

Association of Chinese Authors and Publishers
in Hong Kong and Macau
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Queensway, Hong Kong.
(Fax: 81697654)

2 September 2006

Donald Tsang, Esquire,
The Chief Executive,
HKSAR Government,
Central Government Offices, Central Wing,
Hong Kong.

Dear Sir,

Proposal to amend law as a Result of incident of Ms. Chung Yan Tung

We are a pressure group interested in enhancing the general ethics of the publishing media in HK & Macao. To refresh your memory, we have in the early part of last year instituted proceedings for judicial review against, inter alia, your good self, for an order of mandamus to include the Hong Kong Arts Development Council as member of the evaluation committees for the West Kowloon Cultural District.

We feel the current incident of Ms. Chung Yan Tung offensive. Actually a lot of such publication media have been for many years conducting such misbehaviour, taking advantage of protection of freedom of news media, but in fact abusing such protection and humiliating the general ethics of media in Hong Kong.

We have just learnt from the newspaper that the HKSAR Government is considering to introduce law to control taking personal data but the enactment of which is still in the air. With due respect, we think taking personal data is not of the concern of all. It is the publication that the public is of concern with. We are also aware of the speed of legislation in Hong Kong, in particular, in this particular incident the HKSAR Government has indicated that there is yet no time schedule for the bill concerned.

We are aware that the Control of Obscene and Indecent Articles Ordinance prohibits the publication of obscene or indecent articles. However, situations occurred on unaccountable occasions that articles not amounting to obscenity or indecency were published but nonetheless annoyed the public at large.

We have weighted the control on such adverse publication against the rights of the media in respect of freedom of speech and have concluded that such conduct must

be controlled so that the freedom of speech will not be abused. Therefore on without liability basis, we hereby tender the following proposal for the consideration by the HKSAR Government:

If any person, without legal authority or reasonable excuse, publishes any image of another without the consent of that other person and such publication shall be considered by the Magistrate as to amount to annoyance to the general public of Hong Kong, that person publishing such shall be liable to be punished as having committed public nuisance under section 4 of the Summary Offences Ordinance, Chapter 228, Laws of Hong Kong, subject to:

1. The publication shall have been duly considered by the Obscene Articles Tribunal on unanimous votes of the members to be amounting to annoyance to the general public of Hong Kong, which shall be prima facie evidence for such offence;
2. Time limitation for prosecution shall commence on the decision being given by the Obscene Articles Tribunal or ultimately by superior courts.
3. It shall be a defence that the image was taken in a public place which for the purpose of such shall not include place carved out from public place and reserved for the exclusive use of specified persons subject to that the image is published in the original form taken without any deliberate modification.
4. It shall be a defence that the image was taken in a private place but with the explicit or implied consent of the person having control of the place at the time of taking of the image.
5. It shall be a defence that the image has been tendered to the Obscene Articles Tribunal under section 13(1) of The Obscene and Indecent Articles Ordinance and all directions made by the Tribunal thereafter have been strictly complied with.
6. Anybody taking such image anywhere on earth, knowing that it will be published to the public in Hong Kong shall be guilty as aider and abettor of the same offence.
7. Upon 2nd conviction of the same offence within 6 months, the Magistrate shall have power to order suspension of business of the publisher of the image, if the publisher is a business, for a period of not exceeding 1 month.
8. Upon 3rd conviction of the same offence within 6 months, the Magistrate shall have power to order cessation of business of the publisher of the image, if the publisher is a business.
9. Any person who is the subject of publication of the image concerned or alleged by the publication to be so shall have the right to refer such publication to the Obscene Articles Tribunal subject to payment of deposit sufficient to cover the costs of the Tribunal, which deposit shall be forfeited if the Tribunal shall find that the publication is not annoying to the public (but not if the Tribunal's ruling is overruled by higher courts) or if the complainant shall not be able to convince the Tribunal that the publisher can be identified or located.

Our honoray Legal Adviser has arrived at the above after quite some in depth

researches and will be more than happy to offer further assistance in the formal drafting of the above into bill form and associated matters such as consequential amendments on the said or other laws, on complimentary but no liability basis.

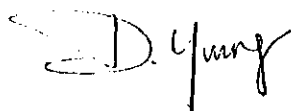
If we do not hear anything from you within 1 month of the day hereof, our honorary Legal Adviser shall research into the feasibility of proposing a private bill to the Legislative Council in respect of the the above by ourselves. However, prior to putting up a private bill, we shall apply to court for a mandamus compelling the HKSAR Government to put up such bill along the lines we have made hereinbefore, with necessary tidying up and modifications, via a judicial review if necessary, and costs relating thereto. The duty of enactment rests primarily on the HKSAR Government.

If you have any further queries, please fee free to contact the below mentioned persons.

Yours faithfully,



Ricky Cheng
President



David Yung
Secretary

- c.c. The Secretary, Legislative Council (By mail)
The Secretary, HK Performance Artists Guild (By mail)
The Chairperson, HK Journalist Association (By fax: 25727329)

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