

政制及內地事務局
政府總部

香港添馬添美道2號
政府總部東翼



CONSTITUTIONAL AND MAINLAND AFFAIRS BUREAU
GOVERNMENT SECRETARIAT

EAST WING
CENTRAL GOVERNMENT OFFICES
2 TIM MEI AVENUE, TAMAR
HONG KONG

本署檔號 Our Ref : CMAB E4/1/1
電話 Tel No : 2810 2333
傳真 Faxline : 2524 7437

(By email and fax)
(Fax no.: 2509 9055)

[English Translation]

Ms Joanne MAK
Clerk to Bills Committee on National Anthem Bill
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

29 March 2019

Dear Ms MAK,

**Re: Policy on prosecution and collecting evidence
related to the National Anthem Bill**

Regarding the letter from Hon YEUNG Alvin of 22 March, our reply is set out below.

Online publishing behaviours

2. Clause 7(3) of the National Anthem Bill (the Bill) provides that a person commits an offence if, with intent to insult the national anthem, the person intentionally publishes (a) altered lyrics or an altered score of the national anthem; or (b) the national anthem played and sung in a distorted or disrespectful way. Clause 7(4) of the Bill provides that a person commits an offence if, with intent to insult the national anthem, the person intentionally publishes the insulting in any way of the national anthem. Clause 7(8) of the Bill provides that in section 7, “publish” includes (a) to communicate to the public in any form, including speaking,

writing, printing, displaying notices, broadcasting, screening and playing of tapes or other recorded material; and (b) to distribute, disseminate or make available to the public.

3. In his letter, Hon YEUNG raised questions on whether uploading materials on local online platforms, which insult the national anthem for public viewing by Internet users all over the world, would constitute an offence. According to clause 7(8) of the Bill, distributing, disseminating or making available to the public materials which insult the national anthem on online platforms can constitute the act of “publish” in clause 7(3) and 7(4), which is in line with the legislative intent of the National Anthem Law. According to the report on proposed amendments to the “Law of the People’s Republic of China on the National Anthem (Second Draft)” by the Legislative Affairs Commission of the National People’s Congress¹, “irrespective of whether it takes place at a public place in the real world or on the Internet, it is an act of publicly insulting the national anthem through ways of public dissemination, and will cause harm to the dignity of the country and to public order. Legal liability should be pursued in accordance with the National Anthem Law.” Whether the materials distributed, disseminated or made available to the public constitute materials which insult the national anthem is a question of fact and has to be assessed based on the actual circumstances of each case.

4. If a person continues to publish materials which insult the national anthem in order to insult the national anthem after the Bill takes effect, that person may also contravene clause 7 of the Bill.

5. On top of proving that the behaviours concerned constitute a “publishing” act provided in clause 7(3) or 7(4) of the Bill, prosecutors would also need to prove that the person concerned had, with intent to insult the national anthem, intentionally published the relevant materials, in order to initiate prosecution under clause 7(3) or 7(4) of the Bill. To protect reasonable publication of materials that insult the national anthem (e.g. fair reporting by the media or for teaching purposes by teachers, etc.), and to make it clear to the public that such acts of publication with no intent to insult the national anthem will not constitute a criminal offence, clause 7(5) of the Bill clearly provides that a person does not commit an offence if the person who publishes materials insulting the national anthem has no intent to insult the national anthem.

6. To determine whether a specific “publishing” act would contravene clause 7 of the Bill, the Police would, based on the actual circumstances

¹ Full report (Chinese only): http://www.npc.gov.cn/npc/xinwen/2017-09/01/content_2028099.htm

and the evidence collected in each case, make an assessment in accordance with the law and the aforementioned principles. As with the investigation of other offences, the Police would gather evidence from various channels, and apply for warrants from the courts when necessary, to obtain information relevant to the case. On completion of the investigation, the Police would examine all the evidence collected, and seek the advice of the Department of Justice when needed, to determine whether prosecution should be instituted. If the relevant agencies could establish the act and the intent and decide to prosecute, the courts will apply the usual standard of proof for criminal cases in Hong Kong (i.e. beyond reasonable doubt) in making a fair decision on the case.

7. If it is found that someone has allegedly published materials that insult the national anthem on the Internet, the Police will contact the relevant ISP to remove such materials. This approach is consistent with the handling of other illegal materials published on the Internet.

8. Whether or not website administrators would be criminally liable to a specific act of publishing by a user depends on whether the administrators have the intent to insult the national anthem and the evidence gathered by the enforcement agencies. Generally speaking, it would be difficult to establish that the website administrators have intent to insult the national anthem if they are not aware of the publishing of materials which insult the national anthem on the Internet by users.

Incorporating parts of the melody or lyrics of the national anthem in musical works

9. Whether a piece of music would so closely resemble the national anthem as to lead to the reasonable belief that it is the national anthem or a part of the national anthem, and whether the piece of music would amount to insulting the national anthem is a question of fact and has to be assessed based on the actual circumstances of each case.

Making noises on occasions where the national anthem is played and sung

10. When determining whether a certain behaviour contravenes clause 7 of the Bill, we have to consider whether the behaviour is a public and intentional act, whether the intent of the person concerned is to insult the national anthem, and whether the behaviour falls within the criminal behaviours regulated in the Bill. Whether or not the occasion concerned is an occasion stipulated in Schedule 3 will not affect the aforementioned

consideration. On whether a specific act will contravene clause 7 of the Bill, the principles set out in paragraph 6 will apply.

Yours sincerely,



(Ms Cordelia LAM)

for Secretary for Constitutional and Mainland Affairs

c.c. Secretary for Justice

(Attn: Mr Lawrence PENG, Fax no.: 3918 4613

Mr Jonathan LUK, Fax no.: 3918 4613

Mr Derek LAU, Fax no: 2845 1609)

Secretary for Security

(Attn: Mr Andrew TSANG, Fax no.: 2810 7702)