review and it welcomed continuing dialogue in the coming few months with all stakeholders and interested parties on the subject.

23. The Commissioner for Television and Entertainment Licensing (C for T&EL) highlighted on TELA’s efforts in enforcing the COIAO. She said that TELA monitored publications and inspected retail outlets (including bookshops and newspaper stalls etc) on a daily basis to check if there were any published articles suspected of breaching the COIAO. As in the case in question, TELA submitted the published article suspected of breaching the COIAO to OAT for classification. TELA had enhanced its enforcement actions, and as far as entertainment magazines were concerned, the number of articles submitted to OATs for classification had

increased from 44 in 2005 to 31 in just the seven months from January to July 2006. Although only seven of the 31 articles submitted in the seven months had been classified as indecent (Class II), TELA would continue to step up its inspection efforts. On other improvement measures, C for T&EL advised that TELA actively examined the outcome of interim classification of every submitted article made by the OAT. After consulting DOJ, TELA would request an OAT to review the interim classification at a full hearing if it was justified to do so. Since the beginning of 2006, TELA had requested for such review in three cases, after which two remained as Class I articles. Furthermore, if considered necessary and in consultation with DOJ, TELA might also request for a review of the penalty levied by the court. C for T&EL pointed out that upon a recent review, the penalties levied for three offence cases had been raised. Furthermore, in cases where an increased penalty was still considered inadequate, TELA might further appeal to the High Court.

24. The Permanent Secretary for Home Affairs (PSHA) said that the debate arising from the incident was yet another example to show the difficulties in balancing between upholding press freedom and protection of privacy. She said that with the exception of the LRC Report on Regulation of Covert Surveillance released in March 2006, the Panel on Home Affairs (HA) had discussed the other three relevant LRC Reports (i.e. the Report on Stalking released in October 2000, the Report on Civil Liability for Invasion of Privacy and the Report on Privacy and Media Intrusion released in December 2004). At the meetings, some deputations and Members had expressed grave reservations over the proposals in view of the possible adverse impact on press freedom as set out in the Administration's paper (LC Paper No CB(1)2175/05-06(01)). PSHA further advised that in addition to drawing reference from overseas experience, the Home Affairs Bureau (HAB) had proposed to use the concrete proposals of the LRC Reports as a basis for further discussion with all relevant stakeholders, including LegCo Members, the media and the general public. Subject to the agreement of Members, HAB planned to take the LRC proposals to the HA Panel again for further discussion. She assured members that the controversial issues would be thoroughly discussed and there was no question of rushing any new legislation without detailed public consultation.

Issues raised

Press freedom and privacy rights

25. Mr Ronny TONG stressed that all along, he was very concerned about press freedom in Hong Kong. However, he considered that the incident in question was a case of indecent infringement of personal privacy, which did not involve any issue of public interest at all. It was not a reporting of news value and the intrusive acts of the media had nothing to do with freedom of press or expression. Mr TONG was pleased to note that HAB was considering the need for legislative changes based on the proposals of the LRC Reports. He enquired about the Administration's legislative timetable, including the timeframe for public consultation.

26. PSHA replied that as a first step, HAB intended to take the LRC proposals back to the HA Panel for further discussion. It would work closely with the concerned quarters in engaging full discussion by the public on all the important issues, and hope to reach a community consensus afterwards. The consensus would then serve as the basis for formulating and putting forward concrete legislative proposals.

27. Mr Ronny TONG said that as the incident had stirred up a firestorm of public outrage, there was already a general consensus in the community on the need for introducing new legislation to protect privacy rights against intrusion by the media. He questioned how photographs of the kind covertly taken by the media could be correlated to press freedom; and how the publication of indecent or obscene photographs could be linked to freedom of expression. He further pointed out that there was no necessary conflict between press freedom and protection of privacy rights and therefore one should not be over-worried about new legislation to provide for greater protection of privacy. In his opinion, press freedom was not a valid reason for opposing legislation against privacy intrusion. Mr TONG urged that the Administration should proceed expeditiously with public consultation on the proposals of the LRC Reports and set a timetable for the legislative process.

28. In response, PSHA reiterated that the Administration had consulted Members and a wide spectrum of concerned groups on the proposals in three of the LRC Reports at a number of HA Panel meetings. HAB was prepared to use the specific proposals of the LRC Reports as a basis for further consultation with all stakeholders. As it would take time for the community to consider the varied views and reach a consensus, the Administration could not provide a definite legislative timetable at this stage.

29. Dr CHEUNG Kwai-yeung of HKPC pointed out that covert photo-taking was a means used occasionally in news gathering, particularly in unveiling unscrupulous selling practices to protect consumers' interests. The incident under discussion, however, was in essence sneaky photography tantamount to peeping, which was subject to legislative controls in European countries and the United States.

30. Ms Emily LAU observed that despite that the community at large had criticized Easy Finder for publishing the article and the photographs in question, many members of the public had flocked to buy the issues which were sold out within a short time. In this regard, Ms LAU called on the public to reflect on their behaviour and the media industry to exercise more self-discipline in respecting people's privacy. She expressed support for HAB's plan to further conduct public consultation on the proposals of the LRC Reports, and its initiative to study the practices in overseas jurisdictions for the protection of privacy rights. Referring to the views of HKHRM and HKJA, Ms LAU agreed that freedom of the press and expression should be safely upheld, whilst the Administration should map out the way forward for privacy protection.

31. Regarding the regulation of intrusive media, Ms WOO Lai-wan of HKJA said that due regard should be given to the need for allowing the media to conduct covert surveillance to obtain evidence in matters involving public interest, for example, detection of malpractices in drug dispensing by pharmacies or investigation of suspected cases of transfer of benefits between business sectors and the Government. She was worried that the proposals in the LRC Reports might inhibit media covert surveillance activities with a legitimate purpose. Ms WOO further said that the HKJA had reservation about a number of specific proposals in the LRC Report on Regulation of Covert Surveillance, in particular the introduction of the proposed criminal offences and the scope of the definition of “private premises”.

32. Mr LAW Yuk-kai of HKHRM reiterated HKHRM’s concern that because of the lack of democracy in Hong Kong, freedom of expression and the press had to be relentlessly guarded. Noting that the LRC Report on Regulation of Covert Surveillance had recommended that a law enforcement agency might apply to the Court of First Instance for a warrant for covert surveillance to be carried out by its enforcement officers, Mr LAW said that he was not confident that the privacy of targeted individuals could be protected adequately.

33. Mr Howard YOUNG remarked that the Easy Finder incident was not an isolated case but one of repeated “paparazzi” activities conducted by entertainment magazine publishers. He noted that there had not been much public criticism about the indecency of the photographs *per se*, as the body of the female singer was not clearly exposed as compared with other more repulsive photographs previously published in other issues of the magazine. The key issue of concern was that the photographs were taken secretly and that had seriously infringed the privacy of the person concerned. In view of the public outcry, Mr YOUNG considered it necessary and timely to introduce legislative measures to deal with the problem. He echoed the view that press freedom, despite its importance, should not be an overriding reason for not addressing the worsening problem of unwarranted intrusion of privacy by the media. Recalling that Members had expressed serious concerns on the need to safeguard privacy rights during the scrutiny of the Interception of Communications and Surveillance Bill, Mr YOUNG said that similar concerns should also be taken into account in considering the LRC’s proposals. On specific legislative measures, Mr YOUNG suggested that the LRC’s proposal on the setting up of an independent and self-regulating press committee by statute, similar to the Travel Industry Council of Hong Kong, should be carefully examined.

34. Mr SHAM Kin-fun of HKPAG said that there was no dispute over media covert surveillance activities conducted for legitimate purposes and in the interest of the public. However, the issue at stake was the unauthorized and/or immoral intrusion into individuals’ privacy for the sake of satisfying some people’s curiosity and profiting through sale of the publication of the materials obtained by intrusive means. Mr SHAM called on the HKJA and HKPC to take actions to reinforce

self-discipline of the print media. He also expressed the strong support of HKPAG for the Administration's plan to use the proposals of the LRC Reports as a basis for examining the need for implementing new legislative measures. In his view, the proposals could help address the inadequacies of the existing legislation in dealing with illegitimate paparazzi activities which might infringe people's privacy. He hoped that the review could come up with satisfactory regulatory measures which could at the same time balance the protection of privacy and press freedom.

35. While expressing support for press freedom, Mr CHAN Kwok-sun of HKPAG queried the value of press freedom in a society where personal privacy rights were ignored.

Enforcement of COIAO

36. Noting the view that the penalties actually meted out by the court were too lenient, Mr Howard YOUNG sought the deputations' views on whether the problem of media intrusion of privacy could be solved by higher fines.

37. Mr SHAM Kin-fun of HKPAG said that the levy of fines which fell far below the maximum statutory levels could not deter the repeated offenders. He said that the fact that the Easy Finder had continued the same intrusive acts despite being found guilty and fined for 14 times was ample evidence. Mr SHAM called on the Administration to review the penalty provisions in the law and the actual levy of fines ordered by the court. He also suggested the introduction of new deterrent measures, such as a demerit point system for media operators publishing offensive materials.

38. Echoing the view that the penalties ruled by the court were too lenient, Mr Fred LI said that the reprint of additional copies of the Easy Finder for sale despite the public outcry indicated the publisher's blatant disregard of the law. He urged the Administration to introduce tougher penalties, particularly to target at repeated offenders.

39. Ms WOO Lai-wan of HKJA said that increasing the maximum penalties under the existing legislation might not work, pointing out that the penalties actually levied by the court had fallen short of the statutory maximum levels. In the case of the publication of an indecent (Category II) article, for example, the maximum penalty was a fine of \$400,000 and an imprisonment for 12 months on a first conviction. However, according to the information obtained from by OATs, the actual penalties for such offences ordered during the period January to July 2006 involving entertainment magazines only ranged between \$3,000 to \$5,000. Ms WOO added that apart from the insignificant levels of penalty handed down by the court, it was learnt that some entertainment magazines or newspapers displaying obscene or indecent articles had not even been sent to OATs for classification, let alone prosecuted. She considered that instead of amending the legislation to increase the maximum penalties, TELA should step up its enforcement action, and the level of actual penalties imposed by the court should be reviewed.

40. On the enforcement of COIAO, C for T&EL reiterated that TELA critically examined the result of interim classification of every submitted article. After seeking the views of DOJ, it would request the OAT to review the interim classification at a full hearing if it was considered justifiable to do so. Moreover, upon consultation with DOJ, TELA might ask for a review of the penalty levied by the court.

41. Mr Fred LI expressed concern that apart from display of obscene or indecent photographs, there was increasing number of entertainment magazines using coarse words to attract readers and boost sales. He enquired whether articles with crude language would also be referred to OATs for classification. Noting that some entertainment magazines were notorious for publishing indecent materials and were frequently in breach of the COIAO, Ms Emily LAU urged the Administration to tighten enforcement action.

Admin 42. In response, C for T&EL clarified that the term “article” defined in the COIAO included anything consisting of or containing material to be read and/or looked at. Hence, both texts and pictures were within the scope of the Ordinance. In reply to Mr Fred LI’s further enquiry, C for T&EL confirmed that so far this year, none of the publications ruled by the court as violating the COIAO had been penalized solely because of the use of coarse language. Mr Fred LI responded that he was very surprised with the situation and considered it unacceptable. In this connection, the Chairman requested TELA to provide breakdown figures on the respective number of obscene and indecent entertainment magazines with intrusive photographs or crude language that had been submitted to the OATs for classification in the past three years, together with brief descriptions of the articles concerned, the outcome of classification and penalty levied, if any.

43. Noting that the number of inspections conducted by TELA in 2005 was three times more than that in 2000 while the number of obscene and indecent articles seized had increased eight-fold in 2005 vis-à-vis 2000, Mr Fred LI enquired whether TELA would continue to strengthen its enforcement actions, particularly targeting at entertainment magazines.

44. C for T&EL informed members that persistent joint enforcement operations with the Police against shops selling indecent/obscene VCDs/DVDs in 2004 had led to a substantial decrease in the number of these shops and the quantity of articles seized and scrutinized in 2005.

45. To combat the prevalence of problematic entertainment magazines in the market, Miss TAM Heung-man suggested that the Administration might consider mandating the publishers to send their magazines for classification, and if necessary, to do proper wrapping of the magazines before sale. C for T&EL responded that such requirements would have significant implications relating to freedom of press and publication and were likely to give rise to controversies. The Administration did not prefer to implement such measures in the absence of any consensus in the community.

46. Noting that many people were interested in reading magazines with clandestine photographs and offensive content which degraded the image of females, Miss TAM Heung-man sought explanation on the Administration's efforts in strengthening public education to promote moral standards in the society. PSHA responded that the Equal Opportunities Commission was tasked with elimination of sex discriminations, whereas the Women's Commission had also undertaken a lot of educational activities to promote gender equality in the society.

Legislation to protect privacy

47. Ms Yolanda NG of WRA said that the high readership of entertainment magazines with objectionable materials did not represent the public's endorsement of their content and style. The buyers might just take the reading as a past-time or they might just be interested in other news or information contained in the magazines. Ms NG opined that apart from public education, self-discipline of media publishers as well as the writers and reporters should be strengthened. However, the sad situation at present was that self-regulation of the print media and the enforcement mechanism did not work well. Pointing out that not all media reporters and publishers were members of HKJA or HKPC, Ms NG suggested that the legislation should be amended to give both bodies a legal status and statutory power to regulate the industry more effectively.

48. Echoing Ms NG's views, Dr CHEUNG Kwai-yeung of HKPC remarked that the existing mode of operation of the HKPC was not conducive to self-regulation of the media industry as the "black sheep" were not members of HKPC. He pointed out that HKPC had dealt with about 160 complaint cases and issued 13 condemnations since its establishment in 2000. In his view, if HKPC could be established by statute with jurisdiction over all newspapers and magazines registered in Hong Kong, it could deal with complaints against unjustified intrusions of privacy perpetrated by the print media more effectively. He said that HKPC had been advocating for a legal status since 2001 with a view to enhancing its regulatory role.

49. Mr CHOI Chi-sum of STL said that he would advocate a four-pronged approach in dealing with clandestine photo-taking, namely, promoting self-discipline among the print media, strengthening consumer education, review of the scope and provisions of COIAO, and enhancement of the enforcement mechanism. Given the recent public outcry over the Easy Finder incident, he suggested that the Administration should first deal with the less controversial issues such as introducing legislation against snooping and peep photography and stepping up enforcement of the COIAO.

50. Mr LAM Keung of APVMC shared Mr CHOI's view. He considered that the Government should aim at legislating against the malpractices of a handful of unscrupulous print media operators and narrow the scope of the targets to articles containing peep photographs or pornographic reports in coarse language. Mr

LAM believed that the general public would support legislative proposals with clear and legitimate purposes.

51. While recognizing that privacy was an important human right, Mr LAW Yuk-kai of HKHRM said that the mass media had the obligation to fulfill the role endowed upon them, i.e. duty to inform, educate and entertain. Mr LAW expressed concern that once the Administration had embarked on new legislative means, such as the proposed establishment of a press commission, to bring the mass media under stricter controls, it would open a floodgate for unnecessary regulatory measures which could undermine the important roles of the media. Mr LAW considered the Easy Finder incident not a case of obscene or indecent publication but one of intrusive reporting involving the issues of obtaining and disseminating of information by the media. Such problems could be addressed by means other than new legislative controls. He reiterated caution that protection of privacy by strict legislative means might impact adversely on press freedom and other fundamental civic rights.

52. Ms WOO Lai-wan of HKJA agreed that public education was a preferred means to deal with the problem of irresponsible and intrusive publications at root. Sharing the concern of HKHRM, she remarked that regulatory powers could be easily abused and therefore proposals to create more such powers had to be considered with extreme caution.

53. Mr Ronny TONG did not subscribe to the views. He said that privacy rights were fundamental human rights and the law should reflect the accepted moral standards of the society. The worries about freedom of the press being impeded by legislative measures could be addressed by careful law drafting and thorough deliberations of the legislative amendments before they were enacted.

54. While stating support for legislative measures to protect privacy rights and regulate dissemination of offensive and indecent materials by the media, the Deputy Chairman said that the Administration should ensure that the authorities would enforce the law in a way that could achieve the intended purposes. He agreed that efforts should also be stepped up to educate the public, in particular the young generation, on the proper roles and conduct of the mass media, and to discourage them from buying publications that failed to live up to the standards. He further remarked that as advertising was the major source of income for the media, in particular entertainment magazines, the public should boycott the goods advertised in publications which were blatant violators of the law in order to exert pressure on the media operators. His views were shared by Mr CHOI Chi-sum of STL.

The way forward

55. In concluding, the Chairman said that the Panel appreciated the need to review the existing legislative provisions and supported the Administration's proposal to take forward a detailed consultation based on the LRC Reports. Members also noted the Administration's plan to take the LRC proposals back to the

HA Panel for further discussions. The Chairman considered that the relevant Panels should follow up with the Administration on the relevant issues in due course.

II Any other business

56. There being no other business, the meeting ended at 4:30 pm.

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Legislative Council Secretariat
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