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The Society of Publishers In Asia

174 號意見書

Submission No. 174

Hon Ip Kwok-him, JP
Chairman
Bills Committee on National Security (Legislative Provisions) Bill
Room 523G, West Wing
Central Government Offices
Hong Kong

11 June, 2003

Dear Mr. Ip,

Thank you for soliciting our views on the Committee Stage Amendments to the National Security Bill, proposed by the Administration on 3 June 2003. We appreciate the effort made by the Administration to refine the Bill. In particular, we welcome the narrowing of the sedition offence to include only acts for which the nature and circumstances of the incitement "are such that another person is likely to be induced to commit the offence or to engage in violent public disorder." This goes some way towards implementing a standard of "clear and present danger," which we have consistently advocated.

In the overall scope of the Bill, however, this is a very minor improvement. So despite this small step forward, we must express our deep disappointment that the Administration has missed this important opportunity to make significant improvements in the legislation.

In particular, we are dismayed that "handling seditious publications" remains an offence, as this offence could catch a wide range of legitimate commercial actions by printers, importers, distributors, retailers, and others. It could easily create an environment of self-censorship among journalists, publishers, printers, retailers, and others. We continue to urge that this offence be deleted.

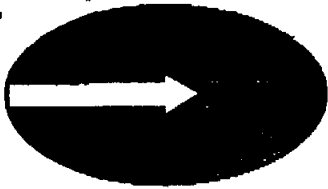
Although the amendments propose a time limit of three years for prosecuting the offence of "handling seditious publications," three years is far too long, much longer than the six months under current law. Moreover, the amendments set no time limit for prosecution of sedition itself, so the risk of prosecution for that offence would hang over an individual for an indefinite period of time. The six-month time limit should remain for all sedition-related offences.

There has been no substantive change in the new provisions relating to the Theft of State Secrets, and we remain concerned about several aspects of the Legislation that expand the existing Official Secrets Ordinance without adding important safeguards.

The class of protected information encompassing "relations between the Central Authorities of the People's Republic of China and the HKSAR," applied to "affairs concerning the Hong Kong Special Administrative Region which are, under the Basic

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Law, within the responsibility of the Central Government" is unnecessary and unclear. Furthermore, unless such information relates to true national security issues such as national defence, we assert that the public has a right to know about relations between Hong Kong and the Central Authorities, in the interest of good governance and the smooth functioning of "one country, two systems."

In addition, making it a criminal act for an individual to make an unauthorized and damaging disclosure of protected information acquired indirectly, unless he could prove "he did not know and had no reasonable cause to believe" the information came from a protected source, would place an unreasonable burden on journalists to determine the original source of the information, and would require them to treat information obtained anonymously as information that could have been obtained illegally.

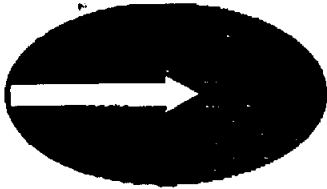
Another area of concern which was left untouched by the amendments is the expansion of the list of people on whom the duty of confidentiality is imposed to include all present and former public servants or government contractors, and agents and informants who provide information to the police.

Significantly, the amendments ignored the opportunity to help remedy the shortcomings of the legislation by providing a "public interest defence" and a "prior publication defence." We believe that these should be added to the Legislation.

Finally, we would like once again to express our view that the Secretary for Security's power to proscribe any local organization should not be set in motion by decisions made by mainland authorities, but rather should be made exclusively by the Hong Kong Courts, as an independent exercise of judgment on the part of SAR officials, and based on criteria relevant to the SAR. In fact, in this area the amendments represent a step backwards, actually increasing our concerns by giving the Secretary for Security the power to make rules for appeals against the banning of a group on national security grounds. It is not acceptable for the Secretary for Security to dictate what kind of evidence can be presented, what kind of witnesses can appear, and what the court can or cannot do. None of these proscription provisions are required by Article 23, and they place at risk many organizations that have been operating in the HKSAR for years, without causing any threat to the security of the HKSAR or the Central Government.

In conclusion, we must honestly state that the amendments do not allay our fears that the Legislation would inhibit the functioning of the local, regional, and international press in Hong Kong, and would threaten the legitimate expression of free speech, assembly, a free press and the other liberties that characterize Hong Kong's way of life.

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We sincerely hope that the Legislative Council will not view the government's committee stage amendments as the end of the process of amending and improving the Bill. Instead, we hope that the Legislative Council will continue working to improve the Bill until the concerns expressed above are addressed.

Thank you for giving us the opportunity to express our views.

Yours truly,

Cyril Pereira,
Chairman
*For and on behalf of the executive board,
Society of Publishers in Asia*

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