

**For discussion
on 14 February 2012**

**Legislative Council
Panel on Information Technology and Broadcasting and
Panel on Education**

Regulation of Indecent Articles in Free Newspapers

Purpose

This paper briefs Members on the existing regulatory regime for controlling obscene and indecent articles under the Control of Obscene and Indecent Articles Ordinance (COIAO) (Cap 390) and the follow-up actions taken by the Television and Entertainment Licensing Authority (TELA) in respect of the complaints against indecent articles published in Sharp Daily.

Existing Regulatory Regime

Objective

2. On regulating the publication of articles, the Government's long-standing policy is to preserve the free flow of information and safeguard the freedom of speech, while applying the standards of public decency to articles (especially those intended for young and impressionable people). There is no compulsory pre-censorship before the publication of an article under the law. However, the publisher has a clear responsibility to ensure that the publication is in compliance with the legal requirements, including the provisions prohibiting the publication of indecent articles to juveniles and on relevant penalties.

Scope and Classification

3. The COIAO regulates the publication and public display of obscene and indecent articles. Under the COIAO, "obscenity" and "indecent" include violence, depravity and repulsiveness. The term "article" has a broad definition in the COIAO, covering anything containing material to be read and/or looked at, any sound-recording, and any film, videotape, disc or other record of a picture.

Obscene Articles Tribunal

4. The Obscene Articles Tribunal (OAT) is a part of the Judiciary. To enforce COIAO, the OAT may classify an article into three different classes, viz. -

- (a) Class I (Neither Obscene nor Indecent) articles may be published without restriction;
- (b) Class II (Indecent) articles must not be published to persons under the age of 18. Publications of Class II articles must comply with certain statutory requirements, including sealing such articles in wrappers, and display of a warning notice on the front and back covers of such articles as prescribed by the COIAO; and
- (c) Class III (Obscene) articles are prohibited from publication.

5. The OAT also has exclusive jurisdiction to determine whether any article is obscene or indecent. The Administration is not involved in the classification process. The OAT comprises a presiding magistrate and two or more members drawn from a panel of adjudicators appointed by the Chief Justice. The adjudicators are ordinary members of the public with a wide spectrum of socio-economic background. This is to ensure that the standards of morality, decency and propriety adopted by the OAT in classifying submitted articles are consistent with those prevailing in the community.

6. There is no compulsory pre-censorship before the publication of an article under the COIAO. Nevertheless, publishers may voluntarily submit that article for classification. Upon receipt of an application for classification of an article from a publisher or a law enforcement agency, the OAT will conduct a hearing within five days to give an interim classification on the article. If the interim classification is not disputed, it will be taken as the final classification. If any person is not satisfied with the interim classification, he/she may ask for a review within five days. The OAT will arrange a full public hearing to review the interim classification. In conducting a full hearing, the OAT must consist of a presiding magistrate and four or more adjudicators who were not previously involved in the interim classification.

7. According to the COIAO, the OAT has to consider the following factors in classifying an article –

- (a) the standards of morality, decency and propriety that are generally accepted by reasonable members of the community;
- (b) the dominant effect of an article as a whole;
- (c) the persons or class of persons, or age groups of persons, to or amongst whom the article is intended to be published;
- (d) in the case of matter publicly displayed, the location where the matter 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 any part of it acceptable.

Enforcement of the COIAO

8. The COIAO is enforced by TELA, the Hong Kong Police Force (the Police) and the Customs and Excise Department (C&ED). In general terms, the Police mainly deal with the sale of articles at wholesale and retail outlets, while C&ED intercepts articles at boundary checkpoints and may encounter such articles in the course of copyrights enforcement work. TELA monitors publications and inspects retail outlets (such as news stands, video shops, comic book stores, computer shops, etc.) to check if there are any published articles suspected of breaching the COIAO. TELA will normally submit articles suspected of breaching the COIAO to the OAT for classification and will prosecute publishers or vendors who are found to have published articles classified by the OAT as Class III. For Class II articles which are not published in compliance with the COIAO requirements, the publishers or vendors concerned will also be prosecuted. In 2011, TELA conducted 72 000 inspections. The number of indecent and obscene articles seized has dropped from around 38 500 in 2009 to 9 500 in 2011.

Penalty

9. The penalty for violating the COIAO is determined by the court. The maximum penalty for the publication of an obscene article under the COIAO is a fine of \$1,000,000 and imprisonment for 3 years. The maximum penalty for the publication of an indecent article in breach

of the COIAO is 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.

Complaints against Sharp Daily

10. Under the existing regulatory regime, newspapers (whether pay or free) are regulated by the COIAO. TELA has been closely monitoring Sharp Daily since it was first published on 19 September 2011. The Administration is also very concerned about the classified indecent articles published in Sharp Daily.

11. As at 31 January 2012, TELA has received a total of 209 complaints, mainly against the newspaper for carrying indecent, obscene and violent contents. TELA has conducted investigations into the complaints against Sharp Daily and submitted a total of 26 articles published between 19 September 2011 to 10 October 2011 suspected of contravening the COIAO to the OAT for classification. Among these articles, 23 have been classified by the OAT as Class II (indecent) articles, whereas the remaining 3 have been classified as Class I (neither Obscene nor Indecent) articles. TELA has taken prosecution actions against the publisher in respect of all the Class II written articles published in the Sharp Daily. TELA has also written to Sharp Daily, requesting it to duly respect the complaints lodged by members of the public against Sharp Daily for publishing a series of indecent articles and reminding it that all articles published should comply with the legal requirements and that the Government would take prosecution actions against any publisher who illegally publishes indecent articles. The case was heard by the Eastern Magistrates' Court in November 2011 and December 2011. As Sharp Daily pleaded not guilty, the court referred the articles to OAT for determination in March 2012. Court hearing for the case will resume in April 2012.

12. TELA will continue to closely monitor the situation and where necessary, take appropriate follow-up action, including prosecution. In addition, while TELA will usually submit an article suspected of contravening the COIAO to the OAT for classification first before taking prosecution action against publisher, TELA would also consider taking direct prosecution action against the publisher without submitting the article concerned to OAT if the article clearly violates the COIAO. TELA has successfully taken direct prosecution against offenders in the past.

Publicity and Public Education

13. In addition to taking enforcement actions against publishers violating the COIAO, TELA has also stepped up publicity and public education of the COIAO in the past few years to promote the importance of healthy information amongst children and youngsters, and to build up their resistance to harmful information. In 2011-12, the expenditure for organising publicity and public education programmes in relation to the COIAO was \$6.7 million, representing a substantial increase of around 50% as compared to that of \$4.4 million in 2009-10.

14. The major publicity and public education programmes conducted by TELA in 2011-12 include the following:

- (a) school talks;
- (b) filtering software workshops for parents (including the distribution of free filtering software);
- (c) sponsorship for publicity and public education activities related to the COIAO;
- (d) education projects for retail outlets and chain stores;
- (e) Meritorious Website Contest;
- (f) Healthy Internet Video Contest;
- (g) Healthy Information Student Ambassadors Scheme;
- (h) roving exhibitions; and
- (i) Internet E-banners.

TELA has launched new programmes in the last two years to meet the changes in society and to cater for the needs of students and youngsters. These programmes include the Healthy Mobile Phone / Tablet APPS Nomination Programme, school drama tours and radio dramas.

15. In 2010-11, the publicity and public education programmes organised by TELA in relation to the COIAO were well received with a total of 277 000 participants, which was almost 20% higher or 45 000 more participants than that in 2009-10. TELA will continue to organise a

wide range of publicity and public education programmes to help youngsters build up resistance to harmful materials. We will also continue to provide guidance to parents in assisting their children in the safe and healthy use of the new media, such as the Internet and mobile phones / tablet computers and visit retail outlets and chain stores to explain the provisions of the COIAO to the operators to prevent them from encroaching upon the law.

Way Forward

16. Having regard to public concern over Sharp Daily, TELA has already stepped up enforcement efforts in monitoring articles published in the market, and will refer any article suspected of contravening the COIAO to the OAT for classification after consideration of factors such as the age groups of persons to whom the article (e.g. a free newspaper) is intended to be published or, in the case of matter publicly displayed, the location where the matter is publicly displayed and the persons likely to view such matter. Appropriate follow-up actions, including prosecution, will be taken against articles classified as indecent or obscene. If a publisher publishes an article which clearly violates the COIAO, TELA would consider taking direct prosecution action.

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