

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 April 2019

Dear Ms MAK,

**Re: Follow-up Questions on Offence of
Behaviour of Insulting the National Anthem**

Regarding the letter from Hon MOK Charles Peter of 12 April, our reply is set out below.

2. In his letter, Hon MOK raised questions on whether various online publishing behaviours are behaviours in Hong Kong. As we stated in LC Paper No. CB(2)1127/18-19(02), according to common law principles, after its passage, the National Anthem Bill (the Bill) will only apply to behaviours in Hong Kong. For online behaviours, when considering whether a certain online behaviour is a behaviour in Hong Kong, relevant agencies have to make an assessment based on the actual circumstances and the evidence collected in each case. There should be no generalisation. On whether a specific publishing act would contravene clause 7 of the Bill, 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.

3. If there are cross-border elements in a case, for example, using an overseas Internet Protocol (IP) address to publish illegal information, enforcement agencies will seek assistance from overseas enforcement agencies when needed during the investigation process, and will seek legal advice when needed before taking prosecution action.

4. As we stated in LC Paper No. CB(2)1127/18-19(02), if it is found that someone has allegedly published materials that insult the national anthem on the Internet, the Police will contact the relevant Internet Service Providers (ISPs) to remove such materials. This approach is consistent with the handling of other illegal materials published on the Internet.

5. Regarding local ISPs, if it is necessary to obtain personal data of users, the Police will issue the request to the organisation concerned pursuant to the relevant exemption provision in the Personal Data (Privacy) Ordinance (Cap. 486), or apply for a court warrant. The Police will seek the assistance of overseas enforcement agencies through the established mutual legal assistance procedures when necessary.

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)