

立法會
Legislative Council

LC Paper No. CB(1)927/08-09
(These minutes have been seen by
the Administration)

Ref : CB1/PL/ITB/1

Panel on Information Technology and Broadcasting

Minutes of meeting
held on Thursday, 20 November 2008, at 2:30 pm
in the Chamber of the Legislative Council Building

- Members present** : Hon Andrew LEUNG Kwan-yuen, SBS, JP (Chairman)
Hon LEE Wing-tat (Deputy Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon WONG Yuk-man
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP
- Members absent** : Hon Timothy FOK Tsun-ting, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
- Public officers attending** : Agenda Item IV

Mr Gregory SO, JP
Acting Secretary for Commerce and Economic
Development

Mr Duncan PESCOD, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Alan SIU, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Ms Maisie CHENG
Commissioner for Television and Entertainment
Licensing

Agenda Item V

Mr Duncan PESCOD, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Jeremy GODFREY
Government Chief Information Officer

Mr Stephen MAK, JP
Deputy Government Chief Information Officer
(Operation)

Mr Bassanio SO
Acting Deputy Government Chief Information Officer
(Planning and Strategy)

Ms Caroline FAN
Acting Chief Systems Manager (E-government Policy
and Development Division) (C)

**Attendance by
invitation**

: Agenda Item IV

Hong Kong Women Development Association

Ms KWONG Yuet-sum
Vice-Chairperson

Women's Right Association

Ms Yolanda NG Yuen-ting
Deputy Director

Hong Kong Journalists Association

Mr TANG Kong-fai
Vice Chairman

Internet Professional Association

Mr Paul FUNG
Vice-chairman, Policy Committee

Hong Kong Women Christian Council

Ms Sharon LOH Yuen-ching
Executive Secretary

Hong Kong Christian Institute

Mr Samuel IU Shing-chi
Assistant Programme Secretary (Social Concern)

IT Voice

Mr Chester SOONG Tak-kar
Representative

The Professional Commons

Mr Simon KWONG
Chief Operating Officer

Internet Society Hong Kong

Mr Charles MOK
Chairman

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Mr KWOK Hiu-chung
Project & Education Officer

Hong Kong Press Council

Prof Joseph CHAN
Chairman

The Society for Truth and Light

Mr CHOI Chi-sum
General Secretary

Ms Helen FU Dan-mui
Assistant General Secretary

Action for REACH OUT

Ms Kendy YIM
Executive Director

Hong Kong Computers Society

Ms Susanna SHEN Shuk-ching
Director of International/China Affairs

inmediahk.net

Ms LAM Oi-wan
Editor

Young Civic

Mr Leo YAU Lut-pong
Spokesperson

Nutong Xueshe

Miss KO Sze-wai
Secretary

Miss LAM Sze-wai
Co-director of G dot TV

Rainbow Action

Mr Noel CHEN
Executive Committee

Mr Wayne
Associate Committee Member

Student Christian Movement of Hong Kong

Ms TSANG Oi-leng
Vice-Chairperson (External Affairs)

Ms LAU Kim-ling
Executive Secretary

Hong Kong University Students' Union

Mr Michael TSUI
Popularly Elected Councillor

Rainbow of Hong Kong

Mr Jimmy SHAM
Project Organizer

Hong Kong Ten Percent Club

Mr Joseph CHO Man-kit
Vice President

AIDS Concern

Mr Timothy LEE
Prevention Officer

Hong Kong Federation of Students

Mr LI Yiu-kee
Secretary General

The Student Union of The Chinese University of Hong Kong

Miss LAU Ming-wai
Vice President

The Student Union of The Hong Kong Baptist University

Miss YIP Cho-yan
President

The Association for the Advancement of Feminism

Ms AU Mei-po
Organizer

Civil Human Rights Front

Ms Bo Bo YIP
Member

Women Affairs Committee, The Hong Kong Federation
Of Trade Unions

Ms CHAN Sau-yi
Deputy Director

Ms HUNG Yin-ping
Secretary

Videotage Limited

Mr Ray CHUNG
Vice Chairman

The Family Planning Association of Hong Kong

Ms Grace LEE Ming-ying
Education Officer In-charge

Horizons

Mr Reggie HO
Honorary Chairman

Society for the Study of Sexualities and Sex-pol

Ms Jo LEE Wai-yee
Chairperson

Hong Kong Informal Education Research Centre

Mr Verdy LEUNG Wai-yee
Project Director

Hong Kong Internet Service Providers Association

Mr Ben LI Ming-pan
Secretary

Individual

Mr Martin OEI
IT Columnist

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Ms Annette LAM
Senior Council Secretary (1)3

Mr KWONG Kam-fai
Council Secretary (1)3

Ms Debbie SIU
Legislative Assistant (1)6

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)127/08-09 -- Minutes of meeting held on
14 October 2008)

The minutes of the meeting held on 14 October 2008 were confirmed.

II. Information paper issued since last meeting

2. Members noted that no paper had been issued since the last meeting held on 14 October 2008.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)202/08-09(01) -- List of outstanding items for
discussion

LC Paper No. CB(1)202/08-09(02) -- List of follow-up actions)

3. Members noted that the next regular meeting would be held on 8 December 2008 at 2:30 pm to discuss the following items proposed by the Administration:

- (a) Assignment of available spectrum in 1800 MHz band for provision of mobile public services; and
- (b) Information security.

4. Members agreed that Deputy Chairman, Mr LEE Wing-tat, would chair the regular meeting in December as the Chairman would be out of town on 8 December 2008.

IV. Review of the Control of Obscene and Indecent Articles Ordinance (Cap. 390)

(LC Paper No. CB(1)202/08-09(03) -- Administration's paper on the review of the Control of Obscene and Indecent Articles Ordinance

LC Paper No. CB(1)202/08-09(04) -- Paper on issues relating to the control of obscene and indecent articles prepared by the Legislative Council Secretariat (background brief)

Submissions from deputations not attending the meeting

LC Paper No. CB(1) 202/08-09(08) -- Submission from Office of the Privacy Commissioner for Personal Data, Hong Kong dated 13 November 2008
(English version only)

LC Paper No. CB(1)202/08-09(09) -- Submission from LibertarianHK
(Chinese version only)

LC Paper No. CB(1)202/08-09(10) -- Submission from HKStandup
(Chinese version only)

LC Paper No. CB(1)219/08-09(01) -- Submission from Mr LEUNG Siu-tong, Islands District Councillor dated 4 April 2008
(Chinese version only)

LC Paper No. CB(1)258/08-09(12) -- Submission from Spiritual Seekers Society Hong Kong dated 19 November 2008
(English version only)
(tabled at the meeting and subsequently issued via e-mail on 21 November 2008)

LC Paper No. CB(1)258/08-09(13) -- Submission from Hong Kong Sex Culture Society
(Chinese version only)
(tabled at the meeting and subsequently issued via e-mail on 21 November 2008)

LC Paper No. CB(1)258/08-09(14) -- Submission from Justice & Peace Commission of the Hong Kong Catholic Diocese dated 20 November 2008
(Chinese version only)
(tabled at the meeting and subsequently issued via e-mail on 21 November 2008)

Welcoming remarks

5. The Chairman welcomed representatives of the Administration and deputations to the meeting. He reminded deputations that submissions and oral presentations made by them would not be covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382)

Presentation by the Administration

6. At the invitation of the Chairman, the Acting Secretary for Commerce and Economic Development (Atg SCED) briefed members and deputations on details of the first round of public consultation on the review of the Control of Obscene and Indecent Articles Ordinance (COIAO) (Cap. 390) launched on 3 October 2008. Various aspects of the COIAO were covered in the review and grouped into seven sections in the consultation booklet. Atg SCED highlighted that it was the Government's long-standing policy to preserve the free flow of information and safeguard the freedom of expression, both of which were the core values of Hong Kong, while balancing them with the need to provide parents with the means to protect minors from obscene and indecent materials. The Administration did not have any pre-conceived views about the direction of the review and was open to suggestions from members and the community on measures to improve the existing regime and enhance the operation of the COIAO.

Presentation by deputations

7. Members noted that a total of 36 deputations were present at the meeting, of which 19 deputations had provided written submissions. In addition, submissions had been received from seven other deputations that were not present at the meeting, as follows –

- (a) Office of the Privacy Commissioner for Personal Data, Hong Kong (LC Paper No. CB(1)202/08-09(08));
- (b) LibertarianHK (LC Paper No. CB(1)202/08-09(09));
- (c) HKStandup (LC Paper No. CB(1)202/08-09(10));
- (d) Islands District Councillor Mr LEUNG Siu-tong (LC Paper No. CB(1)219/08-09(01));
- (e) Spiritual Seekers Society Hong Kong (LC Paper No. CB(1)258/08-09(12));

- (f) Hong Kong Sex Culture Society (LC Paper No. CB(1)258/08-09(13)); and
- (g) Justice & Peace Commission of the Hong Kong Catholic Diocese (LC Paper No CB(1)258/08-09(14)).

8. Members also noted that the views and comments made by deputations mainly covered the following areas:

- (a) Consultation exercise;
- (b) Classification system;
- (c) Adjudication system;
- (d) New forms of media;
- (e) Penalty;
- (f) Enforcement;
- (g) Education; and
- (h) General issues.

Hong Kong Women Development Association (HKWDA)
(LC Paper No. CB(1)202/08-09(05) -- Submission (*Chinese version only*))

9. Ms KWONG Yuet-sum, Vice-Chairperson of HKWDA, suggested that the Obscene Articles Tribunal (OAT) should have parents and female representatives. The Administration should increase the membership of OAT, of which 50% should be women. The definitions of "obscenity" and "indecenty" should be clear and specific and the Administration should consider strengthening the deterrent effect of the COIAO by increasing the maximum penalty on repeat offenders. While protecting free flow of information and freedom of expression, the Administration should, in conjunction with Internet service providers (ISP), devise effective means to install filtering software to protect youngsters from exposure to objectionable materials on the Internet. Parents should also be educated and assisted to help their children develop healthy habits in using the Internet.

Hong Kong Journalists Association (HKJA)
(LC Paper No. CB(1)228/08-09(01) -- Submission (*Chinese version only*))

10. Mr TANG Kong-fai, Vice Chairman of HKJA, was against tightening regulation of new forms of media, including the Internet and any form of pre-censorship or content control which might impede free flow of information and

restrict freedom of expression. He held the view that the requirement for Internet users to input credit card data before accessing webpage containing indecent materials was not enforceable and had serious privacy implications. He objected to mandatory filtering by ISPs and considered that parents should be responsible for deciding whether or not to use such filtering device.

Hong Kong Women Christian Council (HKWCC)

11. Ms Sharon LOH, Executive Secretary of HKWCC, said that their organization had experienced difficulty in joining the focus group organized by the Government. Referring to some of the proposals put forth in the consultation document, she queried the impartiality of the Government's consultation exercise. She criticized the Government for depriving young people of their right to learn about sex under the pretext of protecting the young generation from the harmful effects of indecent and obscene materials. She questioned whether it was feasible to regulate obscenity on the Internet, given that the materials transmitted were often extraterritorial in nature with the host websites based overseas which were not subject to the laws of Hong Kong.

Hong Kong Christian Institute(HKCI)

12. Mr Samuel IU, Assistant Programme Secretary (Social Concern) of HKCI, highlighted that social values and moral standards should not be regulated through legislation given the difficulty of agreeing on a common standard of morality and propriety in a diversified and open society such as Hong Kong. He advocated that the administrative and judicial functions of the OAT should be separated with clear division of roles, functions and powers.

Mr Martin OEI

(LC Paper No. CB(1)228/08-09(02) -- Submission (*Chinese version only*))

13. Further to the views expressed in his written submission, Mr Martin OEI, IT Columnist, opined that instead of proceeding with the consultation exercise, the Ordinance should be reviewed by the Law Reform Commission to work out an enforceable legislative framework. He commented that the consultation document lacked detailed discussions about legal, social and economic impacts of the proposed measures mentioned and did not contain any references to practices in other jurisdictions.

IT Voice

(LC Paper No. CB(1)258/08-09(01) -- Joint submission from The Professional Commons and Internet Society Hong Kong (*English version only*))
tabled at the meeting and subsequently issued via email on 21 November 2008)

14. Mr Chester SOONG, representative of IT Voice, commented that inconsistency in the classification of articles had caused confusion to the public and undermined public confidence in the classification system. To help maintain consistency and enhance transparency, the OAT should provide information on the criteria and rationale used in classifying articles. He objected to mandatory requirement for ISPs to provide filtering software or services at the server level as such software and services targeting youth were already available from some ISPs but, for various reasons, the adoption rate was not high. The self-regulating regime for the handling of obscene and indecent articles on the Internet established between the Hong Kong Internet Service Providers Association (HKISPA) and the Television and Entertainment Licensing Authority (TELA) had been functioning well and should be used continuously.

The Professional Commons (PC)

(LC Paper No. CB(1)258/08-09(01) -- Joint submission from IT Voice and Internet Society Hong Kong (*English version only*))
(*tabled at the meeting and subsequently issued via email on 21 November 2008*)

15. Mr Simon KWONG, Chief Operating Officer of PC, opined that it was not appropriate to specifically target control at new forms of media such as the Internet.

Internet Society Hong Kong (ISHK)

(LC Paper No. CB(1)258/08-09(01) -- Joint submission from IT Voice and The Professional Commons (*English version only*))
(*tabled at the meeting and subsequently issued via email on 21 November 2008*)

16. Mr Charles MOK, Chairman of ISHK, objected to singling out the Internet for any form of content control as laws and legislation should be held to be neutral in technology and media. He said that no filtering device was totally foolproof and mandatory filtering requirement would give the public a false sense of security. Moreover, mandatory filtering requirement which required infrastructural and operational changes was unfair to ISPs and customers as the costs arising from hardware investment, customer support and staff training on such requirement would be passed on to them eventually. On the definition of "public" in the context of distribution of articles, he opined that communications between users of a forum should not be considered as distribution of articles to members of the public. He said that while Australia had been cited as an example of using some forms of mandatory filtering and age verification, it should be noted that those measures were still highly controversial in Australia and had been cited as failure in technology. The Australian Government had also been criticized for pushing forward with these controls.

Hong Kong Human Rights Monitor (HKHRM)

17. Mr LAW Yuk-kai, Director of HKHRM, criticized that the definition of "obscenity" and "indecent" lacked clarity and was too subjective. He said that regulation should be based on hard evidence, not speculation or fear. There was no evidence so far to show whether and how indecent or obscene materials transmitted through the Internet and other forms of media had adversely affected the young generation, hence justifying tightening of control and regulation. He opined that propriety should not be decided by majority voting and the majority should also respect the views of the minority. The current classification system which based on the standards of morality, decency and propriety that were generally accepted by reasonable members of the community had disregarded the views of the minorities and was against basic human rights. To enhance consistency in classifying articles, a database on classifications made by the OAT, with examples and illustrations on what constituted "obscenity" and "indecent" and the parts considered as "obscene" and "indecent" etc, should be compiled and published in the Internet for public reference. He also called for a review of the current adjudication system with reference to the jury system.

Hong Kong Press Council (HKPC)

18. Professor Joseph CHAN, Chairman of HKPC, called for a revamp of the current classification regime and adjudication system to enhance transparency. The composition of the OAT which made up of a presiding magistrate and two adjudicators should be increased to make the OAT more representative. Adjudicators of the OAT should keep in pace with the changing social and moral values to reflect the prevailing community standard.

The Society for Truth and Light (STL)

19. Mr CHOI Chi-sum, General Secretary of STL, said that the definition of "obscenity" and "indecent" should be fine-tuned by making reference to relevant ordinances in overseas jurisdictions such as New Zealand, Canada and US. Parents, teachers, social workers and education groups should be engaged in the consultation process. He opined that regulation of the Internet was necessary in view of the prevalence of indecent/obscene content in newspapers and entertainment magazines and the dissemination of such materials on the Internet, which was easily accessible by young people and students. However, a balance should be struck between protecting public morals and young people on one hand and preserving the free flow of information and safeguarding the freedom of expression on the other. He suggested that the review of Internet regulation should be dealt with separately to avoid the whole consultation exercise being stalled by controversy over Internet control. He also urged the TELA to step up training for its staff to enable them to properly carry out their inspection duties.

Action for REACH OUT (ARO)

(LC Paper No. CB(1)258/08-09(02) -- Submission (*Chinese version only*))
(*tabled at the meeting and subsequently issued via email on 21 November 2008*)

20. Ms Kendy YIM, Executive Director of ARO, said that the consultation document was piecemeal, fragmented and failed to facilitate the public to make a more informed response to the consultation. She called for a review of the operation, composition and appointment mechanism of the OAT and suggested abolishing the OAT and to rely on the court to classify articles reflecting the community views on morality, decency and propriety as was the case in some advanced jurisdictions. Clear and objective criteria should be used as basis for classification to help maintain consistency in classification as far as practicable. The use of "obscenity" and "indecenty" should be abolished and the nomenclature of Class I, II and III should be adopted. She questioned the feasibility of regulating obscenity on the Internet and objected to imposing specific measures to regulate the Internet which would restrict free flow of information and freedom of expression and lead to self-censorship by publisher/distributor.

Internet Professional Association (IPA)

21. Mr Paul FUNG, Vice-chairman of IPA, opined that over-regulation under the presumption of protecting youths from exposure to materials labeled as objectionable would undermine independent thinking of the young generation. Youngsters in a germ-free environment might develop allergic reaction when exposed to such material in future.

Hong Kong Computers Society (HKCS)

22. Ms Susanna SHEN Shuk-ching, Director of HKCS, objected to mandatory filtering. A better alternative would be for ISPs to provide such an option so that parents could have a choice. She suggested that more resources be used to step up sex education for young people to help them develop a positive and healthy attitude towards sex. The current adjudication system should be revamped to make the OAT more representative.

inmediahk.net

(LC Paper No. CB(1)202/08-09(06) -- Submission (*Chinese version only*))

23. Ms LAM Oi-wan, Editor of inmediahk.net, opined that propriety and moral standard should not be determined by majority voting. The majority should also respect the rights of the minorities. Articles should be simply classified into "restricted" and "unrestricted". The Administration should encourage an open and inclusive society and prevent filtering mechanism from being abused. Any form of censorship would only deprive young people of their right to know and make

them more ignorant.

Young Civic (YC)

(LC Paper No. CB(1)258/08-09(03) -- Submission (*Chinese version only*))
(*tabled at the meeting and subsequently issued via email on 21 November 2008*)

24. Mr Leo YAU, Spokesperson of YC, said that "obscenity" and "indecenty" should be clearly defined, taking into account minority views, creativity, freedom of expression and publishing and the possible impact on art, culture, science and information flow. The current adjudication system and the pool of 300 adjudicators serving the OAT should be increased by making reference to the jury system whereby attendance of juror was required by law and the magistrate was only responsible for providing legal guidance. To make the OAT more representative and ensure that the adjudicators could reflect the prevailing community values and standards, adjudicators should be drawn randomly and balance in the genders. Mr YAU was of the view that the existing arrangement for enforcement agencies and publishers/distributors to submit articles to the OAT for classification should be retained and that enforcement agencies should make submissions to the OAT for classification before laying charges. To enhance transparency and understanding of the parameters adopted by the OAT in making classifications, the rationale, criteria and reasons for classifications should be published on the Internet. Sharing some deputations' view that over-regulation would lead to self-censorship by publisher/distributor as in the case of National Geographic, he objected to mandatory filtering by ISPs and the introduction of sub-classes under Class II. He called on the Administration to conduct research on international practice and make reference to Internet control in overseas jurisdictions as provided under the Children's Internet Protection Act, Child Online Protection Act and Communications Decency Act in the US.

Nutong Xueshe

(LC Paper No. CB(1)258/08-09(04) -- Submission (Chinese version only))
(*tabled at the meeting and subsequently issued via email on 21 November 2008*)

(LC Paper No. CB(1)258/08-09(05) -- Submission (Chinese version only))
(*subsequently issued via email on 21 November 2008*)

25. Citing some cases where sex education websites of the Health Department, Family Planning Association, academic study on sex, homosexuality of tertiary institutions were screened out by the filtering software offered by PCCW and Parental Control Bar recommended by TELA, Miss LAM Sze-wai, Co-director of G dot TV of Nutong Xueshe, expressed concern that mandatory filtering which

usually based on key word search might indiscriminately block out website(s) providing positive information on sex education. She objected to mandatory filtering and was against Government subsidizing the development of filtering software. Public bodies/Government departments providing Internet access services were urged to publish their list of filtered websites, make known the filtering software used and put in place an appeal mechanism to allow blocked out/blacklisted websites to seek redress. To enhance transparency, the OAT should publish their reasons and criteria for classification;

Rainbow Action (RA)

(LC Paper No. CB(1)258/08-09(06) -- Submission (*Chinese version only*))
(*tabled at the meeting and subsequently issued via email on 21 November 2008*)

26. Mr Noel CHAN, Executive Committee member of RA, criticized that the Administration had failed to widely consult different sectors of the community as certain sex minority groups had not been consulted or invited to participate in focus group discussions. He opined that no materials should be classified as Class III and prohibited from publication and distribution. He said that the COIAO should be repealed and the Government should not make use of the regulation mechanism under the COIAO to control and deprive to the rights of minorities on freedom of expression and information flow.

Student Christian Movement of Hong Kong (SCMHK)

(LC Paper No. CB(1)258/08-09(07) -- Submission (*Chinese version only*))
(*tabled at the meeting and subsequently issued via email on 21 November 2008*)

27. Ms TSANG Oi-leng, Vice-Chairperson (External Affairs) of SCMHK, held the view that not all information about sex was unhealthy. Young people should not be deprived of their rights to access to information about sex or pressurized to suppress sex. Young people should be helped to develop independent thinking and the ability to make the right choice of information. Sex education should be strengthened to help youngsters develop a positive and healthy attitude towards sex instead of learning about sex through indecent websites.

Hong Kong University Students' Union (HKU Student Union)

28. Mr Michael TSUI, Popularly Elected Councillor of HKU Student Union, shared SCMHK's view on stepping up sex education to provide proper channel for young people to learn about sex. Concern was expressed that mandatory web filtering and any form of pre-censorship and content control might thwart the development of Hong Kong into a regional digital and information technology hub.

Rainbow of Hong Kong (RHK)

(LC Paper No. CB(1)258/08-09(08) -- Submission (*Chinese version only*))
(tabled at the meeting and subsequently issued via email on 21 November 2008)

29. Mr Jimmy SHAM, Project Organizer of RHK, criticized that the current classification system, which was based on the standards of morality, decency and propriety that were generally accepted by reasonable members of the community, had disregarded the views of the sex minority. Sex minority group should be represented in the OAT and education requirement of adjudicators should be lowered to secondary level education. Information/statistics about adjudicators including their gender, sex inclination, academic qualifications and age etc. should be published for public information. Given it was practically impossible to regulate obscenity on the Internet by legislation, the Administration should refrain from any attempt to do so to avoid being perceived as curtailing the free flow of information. Sex education should be strengthened as an alternative.

Hong Kong Ten Percent Club (HKTPC)

(LC Paper No. CB(1)258/08-09(09) -- Submission (*Chinese version only*))
(tabled at the meeting and subsequently issued via email on 21 November 2008)

30. Mr Joseph CHO Man-kit, Vice President of HKTPC, said that the consultation document which gave the impression that sex was unhealthy was misleading and biased. Whether or not to regulate obscenity was not simply a moral issue, it was an issue about basic human rights. The Administration should give hard evidence on whether and how exposure to obscene and indecent materials would contaminate the young generation instead of justifying control and regulation on the basis of assumption. He commented that the Administration should not interfere with adults' (aged 18 and above) access to information and that no materials should be classified as Class III and prohibited from publication and distribution. The administrative and judicial functions of the OAT should be separated with the judicial function given to the court. He also considered the existing penalty level for breaches of the COIAO too high and urged the Administration to promote education work/programme that adopted an accommodative and inclusive attitude towards sex.

AIDS Concern (AS)

(LC Paper No. CB(1)258/08-09(10) -- Submission (*Chinese version only*))
(tabled at the meeting and subsequently issued via email on 21 November 2008)

31. Mr Timothy LEE, Prevention Officer of AS, was concerned that mandatory

filtering might indiscriminately remove all materials about sex which could be used for the purpose of educating youngsters on issues such as safe sex and curtail civic rights to free flow of information. He shared the view of RA and HKTPC that materials should not be classified into "obscenity" and "indecent" which carried a bad connotation and that no materials should be classified as Class III and prohibited from publication. In addition, he suggested that TELA should educate media to respect the rights of people with different sex inclinations and to avoid publishing wrong and discriminatory information about sex and minority groups.

Hong Kong Federation of Students (HKFS)

(LC Paper No. CB(1)202/08-09(07) -- Submission (*Chinese version only*))

32. Mr LI Yiu-kee, Secretary General of HKFS, was against regulating obscene and indecent materials on the Internet. He considered that over-regulation might in fact increase youngsters' curiosity about sex. The Administration should ensure that the provisions of the COIAO would not curtail freedom of expression or impede free flow of information which were basic human right guaranteed by law. He suggested that the definition for "obscenity" and "indecent" should be fine-tuned with reference to that of the relevant regulation in Canada to avoid jeopardizing academic study and research on sex related subjects. He also called on the OAT to publish the rationale and criteria for classification, classification results, and the parts considered as "obscene" and "indecent".

The Student Union of The Chinese University of Hong Kong (SU of CUHK)

33. Miss LAU Ming-wai, Vice President of the SU of CUHK, called on the Administration to respect young people's rights to access information about sex and help youngsters develop independent thinking. She opined that law enforcement agencies should obtain the classification of the OAT before laying charges and that the judicial and administrative functions of the OAT should be separated. The existing arrangement whereby, in addition to the law enforcement agencies, publishers and distributors might voluntarily submit articles to the OAT for classification and that members of the public could lodge a complaint to TELA should be retained.

The Student Union of The Hong Kong Baptist University (SU of HKBU)

34. Referring to the statistics of 2003 which showed that only 1% of the OAT adjudicators were in the 21-30 age group while 60% of the cases were dealt with by 21 active members of the OAT, Miss YIP Cho-yan, President of the SU of HKBU, said that to ensure that the OAT would be representative and to avoid classification being monopolized by a small number of adjudicators, the membership of OAT should be increased to 7/9 adjudicators, and a majority of 5/7 adjudicators were required when making a classification. She suggested that reference be made to the jury system whereby attendance of jurors was required by law and the magistrate was only responsible for providing legal guidance.

The Association for the Advancement of Feminism (AAF)

35. Ms AU Mei-po, Organizer of AAF, objected to any attempt to control and curtail freedom of expression under the review of the COIAO. She said that the Administration had failed to widely consult different sectors of the community as certain women, civic rights and sex minority groups had not been consulted or invited to participate in the Government's focus groups discussion. She called on the Administration to respect the rights of the minorities and allow the co-existence of diverse views conducive to the development of an open, inclusive and culturally diversified society.

Women's Right Association (WRA)

36. Ms Yolanda NG, Deputy Director of WRA, suggested that the definition of "obscenity" and "indecent" should be clear and specific, taking into account artistic, cultural and religious considerations. Membership of the OAT should be increased to 7/9 or more members of which at least 40%, preferably 50%, should be female. She opined that media organizations which had repeated records of publishing indecent articles should be suspended from publishing to enhance the deterrent effect, and that more resources should be deployed to step up moral and sex education.

Civil Human Rights Front (CHRF)

37. Ms Bo Bo YIP, Member of CHRF, shared some deputations' view that the Administration had failed to widely consult different sectors of the community as some civic rights and sex minority groups had not been consulted. She suggested that the female gender, people from civic rights and sex minority groups should be represented in the OAT to make it more representative. In addition, information materials should be classified into different categories, which were similar to the classification of air quality by the Observatory. She was concerned that the review would become a tool for political censorship and highlighted that under the principle of "small Government, big society", the Administration should not try to impose the main-stream value system on the cyber world and on young people under the pretext of protecting the young generation from the harmful effects of indecent and obscene materials.

Women Affairs Committee, The Hong Kong Federation of Trade Unions (HKFTC)
(LC Paper No. CB(1)228/08-09(03) -- Submission (Chinese version only))

38. Ms CHAN Sau-yi, Deputy Director of the HKFTC, suggested that the number of adjudicators for a first hearing and a full hearing should be doubled to four and eight respectively. The female gender should be represented in every first and full hearings. The language requirement on female adjudicators should be relaxed to allow more female to become members of the OAT. She also

expressed concern about the low level of penalties imposed upon conviction and urged the Administration to consider strengthening the deterrent effect of the COIAO by increasing the maximum penalty on repeat offenders and imposing harsher penalties on them. She called for a review and tightening of the Personal Data (Privacy) Ordinance (Cap. 486) to prevent malicious intrusion into privacy. While appreciating the technological difficulty of regulating objectionable materials transmitted through the Internet, she suggested that the Administration should step up cooperation with ISPs to closely monitor the distribution and transmission of such materials on the Internet pending the formulation of effective technological solutions. Suggestion was also made to step up education for parents and strengthen sex education for young people to provide them with proper channel to learn about sex and develop a healthy and positive attitude towards sex.

Videotage Limited (VL)

39. Mr Ray CHUNG, Vice Chairman of VL, opined that the consultation document had not specified the principles for review and had given too much emphasis on cost effectiveness, but made little reference to preservation of the free flow of information and protection of personal privacy which were core social values and basic human rights guaranteed by the law. He also questioned whether it was technologically feasible to enforce complete regulation of materials transmitted through the Internet given the transient and extraterritorial nature of the materials distributed and that host websites based overseas were not subject to Hong Kong laws.

The Family Planning Association of Hong Kong (FPA)

(LC Paper No. CB(1)228/08-09(04) -- Submission (*Chinese version only*))

40. Ms Grace LEE, Education Officer In-charge of FPA, suggested that "obscenity" and "indecenty" should be clearly defined with elaboration and illustration to enable publishers and media organizations to better understand the requirements and the classification. Materials should be classified with reference to the existing classification system and nomenclature under the Film Censorship Ordinance (Cap. 392) for films. She shared some deputation's concern that mandatory filtering which usually based on key word search might indiscriminately block out website(s) providing positive information on sex education, and doubted whether ISPs had the expertise and the knowledge to determine which websites should be blocked. She suggested setting up a committee on sex education/media education with members drawn from academia, media, voluntary groups, youth organizations and parent groups etc to formulate and oversees the implementation of long-term policies on promoting sex/media education.

Horizons

41. Mr Reggio HO, Honorary Chairman of Horizons, suggested that focus group should be set up to specifically consult youngster's views on the review of

the COIAO. He was concerned that instead of protecting youngsters, the tightening of control might instill in them a guilty feeling towards sex. As such, he considered that control, if any, should be kept to the minimum and that no materials should be classified as Class III and prohibited from publication.

Society for the Study of Sexualities and Sex-pol (Society for SSS)

42. Ms Jo LEE, Chairperson of Society for SSS, was against imposing specific measures to regulate obscenity on the Internet under the pretext of the COIAO review as this would curtail freedom of expression and free flow of information. She shared some deputations' view that the OAT, which had no specified term of appointment, lacked transparency and should be revamped. To make it more representative and to ensure that the adjudicators could reflect the prevailing community values and standards, various sector of the community, including sex educators, should be represented in the OAT. She was of the view that submission of articles to the OAT for classification seriously restricted academic freedom and freedom of information flow and that no materials should be classified as Class III and prohibited from circulation. She called on the Administration to conduct research on international practice for reference. Referring to the inconsistency in the classification of the same nude photo of a female soldier published by three local newspapers, she suggested that there should be clear and objective criteria as basis for classification to help maintain consistency in classification as far as practicable and to avoid repeated occurrence of inconsistent classifications, giving the public an impression of differential treatment or selective prosecution.

Hong Kong Informal Education Research Centre (HKIERC)

43. Citing the success of sex education in Holland, Mr Verdy LEUNG, Project Director of HKIERC, suggested that instead of tightening control of obscene and indecent materials, more resources should be put to develop and promote open and comprehensive sex education, and to step up education/training for teachers and parents with a view to helping youngsters to develop a healthy and positive attitude towards sex.

Hong Kong Internet Service Providers Association (HKISPA)

(LC Paper No. CB(1)202/08-09(11) -- Submission (*English version only*))

LC Paper No. CB(1)258/08-09(11) -- Further submission (*Chinese version (tabled at the meeting and only)*)
subsequently issued via email on 21 November 2008)

44. While acknowledging that it was technically impossible to regulate all materials transmitted through the Internet and screen out all objectionable websites, Mr Ben LI, Secretary of HKISPA, recommended FiLial2.0 as a viable web filtering solution where blocking action was on the client side at the user's sole discretion.

Users could view monthly activity summary and online reports to have a clear picture on computer usage.

Discussion

The review of COIAO and the public consultation exercise

45. In response to some deputations' concern about the impartiality of the consultation document, the Atg SCED stressed that the Government was open-minded and did not have any pre-conceived position on the review. In reviewing the COIAO, the Administration was mindful of the need to strike a balance between protecting moral standards and young people on one hand and preserving the free flow information and freedom of expression on the other. He said that the consultation document had set out a wide range of possible improvement measures and options to provide a starting point for public discussion and deliberation. Most improvement measures were modeled on the practices of developed countries overseas. Following the first round of consultation, the Administration would draw together the public views received and, as far as possible, come up with more concrete proposals for a second round of public consultation. Information on the regulation regimes and practices of major overseas jurisdictions, including Australia, New Zealand, the United Kingdom, the United States, France, Canada and Germany, had been posted on the website of the Commerce and Economic Development Bureau for public reference.

46. Ms Emily LAU sought explanation from the Administration why some minority groups had been excluded from participating in focus group discussions and were not consulted. In response, the Atg SCED stressed that the Government was keen to hear from the community on measures to improve the existing regulation regime and no organizations that wished to participate in the discussions had ever been refused. He said that during the consultation period, the Administration would consult extensively in different formats through different media. In addition to the six discussion forums at town halls for District Council members and the public, representatives from various sectors, including women, youth, information technology (IT), education, press and publication, culture and arts, legal, civic rights, social morals, etc were invited to participate in focus group discussions. With the support of youth organizations, a series of activities would be organized to seek the views of youngsters. He noted that many associations and organizations in different sectors were arranging meetings and seminars on the review. The Administration welcomed such initiatives and had been attending such meetings upon request. A public opinion survey on the review would be conducted at a later stage.

47. Mr WONG Yuk-man said that many of the organizations, in particular, minority and student groups, were invited to the Panel's meeting at his suggestion. In response to his request, the secretariat had expanded the invitation list to also include the 36 deputations/individuals as suggested by him. The Chairman and

the Clerk explained that in line with the usual practice, a notice inviting views and submissions had been posted on the Legislative Council (LegCo) website. All LegCo Members, including non-Panel members, had been invited to propose other organizations to which invitation should also be issued. In addition, members of the 18 District Councils had been invited to attend the meeting.

48. Referring to the views expressed by representatives of minority and student groups, Mr WONG Yuk-man commented that most adults, including parents and those in the Administration, had not been able to catch up with the changing values of youths nowadays. He criticized the Administration for trying to impose a main-stream value system on the cyber world and young people under the pretext of protecting them from exposure to harmful materials. He said that the young generation had voiced their views against any form of control and regulation loud and clear. Mr WONG considered that the measures proposed in the consultation document, which were in contradiction with the prevailing majority view, were destined to fail. He called on the Administration to put an end to the review and the consultation.

49. Mr Paul TSE shared the view that the review and the consultation should be discontinued. He opined that there was no way for parents, the Government and any enforcement agencies to provide a germ-free environment for the young generation since it was not feasible to set up a regulatory regime over the Internet. The solution to the problem lied in helping young people develop independent thinking and become capable of making the right judgment. Instead of imposing control, young people could build up their immunity through suitable exposure. He considered it a waste of resources and manpower to review and improve the flawed adjudication and classification systems whereby classifications made by the OAT were arbitrary, subjective and inconsistent. In view of the difficulties in enforcement and defining the terms "obscene" and "indecent", and the lack of deterrent effect of the existing penalty provisions, Mr TSE urged the Administration to seriously consider abolishing the regulation mechanism under the COIAO so as to make Hong Kong a truly open city and an attractive tourist destination that was free from political control and restriction on information about sex.

50. Mr CHAN Kam-lam noted that different sectors of the community held different views over the various issues covered in the review. While some deputations called for an end to the review and the abolition of any form of control on the Internet and the media, others considered it necessary to review the existing regulatory regime. He appreciated that it was difficult to have a consensus on the definition of "obscene" and "indecent" and hoped that different sectors of the community could strike the right balance to agree on a commonly accepted standard of morality and propriety as yardstick for making classifications and enforcement. He invited deputations' views on the definition of "obscene", "indecent", "violence" and "depravity" and how to improve the clarity of the definitions.

51. In response, Mr Martin OEI, IT columnist, opined that the terms "obscene" and "indecent" which carried negative connotation were based on the UK law of the 1950s/60s that were already outdated. He suggested that reference be made to the New Zealand Film and Video Classification Act 1993 in which the term "objectionable" was used instead. He reiterated that the COIAO should be reviewed by the Law Reform Commission. Ms Yolanda NG of WRA opined that the clear, specific and objective criteria should be used in defining the terms, taking into account artistic, cultural and religious consideration to avoid the repeated occurrence of famous art works being classified as "indecent". Ms Jo LEE of the Society for SSS cautioned that care should be taken to guard against the abuse of the complaint mechanism.

Regulation of the Internet

52. Ms Emily LAU noted the diverse views expressed by depositions, in particular the strong objection against mandatory filtering by ISPs and the tightening of Internet control which might jeopardize basic human rights to freedom of expression and free flow of information. She cautioned against any form of content control and censorship and urged the Administration to uphold the principles of freedom of expression and preserve free flow of information which were core social values and basic human rights guaranteed by law and essential to the prosperity of Hong Kong.

53. Mr TANG Kong-fai of HKJA expressed a similar view that over-regulation would impede the free flow of information and restrict the freedom of expression. He opined that the measures set out in the consultation document which further tightened control on the Internet should be shelved.

54. Ms Cyd HO indicated strong objection to any form of control of the Internet and the printed media and queried the feasibility of regulating morality, decency and propriety by legislation. She was gravely concerned that mandatory web filtering mechanism would be utilized to control freedom of Internet usage in Hong Kong, hence restricting the free flow of information and freedom of expression under the pretext of protecting youngsters from harmful materials. While appreciating some parents' concern about the prevalence of objectionable materials on the Internet, newspapers and entertainment magazines and their wish to regulate such materials to protect the youngsters, she held the view that it should be the parents' responsibility to supervise and teach their children, rather than for the Administration to regulate social values and moral standards through legislation. Ms HO opined that youngsters could be helped to develop independent thinking and a positive and healthy attitude towards sex through moral/sex education. As an alternative to mandating ISPs to provide filtering services at the server level by law, parents could consider installing filtering software in their home computers to screen out any undesirable websites. She agreed with some depositions that the tightening of control and regulation should be based on hard evidence, not fear or

speculation. Ms HO questioned whether and how indecent or obscene materials transmitted through the Internet and other forms of media had caused harmful effect on youngsters. She also enquired about the number of cases involving youths below and above age 16.

55. In this connection, Mr CHOI Chi-sum of STL remarked that parents were very concerned that young and impressionable people would gradually become susceptible to the influence of obscene and indecent materials on the Internet and popular printed media. He said that while it was impossible to provide a germ-free environment to protect young people, no parents would want to leave their children in a dirty polluted environment full of objectionable materials.

56. Mr LEE Wing-tat criticized the Administration for setting the wrong policy direction and misleading parents and the public into believing that the young generation could be protected from "objectionable" materials by legislation and the installation of filtering software. He questioned whether it was feasible to regulate obscenity on the Internet given that a large volume of transient information went through the Internet every day and such materials were often extraterritorial in nature with the host websites based overseas which were not subject to the laws of Hong Kong. Moreover, users could easily disguise their identities when distributing information on the Internet. Mr LEE invited representatives from the IT sector to comment on the viability of web filtering solutions. He remarked that in the event that it was technologically not viable to completely regulate information transmitted on the Internet, resources should be more effectively utilized to strengthen sex education for parents and youngsters to help increase their knowledge about sex and develop a positive attitude towards sex.

57. In response, Mr Paul FUNG of IPA, Mr Charles MOK of ISHK and Mr Martin OEI remarked that no filtering device was totally foolproof and the mandatory filtering requirement would give the public a false sense of security. Web filtering installed by parents could be easily circumvented by youngsters who were technically more competent. Moreover, it was both costly and not viable for individual ISP to maintain a filter list. Mr Ben LI of HKISPA said cooperation between parents and their children was essential on the use of filtering devices to prevent exposure to objectionable materials on the Internet.

Sex/moral education

58. Ms Emily LAU referred to some deputations' and members' suggestion to discontinue the consultation exercise on the review of COIAO and to deploy the resources to step up sex/moral education for parents and youngsters instead. She invited deputations' views on the suggestion made by Ms Grace LEE of the Family Planning Association of Hong Kong on setting up a committee on sex education/media education to formulate and oversee the implementation of long-term policies on promoting sex/media education.

59. In response, Mr Reggie HO of Horizons, Mr Martin OEI and Ms Yolanda NG expressed support for the suggestion. While indicating support for strengthening sex/moral education at school, Mr LAW Yuk-kai of HKHRM opined that the Administration should be careful when allocating resources for promoting sex/moral education through informal channels outside school.

Summing up

60. The Chairman thanked the deputations for the suggestions made. He called on the Administration to take note of the views expressed by deputations and members and revert to the Panel once the Administration came up with proposals for the second round of public consultation.

V. Capital Works Reserve Fund Head 710 Computerization Subhead A007GX – New administrative computer systems

(LC Paper No. CB(1)202/08-09(12) -- Administration's paper on Capital Works Reserve Fund Head 710 Computerization Subhead A007GX – New administrative computer systems)

Presentation by the Administration

61. The Permanent Secretary for Commerce and Economic Development (Communications and Technology) (PSCED(CT)) sought members' support to the proposed allocation of \$600 million under Head 710 Computerization Subhead A007GX (the block allocation) to meet funding requirements for 2009-2010 for the implementation of administrative computer systems and consultancies for feasibility studies and systems development.

Discussion

Project descriptions

62. Ms Cyd HO noted that projects costing above \$10 million each were subject to the specific approval of the Finance Committee (FC) of the Legislative Council while authority to approve projects costing above \$150,000 but not exceeding \$10 million under the block allocation was delegated to the Government Chief Information Officer (GCIO). Noting that most of the project items (15 out of 20) set out in Annex B to the Administration's paper No. CB(1)202/08-09(12) were above \$8 million and close to \$10 million each, Ms HO was concerned whether the project costs had been kept below the \$10 million threshold to avoid seeking funding approval from FC. She said that more detailed information on the proposed projects should be provided to facilitate members' consideration. Ms Emily LAU shared a similar view and sought elaboration on the projects on

setting up a centralized frequently asked questions (FAQs) database of the Office of the Government Chief Information Officer (OGCIO) and the Serviceability Management System (SMS) of the Leisure and Cultural Services Department.

63. In response, GCIO and the Deputy Government Chief Information Officer (Operation) (DGCIO(O)) explained that the \$6 million funding requirements proposed under the block allocation for 2009-2010 included \$413 million for 284 projects initiated in 2008-2009 or earlier, and \$187 million for about 174 new projects. The 20 items set out in Annex B were some examples of more significant new projects highlighted for members' information. They also gave a brief account on the projects on the FAQs and SMS, and undertook to provide more detailed information on the new projects set out in Annex B, in particular those with a project estimate of around \$8 million and close to the \$10 million ceiling.

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Project allocation and award of contracts

64. Noting that the proposed allocation of \$600 million for 2009-2010 was similar to the provision for 2008-2009, Dr Samson TAM asked how the funding requirements were drawn up and whether a ceiling of \$600 million was set for each financial year. In response, GCIO and DGCIO(O) said that each year, bureaux and departments would be invited to submit project proposals and detailed project descriptions to the OGCIO. To ensure optimal utilization of funds, the cashflow requirements of approved block vote projects would be reviewed on a half-yearly or quarterly basis. They explained that the funding requirements for each financial year were drawn up after taking into account approved block vote projects, past expenditure patterns, existing commitments, new proposals submitted by bureaux and departments, and anticipated new projects for various e-government initiatives to be undertaken. No ceiling would be set for the proposed allocation, and the project proposals would be considered on their individual technical viability and merits.

65. Dr Samson TAM noted that in the past, most of the Government information technology (IT) projects were awarded to large IT service providers and suppliers. He asked whether the Administration would consider sub-dividing the projects into smaller items so as to provide more opportunities for small and medium sized enterprises (SMEs) in the IT sector to bid for the contracts. In response, DGCIO(O) said that the Government procurement policy and the award of contracts were subject to the World Trade Organization Agreement on Government Procurement and the tendering requirements of individual project. Where the existing procurement and manpower policies so permitted, the Administration would seek to facilitate participation of local SMEs in the projects. A number of contracts awarded to large companies in the past did in turn involve SMEs as sub-contractors. In response to the Chairman's suggestion to expand the eligible list of service providers to include more SMEs, DGCIO(O) advised that under the Standing Offer Agreement for Quality Professional Services administered centrally by the OGCIO, about one-third of the professional service providers and

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half of the sub-contractors were SMEs. The Administration undertook to provide information on the number of projects and associated project amount that were awarded to SMEs in the IT sector under the block allocation for 2007-2008 and 2008-2009.

Summing up

66. The Chairman noted that members had no objection to the proposed allocation of \$600 million for Head 710 Subhead A007GX. He reminded the Administration to provide further information as stated in paragraphs 61 and 63 above prior to submission of the proposal to the Public Works Subcommittee on 3 December 2008.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)328/08-09 on 2 December 2008.)

VI. Any other business

67. There being no other business, the meeting ended at 5:30 pm.

Council Business Division 1
Legislative Council Secretariat
2 March 2009