

HKISPA Response to the Consultation Paper on the 2000 Review of the Control of Obscene and Indecent Articles Ordinance

1. Since 1996, HKISPA has been working closely with TELA to develop and enforce a Code of Practice to address the community concern about the transmission of obscene and indecent materials over the Internet. **HKISPA is appreciative and supportive of the Government's cooperation with the industry to self-regulate.** HKISPA believes that the measures have been effective in controlling the concern, and more importantly at the same time preserve the freedom of information and the positive image of Hong Kong as an international center for e-commerce. Under the scheme of the Code of Practice, ISPs and the Government maintain the free flow of information and do not engage in any censorship. These are critically important principles that must be maintained.
2. HKISPA agrees with the Government that we should build on the cooperation and intensify the co-regulation regime – one that is fundamentally an industry self-regulation regime with Government consultation and support.
3. The Internet is a truly mass media, and as such it should be handled under the same broad principles regulating mainstream media. Any measures that may be targeting the Internet because of any purported “special nature” of the Internet may become excessive measures that will be prone to censorship or an inhibitor to the free flow of information.
4. While HKISPA is supportive of reasonable measures to prevent young people from receiving obscene and indecent materials, we believe that these measures must also take into full account of the need to maintain the right to information by the broad public, including adults. We also must point out that the Internet industry is complex and increasingly encompass many different constituencies in addition to ISPs, including Internet content providers, e-commerce service providers, application service providers, financial institutions, e-retailers, etc. Since the Internet is a new, truly pervasive mass media, the policy must take into account the difference between an amateur “publisher” (such as individual subscribers of an ISP) and a “professional publisher” (a person or company making its publishing

activity a business service, such as an online content provider).

5. We believe that filtering techniques only provide limited effectiveness in protecting Internet users and young people from offensive or harmful materials. Over-reliance by parents and teachers on filtering tools and techniques may be counter-productive as young people tend to be more proficient in techniques to overcome the barriers of any filtering tools. **The proper message to parents and teachers is that they must learn about the Internet, and surf the Internet with their children and students.** Therefore, while HKISPA can accept the Government's proposal to stipulate that an ISP should make available and provide on request filtering tools to its subscribers, we must point out that the public must bear its own responsibility of educating young people. In addition, **provision of filtering tools by ISPs may lead to higher cost that will be transferred to users.** We must also point out that such requirement for ISPs to provide filtering tools is not common in most countries.
6. HKISPA supports the Government's proposal that ISPs as conveyors of information should not be held responsible for the conveyance of information that they are not aware of, and that ISPs as conveyors of information should be provided with a defense to charges about obscene and indecent articles.
7. **HKISPA is opposed to the Government proposal that ISPs should "block access" to obscene articles hosted overseas.** Technically, ISPs cannot block such access in any meaningfully efficient manner without significant degradation to the level of service provided. The cost of providing services will be increased significantly and access to the Internet in Hong Kong will be greatly slowed down due to such "blocking" and filtering. ISPs must also transfer the additional cost for such filtering to its subscribers, making Internet services more expensive. These consequences will deal a severe blow to Hong Kong's positioning as the regional hub for Internet traffic and content, rendering Hong Kong an inferior place for e-commerce compared to our regional competitors. The reputation for Hong Kong as having information-friendly policies will be damaged irreparably.
8. HKISPA supports the Government's proposals to enhance publicity and public education about awareness and understanding of the provisions of the COIAO.

Hong Kong Internet Service Providers Association

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