

**For discussion
on 29 February 2008**

Legislative Council Panel on Security

**Law Enforcement against Cyber Crimes relating to
Obscene and Indecent Articles and Internet Security Issues**

PURPOSE

This paper provides information, as requested by Members, on law enforcement against cyber crimes relating to obscene and indecent articles and Internet security issues.

BACKGROUND

2. At the Panel meeting held on 19 February 2008, in relation to the recent circulation of some nude photographs on the Internet, the Panel requested the Administration to provide information on the following :

- (a) the enforcement by the Police and other government departments against cyber crimes relating to obscene and indecent articles;
- (b) the number of complaints / reports on cyber crimes relating to such articles in the past three years and the criteria for following up reports on such crimes; and
- (c) the general situation in respect of Internet security, cyber crimes and policing on the Internet.

Cyber crimes relating to obscene and indecent articles

3. The Control of Obscene and Indecent Articles Ordinance (COIAO) (Cap. 390) provides for the regulatory regime for controlling obscene and

indecent articles¹, including the publication² and public display of such articles. Under the COIAO, “obscenity” and “indecent” include violence, depravity and repulsiveness. The term “article” has a broad definition in the Ordinance, covering anything containing material to be read and / or looked at, any sound-recording, any film, videotape, disc or other record of a picture.

4. Under section 21 of the COIAO, any person who publishes; possesses for the purpose of publication; or imports for the purpose of publication, any obscene article, whether or not he knows that it is an obscene article, commits an offence and is liable to a fine of \$1,000,000 and to imprisonment for 3 years. As regards indecent articles, section 24 of the COIAO provides that where a person publishes such an article without complying with the requirements stipulated in section 24 of the COIAO (e.g. sealing the article in a wrapper, displaying a notice of warning, etc.), whether or not he knows that the article is an indecent article, he commits an offence and is liable to a fine of \$400,000 and to imprisonment for 12 months on his first conviction, and to a fine of \$800,000 and to imprisonment for 12 months on a second or subsequent conviction.

5. Under section 29(2) of the COIAO, where in any civil or criminal proceedings before a court or magistrate a question arises as to whether an article is obscene or indecent, that court or magistrate shall refer that question to the Obscene Articles Tribunal (OAT), which has exclusive jurisdiction to determine whether an article is obscene or indecent. However, in the circumstances where a person admits before a court or

¹ Under the COIAO, Class I (Neither Obscene nor Indecent) articles may be published without restriction. Class II (Indecent) articles must not be published to persons under the age of 18; publication of Class II articles must comply with certain statutory requirements, including sealing such articles in wrappers (opaque wrappers if the covers are indecent) and display of a warning notice on the front and back covers of such articles as prescribed by the COIAO. Class III (Obscene) articles are prohibited from publication.

² Under section 2(4) of the COIAO, a person publishes an article if he, whether or not for gain –

- (a) distributes, circulates, sells, hires, gives or lends the article to the public or a section of the public;
- (b) in the case of an article-
 - (i) consisting of or containing material to be looked at; or
 - (ii) that is a sound recording or a film, video-tape, disc or other record of a picture or pictures,shows, plays or projects that article to or for the public or a section of the public.

magistrate that an article is obscene or indecent, the court or magistrate may accept that admission and so find against that person, and the arrangement in section 29(2) does not apply.

6. Given the vast volume and transient nature of information transmitted over the Internet, it is impractical for Television and Entertainment Licensing Authority (TELA) and the Police to scrutinize or monitor each and every such piece of information. Consequently, TELA and the Police adopt a complaint-driven approach in dealing with obscene and indecent Internet content. Both departments work closely with the information technology industry to seek the cooperation of service providers in the prevention and investigation of such Internet-related crimes.

7. As the Commerce and Economic Development Bureau has reported to the Legislative Council Panel on Information Technology and Broadcasting on 14 January 2008, in view of technological advancement and the community's concerns about various aspects of the operation of the COIAO, TELA is conducting a comprehensive review of the provisions of the COIAO. The review covers the regulation of the distribution of obscene and indecent articles over the Internet. TELA will seek the community's views on suggested improvements to the existing regulatory regime in the second half of 2008.

8. Apart from offences under the COIAO, other computer-related crimes in respect of obscene and indecent articles include unauthorized access to computer (under section 27A of Telecommunications Ordinance (Cap. 106)), access to computer with criminal or dishonest intent (under section 161 of Crimes Ordinance (Cap. 200)), and criminal damage such as web defacement or virus spreading (under sections 59 and 60 of Cap. 200). The Police will take appropriate enforcement action having regard to the facts and available evidence of individual cases.

Handling of complaints / reports on cyber crimes relating to obscene and indecent articles

9. Under current established procedures, upon receipt of a complaint related to Internet content, TELA will examine the content to see if the

complaint is in possible breach of the COIAO. If the content is likely to be indecent, TELA will advise the Internet service provider to ask the webmaster to add a warning in the entry page if this has not been done, or to remove or block access to the articles. The above procedure is also made clear in the Code of Practice promulgated by the Hong Kong Internet Service Providers Association following public and industry consultation. All webmasters have been co-operative so far. On the other hand, if the content being complained about is likely to be obscene, TELA will refer the case to the Police for appropriate follow-up enforcement action.

10. When the Police receive a report or complaint, whether directly or referred by other departments including TELA, about allegedly obscene materials on the Internet, the Police will carry out an initial assessment and collect background information if necessary, before deciding whether and how it should be followed up. The Police follow the same due process regardless of the background or status of the complainant or other people involved in the complaint / report. For complaints and reports concerning indecent materials, the Police may refer them to TELA for follow up.

11. For cases involving obscene articles that the Police decide warrant investigation, the Police will collect evidence, and as required initiate arrest and prosecution action as and when appropriate. At the same time, the Police will consider early removal of the obscene article from public access. If a case involves acts conducted or servers situated outside Hong Kong, the Police may seek assistance from the INTERPOL or law enforcement agencies from relevant jurisdictions where warranted.

12. Depending on the circumstances of each case, the law enforcement departments concerned may, where necessary, seek legal advice from the Department of Justice before issuing summons or laying charges. Where there is any doubt on the nature of the article concerned (see footnote 1), the law enforcement departments may submit the articles in question to the OAT for **classification** before deciding on the way forward. But it is clear from section 29 of the COIAO that pre-charge classification is not required by law. Indeed, the Ordinance contemplates that in civil or criminal proceedings the court will not send

the suspect article to the OAT for **adjudication** until it is known that the nature of the article will be a live issue in those proceedings.

13. In the past three years (2005 to 2007), the Police and TELA received 171 and 2029 complaints / reports concerning obscene and indecent articles on the Internet respectively.

Internet security issues

14. As in the physical world, the actions of persons in the cyber world may result in these persons incurring criminal or civil liability. Legislation in Hong Kong generally applies equally to the physical world and the cyber world. And as a general rule, the laws governing various forms of communication, either verbal or written, and other acts also apply to the Internet. In addition, there are offences that expressly target criminal activities related to computers.

15. The Police adopt similar crime prevention, detection and enforcement strategy for the Internet environment as that for the real world. Through maintaining and broadening professional investigation capability, developing accredited computer forensic competency, and enhancing liaison with the profession and stakeholder sectors as well as liaison with local and overseas law enforcement agencies, the Police are able to enforce against computer crimes as provided for in the laws of Hong Kong. The Customs and Excise Department also take enforcement actions under the Copyright Ordinance (Cap. 528) against infringement of copyright on the Internet.

16. In addition to law enforcement, government departments, including the Office of the Government Chief Information Officer (OGCIO), the Police and TELA, are also engaged in promoting the proper use of computer and Internet services as well as awareness of computer-related crimes to minimise the risk of members of the public falling prey to computer crimes or committing offences inadvertently. For example, OGCIO operates a one-stop information security portal (www.infosec.gov.hk) to give advice on information security and the prevention of computer-related crime. It has also published a set of guidelines on “Acceptable Use of Internet” to promote good conduct

among Internet users. The Police have also included a dedicated section on its homepage (www.police.gov.hk) to outline common technology crimes encountered in our daily lives and safety tips for crime prevention. TELA has been promoting healthy use of the Internet via a wide range of publicity and public education activities for students and their parents, such as holding regular school talks and seminars on the use of filtering software, organizing large-scale events including “Meritorious Websites Contest”, sponsoring the information technology industry to implement the Internet Content Rating System Project, etc. TELA will also further step up public education on positive use of the Internet and the wider use of filter software in the coming year.

Security Bureau

Commerce and Economic Development Bureau

Hong Kong Police Force

Department of Justice

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