

立法會
Legislative Council

LC Paper No. CB(3) 415/14-15

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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 4 February 2015

**Amendments to motion on
“Comprehensively reviewing the provision on ‘access to computer with
criminal or dishonest intent’ under the Crimes Ordinance”**

Further to LC Paper No. CB(3) 385/14-15 issued on 23 January 2015, Hon Claudia MO and Dr Hon Elizabeth QUAT have respectively given notice of their intention to move separate amendments to Hon Charles Peter MOK’s motion on “Comprehensively reviewing the provision on ‘access to computer with criminal or dishonest intent’ under the Crimes Ordinance” scheduled for the Council meeting of 4 February 2015. As directed by the President, Hon Claudia MO’s and Dr Hon Elizabeth QUAT’s amendments will be printed in the terms in which they were handed in on the Agenda of the Council.

2. The President will order a joint debate on the above motion and the two amendments. To assist Members in debating the motion and the amendments, I set out below the procedure to be followed during the debate:

- (a) the President calls upon Hon Charles Peter MOK to speak and move his motion;
- (b) the President proposes the question on Hon Charles Peter MOK’s motion;
- (c) the President calls upon the two Members who wish to move amendments to speak in the following order, but no amendment is to be moved at this stage:
 - (i) Hon Claudia MO; and
 - (ii) Dr Hon Elizabeth QUAT;

- (d) the President calls upon the public officer(s) to speak;
- (e) the President invites other Members to speak;
- (f) the President gives leave to Hon Charles Peter MOK to speak for the second time on the two amendments;
- (g) the President calls upon the public officer(s) to speak again;
- (h) in accordance with Rule 34(5) of the Rules of Procedure, the President has decided that he will call upon the two Members to move their respective amendments in the order set out in paragraph (c) above. The President invites Hon Claudia MO to move her amendment to the motion, and forthwith proposes and puts to vote the question on Hon Claudia MO's amendment;
- (i) after Hon Claudia MO's amendment has been voted upon, the President deals with Dr Hon Elizabeth QUAT's amendment to the motion; and
- (j) after Dr Hon Elizabeth QUAT's amendment has been dealt with, the President calls upon Hon Charles Peter MOK to reply. Thereafter, the President puts to vote the question on Hon Charles Peter MOK's motion, or his motion as amended, as the case may be.

3. For Members' reference, the terms of the original motion and of the motion, if amended, are set out in the **Appendix**.

(Odelia LEUNG)
for Clerk to the Legislative Council

Encl.

(Translation)

Motion debate on
“Comprehensively reviewing the provision on ‘access to computer with criminal or dishonest intent’ under the Crimes Ordinance”
to be held at the Council meeting of 4 February 2015

1. Hon Charles Peter MOK’s original motion

That, when the Administration amended the Crimes Ordinance (Cap. 200) in 1993, the provision on ‘access to computer with criminal or dishonest intent’ (i.e. ‘section 161’) was added, with an aim to penalize access to a computer for acts preparatory to but falling short of the commission of a fraud; in recent years, to make prosecution easier, the Police have repeatedly abused section 161 to institute prosecutions against persons using computers or mobile devices to engage in acts which are not in violation of other legal provisions and against persons alleged to have contravened other legal provisions; such a practice has seriously distorted the legislative intent of section 161, and has turned this provision into a draconian law; in this connection, this Council urges the Administration to review and amend section 161 to make it applicable only to computer frauds, so as to protect people from unreasonable arrests and prosecutions.

2. Motion as amended by Hon Claudia MO

That, *according to records*, when the Administration amended the Crimes Ordinance (Cap. 200) in 1993, the provisions on ‘access to computer with criminal or dishonest intent’ (i.e. ‘section 161’) was added, with an aim to penalize access to a computer for acts preparatory to but falling short of the commission of a fraud; in recent years, to make prosecution easier, the Police have repeatedly abused section 161 to institute prosecutions against persons using computers or mobile devices to engage in acts which are not in violation of other legal provisions and against persons alleged to have contravened other legal provisions; *furthermore, the Police have also from time to time invoked section 161 to prosecute the network media which records tomorrow’s history and promotes social reform, so as to suppress freedom of the press and freedom of speech of the fifth power of modern society, as well as to hinder discussions of the civil society and development of social movement*; ~~such a practice has~~ *practices have* seriously distorted the legislative intent of section 161, and ~~has~~ *have* turned this provision into a draconian law; in this connection, this Council urges the Administration to review and amend section 161 to make

it applicable only to computer frauds, *and to stop abusing the relevant provision to suppress freedom of the press and freedom of speech*, so as to protect people from unreasonable arrests and prosecutions.

Note: Hon Claudia MO's amendment is marked in *bold and italic type* or with deletion line.

3. Motion as amended by Dr Hon Elizabeth QUAT

That, *information shows that* when the Administration amended the Crimes Ordinance (Cap. 200) in 1993, the provision on 'access to computer with criminal or dishonest intent' (i.e. 'section 161') was added, with an aim to ~~penalize access to a computer for acts preparatory to but falling short of the commission of a fraud; in recent years, to make prosecution easier, the Police have repeatedly abused section 161 to institute prosecutions against persons using computers or mobile devices to engage in acts which are not in violation of other legal provisions and against persons alleged to have contravened other legal provisions; such a practice has seriously distorted the legislative intent of section 161, and has turned this provision into a draconian law; in this connection~~ *combat acts of access to computers with criminal or dishonest intent; with the prevalence of the Internet and social media, more and more people organize and conduct illegal activities on the Internet, including prostitution, gambling, fraud and criminal intimidation, and also there are people appealing on the Internet for the masses to launch network attacks and storm the Legislative Council Complex and the Central Government Offices; according to the information provided to the Legislative Council by the Administration, between 2011 and 2013, there was a yearly average of several dozen convicted cases under section 161, which accounted for 80% to 90% of the total number of prosecution cases under the same provision in each year of the same period; as the crimes involving the use of computers have become increasingly rampant at present, this Council urges the Administration to review and amend section 161 to make it applicable only to computer frauds, section 161 and other relevant legislation to strengthen the combat against illegal acts associated with the use of computers*, so as to protect people from unreasonable arrests and prosecutions *and social interests*.

Note: Dr Hon Elizabeth QUAT's amendment is marked in *bold and italic type* or with deletion line.