



## **D-Dong's Response to the *Consultation Paper on Stalking***

### **1. Introduction to D-Dong**

D-Dong is one of the few non-district-based youth organizations in Hong Kong. It was established by a group of high-calibre young people in 2010.

Our major focuses are issues related to youth culture and policies, and we release research reports regularly. All research is conducted in the most serious and professional manner. We are eager to increase the public awareness of youth problems and youth issues, and to recommend policies that are beneficial to the young people in Hong Kong.

Moreover, we encourage the young people to contribute to society and participate in various community activities. D-Dong is the ideal place for them to experience the joy of contributing to Hong Kong and China.

D-Dong is an elitist organization. All the members are carefully chosen in order to satisfy the demanding requirement of the organization.

### **2. Response to the Consultation Paper**

We have the following points to make:

#### *(a) Cyber Harassment / Stalking*

Nowadays, if the Internet users consistently receive an unreasonable amount of abusive messages, they can only look into remedies (e.g., injunction) available under the existing civil laws, and most of them are deterred by the high expenses of utilizing the legal procedures.

The legal definition of “stalking” is this: If X persistently pursues Y, or X then arranges Z to pursue Y after stalking Y, then it is considered as a stalking behaviour.

Therefore, the criminalization of the complicated civil law procedure can protect

Internet users who are being cyber stalked in an organized way. But the proposed legislation cannot protect them from being stalked by a disorganized group of stalkers. That is to say, the Internet service providers have no legal responsibility in monitoring disorganized stalking behaviours on their own Internet platforms.

We suggest the Department to investigate how to tackle disorganized cyber harassment / stalking behaviours. Here is a real life example:

January 2012, the D&G store in Tsim Sha Tsui did not allow Hong Kong people to take pictures outside the store. It enraged thousands of citizens who then surrounded the store and protested. One of the employees of the store criticized the protestors on Facebook. Thereafter, many Internet users left messages and comments to attack her, some of them may be considered as harassments. Finally, the employee apologized under immense pressure. She admitted that her family was distressed, too.

The messages and comments left by the Internet users were not organized, but they were voluminous and opened to all, which were enough to create a huge psychological burden to the employee and her family. Shall we consider this kind of disorganized but persistent and relay-like stalking behaviour, which placed the employee in constant fear and alarm, criminal? Should the employee be protected by law in this case? Should Facebook be legally responsible for the harm done to the employee by staying idle? But at the same time how to balance against freedom of speech on the Internet? What kind of comments shall be restricted? What kind of comments shall not be restricted? All these puzzles require further clarification.

*(b) Defences*

D-Dong is of the opinion that the “reasonable conduct” clause has already taken into account the nature of the conducts. According to the Consultation Paper, even though certain behaviours *per se* are stalking behaviours, but when their purposes are taken into account they may still be regarded as reasonable, e.g., a persistent pursuit of a public figure in the public interest. But some in the media sector may not use conventional methods, e.g., telephone a non-public figure many times a day, or seriously disturb the ordinary life of the person and impede him to exercise his legal rights. If defences are unconditionally granted to all kinds of news-gathering

activities, then all the unreasonable practices that are at odds with the good conducts of the media business will be unreasonably sheltered, too.

If a defence is unconditionally granted to the media sector, then the routine works of the debt collectors, the summons deliverers, the security guards, the Members of Legislative Council and District Councils and all the other sectors in which the job nature may involve persistent pursuit of the same person shall be provided with a defence, too. And what is more, the nature of their jobs may not involve public interest, e.g., the security guards who carry out their duties, the debt collectors who collect debts or help to collect debts through legal means, and the Members of Legislative Council and District Councils who do political propagandas. However, in some occasions news-gathering activities may not involve public interest, e.g., a persistent pursuit of the entertainment celebrities.

Therefore, if a defence is to be unconditionally provided to the media sector, the Department must also consider the following five questions:

1. Should a defence be provided to a media worker who commits stalking during non-working hours with her actions involving public interest?
2. Should a defence be provided to a media worker who commits stalking during working hours with her actions not involving public interest?
3. Where is the line between working hours and non-working hours in the media sector? Should “working hours” be a condition to or not to provide a defence?
4. Should a defence be provided to a media worker, who commits stalking during working hours with her actions involving public interest, but whose actions have done unredeemable harm to the victims, e.g., a media worker persistently pursues certain public figures, such as important government officials, and directly caused them to feel immense psychological pressure and distress to the point of committing suicide?
5. Should a defence be provided to a media worker, who commits stalking during working hours with her actions involving public interest, but whose actions are deemed unnecessary, for she may achieve the same result or get the same

answers by not committing stalking in the first place, and however still insists on her relentless pursuit? (That is to say, how to prevent the media sector from abusing the defences?)

In our opinion, the Department should not unconditionally provide defences to the media sector before the public has reached consensus on the above five problems.

The Law Reform Commission recommends giving the court more flexibility in handling stalking cases. We believe that the court can bring in verdicts that are fair and just. To say that the proposed legislation will restrict freedom of the press is equivalent to saying that the court will restrict freedom of the press, and this is not true.

*(c) Penalty*

We are of the opinion that a single maximum penalty of a fine of \$100,000 and imprisonment for two years will be an effective deterrence. We also agree with paragraph 3.26 that a distinction should be drawn between stalkers who knew that their pursuits amounted to harassment and stalkers who did not have this knowledge. The latter should receive less severe punishment, e.g., either a fine or a prison term.

### **3. Summary**

We support the criminalization of stalking in order to protect citizens who are victimized by stalking behaviours. Also, we look forward to passing laws that will deter organized cyber harassment / stalking. But whether disorganized cyber harassment / stalking shall be deterred as well requires further discussions.

We are of the opinion that the proposed “reasonable conduct” clause already includes the media sector and we firmly believe that the court can protect freedom of the press. Therefore, we do not agree with the view that certain sectors should be provided with defences due to the nature of their jobs. We worry that the defences will be abused. What is more, the complexity and variety of the nature of the media sector in Hong Kong render providing a defence to the sector very difficult. We are aware that the nature of stalking behaviours can be very diverse, too. Therefore, it is appropriate to give the court a greater flexibility in handling stalking cases.



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