

立法會
Legislative Council

LC Paper No. CB(1)1783/11-12(05)

Ref : CB1/PL/ITB

Panel on Information Technology and Broadcasting

Meeting on 14 May 2012

**Updated background brief on issues relating to the
control of obscene and indecent articles**

Purpose

This paper describes the regulatory regime for the control of obscene and indecent articles under the Control of Obscene and Indecent Articles Ordinance (COIAO) (Cap. 390), and gives a summary of concerns raised by Members during previous discussions.

The regulatory regime under the COIAO

2. The COIAO regulates the publication and public display of obscene and indecent articles. The term "article" as 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. Nevertheless, 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 "indecenty" include violence, depravity and repulsiveness. An article may be classified as one of the following three classes:

- (a) Class I article (neither obscene nor indecent) which may be published or sold without restriction;

- (b) Class II article (indecent) which must not be published or sold to persons under the age of 18 and, when published or sold, must carry a statutory warning notice and be sealed in a wrapper; or
- (c) Class III article (obscene) which is prohibited from publication.

4. 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 or neither, and any publicly displayed matter is indecent. An OAT comprises a presiding magistrate and two or more members drawn from a panel of adjudicators who are ordinary members of the public appointed by the Chief Justice. Currently, there is a pool of some 340 adjudicators serving the OAT.

5. In classifying an article, an OAT should 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 it seeks to disguise unacceptable material.

6. The maximum penalty for the publication of an obscene article (Class III) is a fine of \$1 million and imprisonment for 3 years. The maximum penalty for the publication of an indecent article (Class II) is a fine of \$400,000 and imprisonment for 12 months on first conviction; and a fine of \$800,000 and imprisonment for 12 months on a second or subsequent conviction. The COIAO does not set out factors which the court should take into consideration when meting out a penalty and the court has full discretion to determine the level of penalty in individual cases.

7. The COIAO is enforced by the Television and Entertainment Licensing Authority (TELA), the Hong Kong Police Force (the Police) and the Customs and Excise Department (C&ED). TELA monitors all articles,

including free newspapers, published in the market, and refers any article suspected of contravening the COIAO to the OAT for classification after consideration of those factors mentioned in paragraph 5(c) and (d) above. Appropriate follow-up actions, including prosecution, will be taken against articles classified as indecent or obscene. The Police mainly deals with the sale of articles at wholesale and retail outlets such as video and computer shops, while C&ED intercepts articles at border checkpoints while carrying out copyrights enforcement work.

8. TELA also deals with indecent articles transmitted on the Internet through monitoring websites and following up on complaints. Together with the Hong Kong Internet Service Providers Association (HKISPA), TELA has developed a self-regulatory Code of Practice in October 1997 to provide guidance for Internet Service Providers (ISPs) on the handling of 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.

Previous discussions

9. There had been wide public concern about the dissemination of obscene and indecent materials in print media such as entertainment magazines and the new media such as the Internet. Questions on the classification criteria and the enforcement of COIAO were raised at Council meetings in 2007 and 2008. At the Council meeting on 19 October 2006, a motion was passed urging the Administration to introduce legislation on the regulation of clandestine photo-taking and to review the imposition of sentence under the COIAO. Related issues were also discussed at the Panel on Information Technology and Broadcasting (the ITB Panel) in the past years.

Protection of young people from exposure to objectionable materials

10. In the past years, the ITB Panel had reviewed with the Administration and invited public views on the appropriate measures to protect young people from being exposed to objectionable materials classified under the COIAO. The deputations which had given views to the Panel on 11 September 2006 considered that in regulating the publication/transmission of materials in the mass media, the Administration should strike a balance between protecting public morals and young people on the one hand and preserving the free flow of information and safeguarding the freedom of expression on the other.

11. In view of the pervasiveness of Internet service and its popularity in Hong Kong families, the ITB Panel was concerned that indecent/obscene Internet content was easily accessible by young people and students. The Panel considered that measures should be taken to protect the youth from being exposed to objectionable materials transmitted on the Internet.

12. ITB Panel members were also concerned about the prevalence of objectionable contents of Internet games and computer games in Internet computer services centres (ICSC). The Panel noted that the Home Affairs Bureau had issued the "Code of Practice for ICSC Operators" to provide guidelines on the operation of ICSC, including crime prevention and filtering of Internet content, for voluntary compliance by the operators. The Administration had no plan to introduce legislation to regulate ICSC at this stage.

Enforcement and penalty

13. At the ITB Panel meeting on 11 September 2006, members expressed grave concern about the clandestine photo-taking behaviour of the media for publication which violated the COIAO and infringed personal privacy. The Panel noted that a media organization had a record of over 100 convictions for publishing indecent articles and called on the Administration to improve the existing penalty provisions to enhance the deterrent effect.

14. In December 2007, there was a media report on the dereliction of duties of some TELA inspection staff while on field duties. Some Panel members expressed concern about the monitoring of the performance of the TELA inspection staff. These members suggested that the Administration should step up staff supervision and formulate a performance standard on the number of inspections to be carried out by inspection staff.

15. On 14 January 2008, the ITB Panel discussed the public opinion survey results on the COIAO commissioned by TELA. According to the survey, the majority of the respondents who regarded the penalties not appropriate considered them too lenient. Some members of the ITB Panel shared the concern about the low level of penalties imposed upon conviction, particularly for cases where the media organizations had repeated records of publishing indecent articles. These members urged the Administration to consider strengthening the deterrent effect of COIAO by increasing the maximum penalty on repeated offenders and imposing harsher penalties on them.

Classification of articles by OATs

16. Regarding the publication of a nude photo of a female soldier by three local newspapers in April 2007, the OAT gave an interim classification as indecent articles for such publication. TELA subsequently instituted prosecution against the three newspapers. The first two newspapers pleaded guilty and were fined, whereas the third newspaper denied the charges. Following a review, the photo was re-classified as a Class I article by the OAT with different membership, and the charges against the third newspaper were dismissed.

17. At the ITB Panel meeting held on 14 January 2008, members expressed concern about the basis and standard for making classifications by OATs. They considered that OATs should maintain consistency in classification as far as practicable, and urged the Administration to provide clear and objective criteria for classification, and put in place an internal control mechanism to avoid repeated occurrence of inconsistent classifications which might be perceived as selective prosecution. To facilitate consistency in making classification, some members suggested that the same set of articles should be classified by the same OAT members, who should also be informed of any precedent or similar cases.

Review of Control of Obscene and Indecent Articles Ordinance

First round of public consultation on the review of COIAO

18. In response to public concern over the prevalence of indecent and obscene articles in various media and the operation of the regulatory regime, the Administration commenced a comprehensive review of the COIAO in 2008 and proposed two rounds of public consultation. The first round of public consultation was conducted from 3 October 2008 to 31 January 2009, during which members of the public were engaged extensively to discuss the following main issues relating to the operation of the COIAO and possible improvement measures:

- (a) definition;
- (b) adjudication system;
- (c) classification system;
- (d) new forms of media;
- (e) enforcement;
- (f) penalty; and
- (g) publicity and public education.

19. Subsequent to the first round of public consultation exercise on COIAO on 3 October 2008, the ITB Panel held two meetings to receive public views on the subject. 85 groups/individuals gave views to the Panel on related issues concerning women, youth, information technology, education, press and publication, culture and arts, civic rights, and social morals. The Panel noted that the community had divergent views on the review of COIAO. Some deputations strongly objected to mandatory filtering by Internet service providers and tightening of Internet control, for fear that this would jeopardize freedom of expression and free flow of information. Some deputations considered that the consultation/review should be discontinued and more resources should be used instead to step up sex education for young people to help them develop a positive and healthy attitude towards sex. Some other deputations, however, called for tighter controls on obscene and indecent materials.

20. Some members of the ITB Panel maintained the view that the Administration should strike a balance between protecting the youth from indecent and obscene materials on one hand and preserving the free flow of information and the freedom of expression on the other in reviewing the COIAO. Given the transient and extraterritorial nature of the massive information flow on the Internet which would not be subject to the laws of Hong Kong, some members called on the Government to carefully address the legal and technical problems involved in Internet control. The Administration noted the views expressed by deputations and Panel members and undertook to further discuss with the Panel when proposals were ready for the second round of public consultation.

21. On 13 July 2009, the ITB Panel noted that the Government had commissioned an independent Consultant to help organize public engagement activities and compile/analyse the views collected through the various channels during the first round of public consultation. The Consultant had submitted to the Administration a report on the first round of public consultation (LC Paper No. CB(1)2180/08-09(05) issued on 8 July 2009). A summary of the major findings of the first round of public consultation prepared by the Administration is at **Appendix I**.

22. Regarding the consultation findings on the adjudication system, some members of the ITB Panel considered that it was not appropriate for OAT to carry out both the administrative and judicial functions. These members supported the removal of the administrative classification function from OAT, and urged the Administration to discuss with the Judiciary to improve the operation of OAT.

23. The Administration advised that views collected in the first round of public consultation would be consolidated and analyzed for drawing up more concrete proposals for the second round of public consultation. Regarding OAT's dual role of performing both administrative and judicial functions, the Administration would discuss with the Judiciary and relevant stakeholders to improve the adjudication system and the operation of OAT.

Second round of public consultation on the review of COIAO

24. On 16 April 2012, the Government launched the second round of public consultation on the review of COIAO. The consultation would last for three months until 15 July 2012. According to the Administration, the first round of consultation confirmed general support for retaining the COIAO regulatory regime and imposition of heavier penalties for breaches to enhance its deterrent effect. In the second round of consultation, the Administration would consult the community on the outstanding issues on how the institutional set-up of OAT should be reformed and the extent to which the maximum penalties under the current regime should be raised.

25. The Administration is inviting comments on two options to reform the OAT institutional set-up. Both involve removing the administrative classification function from the OAT. These reform options seek to address the Judiciary's fundamental concerns of requiring the OAT to perform both administrative classification and judicial determination functions. The first reform option is for the Government, instead of the Judiciary, to set up a statutory classification board and a statutory appeal panel to carry out the administrative classification function. This model is practised in Australia, New Zealand and Germany. The second option is to abolish the administrative classification function. Classification matters would rest with the courts. This model is practised in the UK, the US and Canada. According to the Administration, there are different considerations for the two options. A broad consensus within the community is required in order to take the proposal forward.

26. Noting that the majority of the public support the imposition of a heavier penalty to enhance the deterrent effect as well as fresh concerns generated by the recent distribution of free newspapers containing indecent articles, the Administration has advised that the public would be invited to give their views on the proposal to increase the maximum penalty level under the COIAO.

Council question

27. Dr Hon Priscilla LEUNG raised a question at the Council meeting on 2 November 2011 regarding free newspaper containing indecent contents. She urged the Administration to put in place new measures or penalties with greater deterrence, and to ensure that the contents of such kind of newspaper were suitable for people of all ages. The wording of the question and the Administration's reply are at **Appendix II**.

Panel on Administration of Justice and Legal Services

28. At the meeting of the Panel on Administration of Justice and Legal Services (AJLS Panel) on 30 January 2012, members noted the Judiciary's view that the present institutional set-up of OAT under COIAO was highly unsatisfactory as OAT was required by law to perform both administrative classification and judicial determination functions. Some members of the AJLS Panel agreed with the Judiciary's view that the exercise of an administrative function by OAT as a judicial body would undermine the fundamental principle of judicial independence, and that the problem should be addressed by removing the administrative classification function from the Judiciary, leaving OAT to deal only with its judicial function. Some other members expressed concern about the inconsistency in the classification of articles by OATs. The AJLS Panel generally welcomed the review of COIAO and considered it long overdue.

Joint meeting of the Panel on Education and ITB Panel

29. Arising from the complaints about the indecent content of the free newspaper Sharp Daily by parent organizations, schools and the education sector, the Panel on Education and the ITB Panel held a joint meeting on 14 February 2012 to discuss with the Administration the subject of "Education and media literacy and free newspapers containing indecent content". Interested parties and organizations were invited to present their views at the meeting. Some deputations opined that said free newspapers containing indecent and gambling information had violated media ethics and would bring undesirable influence on the mentality of the young generation. As such, this kind of newspapers should be admonished and boycotted. In this regard, these deputations called on the Administration to impose harsher penalties on repeated offenders, such as revoking the licence of the media organization concerned. They also urged commercial organizations to refrain from placing advertisements in such newspapers, and parents to set a good example by refraining from bringing such newspapers home. In addition, students should be barred from bringing such newspapers to school. They should be educated to develop an analytical mind in order to

differentiate healthy information from harmful information.

30. Some deputations said that the publishing of indecent content in newspapers was nothing new in Hong Kong. Since mid-1990's, many best-selling newspapers had been carrying pornographic materials on a daily basis. However, such articles were often classified as Class I (neither obscene nor indecent) articles which might be published without restriction, and little had been done by the Administration to address the problem. As such, the deputations considered a review of the COIAO long overdue, and urged the Administration to carry out the second round of public consultation on the review of COIAO as a matter of urgency.

31. Some Panel members opined that education was important for instilling a correct view on sex for students. In addition, concerted effort of the enforcement agencies, newspaper publishers, schools and parents was vital to protect the youth from being exposed to objectionable materials classified under the COIAO. Other members considered that the existing legislation should be amended to enhance the deterrent effect for the offenders. The existing regulatory framework was obsolete and should be revamped.

32. The Administration advised that under the existing regulatory regime, newspapers (whether pay or free) were regulated by COIAO. TELA had been closely monitoring Sharp Daily since it was first published on 19 September 2011. The Administration was very concerned about the classified indecent articles published in Sharp Daily. Having regard to public concern over Sharp Daily, TELA had already stepped up enforcement efforts in monitoring articles published in the market, and would refer any article suspected of contravening the COIAO to the OAT for classification. Appropriate follow-up actions, including prosecution, would be taken against articles classified as indecent or obscene. If a publisher issued an article which clearly violated the COIAO, TELA would consider taking direct prosecution action.

Special meeting of the Finance Committee

33. At the special meeting of the Finance Committee (FC) to examine the Estimates of Expenditure 2011-2012 on 7 March 2012, Hon Emily LAU, Dr Hon Samson TAM and Hon Tanya CHAN raised questions on the manpower and expenditure involved in the review of COIAO and promotion of protecting the youth from obscene and indecent materials. The Administration advised that the expenditure of the review exercise would be met by the existing financial provision of the Commerce and Economic Development Bureau. The estimated expenditure for publicity programmes

in relation to COIAO would be maintained at \$6.7 million, around the same level as that in 2011-2012.

Latest position

34. The Administration will brief the Panel on the second round of public consultation on the review of COIAO on 14 May 2012.

Relevant papers

35. A list of relevant papers is at **Appendix III**.

Council Business Division 1
Legislative Council Secretariat
8 May 2012

**A summary of major findings of the first round of public consultation
on the review of the Control of Obscene and Indecent Articles
Ordinance**

* * * * *

Views collected in the Public Opinion Survey

9. The Public Opinion Survey was conducted in January 2009 by the Public Opinion Programme at the University of Hong Kong (HKUPOP) to gauge the public's knowledge of and views towards the Ordinance. Target respondents were the Cantonese-speaking population aged 15 or above and about 1 500 of them responded, representing 64.3% of the sample covered. The major findings are summarised as follows (these are the views received in the Public Opinion Survey and do not represent the position of the Government) -

- (a) the respondents' knowledge of the Ordinance is fair;
- (b) over 80% of the respondents considered that legislation was needed to regulate the publication of articles, and some 60% of the respondents considered the existing three-tier classification system under the Ordinance appropriate;
- (c) most respondents (i.e. over 90%) were aware of the existence of the Obscene Articles Tribunal (OAT) but only less than one-tenth regarded the work of the OAT as "well done" and nearly half of them regarded its effectiveness to be "neither good nor bad";
- (d) among the six proposals for improving the adjudication system listed in the consultation document, the respondents seemed to be highly supportive of increasing the number of adjudicators in each hearing and requiring each hearing to include adjudicators from specified sectors. Both proposals captured almost 80% support. About 60% of respondents supported the establishment of a new independent adjudication system and the replacement of adjudicators by jurors. About 40% of the respondents were in favor of the abolition of the OAT and the classification of articles by a magistrate while another 40% were in opposition;

- (e) as regards the regulation of the Internet, three-quarters of the respondents urged the Government to step up its regulation, mainly to improve the existing regulatory system and to increase the penalty;
- (f) three-quarters of the respondents considered that the court should increase the penalty for violating the Ordinance; and
- (g) nearly three-quarters of the respondents considered that the Government should educate the public through television.

Views collected from other channels and the Consultant's recommendations

10. Having consolidated and analysed the views collected, the Consultant concludes that views on different issues are highly diverse and no consensus has been reached. It is only on the importance of publicity and public education that members of the public are close to a consensus. Nevertheless, the Consultant considers that the views collected have provided valuable insight for the Government to draw upon as it develops concrete proposals to improve the regulatory regime and other issues for inclusion in the second round of public consultation. The analysis and recommendations of the Consultant are summarised below which do not represent the position of the Government.

(a) Need of the Ordinance

11. While some members of the public had reservations on the need for the Ordinance at all and taking the view that it might hinder the free flow of information, others considered that there was a need to keep the Ordinance and there was no apparent support for an overall abolition of the Ordinance. The Consultant suggests the Government should continue to encourage further public discussions with a view to exploring a set of standards generally acceptable by members of the public.

(b) Definitions

12. Currently, the Ordinance provides that "obscenity" and "indecentcy" include "violence, depravity and repulsiveness". There were considerable public discussions on the definitions, and public views collected are diverse. Some members of the public supported expanding the definitions so that the public would know clearly under what circumstances one might breach the law. However, they also agreed that it would be impractical to list out all possible situations. On the other hand, some considered that the existing definitions were adequate and the

Government should not be too prescriptive in interpreting terms like “obscenity” and “indecenty” in the legislation to avoid inflexibility. They would prefer the Government to consider establishing a set of administrative guidelines for the public and stakeholders instead.

13. The Consultant considers that there must be support and understanding from the majority of the public before a decision can be made on whether and how to amend the definitions of “obscenity” and “indecenty”. The Consultant further suggests that the Government should carefully consider the public views and draw up recommendations for discussions in the second round of public consultation.

(b) Adjudication System

14. Members of the public have expressed concerns about the transparency and representativeness of the OAT¹ as well as the consistency in OAT’s rulings. There were a lot of discussions on various measures to improve the operation of the OAT, which included increasing the total number of adjudicators of the OAT, increasing the number of adjudicators at each hearing, selecting adjudicators from different sectors and inviting jurors as adjudicators. Many people supported increasing the number of adjudicators at each hearing, e.g. from two to four at interim hearing, and from four to six at full hearing.

15. The Judiciary and some members of the legal profession have proposed to remove the administrative classification function from the OAT, leaving it to deal with judicial determinations² only, and to replace the adjudicators system in the OAT with the jury system. There was however little deliberation of this issue among the public.

16. Some people suggested abolishing the OAT and asking the court to take up the classification role, though this might greatly increase the workload of the court. Some people have pointed out that, among the many cases handled by the OAT every year, only the classification of a

¹ Currently, the OAT, a judicial body presided over by a magistrate and comprising adjudicators appointed by the Chief Justice, has exclusive jurisdiction in classifying articles. Those who are ordinarily resident in Hong Kong and have been so resided for seven years and are proficient in written English or Chinese are eligible for appointment as adjudicators. There are now around 300 adjudicators.

² - It is an **administrative function** for the OAT to perform its statutory duty to make an interim classification and, upon appeal, a final classification on a submitted article. In performing such classification duty, the OAT does not possess the power and authority of a court.

- The OAT is also required to perform a **judicial function**. Upon referral by a court or a magistrate arising from a civil or criminal proceeding, the OAT determines whether an article is obscene or indecent. The OAT does so as a court, possessing the powers and authority of a court.

very small number of them was controversial. Overall there did not appear to be a strong demand for abolishing the OAT.

17. The Consultant considers that maintaining the OAT, improving the composition of its membership and adjudication procedures would enhance the OAT's transparency, representativeness and consistency of its decisions. Regarding the administrative and judicial functions of the OAT, the Consultant considers it necessary for the Government to conduct further in-depth discussions with the relevant stakeholders.

(c) Classification System

18. The Ordinance provides for a three-tier classification system³. The respondents had less interest in this topic. Of those who expressed views, many supported the existing classification system and did not see a need for change. Some cautioned that introducing sub-classes under Class II would create confusion, cause enforcement problems and increase the cost of adjudication work. A few called for the abolition of Class III or the whole classification system but others disagreed. As the public do not seem to have a major concern about the existing classification system, the Consultant proposes that the Government may consider not covering this in the second round of public consultation.

(d) New Forms of Media

19. Regulation of new media has attracted extensive public discussions during the first round of consultation⁴. On the one hand, industry members and Internet users strongly opposed, both in principle and on technical grounds, any increased control over the Internet, particularly regarding verification of Internet users' age and requiring ISPs to provide filtering services. On the other hand, many members of the public, especially parents and educators, expressed concern about the impact of the Internet on youngsters through dissemination of obscene and indecent information and they supported enhanced regulation of the Internet.

³ At present, articles can be classified as Class I (neither obscene nor indecent), Class II (Indecent) and Class III (Obscene). Class I articles may be published without restriction. Class II articles must not be published to persons under the age of 18 and publication of such must comply with statutory requirements including sealing in wrappers and displaying a warning notice. Class III articles are prohibited from publication at all.

⁴ Currently, Television and Entertainment Licensing Authority (TELA) adopts a complaint-driven approach to deal with obscene and indecent content online. It works closely with the Hong Kong Internet Service Providers Association to implement a self-regulatory code of practice on the handling of indecent articles on the Internet. The code was promulgated in 1997 following industry and public consultation. If the content under complaint is likely to be obscene, TELA will refer it to the Police for follow up enforcement action, including prosecution.

20. The Consultant considers that in view of the public's concern and diverse views about the dissemination of information on the Internet, the Government should not make any decision in the absence of a clear tendency and sufficient discussion in the community, but should conduct further discussions on the subject with the stakeholders and members of the public in the second round of consultation.

(e) Enforcement

21. Enforcement work and priority are relatively technical on which the public have expressed relatively few views. The Consultant suggests that the relevant enforcement agencies should discuss this issue among themselves with a view to seeking operational improvement and the Government may consider not to cover this area in the second round of consultation.

(f) Penalty

22. There were not a lot of public discussions in this area. Of those who have expressed views, the majority supported heavier penalties in order to enhance deterrent effect against repeated offenders. Some pointed out that the penalties handed down by the court were usually lower than the maximum penalty set out in the Ordinance. The Consultant suggests that the Government should consider the feasibility of this approach, taking into account the discretionary power of the court in imposing sentences for individual cases.

(g) Publicity and public education

23. Almost all recognised the importance of publicity and public education, even though some people opined that publicity and public education could not replace legislation. The Consultant considers that the Government should follow up on how to step up educational efforts.

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Appendix II

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LCQ12: Free newspaper containing indecent content

Following is a question by Dr Hon Priscilla Leung and a written reply by the Secretary for Commerce and Economic Development, Mr Gregory So, at the Legislative Council meeting today (November 2):

Question:

I have recently received complaints from quite a number of education bodies and members of the public (including school principals and parents), indicating that the recently launched free newspaper, Sharp Daily, contains indecent contents, and allegedly promotes pornography. Up to mid-October this year, the Television and Entertainment Licensing Authority had already received 193 complaints in this regard. In addition, the Obscene Articles Tribunal classified nine articles and their audio recordings on the Internet version of the newspaper as Class II (indecent) articles. The education bodies and members of the public also pointed out that as the newspaper is distributed to the public free of charge, children as well as youngsters can easily obtain and read the newspaper, and are exposed to the erotic and obscene contents therein, thereby causing undesirable impact on their development. In this connection, will the Government inform this Council:

(a) given that at present, even if a free newspaper contains indecent contents, the authorities often cannot promptly stop it from being put on the market, and only classify the contents of the newspaper after it has been published, which cannot prevent people under the age of 18 from exposure to the relevant contents, whether the Government has any measure to plug the existing loophole;

(b) regarding those paid or free newspapers that often contain indecent or erotic contents, whether the Government will study adopting measures or penalties with greater deterrence, so as to prevent them from including erotic contents again;

(c) given that the number of free newspapers which are openly distributed to the public in Hong Kong has been on the increase, whether the authorities will study introducing some new measures to ensure that the contents of this kind of newspaper are suitable for people of all ages; and

(d) given that at present, copies of free newspapers (including Sharp Daily) are displayed at the lobbies of some housing estates or residential buildings for their residents to obtain and read, some residents have indicated their wish to temporarily disallow placing Sharp Daily in their housing estates or residential buildings, so as to prevent youngsters from exposure to the erotic contents therein, whether the Hong Kong Housing Authority and the Hong Kong Housing Society will take the lead in disallowing free newspapers that often contain indecent or erotic contents to be placed and distributed in the public housing estates or Home Ownership Scheme estates under their management?

Reply:

President,

(a), (b) and (c) Sharp Daily was launched on September 19, 2011. As at October 31, 2011, the Television and Entertainment Licensing Authority (TELA) has received a total of 197 complaints against the newspaper for carrying indecent, obscene and violent content. TELA conducted investigations into the complaints and has submitted 26 articles suspected of contravening the Control of Obscene and Indecent Articles Ordinance (COIAO) (Cap 390) to the Obscene Articles Tribunal (OAT) for classification. Among

these articles, 20 have been classified by the OAT as Class II (indecent) articles as at October 31, 2011. On October 18, 2011, TELA took prosecution action against the publisher in respect of a number of articles published in Sharp Daily. TELA also wrote to the publisher requesting it to pay serious attention to the complaints lodged by members of the public against Sharp Daily for publishing indecent articles for a number of days in a row, and reminding it that all articles published should comply with the legal requirements and that the Government would take prosecution actions against any publisher who illegally publishes indecent articles.

On regulating the publication of articles, the Government's longstanding policy is to preserve the free flow of information and safeguard the freedom of speech while applying standards of public decency to articles, especially those intended for young and impressionable people. Freedom of speech has always been a core value that the Government is determined to safeguard. As such, there is no compulsory pre-censorship before the publication of an article under the law. However the publisher has a clear responsibility to ensure that any publication is in compliance with the law, including the provisions prohibiting the publication of obscene articles to juveniles and on relevant penalties. Section 10 of the COIAO provides that the OAT shall have regard to the following factors in classifying an article:

- (a) standards of morality, decency and propriety that are generally accepted by reasonable members of the community;
- (b) the dominant effect of an article as a whole;
- (c) the persons or class of persons, or age groups of persons, to or amongst whom the article is intended to be published;
- (d) in the case of matter publicly displayed, the location where the matter is to be publicly displayed and the persons or class of persons, or age groups of persons likely to view such matter; and
- (e) whether the article or matter has an honest purpose or whether its content is merely camouflage designed to render any part of it acceptable.

Currently, the Government has no plans to change the regulatory regime for the publication of articles. TELA will continue to closely monitor all articles published in the market, and will refer any article suspected of contravening the COIAO to the OAT for classification after consideration of such factors as the age groups of persons to whom the article (e.g. a free newspaper) is intended to be published or, in the case of matter publicly displayed, the location where the matter is publicly displayed and the persons likely to view such matter. Appropriate follow-up actions, including prosecution, will be taken against articles classified as indecent or obscene.

Under the COIAO, the maximum penalty for publishing an obscene article is a fine of \$1,000,000 and imprisonment for three years. As for publication of an indecent article, the maximum penalty is a fine of \$400,000 and imprisonment for 12 months on first conviction, and a fine of \$800,000 and imprisonment for 12 months on second or subsequent conviction. These penalties are equally applicable to paid or free newspapers. Moreover, we are aware that some members of the public have considered the penalties imposed on publishers of indecent articles in the past too lenient. TELA will closely monitor the penalties handed down by the court for a breach of the COIAO, and where necessary, will apply to the court for a review of penalty.

(d) The Housing Department does not allow newspaper publishers/distributors to distribute or exhibit free newspapers in public rental housing estates of the Hong Kong Housing Authority. As for whether to allow the distribution or exhibition of free newspapers in Home Ownership Scheme estates, the decision rests with the relevant owners' corporations or owners' committees.

Similarly, the Hong Kong Housing Society (HKHS) does not

allow newspaper publishers/distributors to distribute or exhibit free newspapers in its rental housing estates. As for housing estates sold by the HKHS, the decision rests with the relevant owners' corporations or owners' committees.

Ends/Wednesday, November 2, 2011
Issued at HKT 11:59

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Appendix III

List of relevant papers

| Committee | Paper | LC Paper No. |
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| Meeting of ITB Panel on 11 September 2006 | Administration's paper : Enforcement of the COIAO | CB(1)2174/05-06(01) |
| | Administration's paper : Protection of Privacy | CB(1)2175/05-06(01) |
| | Executive Summary of the Report on Privacy : The Regulation of Covert Surveillance published by the Law Reform Commission of Hong Kong | CB(1)2174/05-06(03) |
| | Submissions from deputations | Please refer to the agenda |
| | Follow-up paper : Entertainment Magazines Submitted to the Obscene Articles Tribunals for Classification | CB(1)525/06-07(01) |
| | Minutes of meeting | CB(1)249/06-07 |
| Council meeting on 19 October 2006 | Motion on "Introducing legislation to regulate clandestine photo-taking" | Hansard |
| Council meeting on 30 May 2007 | Written question no. 9 : "Obscene Articles Tribunal" | Hansard |
| Council meeting on 17 October 2007 | Oral question no. 4 : "Enforcement of the COIAO" | Hansard |
| Council meeting on 24 October 2007 | Oral question no. 4 : "Internet Computer Services Centres" | Hansard |
| Council meeting on 31 October 2007 | Written question no. 8 : "Enforcement of the COIAO" | Hansard |
| Council meeting on 5 December 2007 | Oral question no. 2 : "Enforcement of the COIAO" | Hansard |

| Committee | Paper | LC Paper No. |
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| Meeting of ITB Panel on 14 January 2008 | Administration's paper: Public opinion survey on the operation of the COIAO | CB(1)544/07-08(04) |
| | Administration's paper: Effectiveness of the existing regulatory regime under the COIAO | CB(1)544/07-08(05) |
| | Background brief prepared by the Legislative Council Secretariat | CB(1)573/07-08(02) |
| | Minutes of meeting | CB(1)943/07-08 |
| Council meeting on 5 March 2008 | Oral question no. 4: Enforcement of COIAO | Hansard |
| | Oral question no. 5: Prosecution against publishing obscene articles on Internet | Hansard |
| Council meeting on 12 March 2008 | Written question no. 15: Proper use of Internet | Hansard |
| Meeting of ITB Panel on 20 November 2008 | Administration's paper: Review of the COIAO | CB(1)202/08-09(03) |
| | Background brief prepared by the Legislative Council Secretariat | CB(1)202/08-09(04) |
| | Submissions from deputations | Please refer to the agenda |
| | Minutes of meeting | CB(1)927/08-09 |
| Meeting of ITB Panel on 21 January 2009 | Submissions from deputations | Please refer to the agenda |
| | Minutes of meeting | CB(1)2104/08-09 |
| Meeting of ITB Panel on 13 July 2009 | Administration's paper: Review of the COIAO | CB(1)2180/08-09(05) |
| | Background brief prepared by the Legislative Council Secretariat | CB(1)2180/08-09(06) |

| Committee | Paper | LC Paper No. |
|---|---|---|
| | Minutes of meeting | CB(1)2781/08-09 |
| Meeting of Panel on Education on 13 October 2011 | Letters from Dr Hon Priscilla LEUNG dated 20 and 26 September 2011 concerning the contents of Sharp Daily Minutes of meeting | CB(2)13/11-12(01) and (02) CB(2)250/11-12 |
| Council meeting on 2 November 2011 | Question raised by Dr Hon Priscilla LEUNG regarding free newspaper containing indecent content. | http://www.legco.gov.hk/yr11-12/english/counmtg/hansard/cm1102-translate-e.pdf |
| Meeting of AJLS Panel on 30 January 2012 | Administration's paper: Review of the COIAO Judiciary Administration's paper: The Role of the Judiciary in the Adjudication System under the COIAO Information note prepared by the LegCo Secretariat | CB(2)863/11-12(02) CB(2)863/11-12(03) IN04/11-12 |
| Joint meeting of Panel on Education and ITB Panel on 14 February 2012 | Administration's paper: Regulation of Indecent Articles in Free Newspapers Background brief prepared by the Legislative Council Secretariat | CB(2)995/11-12(02) CB(1)1026/11-12 |
| Special FC meeting on 7 March 2012 | Question raised by Hon Emily LAU on manpower and expenditure on review of COIAO (CEDB(CT)016) | http://www.legco.gov.hk/yr11-12/english/fc/fc/w_q/cedb-ct-e.pdf |
| Special FC meeting on 7 March 2012 | Question raised by Dr Hon Samson TAM on expenditure on promotion of COIAO (CEDB(CT)112) | http://www.legco.gov.hk/yr11-12/english/fc/fc/w_q/cedb-ct-e.pdf |
| Special FC meeting on 7 March 2012 | Question raised by Hon Tanya CHAN on expenditure on review of COIAO (CEDB(CT)113) | http://www.legco.gov.hk/yr11-12/english/fc/fc/w_q/cedb-ct-e.pdf |
| Meeting of ITB Panel on 14 May | Administration's paper: Second round of public consultation on the review of the | CTB(CR)8/7/1(09)Pt. 38 |

| Committee | Paper | LC Paper No. |
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| 2012 | Control of Obscene and Indecent Articles Ordinance (Legislative Council Brief) | |