

Legislative Council
Panel on Information Technology and Broadcasting

Control of Obscene and Indecent Materials in the Mass Media

Purpose

This paper informs Members of the regulatory regimes for the control of obscene and indecent materials in the mass media and the measures taken by the Government to protect young people from being exposed to these materials.

Policy considerations

2. In regulating the publication/transmission of materials in the mass media, the Government has to strike a proper balance between protecting public morals and our young people on the one hand and preserving the free flow of information and safeguarding the freedom of expression on the other.

3. Apart from films which are subject to pre-censorship under the Film Classification Ordinance (Cap. 392), we do not maintain pre-censorship regimes for materials published in the mass media. Publication/transmission of obscene or indecent materials in the mass media is controlled through the regulatory and enforcement regimes applied to television/radio broadcasting and the printed/electronic media respectively.

Regulatory regimes

(a) *Television and Radio*

4. The regulation of contents on television and radio is provided for, respectively, in the Generic Code of Practice on Television Programme Standards issued by the Broadcasting Authority (BA) pursuant to section 3 of the Broadcasting Ordinance (BO) (Cap. 562), and in the Radio Code of Practice on Programme Standards pursuant to section 19 of the Broadcasting Authority Ordinance (Cap. 391).

5. These codes were promulgated in June 2001 following extensive consultation within and outside the broadcasting industry and after two rounds of territory-wide consultation. The acceptability of any programme materials broadcast would depend on factors including the target audience, the

circumstances in which the programme are shown and the programme context. Generally speaking, the codes prohibit the broadcast of any material which is indecent, obscene, or of bad taste which is not ordinarily acceptable to the audience taking into the consideration the circumstances of the broadcast of the programmes. Sexually explicit scenes and depictions of violence with a high degree of realism or impact when justified by the context are only allowed in adult programmes in pay TV with access control.

(b) Printed and Electronic Media

6. The publication and public display of obscene or indecent articles in the printed and electronic media are regulated under the Control of Obscene and Indecent Articles Ordinance (COIAO) (Cap. 390). The term “article” as defined in the COIAO includes any thing consisting of or containing material to be read and/or looked at, any sound-recording, and any film, video-tape, disc or other record of a picture or pictures. Articles can be published as printed materials or transmitted through electronic means, including the Internet. The COIAO does not apply to films regulated by the Film Censorship Ordinance (Cap. 392) or television broadcasts governed by the BO.

7. Under the COIAO, “obscenity” and “indecent” include violence, depravity and repulsiveness. An article may be classified as Class I (Neither obscene nor indecent), Class II (Indecent) or Class III (Obscene). Class I articles may be published without restriction. Class II articles must not be published to persons under the age of 18 and, when published, must carry a statutory warning notice and be sealed in a wrapper. Class III articles are prohibited from publishing.

8. An Obscene Articles Tribunal (OAT), appointed by the Chief Justice, has been set up under the COIAO to determine the classification of articles. The OAT has exclusive jurisdiction to decide whether an article, which may be submitted to it by publishers on a voluntary basis if in doubt or by law enforcement agencies, is obscene, indecent or neither. In determining whether an article is obscene or indecent, the OAT shall have regard to the standards of morality generally accepted by reasonable members of the community, the dominant effect of the article as a whole, the class or age of the likely recipients, the location at which the article is displayed and whether the article has an honest purpose.

9. The OAT comprises a presiding magistrate and two or more members drawn from a panel of adjudicators appointed by the Chief Justice from a wide spectrum of the community. To enhance the representativeness of the existing panel of adjudicators, the Administration has invited members

of various community and professional organizations to apply as OAT adjudicators. The response has been encouraging, and it is expected that the OAT panel of adjudicators will be substantially expanded within 2004.

Enforcement and Publicity Measures

(a) Television and Radio

10. The BA, as the regulator, does not pre-censor any programmes but will consider complaints from the public about television and radio broadcasting and has the power to impose sanctions on broadcasters who do not comply with the codes.

11. During the period from 2001 to 2003, the BA processed a total of 233 cases (735 complaints) relating to broadcasting of indecent materials on television and radio, of which four cases (50 complaints) were found in breach of the codes.

12. On the promotion of content regulation, the two domestic free television licensees and the two commercial radio licensees are required to broadcast one BA's Announcement of Public Interest of 30-second duration on each of its television and radio channel on a weekly basis, publicizing the work of the BA, and how to lodge complaints to the BA on radio and television broadcast. The BA also provides a dedicated hotline for members of the public to submit complaints relating to broadcasting. From 2001 to 2003, the Broadcasting Division of the Television and Entertainment Licensing Authority (TELA) conducted 137 media talks to 43 425 students and parents on the role of the BA in regulating broadcasting. The contents of the talks have also been placed on BA's website for easy access by the public.

(b) Printed media and other electronic means

13. The COIAO is enforced by TELA, the Hong Kong Police Force (the Police) and the Customs and Excise Department (C&ED). The Police mainly deals with the sale of obscene articles at the wholesale and retail outlets such as video and computer shops, while the C&ED tackles articles at the entry points and in the course of copyright enforcement work. TELA monitors newspapers, magazines and comic books published in the market and inspects retail outlets (including bookshops, newspaper stalls, video shops and computer shops) to check if any articles published are in breach of the COIAO. TELA will take appropriate enforcement actions, including issuing summonses against publishers or vendors found in breach of COIAO.

14. To tackle the publication/transmission of obscene and indecent articles on the Internet, TELA has, together with the Hong Kong Internet Service Providers Association (HKISPA), developed a self-regulatory regime (a Code of Practice), which was promulgated in October 1997, to provide guidance to Internet Service Providers (ISPs) on handling transmission of obscene and indecent materials through their systems. The Police and HKISPA will take appropriate actions against obscene and indecent materials transmitted via the Internet, including blocking access to or removing obscene articles from the Internet and prosecuting the concerned webmaster or content provider.

15. With the additional resources given to TELA to enforce the COIAO since 2001, the number of inspections has increased by more than twice from about 26 000 in 2000 to about 88 000 in 2003, while the number of obscene and indecent articles seized during the period has increased by 16 times. As a result, publishers are generally more vigilant in adhering to the COIAO requirements when publishing indecent articles.

16. Apart from enforcement efforts, it is also important to work closely with non-governmental organisations (NGOs) and professional bodies in organising publicity and public education programmes to raise the awareness of the public, particularly young people, of the COIAO. A wide range of publicity and public education programmes have been organized since 2001, including 672 school talks, 230 filtering software courses, the Cyber Ambassador Award Scheme, the Ten Healthy Websites Contest, the Internet Content Rating System Project, the COIAO Subsidising Scheme for NGOs to organise publicity and public education activities and the establishment of the Healthy Information Resource Centre. The Administration is committed to stepping up its publicity efforts in promoting the COIAO to the community in conjunction with the NGOs.

Way Forward

17. The Secretary for Commerce, Industry and Technology had informed Members on 16 January 2004 that the Administration would continue to press ahead with the enforcement and publicity measures under COIAO in order to protect our youths from being exposed to obscene and indecent materials. The Commerce, Industry and Technology Bureau, TELA and other relevant agencies will continue to closely monitor the situation, take rigorous enforcement actions and organise extensive publicity and public education programmes under the relevant regulatory regimes to combat the publication of obscene and indecent materials in the mass media so as to protect our young people from the harmful effects of such materials.

Advice Sought

18. Members are invited to note the contents of this paper.

Commerce, Industry and Technology Bureau
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