

立法會
Legislative Council

LC Paper No. CB(1)1720/99-00

(These minutes have been
seen by the Administration)

Ref : CB1/PL/ITB/1

Legislative Council
Panel on Information Technology and Broadcasting

Minutes of meeting
held on Monday, 8 May 2000, at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon MA Fung-kwok (Chairman)
Hon SIN Chung-kai (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon David CHU Yu-lin
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Eric LI Ka-cheung, JP
Hon Fred LI Wah-ming, JP
Hon James TO Kun-sun
Hon Howard YOUNG, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon LAW Chi-kwong, JP
- Members attending** : Hon Ronald ARCULLI, JP
Hon Andrew CHENG Kar-foo
- Members absent** : Prof Hon NG Ching-fai
Hon CHAN Kwok-keung
Hon YEUNG Yiu-chung
Hon Timothy FOK Tsun-ting, SBS, JP
- Public officers attending** : For Item III
Miss Annie TAM
Deputy Secretary for Information Technology and
Broadcasting (3)

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Mr M T WONG
Chief Engineer (Cyberport)
Information Technology and Broadcasting Bureau

Mr LAM Sing-kwok
Chief Engineer/Hong Kong 2
Territory Development Department

For Item IV

Ms Eva CHENG
Acting Secretary for Information Technology and
Broadcasting

Mr Alan SIU
Deputy Secretary for Information Technology and
Broadcasting (2)

Mr Esmond LEE
Acting Commissioner for Television and
Entertainment Licensing

Miss Adeline WONG
Principal Assistant Secretary for Information
Technology & Broadcasting (B)

Clerk in attendance : Miss Polly YEUNG
Chief Assistant Secretary (1)3

Staff in attendance : Ms Sarah YUEN
Senior Assistant Secretary (1)4

I Confirmation of minutes of meeting and matters arising
(LC Paper Nos. CB(1)1505/99-00 and 1504/99-00(01))

The minutes of the Panel meeting held on 10 April 2000 were confirmed.

2. Members noted the Panel's list of follow-up actions.

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II Date and items for discussion for next meeting

3. Members agreed to discuss the following items at the next regular meeting of the Panel to be held on 12 June 2000 at 2:30 p.m. -

- (a) Cyberport;
- (b) Proposed revision of Government fees and charges under the purview of the Information Technology and Broadcasting Bureau (ITBB) and its departments;
- (c) Hacking activities and preventive measures; and
- (d) Industry consultation on licensing framework for Third Generation Mobile Services.

III Progress of the Cyberport project

(LC Paper Nos. CB(1)1504/99-00(02) and (03))

4. The Deputy Secretary for Information Technology and Broadcasting (3) (DS/ITB(3)) briefed members on the two papers from the Administration. Members noted that the proposal relating to the "Construction of the Northern Access Road to Cyberport development at Telegraph Bay" would be considered by the Public Works Subcommittee on 17 May 2000.

Progress of the Cyberport project

Gazettal of the Cyberport project (the project)

5. In reply to the Chairman's query about the objection by residents of Baguio Villa, details of which had not been shown in the chart on objections received, the Chief Engineer (Cyberport), ITBB clarified that the objection made by the management company for Baguio Villa had been included under Objection Serial Nos. 8 - 14 raised under the Town Planning Ordinance. As no specific details had been provided, Miss Emily LAU was keen to ensure that the objection by Baguio Villa had been given due consideration.

6. In response, DS/ITB(3) explained that details of the objection had not been given mainly because the grounds for the objection had not been very clearly presented. She nevertheless assured members that all objections to the project had been submitted in their entirety to the Town Planning Board (TPB) for consideration. The Administration had also drawn TPB's attention to the possible visual impact of the Cyberport's building profile on the surrounding areas, including Baguio Villa, in the master layout plan submission made under section 16 of the Town Planning Ordinance. To help TPB assess the impact,

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photomontage images had also been provided on request. At members' request, DS/ITB(3) agreed to include details of objections 8-14 in the paper for the June meeting of the Panel. As to the Chairman's proposal to list the names of the objectors in the paper as well, she said that the Administration would need to secure the consent of the objectors before disclosing their identity.

7. As to how the Administration had handled the objection by Baguio Villa, DS/ITB(3) reported that representatives of the owners' corporation of Baguio Villa approached the Administration after the master layout plan of the project had been approved by TPB to voice their concern about the visual impact of the project. Notwithstanding TPB's approval of the plan and time constraints, the Administration had reconsidered the owners' concern and accordingly reduced the approved building heights of the Cyberport development even though this would entail re-submission of the master layout plan to TPB. In fact, the new plan had already been submitted to TPB for consideration. DS/ITB(3) further reported that in order to maintain the development potential and design concept of the Cyberport development, the panoramic view of certain flats at the lower levels of Baguio Villa might still be affected by the development notwithstanding the revised building profile. However, the owners' corporation of Baguio Villa had already indicated acceptance of the revised profile and described it as "a most considerate concession" in its letter to the Administration.

Project Agreement

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8. Accounting for the delay in concluding the Project Agreement with Pacific Century Group (PCG), DS/ITB(3) explained that the Administration and PCG had been negotiating the terms of the Agreement for about five months because the project was of a very large scale spanning seven years, and involved highly complicated financial arrangements. She was however confident that the Agreement would be signed in time for the Administration to brief the Panel at its June meeting on the major provisions. She also agreed that if the Agreement was signed earlier, a Legislative Council Brief would be issued before the meeting.

(Post-meeting note: The relevant LegCo Brief was circulated to all LegCo Members on 18 May 2000.)

9. Addressing the Deputy Chairman's concern that works on the project had already commenced before conclusion of the Agreement, DS/ITB(3) clarified that the works being undertaken on site were infrastructural works which had to be implemented irrespective of the project. She assured members that works on the Cyberport per se would not commence before the signing of the Agreement.

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10. Miss Emily LAU was concerned whether the recent sharp fall in PCG's share price would affect its financial capacity to honour its financial commitment to the project. In reply, DS/ITB(3) pointed out that fluctuations in PCG's share price would not impact on the project because the Agreement would contain provisions to secure the financial commitment of PCG regardless of its performance on the stock market. She undertook to brief members after the Agreement had been signed.

Management

11. Miss Emily LAU was keen to ensure that the project would be able to serve its purpose of attracting information technology (IT) companies to set up operations in Hong Kong, and asked how many of the 120 companies which had indicated interest in becoming tenants of the Cyberport were already established in Hong Kong. In reply, DS/ITB(3) explained that there was difficulty in ascertaining the required ratio because the 120 companies were not obliged to supply their details until the time they submitted their formal application for tenancy. She however said that all interested companies, including the 15 which had signed letters of intent, had to formally apply for admission and a selection committee which would comprise international experts would vet the applications. The selection committee would take into account that Cyberport tenants should help promote IT development in Hong Kong by bringing in new technologies. DS/ITB(3) agreed to provide in due course details of the companies admitted to facilitate members' assessment of the success of the project.

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12. On Miss Emily LAU's suggestion to give priority consideration to companies which had not yet set up offices in Hong Kong, DS/ITB(3) cautioned against pre-empting the decisions of the selection committee. She further pointed out that the committee would have to balance the need to assist local companies, and the need to attract multinational corporations to the Cyberport even though they might already be operating in Hong Kong. Notwithstanding, she undertook to refer Miss LAU's suggestion to the committee for consideration. DS/ITB(3) added that companies already operating in Hong Kong would also be encouraged to expand their current business or develop new activities in the Cyberport.

13. Miss Emily LAU noticed that the area of the existing Hong Kong offices of some of the companies which had indicated interest in moving into the Cyberport was larger than their planned new offices in the Cyberport. She was therefore concerned that their operations in Hong Kong might shrink instead of expand. In response, DS/ITB(3) said that these companies might be relocating only part of their existing business to the Cyberport or building up new business in the Cyberport. However, before they formally lodged their tenancy applications with details on their proposed business activities in the Cyberport, the Administration would not be in a position to discuss their future

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business plans.

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14. At the Chairman's request for details of the admission criteria, DS/ITB(3) advised that the initial thinking was that the tenants admitted should be specializing in information services, multimedia content creation, and new and leading-edge IT applications. It was also hoped that such companies would be setting up their headquarters or regional offices in Hong Kong. Members noted that the application details, including the admission criteria, would be worked out after the Project Agreement had been signed and the Panel would be briefed when they were finalised.

Construction of the Northern Access Road to Cyberport development at Telegraph Bay

15. Mr Howard YOUNG enquired whether the construction of Route 7 would have an impact on the alignment of the proposed Northern Access Road (NAR) and the project. In reply, DS/ITB(3) confirmed that according to the relevant traffic impact assessment (TIA) study, the Cyberport development would not be contingent upon the provision of Route 7. However, there was a need to provide road access at both the northern and southern ends of the site. Hence, it was necessary to provide the southern access road (SAR) to connect the site to Victoria Road and the NAR to connect the site to Sha Wan Drive, and the connection of these two access roads by a distributor road D1 within the site. Members noted that although Route 7 had no direct bearing on the project, upon completion, it would be connected to the site by road D2 to further improve the traffic flow in the area.

16. In response to Mr Howard YOUNG's concern about possible traffic congestion in the absence of Route 7, DS/ITB(3) emphasized that according to the relevant TIA study, with improvements to several road junctions, the existing road network would be able to cope with the resultant growth in traffic to be generated by the Cyberport.

17. Miss Emily LAU sought further information on the resumption of land at Stanley Ho Sports Ground to enable the construction of NAR. In reply, the Chief Engineer/Hong Kong 2, Territory Development Department advised that the land was originally allocated to the University of Hong Kong. However, as it was at the upper portion of a slope and had not been effectively utilized, the University had agreed in principle to surrender this area to the Government at no charge.

Other concerns

18. The Deputy Chairman opined that the name "Cyberport" was misleading as there would not be a port within its site. Commenting on his suggestion to rename the project "Cyberbay", DS/ITB(3) pointed out that "數碼港", the

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Chinese equivalent of "Cyberport", referred to a centre of IT development and not a port. The company set up for the project had already been registered under the name of "Hong Kong Cyberport Development Holdings Limited", and the Administration had no intention to rename the project. DS/ITB(3) nevertheless noted the Deputy Chairman's view. Accounting for the appearance of launches in the artistic impression of the Cyberport, DS/ITB(3) further explained that the artist had added in the launches because a marina might be built in the vicinity of the Cyberport somewhere opposite Route 7. However, the provision of the marina would not be confirmed before finalisation of the alignment of Route 7.

IV Review of the Control of Obscene and Indecent Articles Ordinance

(The relevant LegCo Brief (File Ref.: ITBB(CR)8/7/1(00)) and a set of power-point presentation material tabled at the meeting and circulated thereafter vide LC Paper No. CB(1)1551/99-00)

General

19. With the aid of power-point presentation, the Acting Secretary for Information Technology and Broadcasting (SITB (Atg.)) briefed members on the Consultation Paper on Protection of Youth from Obscene and Indecent Materials: The 2000 Review of the Control of Obscene and Indecent Articles Ordinance (COIAO), which proposed improvements to the COIAO to address community concerns and the inadequacies of the current classification system.

20. Mr Fred LI enquired if the proposals were directed at three specific Chinese language newspapers which carried indecent materials in the form of "sex-pages". In reply, SITB(Atg.) pointed out that apart from indecent materials, the public was also gravely concerned about the proliferation of violent comic books.

The classification system

21. Mr Andrew CHENG was concerned about the proposed adoption of a two-tier classification system which comprised an obscene articles classification board to classify articles and the existing Obscene Articles Tribunal (OAT) to consider appeals against the classification decisions of the classification board and to deal with the determination of articles referred to it by a court or a magistrate. In his view, the original purpose of establishing the OAT under the COIAO was to ensure the implementation of the classification system by a judicial body independent of the Administration. The proposed restructure however would result in a shift from an independent statutory classification system to a quasi-administrative one and would render the system more vulnerable to governmental control. This might also give the impression that the Administration was trying to interfere with what had been the job of

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the Judiciary all along. Moreover, the replacement of the current one-tier system with a two-tier one might also lead to duplication of resources. He summed up the view of Members of the Democratic Party that instead of introducing a restructure, the Administration should improve the performance of OAT by introducing a jury system.

22. In response, SITB(Atg) pointed out that OAT's current dual role of classifying articles while at the same time considering appeals against its classification decisions was undesirable because the two duties were different, one being administrative and the other judicial. The proposed separation of appeal handling from classification would be a better approach and could strengthen the checks and balances available. Moreover, in finalising the present proposal, the Administration had consulted the Judiciary and they also found the entrustment of the classification of articles to a separate administrative organ agreeable, having regard that classification involved fewer legal considerations. SITB(Atg) further pointed out that after restructuring, the OAT would be even more representative of community views as appeals would be considered by jurors.

23. Noting that OAT's caseload was not heavy, Mr Andrew CHENG was not convinced of the need for the classification board to take up a part of its existing work. He did not agree that classification of articles was administrative in nature as the work had to be carried out in accordance with the COIAO and the classification decisions would also have legal effect. In particular, he opined that the serial publication orders against serial publications were in fact statutory orders and should only be issued by the OAT. SITB(Atg) took note of Mr CHENG's views for consideration.

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24. As regards the representativeness of the classification board, SITB(Atg) confirmed that members on the board would be drawn from different sectors of the community. The Administration had also noted the suggestion to invite nominations from relevant bodies in these sectors for consideration for appointment to the classification board. Moreover, the board would also classify articles according to a set of administrative guidelines issued by SITB mainly on the basis of the results of surveys on the standards of morality generally accepted by the community. Such surveys would be conducted annually to ensure that the guidelines could reflect changing community standards and concerns.

25. Miss CHOY So-yuk and Mr Kenneth TING accepted the establishment of a classification board to classify articles. Miss CHOY however opined that the administrative guidelines for the board's reference should be clear and transparent, and should be regularly reviewed to reflect changing needs and expectations of the community in a timely manner. She therefore pointed out that instead of updating them on the basis of annual reviews conducted by the Administration, the Administration should consider commissioning

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independent institutions to conduct comprehensive scientific surveys and actively soliciting the views of news media, educational, social and women organisations. In response, SITB(Atg) advised that it was the intention of the Administration to conduct regular surveys on the standards of morality generally accepted by the community and independent institutions/companies would be commissioned to conduct the surveys. She however noted Miss CHOY's suggestions for consideration.

Enforcement

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26. Mr Andrew CHENG opined that the COIAO should provide clear definitions and guidelines on obscenity and indecency to avoid abuse and ensure effective enforcement. In response, SITB(Atg) pointed out that as a result of conducting more active and regular reviews, the classification system should be able to reflect changes in public moral standards.

27. In reply to Mr Fred LI's enquiry on the standards adopted by staff of the Television and Entertainment Licensing Authority (TELA) when determining whether to refer an article to OAT for classification, SITB(Atg) said that when performing their duties, TELA staff would make reference to OAT's classification rulings for guidance. At Mr LI's request, she agreed to provide the annual figures on the articles referred by TELA to OAT for classification and the articles subsequently classified as obscene or indecent by OAT.

28. Mr Eric LI highlighted community concerns about the protection of young people against obscene and indecent articles and opined that enforcement actions should be geared up immediately without awaiting the results of the consultation exercise. Mr Andrew CHENG shared his view and added that TELA's staffing support should be increased accordingly to step up enforcement. He also considered the requirement on newspapers with indecent content to carry clear identification such as prominent red markings ineffective as this might, on the contrary, help to boost the sale of the papers. In response, SITB(Atg) assured members that in recognition of the need to strengthen enforcement actions, sufficient staffing support would be provided to TELA by redeploying internal resources.

29. Mr Eric LI proposed that to deny young persons below 18 years of age access to indecent publications, the Administration should require newspaper vendors to lock up such publications (similar to the sale of cigarettes) or restrict their sale at designated retail points or shops. In response, SITB(Atg) pointed out that given the existing trade practice of on-street newspaper vendors and the constraint of space, the suggestion might not be practicable. As regards the proposal to restrict the sale of indecent publications at designated shops, its effective implementation would entail the introduction of a licensing system, possibly with a cap on the number of designated shops to be licensed. As such, the access to such publications by adults might be unduly affected and

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this was not the policy intention. She further pointed out that since there was no prior censorship, there would also be difficulty in predetermining which publications should be locked up or sold in designated premises. In reply to Mr Eric LI, the Acting Commissioner for Television and Entertainment Licensing confirmed that so far, the Administration had not received any counter-proposals by newspaper vendors on how to prevent young persons from access to indecent materials on sale at newsstands.

30. Mr Kenneth TING, on the other hand, did not agree that newspaper vendors should be made responsible for restricting the sale of indecent articles, and urged the Administration to formulate more effective regulatory measures. In response, SITB(Atg) clarified that newspaper vendors already had such responsibilities under the COIAO. The only additional duty proposed to be imposed on them was ensuring the enforcement of the serial publication order.

Proposed penalties

31. Noting that notwithstanding the maximum penalties prescribed in the COIAO, the convictions in 1999 only resulted in fines ranging from \$500 to \$90,000, Mr Kenneth TING cast doubt on the effectiveness of increasing the penalties under the COIAO. Mr Andrew CHENG shared his view, and opined that to achieve the desired deterrent effect, the level of penalties should be pegged to the profits derived from the sale of the indecent articles concerned. In response, SITB(Atg) pointed out that the proposed increase in the level of fine was necessary for enhancing the deterrent effect in view of the adverse influence of the offences on young people. She nevertheless took note of members' views for consideration.

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Regulation of obscene and indecent articles on the Internet

32. The Deputy Chairman opined that where local Web sites were concerned, apart from clarifying the legal liabilities of the Internet service providers (ISPs), consideration should also be given to examining the responsibility of the Web hosts as well as the Web site owners in question. He further pointed out that the legal liabilities of the three parties should be clearly defined and differentiated in legislation. In response, SITB(Atg) said that the ISP would be held responsible because its role was similar to that of the publisher in printed materials. She however noted the Deputy Chairman's concerns and advised that as it was not reasonable to expect the ISPs to be able to screen all information that might be uploaded onto or downloaded from the Internet by users or transmitted via their servers from other servers on the Internet, the Administration had already proposed that ISPs as conveyors of information should be provided with a defence so that they would not be held responsible merely for the conveyance of information which they were not aware of or had reasonable grounds for believing to be not obscene or indecent.

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33. As to the requirement on local ISPs to block access to obscene materials, the Deputy Chairman commented that the requirement would be reasonable only where the obscene materials were hosted overseas and hence, outside the jurisdiction of Hong Kong. The only option for the Government would therefore be requiring local ISPs to block access to the obscene materials. However, in the case of obscene materials hosted locally, before directing the local ISP concerned to block access to or remove the obscene articles in question, the Government should institute an action against the originator of the material first. His views were noted by the Administration.

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34. To strengthen control on young people's access to indecent materials on the Internet and to relieve the onus on ISPs, the Deputy Chairman suggested that the Administration might consider asking the ISP to require a user to declare he was over 18 before allowing him access to indecent materials on the Internet. In response, SITB(Atg) pointed out that the suggestion would need more detailed examination because the ISP might not be aware of the content of the materials placed on the Internet by users of his services. In this regard, the Deputy Chairman said that such declaration could be required in respect of articles already confirmed to be indecent.

Concern about press freedom

35. Members highlighted the need to refine or explain the proposals further to address concerns of the news media about the impact, if any, on press freedom. In particular, Messrs Eric LI and Kenneth TING stressed the importance of active communication between the Administration and the news media. Miss Emily LAU urged the Administration to take immediate action to clarify to the community at large that the professional and journalistic ethics in the media were outside the scope of the COIAO. In view of the concerns expressed by the media, Miss LAU considered that the Administration must not convey any misunderstanding in the international community that Hong Kong's press freedom was being jeopardized.

36. In response, SITB(Atg) reaffirmed that it was not the intention of the proposals whatsoever to restrict press freedom and the Administration would exercise care to strike a proper balance between protecting public morals and young people on the one hand and preserving the free flow of information and safeguarding the freedom of expression on the other. To clarify any misunderstanding, the Administration had already taken the initiative to meet different organizations to explain the proposals and solicit views. To further assure the news media, the Administration would be prepared to consider their suggestions, such as further clarifying the existing statutory defence in the COIAO.

37. In consideration of the concerns expressed by the public and the news media about the proposals, members agreed to hold a special meeting on 22

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June 2000 at 2:30 p.m. to receive deputations on the Consultation Paper.

(Post-meeting note: To avoid a possible clash with the Council Meeting to be held on 21 June 2000, which would likely continue into the next day (i.e. 22 June 2000) in anticipation of a long agenda towards the end of the legislative session, the Chairman has decided, after consulting members, that the special meeting be rescheduled to be held on 20 June 2000 at 2:30 p.m.)

38. The meeting ended at 4:35 p.m.

Legislative Council Secretariat

31 May 2000