

Hon Mrs. Rita FAN HSU
Legco Member

Dear Honourable Mrs. FAN HSU

15 January 2007

1. This is our second joint psychologists' letter on the issue of obscene and indecent magazine covers and contents.
2. Hong Kong aspired and claimed to be Asia's World City. In many ways it is. But sadly week after weeks for too many years, Hong Kong has been littered with sexual trash (obscene and indecent magazines and newspapers) dumped on the public by a handful of unscrupulous businessmen whose primary motive is making money, without concern for the welfare of the family and society. This has continued for years, in spite of thousands of complaints from Hong Kong citizens. Our clients asked us to appeal the government on their behalf. Businessmen who benefit from Hong Kong have an obligation to be responsible members of Hong Kong society, in promoting social good and not causing social harm.
3. Even though there are only a handful of unwholesome weekly magazines (namely "*Oriental Sunday* 東方新地", "*East Week* 東周刊", "*Next Magazine* 壹週刊", "*Easy Finder* 一本便利", "*Sudden At Next* 忽然一周", "*8 Weekly* 星期 8", "*Three Weekly* 三周刊"), these debased magazines (mainly from two newspaper groups, *Oriental Daily* and *Apple Daily*) pollute Hong Kong people's streets, families, and cultures. A few businessmen affect the welfare of 7 million Hong Kong citizens and the image of Hong Kong. You too will be offended if these magazines were placed in your waiting room or your children's schools.
4. On the covers and inside the magazines include:
(See sample in the APPENDIXES, in alphabetical order of magazine names).
 - naked women and men (APPENDIX 6, 8, 9, 21)
 - obscene sexually explicit headings (APPENDIX 2 left, 6, 12, 15, 20 left)
 - oral sex (photos and words, APPENDIX 14 right, 15)
 - prostitution, and various premarital / extramarital sex (APPENDIX 7, 8 left, 12 left, 18, 19)
 - cohabitation (APPENDIX 4 left, 21)
 - voyeurism (APPENDIX 5 left)
 - stripping nightclub stage show (APPENDIX 16)
 - homosexuality (APPENDIX 12 left, 21)
 - 激情男女- an "*Easy Finder* 便利" regular feature (e.g. a photos of a partly naked teenage boy in bed with two partly naked girls; a college woman experiencing her first sexual intercourse with a date, APPENDIX 7, 10)
 - pornographic advertisings - comics style (to entice children and adolescents) advertising for pornographic telephone conversation for a fee (APPENDIX 3, 20 right)

- inserts (APPENDIX 3 left)
- surreptitious photographs (APPENDIX 1 left, 12 left, others).

5. In the area of morality and propriety, Chinese people have a culture of shame, in which wrongful behaviors produced in the person and the family a sense of public shame (losing face). This sense of shame is closely linked with the conscience (良心) which upholds moral values, and maintains harmonious interpersonal relationships. These unscrupulous businessmen have neither.

6. As psychologists, we are aware of a psychological disorder called the antisocial personality disorder, which has a prevalence of 1% in the population. People with this disorder are charming, but without conscience or a sense of shame. They cheat, lie, and engage in illegal activities for personal benefits and profits, without a sense of guilt. They will not flinch, even when their actions caused the sufferings and harm of others. The only effective means of controlling these people is through the criminal justice system, as education, therapy, or reprimand do not work.

7. These businessmen have been defying the law for years, but the Hong Kong government (TELA and OAT) is ineffective in restraining them. It was a sad revelation about the ineffectiveness of the government when Ming Pao (2006 Sep 16, APPENDIX 22) reported on a LegCo special committee meeting that took place on 2006 Sep 15, after *Easy Finder* 便利 (2006 Aug 23, Issue 761) published the photographs and article on pop singers Twins. The Obscene Article Tribunal (OAT) blamed the Television and Entertainment Licensing Authority (TELA) for not submitting articles for judgment, while TELA blamed OAT for being too lenient on fines.¹(See Note 1). From January – July 2006, the average fine was \$3,000 - \$5,000. This is silly as a few advertising income from the magazine already exceeded the fine. In comparison, a person who spits or throws a piece of banana peel on the ground is liable to a \$1,500 flat fine, and a person who smokes in a non-smoking area is liable to a \$5,000 flat fine. While a person who spits, litters, or smokes affects only a few people, a profit making company that spews out indecent / obscene trash affects 7 million Hong Kong people.

8. While government units blamed each other, passing the buck also existed in the publishing, distributing, and selling of indecent/obscene pornography, in a continuous cycle that affects the public. We have complained many times to sidewalk newspaper vendors and to 7-Eleven, but they said to complain to the publishers. Many groups and thousands of complaints were made to the publishers, and they blamed the movie stars and pop singers. Immoral, debased movie stars and pop singers and their managers reveled in the free publicity of their lewdness. Debased people need the company of like-minded people, in perpetrating vice.

9. But the function of the government is to promote good and to punish evil doers. If drunk drivers were allowed to continue endangering people, if public housing tenants were repeatedly allowed to throw garbage out their windows, if smokers were allowed to smoke in public places (such as restaurants, schools, and hospitals), or if communicable diseases such as SARS were allowed to spread unhindered, then a few people endangered

¹ Note 1. The obscene and indecent law has the following penalties: “Anyone who publishes an indecent article to a juvenile is liable to a fine of \$400,000 and to imprisonment for 12 months on first conviction and \$800,000 and imprisonment for 12 months for a second or subsequent conviction.” (www.judiciary.gov.hk).

the safety and well-being of the entire society. Thankfully, as a government that responds to public views, the Hong Kong government has acted with legislations and enforcements in many of these areas for the public good, except in the area of indecency and obscenity.

10. The unconscionable tactics of weekly magazines such as “*Easy Finder* 便利” (2006 Aug 23, Issue 761) on Twins was a natural and logical consequence of years of failure of the government to punish and restrain these businessmen. The only difference here was that Twins and their manager hired lawyer and brought the issue to court. However, most victims do not have the clout, the means and the time to file legal actions. But the government should not wait for legal action before taking matters seriously.

11. The South China Morning Post (2006 Nov 02, APPENDIX 23) reported the judgment of the Obscene Article Tribunal (OAT) on “*Easy Finder* 便利” (2006 Aug 23, Issue 761):

“It said pictures were presented with text that was “extremely detailed, graphic and provocative” and meant to be sexually arousing and pornographic. In that context, it was not necessary for nipples to be shown for the material to be indecent... the “dominant effect as a whole”, including the text and photos, should be considered. The tribunal believed that the moral standard society seeks was not solely on whether nipples were shown, but it also included the meaning behind the picture.” (underline added for emphasis).

12. Such judgment came too late (should have been done years earlier), but was a step forward in controlling indecency and obscenity. We welcome such decision. Yet to the dismay of many, in less than a month more indecent materials were published by *Easy Finder* (Appendix 8-10), and other magazines such as *Oriental Sunday* (Appendix 13-16) and *Sudden* (Appendix 17).

13. When a handful of unscrupulous businessmen, writers, and photographers are allowed to repeatedly defy the law, yet are rarely charged or receive only a token fine of a few thousand dollars, the whole society suffer. When the government is inept in hindering unscrupulous practices, it resulted in the proliferation of indecency and obscenity by emboldening current businessmen to brazenly continue their indecent publications, and by inviting new ones to join in promulgating obscenity (by the appearance of new trashy magazines). Another negative consequence is the pressure this placed on currently wholesome publications to enter the sleaze trade.

14. Besides blaming each other for the problem (thus perpetuating the problem), there are some people who argue in support of indecency and obscenity. However, we object to the following two arguments commonly used to continue the promulgation of indecency and obscenity:

- One is the argument of the free flow of information or freedom of the press. Our objection: We value freedom of the press. Hong Kong has many good newspapers and good magazines. But we cannot accept hiding behind freedom of the press, to make profit from social vice that negatively affects children and the family.
- A second argument is that many people buy these magazines. These magazine publishers claimed tens of thousands of copies sold per issue. Our objection: Many people purchasing these magazines do not rule out that these are indecent

and obscene materials. Many people throwing trash or taking illicit drugs do not make it healthy and sound. Even if those 7 magazines mentioned above sold several thousand copies each week combined, that still left the majority of over 6 million people who do not like them, are disgusted, fed up or merely tolerated these materials.

15. As psychologists, we spend our professional life (research, education, treatment) helping clients and families to live healthy and productive lives. The government spends a lot of money through the Social Welfare Department, Hospital Authority, Education and Manpower Bureau, and Department of Health in educating and helping school children, adolescents and their families to live harmonious, physically and emotionally healthy lives. Yet a few businessmen aim to destroy these young people's lives with their powerful influence of the media.

16. Therefore, we make the following suggestions on all Class I (sold to all ages) publications:

1) Use the precedent set by the recent OAT judgment (see paragraph 11 and APPENDIX 23) against *Easy Finder* 便利 (2006 Aug 23, Issue 761) toward ALL indecent materials. For years, OAT classified indecency as Class II only if the nipples or sexual organs were exposed (the so-called 3-point objective criteria). This was not the standard of the community, as evidenced by thousands of complaints by citizens². (See Note 2) One need not be a scientist to know that the breast is not just the nipple. The unfortunate consequence of the ridiculous 3-point criteria was that indecent and obscene images were published and not prosecuted when the nipples or genitals were covered with two small dots as small as ten cent coins, covered with fingers, made slightly fuzzy, or when naked people's side or back (including buttocks) were shown. And obscene headings and words were not classified as indecent or obscene. Could it be that TELA and OAT were out of touch with community standard?

As the OAT stated in the decision, the "dominant effect as a whole", including the text and photos, should be considered. A practical and common sense standard would be whether the publication is suitable to be displayed in a doctor's waiting room, or in a Children and Youth Centre. If not, then it is indecent.

2) As low fine has been a problem, we suggest a fixed fine of HK\$1,500 per copy printed, as in the fine for each spitting and littering. When one person spits in two different spots, the person could be fined two different times. So, when a publisher printed 10,000 copies of obscenity and littered Hong Kong streets, the fine should be 10,000 x 1,500 or HK\$15,000,000.³ (See Note 3)

3) As monetary fine do not deter unscrupulous businessmen (who makes a lot of money from advertising income alone), penalize these people with imprisonment as stated in the OAT pamphlet.

4) Have a demerit system for obscene publishers. For example, 3 months suspension of publishing license for second offence, 6 months suspension for third offence, and close altogether thereafter. After years of public housing tenants throwing garbage out their flats, the Housing Department in recent years have instituted a demerit

² Note 2: Refer to OAT's pamphlet "the publication of the article or the public display of the matter is intended for the public good...the standards of morality, decency and propriety that are generally accepted by reasonable members of the community...the dominant overall effect of an article or matter...the location of such display...age groups likely to view it..." Please note "members of the community" should mean Hong Kong community, not other countries. (From http://www.judiciary.gov.hk/en/crt_services/pphlt/pdf/oat.pdf)

³ Note 3: Actually the maximum penalty was only HK\$400,000 for first offence and HK\$800,000 for second offence. The average fine from 2006 Jan - July was merely HK\$3,000 - \$5,000 (Ming Pao Daily, 16 Sep 2006, Appendix 22).

system, and expelled these tenants. A driver can have his/her license suspended for 3 months, then 6 months due to speeding. Taxi drivers have ceased from making a living due to speeding. Why not indecent and obscene publishers?

5) Even one indecent / obscene photo, wordings, or article make the entire publication indecent, the entire magazine or newspaper should be classify as Class II or Class III, rather than just the article. If repeated offenders were fond of including such trash in their publication, then the government should require that the publication be classified as Class II or Class III. Therefore, Easy Finder, Oriental Sunday, or similar magazines should be required to abide with Class II requirements thereafter.

6) Pornographic advertisings of games, posters, comics, telephone calls, etc. should not be allowed in Class I publications.

7) Require that names of publisher and editors, publication address and telephone numbers be printed on the inside front cover of the publication, and the names of writers and photographers on each article. And include TELA's complaint hotline, fax, and email on the inside front cover, just as the Broadcasting Authority's complaint hotline is broadcast on TV.

8) TELA regularly publish the names of magazines sent to OAT and the penalties (fines and prison terms) on its website.

9) Sexually indecent and obscene materials and advertisings should be prohibited in Hong Kong's daily newspapers, such as *Oriental Daily* (東方日報) and *Apple Daily* (蘋果日報) that are displayed and sold to people of all ages.

10) We object to the obtrusive, eye level display of pornographic magazines (Class II) on our sidewalk newsstands, and in convenient stores, such as 7-Eleven and Circle K where customers of all ages patronize. In many places, pornography is displayed front and center of public view, while wholesome magazines are placed on the side. It is unreasonable that pornography and sleazy magazines are displayed along with children's books and magazines in such small sidewalk newsstands and convenient stores. Indecent Class II pornography should not be allowed on sidewalk newsstands and in convenient stores. Presently, every newsstand is a pornographic "adult" stand. Instead, designate "Adult Bookstores" with age-limit warnings posted at the front of the stores. The pornographic materials in these "Adult Bookstores" should not be displayed on the windows. These Adult Bookstores should require a license from the government to operate, and should receive regular random, unannounced inspections. There should only be a limited number of such bookstores, maybe 18 (one in each electoral district). There is an ordinance on "Prohibition on display of indecent matter."⁴ (See Note 4)

Thank you for your support and action. We look forward to hearing from you. Please send reply to our contact person: Sarah IP, Clinical Psychologist, Fullife Psychological Practice, Suite 3208, 32/F., Shell Tower, Times Square, Causeway Bay, Hong Kong. Tel: 2322-8456.

Sincerely,

A group of concerned psychologists

⁴ Note 4: Control of Obscene and Indecent Articles Ordinance Chapter 390 Section 23 "Prohibition on display of indecent matter." (1) If any indecent matter is publicly displayed the person making the display and any person causing or permitting the display to be made, whether or not he knows that the matter is indecent, commits an offence and is liable to a fine of \$400000 and to imprisonment for 12 months on his first conviction, and to a fine of \$800000 and to imprisonment for 12 months on a second or subsequent conviction. (Amended 73 of 1995 s. 7)

By Alphabetical Order of Last Names (37 psychologists):

Angel AU, Clinical Psychologist / Autism Partnership
Derek CHAN, Clinical Psychologist / Caritas-Hong Kong
Elaine CHAN Sau-wai, Educational Psychologist / Society for Boys' Centres
May CHAN Ching-king, Educational Psychologist / Society of Boys' Centres
Michelle CHAN Wai-Man, Educational Psychologist / Catholic Education Office
Patricia CHAN, Clinical Psychologist / Oasis-Center for Personal Growth and Crisis
Intervention, Hospital Authority
Winnie CHAN, Clinical Psychologist / Kwun Tong Methodist Social Service
Winning CHAN, Clinical Psychologist, Counselor / Hong Kong University
Sammy CHENG, Ph.D., Clinical Psychologist / Kwai Chung Hospital
Sally CHIU Chung-man, Educational Psychologist / Hong Chi Association
Debbie CHOI Kit-yan, Educational Psychologist / The Methodist Church Hong Kong
CHU Lai-ye, Clinical Psychologist / Correctional Services Department
Hannah CHUNG NG Lai-kuen, Clinical Psychologist / Centre of Marriage and Child
Guidance
Janice FONG Sau-kuen, Educational Psychologist / Education and Manpower Bureau
David Y. F. HO, Ph.D., Professor, Center on Behavioral Health, University of Hong Kong
Stephanie HO Wing-ye, Clinical Psychologist / Fu Hong Society
Sarah IP, Clinical Psychologist / Fullife Psychological Practice
Stephen JANG, Ph.D., Clinical Psychologist / Christian Family Service Centre
Wendy LAI Yuen-kwan, Agency-based Clinical Psychologist / Caritas-HK Rehabilitation
Service
Ester LEE, Clinical Psychologist / Baptist Oi Kwan Social Service
LEE Suk-han, Educational Psychologist / Education and Manpower Bureau
Becky LEUNG, Clinical Psychologist / Hong Kong Christian Service
Frank LEUNG King-wai, Senior Lecturer / HKU Space Community College
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Alexander LO, Ph.D., Consultant Clinical Psychologist / City University Professional
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Isaac TAM, Ph.D., Clinical Psychologist, Senior Student Counselor /
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Judy TAM, Clinical Psychologist / Caritas-Hong Kong
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