

**For information
on 11 September 2006**

**Legislative Council
Panel on Information Technology and Broadcasting**

Enforcement of the Control of Obscene and Indecent Articles Ordinance

Purpose

This paper informs Members of the existing regime of controlling obscene and indecent articles under the Control of Obscene and Indecent Articles Ordinance (COIAO) (Cap. 390).

Existing Regime

Scope and Classification

2. The COIAO regulates the publication and public display of obscene and indecent articles. The term “article” 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, videotape, disc or other record of a picture or pictures. Articles published on the Internet are also subject to the regulation of the COIAO. Nonetheless, the COIAO does not apply to films which are subject to censorship under the Film Censorship Ordinance (Cap. 392) and television broadcasts regulated under the Broadcasting Ordinance (Cap. 562).

3. 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).

4. 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 Class II articles must not be published to persons under the age of 18 and, when published, must carry a statutory warning notice and be sealed in a wrapper.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.

Obscene Articles Tribunals

5. Obscene Articles Tribunals (OATs) are set up under the COIAO as part of the Judiciary to classify submitted articles. They have exclusive jurisdiction to determine for the purposes of the COIAO whether any article is obscene or indecent, and any publicly displayed matter is indecent.

6. The author, printer, manufacturer, publisher, importer, distributor or owner of the copyright of any article or any person who commissions the design, production or publication of any article may, by application in the prescribed form, submit that article to an OAT for classification. In addition, the Secretary for Justice and any public officer authorized in that regard by the Chief Secretary for Administration, including relevant officers of the Television and Entertainment Licensing Authority (TELA), may, by application in the prescribed form, submit any article to an OAT for classification. OATs do not solicit any articles for classification.

7. An OAT shall make an interim classification in respect of any article submitted to it. Where an OAT makes an interim classification in respect of an article, any person who submitted, or would have been entitled to submit the article, may request an OAT to review that interim classification at a full hearing if he is not satisfied with that interim classification.

8. In classifying an article, an OAT is required by the COIAO to have regard to:

- (a) the standards of morality, decency and propriety that are generally accepted by reasonable members of the community;
- (b) the dominant overall effect of an article or matter;
- (c) the persons, classes of persons, or age groups intended or likely to be targeted by an article's publication;
- (d) in the case of matter publicly displayed, the location of such display and the persons, classes of persons, or age groups likely to view it; and
- (e) whether the article or matter has an honest purpose or whether instead it seeks to disguise unacceptable material.

9. An OAT comprises a presiding magistrate and two or more members drawn from a panel of adjudicators appointed by the Chief Justice. The presiding magistrate determines the number of adjudicators required on an OAT. The adjudicators are ordinary members of the public with a wide spectrum of socio-economic background. This is to ensure that the standards of morality, decency and propriety adopted by an OAT in classifying submitted articles are consistent with those prevailing in the community.

Enforcement

10. The COIAO is enforced by TELA, the Hong Kong Police Force (the Police) and the Customs and Excise Department (C&ED). The Police mainly deal with the sale of articles at wholesale and retail outlets such as video and computer shops, while C&ED intercepts articles at border checkpoints and may encounter such articles in the course of copyrights enforcement work. TELA monitors publications and inspects retail outlets (including bookshops, newspaper stalls, video shops and computer shops) to check if there are any published articles suspected of breaching the COIAO.

11. The enforcement agents will submit published or publicly displayed articles suspected of breaching the COIAO to an OAT for classification. They will prosecute publishers or vendors who are found in breach of the COIAO.

12. To tackle the publication of obscene and indecent articles on the Internet, TELA has, together with the Hong Kong Internet Service Providers Association (HKISPA), developed a self-regulatory Code of Practice in October 1997 to provide guidance for Internet Service Providers (ISPs) on handling obscene and indecent materials published on the Internet. The Police and HKISPA may block access to or remove obscene articles from the Internet and prosecute those responsible for the breach.

Penalty

13. The penalty for violating the COIAO is determined by the court. The maximum penalty for the publication of an obscene article under the COIAO is a fine of \$1,000,000 and an imprisonment for 3 years. The maximum penalty for the publication of an indecent article in breach of the COIAO is a fine of \$400,000 and an imprisonment for 12 months on a first

conviction, and a fine of \$800,000 and an imprisonment for 12 months on a second or subsequent conviction.

Improvement Measures

Enforcement Enhancement

14. TELA has increased the number of inspections from about 26,000 in 2000 to about 78,000 in 2005. The number of obscene and indecent articles seized by TELA increased from 52,000 in 2000 to 424,000 in 2005.

15. TELA actively examines the outcome of interim classification of every submitted article. After consulting the Department of Justice, it will request an OAT to review the interim classification at a full hearing if it is justified to do so. Furthermore, after consulting the Department of Justice, TELA may request a review of the penalty levied by the court. Since the beginning of this year, TELA has requested such review in three cases.

16. To enable the public to have a better understanding of the enforcement of the COAIO by TELA, it has uploaded since November 2004 statistics relating to the enforcement of the COAIO onto its website, including the number of articles scrutinized, complaints received, inspections, referrals to OATs, and convictions.

17. To further enhance the transparency of the enforcement of COAIO, TELA will, starting from September 2006, upload onto its website details of the referrals to OATs and convictions. They include the name of the publication, date of issue, brief description of the concerned article, outcome of classification and penalty levied.

Publicity and Public Education

18. In addition to enhanced enforcement, TELA also launches publicity and public education activities to raise the awareness of the public of the importance of protecting the youth from being exposed to obscene and indecent materials.

19. TELA works closely with non-governmental organizations (NGOs) and professional bodies in organizing publicity and public education

programmes through the COAIO Subsidising Scheme. The activities help enhance the public's understanding of the existing regime of controlling obscene and indecent articles under the COIAO and educate the public on measures to protect minors from objectionable materials on the Internet. Since 2001, TELA and NGOs have organized 1,175 school talks/seminars and 283 filtering software courses, launched the Cyber Ambassador Award Scheme, Meritorious Websites Contests, Internet Content Rating System Project, and established the Healthy Information Resource Centre.

Gauging Public Opinion

20. TELA attaches great importance to public opinion. It conducts regular opinion surveys to gauge public views on the standards of morality, decency and propriety. TELA will upload the survey findings onto its website and let obscene and indecent article adjudicators have them for reference. In addition, the surveys will also gather public opinion on the effectiveness of the enforcement measures, and publicity and public education activities. The information will help TELA further improve its work in these areas. The next opinion survey will be conducted in the fourth quarter of 2006.

Representativeness of the Panel of Adjudicators

21. To enhance the representativeness of the panel of adjudicators, the Administration invited in 2004 members of dozens of community and professional organizations to apply for appointment as OAT adjudicators. As a result, the number of adjudicators has increased by threefold from about 100 to about 300. The Administration will launch another campaign to recruit adjudicators to enlarge the panel. Invitations for application to be adjudicators will be sent to District Councils, NGOs, and concern groups.

22. At present, a presiding magistrate usually draws only two adjudicators to form an OAT to make interim classification and four adjudicators to form an OAT at a full hearing. We understand that, in appropriate cases, a presiding magistrate may consider increasing the number of adjudicators on an OAT.

COIAO

23. The Administration understands the concern of the community over the inclusion of objectionable materials in publications. We will review if the provisions in the COIAO would need to be strengthened, in particular those relating to repeated offenders, to enhance the deterrent effect.

Commerce, Industry and Technology Bureau
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