



Healthy Information for a Healthy Mind

**Report on the First Round of Public Consultation
on the Review of the Control of Obscene and
Indecent Articles Ordinance**

Commerce and Economic Development Bureau
Hong Kong Special Administrative Region Government

July 2009

Foreword

The Government embarked on a comprehensive review of the Control of Obscene and Indecent Articles Ordinance (the Ordinance) at the end of 2008.

The first of two planned rounds of public consultation was conducted from 3 October 2008 to 31 January 2009. The Government commissioned AWTC (Lo & Lam) Consultancies Ltd (the Consultant) to provide consultancy and research services throughout the public consultation exercise. This report, compiled by the Consultant, contains a consolidated analysis of all the views collected in the first round of public consultation. It sets out the relevant statistics, and the methodology used to analyse public opinion.

We will carefully consider the feedback collected from the public as well as the recommendations in the report with a view to coming up with more concrete proposals for the second round of public consultation.

We would like to take this opportunity to thank individuals/organisations/groups who expressed their views through various channels in the first round of public consultation. All minutes/summaries of meetings and written submissions (excluding the repeated ones) have been uploaded to the thematic website (<http://www.coiao.gov.hk>) for public viewing. If you have any enquiries about the review of the Ordinance and this report, please contact us through the following channels -

<i>Post</i>	Commerce and Economic Development Bureau 2/F, Murray Building Garden Road Central, Hong Kong
<i>Fax</i>	(852) 2511 1458
<i>E-mail</i>	info@coiao.gov.hk
<i>Website</i>	http://www.coiao.gov.hk

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Indecent Articles Ordinance
Report of the First Round of Public
Consultation**

**Submitted by AWTC (Lo & Lam)
Consultancies Ltd**

June 2009

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General Summary

First Round of Consultation

The booklet published for the first round of public consultation lists out seven main areas relating to the operation of the Control of Obscene and Indecent Articles Ordinance (COIAO) and possible improvement measures for public deliberation.

2. At the early stage of public consultation, members of the public mainly focused on the regulation of new forms of media, especially on whether the age of Internet users should be verified and whether the Internet service providers (ISPs) should be required to provide filtering software. The public began to comment more on other relevant areas of the public consultation as various focus group discussions and town hall meetings were held. Among the various areas of public consultation, the definitions of 'obscenity' and 'indecenty', the operation of the Obscene Articles Tribunal (OAT) as well as the handling of the Internet and new forms of media are of particular concern of the public.

3. In the first round of public consultation on the COIAO, views collected on different areas are highly diverse and no apparent consensus has been reached on any of the areas so far. It is only on the importance of publicity and public education that public views are close to a consensus. Having said that, views collected during the first round of public consultation have provided valuable guidance for the Government and paved ways for the second round of public consultation.

Overall Direction

4. The Consultant compiled, consolidated and analysed the views collected during the first round of public consultation. In general, the Consultant recommends the Government to consider the following points when exploring various recommendations for the second round of public consultation:

- (a) Public views on a number of areas relating to the publication of obscene and indecent articles are diverse. Unless there is an imminent need to amend the COIAO,

or such amendments are expected to bring significant improvement, the Government should encourage the public to participate actively in further discussions so as to come up with improvement measures generally acceptable to the community;

- (b) The morality issues involved in the COIAO (e.g. the understanding of 'obscenity' and 'indecenty') require a longer period of time for in-depth public discussions so that mutual acceptance and understanding can be fostered. Mainstream views in society are supportive of measures to enhance the transparency, representativeness of the OAT as well as the consistency of its decisions on the classification. The Consultant recommends the Government to explore measures to improve the operation of the OAT which can be carried out within a relatively shorter period of time. The Government should encourage further discussions among different sectors of society on this area;
- (c) Members of the public did not have much discussion on some more technical aspects of the COIAO, including the division of labour among different law enforcement departments, level of penalty, etc. The Consultant believes that while the relevant Government departments should continue to work together to draw up possible improvements on the existing arrangements, the Government may not need to include these areas for further discussions in the second round of public consultation. The Judiciary and the legal sector considered that the OAT should not take up the administrative functions in classifying articles and also proposed to replace the adjudicators' system with the jury system. Members of the public did not pay much attention to these technical issues. The Consultant recommends the Government to conduct in-depth discussions with relevant stakeholders on these areas and look for possible improvement measures in the second round of public consultation; and
- (d) Members of the public also proposed improvement measures which could be implemented outside the

legislation through co-operation between the Government, the community organisations and various stakeholders. For example, regarding the Internet, some recommended that ISPs could compile codes of practice for the industry, implement voluntary content rating system and conduct public education concerning the operation of the Internet and the identification of content. The Consultant suggests the Government continue to follow up these recommendations and discuss with related community organisations and stakeholders in order to carry out improvement measures through administrative rather than legislative means.

5. The following are the analysis and recommendations of the Consultant on the major areas discussed in the first round of public consultation for reference of the Government in conducting the second round of public consultation.

The Legislative Intent of the COIAO

6. The main objective of the COIAO is to regulate the publication of articles. The Government's long-standing policy is to reflect standards of public decency as they should apply particularly to articles intended for young and impressionable people while at the same time preserving the free flow of information and safeguarding the freedom of expression.

7. Some members of the public have reservation on the need of the COIAO to avoid any hindrance on the free flow of information. On the other hand, quite a lot of people are concerned about the far-reaching impacts of pornography and find it necessary for the COIAO to exist. Standards of public decency always exist and there is no question of absolute freedom. The existence of the COIAO and the freedom of speech and information are not mutually exclusive.

8. According to the Telephone Public Opinion Survey conducted by Public Opinion Programme at the Hong Kong University (HKUPOP), 80% of the respondents believed that there was a need for Hong Kong to regulate the publication of articles through legislation, while only 20% found it unnecessary. Female respondents were more inclined than the male ones to believe in

the need of such legislative regulation. Also, the lower the education level, the more likely the respondents would agree that there was 'a need' for Hong Kong to have legislation in regulating articles published to the public. In the focus group discussions, town hall meetings and the over 18 000 written submissions, there was no apparent support of the abolition of the COIAO. Apart from a small number of people, representatives of the minority community did not entirely deny the need of regulating obscene and indecent articles, yet such regulation should be designed and implemented in a cautious manner. Therefore, the COIAO is still necessary and the Government should continue to explore comprehensive and appropriate ways of improving the regulatory regime.

9. The public were diverse on ways of implementing the COIAO to cater for the prevailing need of the community. The basic principle of the COIAO is to identify articles that should be prohibited from publication and those that are not suitable for persons below the age of 18 according to standards generally accepted by members of the community. Some members of the public pointed out that as such standards are subjective moral values, tolerance should be allowed for articles in the interests of education, science, literature, history and art, and the background of such articles should be considered. In this respect, it will be impossible for a diversified community to reach an overall consensus.

10. Besides, the freedom of speech and the free flow of information are core values of Hong Kong. When deciding on moral standards, even if there are apparent majority views, the rights of the minority cannot be neglected. The Consultant suggests that the Government should continue to encourage further public discussions so as to explore a set of standards generally acceptable by members of the public which can also meet the changing need of society.

Definition and Classification

11. During the first round of public consultation, members of the public went into great detail regarding the definitions of obscene and indecent articles. Issues of the classification system received relatively less attention. Members of the public and stakeholders

largely agreed that any amendments to the definitions and the classification system must be conducted in a prudent manner.

12. According to the COIAO, the definitions of ‘obscenity’ and ‘indecenty’ include ‘violence, depravity and repulsiveness’. Public views varied on the definitions of ‘obscenity’ and ‘indecenty’, reflecting the diverse social values concerning these articles. Quite a lot of public views received supported making the definitions more concrete so that the public would be aware of the circumstances under which one might risk breaching the law. However, such views also recognized the practical difficulties in listing out all possible scenarios. Other views regarded that the existing definitions were sufficient and the Government should not be too prescriptive in interpreting terms like ‘obscenity’ and ‘indecenty’ to avoid inflexibility. The Government should consider establishing a clear set of administrative guidelines for the public and stakeholders instead.

13. According to the COIAO, the OAT should consider the factors listed out under Section 10 of the COIAO when classifying whether an article is obscene or indecent¹. Under Section 28 of the COIAO, if an article is in the interests of science, literature, art or learning, or any other object of general concern, it may be used as a defence against prosecution. Members of the public expressed various views on it. Lots of the respondents stated that the Government should put forth clearer definitions for factors under Section 10 and terms like ‘academic’ under Section 28 by making reference to the approaches of other countries/regions.

14. Under the COIAO, articles may be classified into the following three categories: Class I (Neither Obscene Nor Indecent); Class II (Indecent) and Class III (Obscene). Lots of views were in support of the existing classification system and saw no need of amendments. Some stated that further classification (e.g. to further divide Class II into Classes IIA and IIB, restricting

¹ According to Section 10 of the COIAO, the following list of factors shall be considered:

- (a) standards of morality generally accepted by reasonable members of the community;
- (b) the dominant effect of the article as a whole;
- (c) the class or age of the likely recipients;
- (d) the location at which the article is displayed; and
- (e) whether the article has an honest purpose.

publication to persons aged above 15 and 18 respectively) would only create confusion, lead to enforcement problems and increase the cost of adjudication. Nevertheless, there were also respondents in favour of such a suggestion as they opined that it would provide more information about the articles and assist the public in selecting appropriate publications.

15. The Consultant believes that any amendment to Section 10 or Section 28 of the COIAO to provide more detailed explanation or any changes to the existing three-tier classification system should only be conducted when there is apparent support by the majority of the community. The Consultant suggests that the Government should continue to consider public views regarding the definitions and draw up recommendations for improvements so that members of the public can further discuss in the second round of public consultation. It does not seem that the classification system needs to be further discussed in the second round of public consultation.

The Operation of the OAT

16. During the first round of public consultation, the public generally hoped that the transparency and representativeness of the OAT as well as the consistency in its classification decisions could be enhanced. The classification system of the COIAO is mainly based on the moral standards generally acceptable by reasonable members of the community. In a free and diverse community, healthy discussions are expected on areas of public concern. No matter how the adjudication system is changed, such debates will not be eliminated. Improvement in the transparency and representativeness of the OAT as well as consistency in its decisions can help reduce misunderstanding and controversy.

17. As to transparency, some stated that the public should have the right to know the classification results and the reasons behind, whether for the interim hearing or the full hearing. The Government should consider releasing information of the classification on the Internet.

18. Regarding representativeness, members of the public raised different views on a number of improvement measures, which included increasing the number of adjudicators of the OAT,

increasing the number of adjudicators in each case, selecting adjudicators from different sectors and inviting jurors as adjudicators. Statistics from the Telephone Public Opinion Survey conducted by HKUPOP reflected that almost 80% of the respondents supported increasing the number of OAT adjudicators from two to four in the interim hearing and from four to six in the full hearing, and stipulating in the legislation the inclusion of representatives from certain sectors on the OAT.

19. As to consistency in classification decisions, some expressed that it was worthwhile for the OAT to compile information on the classification cases and establish a database. The public should be allowed to get access to such documents and precedents to ensure consistency in classification.

20. Some respondents suggested that the Government might consider abolishing the OAT and appoint a magistrate to classify articles according to moral standards generally acceptable by the community. However, such approach will greatly increase the workload of the court. Other respondents stressed that only a handful of the tens of thousands of cases handled by the OAT were controversial. The findings of the Telephone Public Opinion Survey conducted by HKUPOP do not show an apparent public request for the abolition of OAT.

21. On balance, the Consultant believes that it is more practical to keep the OAT, improve the composition of its membership, and enhance its transparency and representativeness as well as the consistency in its classification decisions. The Consultant also recommends that the Government should consider the public views carefully, analyse the pros and cons of these suggestions and invite members of the public to discuss in depth during the second round of public consultation.

The Internet and New Forms of Media

22. The Television and Entertainment Licensing Authority (TELA) adopts a complaint-driven approach to deal with obscene or indecent Internet content and works with the Hong Kong Internet Service Providers Association to implement a Code of Practice. In the booklet of the first round of public consultation, a number of measures regulating the Internet were listed out for public

discussion, for example, retaining the existing co-regulatory regime with the introduction of additional administrative measures, making it a legislative requirement for Internet service providers to provide filtering software and tightening statutory controls. Representatives of the industry and discussions on the online discussion forums strongly opposed the increased control of the Internet, while a large number of members of the public, especially parents and educators, supported measures of tighter regulation. According to the Telephone Public Opinion Survey conducted by HKUPOP, three quarters of the respondents wished that the Government's regulation could be 'stricter than it is now', of which almost half of them opted for 'much stricter'. Another 13% considered the current regulation was 'appropriate', while only less than one-tenth wished that the regulation could be 'more lenient than it is now'. The general public did not seem to oppose regulating the Internet.

23. Some objected in principle to the regulation of the Internet, as the nature of the Internet differed from other forms of the mass media and it should not be regulated by whatever means. On the other hand, some respondents found this argument unsound as there were already a number of ordinances regulating Internet behaviour, disagreeing that the unique nature of the Internet could be used as a defence against any regulation.

24. Some other views stressed the principle that the Government should differentiate the Internet from other media and introduce a separate different ordinance for regulation purpose. As most existing regulatory legislation in Hong Kong are technology-neutral, the Consultant sees no obvious need of establishing a separate set of ordinance to regulate the publication of obscene and indecent articles on the Internet.

25. On the technical grounds, some respondents spotted practical difficulties in enforcing the existing COIAO on Internet activities, especially when the ordinances in Hong Kong were unable to regulate obscene and indecent articles disseminated via overseas websites. The Consultant finds this view worth-noting. It would be meaningless to establish an ordinance which cannot be enforced effectively. Nevertheless, technical difficulties should not be the justification for entire exclusion of the Internet from statutory regulation. Since members of the public are highly concerned

about the handling of publication of information on the Internet and have diverse views on it, the Government should not make any decision before the community has thorough discussions and clear inclination on it. The Consultant believes that the Government needs to have further discussions with the stakeholders of the Internet and should involve members of the public in this issue in the second round of public consultation.

26. Internet stakeholders also suggested that the Government should work hand in hand with community organisations and concerned parties to combat the publication of obscene and indecent articles through measures other than legislative means. For instance, ISPs may establish industry-wide codes of practice, promulgate voluntary content rating and public education. The Consultant advises the Government to follow up these measures. It can discuss with community organisations and concerned parties ways that the industry can be involved in assisting the regulation of publication of obscene and indecent articles on the Internet outside the COIAO.

Enforcement and Penalty

27. In the first round of public consultation, members of the public did not have many discussions on issues relating to enforcement and penalty in activities organised by the Government and community organisations and suggestions submitted through other available channels.

28. At present, three Government departments, TELA, Police Force and Customs and Excise Department are responsible for the enforcement of the provisions under the COIAO. Since the enforcement arrangements are relatively technical and involve practical issues on coordination among various enforcement bodies, members of the public may find it difficult to express their views on it. The general public did not show much concern regarding this issue as well. The Consultant suggests that the relevant enforcement departments may have further discussions among themselves so as to seek feasible measures to achieve a more effective division of labour.

29. Regarding modes of enforcement, some respondents supported retaining the complaint-driven mode in regulating the

publication of obscene and indecent articles, while others suggested that the enforcement departments should take the initiative to regulate instead of waiting for reports or complaints from the public. There were not many discussions about the priority of enforcement. The Government should continue to closely monitor public views to cater for the changing need of the community.

30. As to penalty, the majority of the public supported a heavier penalty in order to enhance the deterrent effect. The Consultant suggests that the Government should consider ways of following up such views in a serious manner. It should also take note some respondents pointed out that the penalties handed down by the court were usually lower than the maximum penalty (publication of obscene articles is subject to a maximum penalty of \$1 million fine and 3 years' imprisonment upon conviction). It shows that merely increasing the level of penalty under the Ordinance might not be effective in practice. It should also be borne in mind that the court has the discretionary power in imposing sentences in accordance with the individual circumstances of individual cases.

31. There were also discussions on whether the COIAO should list out the factors to be considered by the court when handing down penalty. Members of the public were diverse on this issue. The mostly mentioned factor for consideration of the court is the circulation volume of the article concerned. The Government may consider the practicability of this suggestion. Since not many views were received from the public about penalty and no significant discrepancy is noted, it is suggested that the Government may not need to discuss this issue further in the second round of public consultation.

Publicity and Public Education

32. Public views on the importance of publicity and public education are close to a consensus in the first round of public consultation. While some expressed that publicity and public education could not replace legislative regulation, many recognized the importance of publicity and public education. The Government, schools and families should each take up different roles and work together to promote public education.

33. For the Government, members of the public pointed out that systematic publicity and public education programmes should be launched to foster cooperation among different sectors. Apart from the traditional media like television, newspapers, magazines and booklets, the Government should also select new forms of media which are preferred and frequently used by youngsters for publicity to yield greater impact.

34. For the schools, lots of respondents stressed that the Government should allocate more resources for primary and secondary schools to strengthen sex education for the youth. Schools should allow more time and space for teachers to take care of the need of their students, so that assistance can be provided in better understanding, thinking and debating cases relating to pornographic culture. This will help establish correct concepts and values about sex. Some also suggested the Government should provide support to teachers and enhance their ability in implementing sex education.

35. For the families, it is noted that many parents are unclear about the classification criteria and penalty under the existing legislation. The Consultant recommends that the Government should consider providing counselling for parents and releasing up-to-date information to them on a regular basis. Some respondents also suggested that parents should familiarize themselves with the Internet culture, communicate more with their children and inculcate them with a correct concept of sex. This will help their children identify and resist various types of unhealthy information.

The Way Forward

36. The views collected in the first round of public consultation reflect that members of the public are more concerned with the definitions of 'obscenity' and 'indecentcy', the operation of the OAT and the handling of the Internet and new forms of media. Public views on these issues are significantly divergent. The Consultant recommends the Government to invite public views on the abovementioned issues again, try its best to reach a general consensus and understanding on them so as to draw up feasible

measures to improve the existing regulatory regime on obscene and indecent articles.

Chapter 1: Introduction

Background of the Review of the Control of Obscene and Indecent Articles Ordinance

Hong Kong is a free and open society. We enjoy freedom of speech, of the press and of publication as guaranteed under Article 27 of the Basic Law and the relevant provisions of the Hong Kong Bill of Rights Ordinance. In respect of the regulation of publication of articles, the Government's long-standing policy is to reflect standards of public decency as they should apply particularly to articles intended for young and impressionable people while at the same time preserving the free flow of information and safeguarding the freedom of expression. There is no compulsory pre-censorship before the publication of an article, but the publisher has the responsibility to ensure that any publication is in compliance with the law. The Control of Obscene and Indecent Articles Ordinance (COIAO) reflects this policy. The Government conducts reviews on the operation of the COIAO from time to time to ensure that the regulatory regime is able to meet the changing needs and mores of the community. The Government consulted the public in a comprehensive manner in the last review in 2000. As diverse public views were received, the Government decided to adopt administrative measures to improve the existing regulatory system and not to pursue the proposals set out in the review.

2. In the last few years, newspapers and entertainment magazines have from time to time published articles and photos that have subsequently been ruled to be indecent or worse. There has been growing public concern over the dissemination of obscene and indecent materials on the Internet. The Government therefore undertook in early 2008 to conduct a comprehensive review of the COIAO.

3. The Government commenced the comprehensive review at the end of 2008 and proposed to conduct two rounds of public consultation on the review. In the first round, members of the public discussed extensively a number of main issues on the operation of the COIAO and proposed improvement measures. The Government did not have any pre-conceived views about the direction of the review. It wished to hear from the community on

measures to improve the existing regime. The Government will draw together the public views and, as far as possible, come up with more concrete proposals for a second round of public consultation.

4. The Government commissioned AWTC (Lo & Lam) Consultancies Ltd (the Consultant) to provide consultancy services and carry out research. These include:

- (a) To promote key points and objectives of the review of the COIAO to the public, the Consultant arranged Government representatives to meet with persons-in-charge of the press, commentators and columnists, who would help extensively disseminate relevant information to members of the public;
- (b) To arrange and organise a number of focus group discussions and town hall meetings. Logistical support was also provided to record and summarize public opinion collected in focus group discussions and town hall meetings. Experienced facilitators were present to facilitate and encourage discussions;
- (c) To collect public opinion regarding the COIAO expressed by individuals, groups and the media through various channels; and
- (d) To consolidate, categorize and analyse public opinion collected in the first round of public consultation and prepare a report after careful consideration of the public opinion.

5. This report sets out survey statistics, methodology and public views collected in the first round of public consultation as well as concluding remarks formulated after the views have been carefully considered and analysed.

Chapter 2: First Round of Public Consultation

Mechanism of Collecting Public Opinion

The first round of public consultation commencing on 3 October 2008 lasted for four months and was completed on 31 January 2009. The Government published a user-friendly and easy-to-digest booklet which covers various issues concerning the Control of Obscene and Indecent Articles Ordinance (COIAO) (including definition, adjudication system, classification system, new forms of media, enforcement, penalty, publicity and public education, etc.). Improvement measures of different areas are provided in the booklet for public deliberation and discussion. The consultation was also publicized through a number of media (e.g. television, radio, newspapers, Internet advertisements, posters and leaflets) in order to arouse public awareness and encourage expression of opinion by the public. Government representatives also introduced the review of the COIAO at various occasions and exchanged ideas with different parties.

2. Public views were collected through the following channels and media during the first round of public consultation:

(a) Focus Group Discussions

The Government engaged representatives of over ten different sectors to participate in 11 focus group discussions, including Chairmen and Vice Chairmen of District Councils, women, youth, information technology, education, press and publication, culture and arts, legal, civic rights and social moral, Internet services and sexual minorities;

(b) Town Hall Meetings

The Government held six town hall meetings and invited District Council Members and members of the public to participate in discussions;

(c) Internet and Media

A thematic website for the review of the COIAO (<http://www.coiao.gov.hk>) and a dedicated online discussion forum were established to provide further

detailed information for the public and serve as a platform for exchange of views. The Government also kept in view editorials and commentaries published on newspapers and public views expressed in major online discussion forums;

- (d) Meetings/Seminars organised by different organisations and community organisations in different sectors in which Government representatives were invited to take part
The Government was invited to attend 37 related seminars and meetings, discussing issues concerning the COIAO with members of the public;
- (e) Telephone Public Opinion Survey
The Government commissioned the Public Opinion Programme at the University of Hong Kong (HKUPOP) to conduct a Telephone Public Opinion Survey to gauge public opinion towards the COIAO;
- (f) Written Submissions
Members of the public were invited to express their views through various channels including mail, fax and email; and
- (g) Meetings of the Panel on Information Technology and Broadcasting of the Legislative Council
Nearly 90 organisations/individuals attended two meetings of the Panel on Information Technology and Broadcasting and had discussions on the COIAO with Government representatives and Members of the Legislative Council.

Statistics of the First Round of Public Consultation

3. The Government attended a variety of meetings and forums during the first round of public consultation and met with over 2 200 people. All related minutes/summaries of meetings have been uploaded to the thematic website (<http://www.coiao.gov.hk>) for public viewing. Relevant meetings and forums include:

(a) 11 Focus Group Discussions

Date	Target Group
16 Oct 2008	District Council Chairmen and Vice Chairmen
21 Oct 2008	Women
28 Oct 2008	Information Technology
30 Oct 2008	Press and Publication
31 Oct 2008	Youth
4 Nov 2008	Culture and Arts
11 Nov 2008	Legal
17 Nov 2008	Civil Rights and Social Moral
20 Nov 2008	Education
24 Nov 2008	Internet Services
6 Jan 2009	Sexual Minorities
Total number of attendants: about 110	

Minutes/summaries of the meetings have been uploaded to the thematic website (<http://www.coiao.gov.hk>) for public viewing.

(b) Six Town Hall Meetings

Date	Target Group
27 Oct 2008	Members of District Councils (Hong Kong Island)
29 Oct 2008	Members of District Councils (New Territories)
14 Nov 2008	Members of District Councils (Kowloon)
21 Nov 2008	Members of the Public (Hong Kong Island)
8 Dec 2008	Members of the Public (New Territories)
16 Jan 2009	Members of the Public (Kowloon)
Total number of attendants: about 330	

Minutes/summaries of the meetings have been uploaded to the thematic website (<http://www.coiao.gov.hk>) for public viewing.

- (c) 37 Meetings/Seminars organised by different organizations and community organisations in different sectors in which Government representatives were invited to take part

Date	Name of Meeting	Organiser
17 Oct 2008	Meeting	Communications Association Hong Kong
6 Nov 2008	Media Roundtable Discussion	Hong Kong Federation of Journalists
17 Nov 2008	"Review of COIAO" Forum	Hong Kong Information Technology Federation, Hong Kong Wireless Technology Industry Association, Internet Society Hong Kong and Professional Information Security Association
20 Nov 2008	Meeting	Central and Western District Council Culture, Leisure and Social Affairs Committee
20 Nov 2008	Meeting	Legislative Council Panel on Information Technology and Broadcasting
27 Nov 2008	Meeting	Women's Commission
29 Nov 2008	Meeting with Mr Gregory SO Kam Leung, Under Secretary for Commerce and Economic Development	The Honourable Emily LAU Wai Hing

Date	Name of Meeting	Organiser
2 Dec 2008	New Media and Youth: Control vs Self Regulation - "Review of COIAO" Seminar	Breakthrough, Internet Professional Association Limited, Hong Kong Information Technology Joint Council and Office of the Honourable Samson TAM Wai Ho
4 Dec 2008	Seminar	Digital 21 Strategic Advisory Committee
5 Dec 2008	Healthy Internet Movement Forum	Hong Kong Council of Social Service
19 Dec 2008	Seminar for Tertiary and Secondary School Students on the COIAO	U-fire
2 Jan 2009	To Control or Not to Control – Seminar on the Myths of Controlling Pornographic Information	Hong Kong Sex Culture Society, The Society for Truth and Light, Hong Kong Alliance for Family, Hong Kong Baptist University Chaplain's Office
3 Jan 2009	Meeting	Federation of Parent-Teacher Association of Yuen Long
5 Jan 2009	Meeting	Commission on Youth
7 Jan 2009	Seminar	Family Heartware
7 Jan 2009	Seminar of Pastoral Ministers – Mobilizing Believers to Concern about the COIAO	Kingdom Ministries
8 Jan 2009	Meeting	Central and Western District Council
9 Jan 2009	Meeting with Mr Gregory SO Kam	Hong Kong Institute of Confucianism, Buddhism

Date	Name of Meeting	Organiser
	Leung, Under Secretary for Commerce and Economic Development	and Taoism Limited
10 Jan 2009	Meeting	Federation of Parent-Teacher Association of Shum Shui Po
10 Jan 2009	Seminar	Federation of Parent-Teacher Association of Tuen Mun
12 Jan 2009	Seminar	Hong Kong Association of Computer Education and Hong Kong Information Technology Joint Council
12 Jan 2009	Seminar for Educators – Concerning about the COIAO (Tuen Mun)	Alliance Concerning the COIAO
14 Jan 2009	Meeting	Wofoo Leaders' Network
15 Jan 2009	Seminar for Educators – Concerning about the COIAO (Tseung Kwan O)	Alliance Concerning the COIAO
15 Jan 2009	Seminar	Committee on Home-School Co-operation
15 Jan 2009	Seminar of Young Lawyers to concern about the COIAO	Young Lawyers' Committee on Public Affairs
16 Jan 2009	Meeting with Mr Gregory SO Kam Leung, Under Secretary for	Hong Kong Women Development Association, Kowloon Women's Organizations Federation,

Date	Name of Meeting	Organiser
	Commerce and Economic Development	Hong Kong Women's Organizations Federation and Women's Committee of the Hong Kong Federation of Trade Unions
17 Jan 2009	Hong Kong 200 Forum	Hong Kong 200 Concern Group on COIAO
17 Jan 2009	Seminar	Federation of Parent-Teacher Association of Yau Tsim Mong
19 Jan 2009	Seminar for Educators – Concerning about the COIAO (Yuen Long and Tin Shui Wai)	Alliance Concerning the COIAO
19 Jan 2009	The COIAO and You Seminar	Alliance Concerning the COIAO
20 Jan 2009	To Control or Not to Control – Seminar of the Education Sector on the Myths of Controlling Pornographic Information	Education Convergence, The Society of Truth and Light, Hong Kong Sex Culture Society, Hong Kong Baptist University Chaplain's Office and Hong Kong Alliance for Family
20 Jan 2009	Forum for Entertainment and Creative Arts Organizations to concern about the COIAO	Committee Promoting Health Information via Entertainment and Creative Arts
21 Jan 2009	Meeting	Legislative Council Panel on Information Technology and

Date	Name of Meeting	Organiser
		Broadcasting
21 Jan 2009	Seminar for Parents – Concerning about the COIAO	Alliance for Children
21 Jan 2009	Seminar for Youth – “This is our Ordinance”- Concerning about the COIAO	CROSSMEN
22 Jan 2009	Seminar for Sun Po Kong District - Concerning about the COIAO	Caring Network of Sun Po Kong District
Total number of attendants: about 1 800		

Minutes/summaries of the meetings have been uploaded to the thematic website (<http://www.coiao.gov.hk>) for public viewing.

4. Over 18 800 written submissions from individuals and organisations from different sectors of the community and comments on the dedicated online discussion forum at the thematic website were received in the first round of public consultation. Statistics on types and modes of written submissions are as follows:

			Number of Submissions	
			Total Number of Submissions	Repeated Submissions
Types of Written Submissions	Organisations		187	41
	Groups		247	14
	Individuals		18 385	6 347
Total:			18 819	6 402

		Number of Submissions	
		Total Number of Submissions	Repeated Submissions
Modes of Written Submissions	By email	13 147	4 964
	By post or fax	5 509	1 436
	Comments on the dedicated online discussion forum	163	2
Total:		18 819	6 402

5. After consolidating over 18 000 written submissions, the Consultant identified the following issues:

- (a) The Consultant discovered a number of identical written submissions repeatedly submitted by the same persons. After discounting these repeated written submissions, a total of 12 417 written submissions and comments on the dedicated online discussion forum were received;
- (b) A large number of written submissions in template formats with identical / similar content were submitted by different individuals. Among the 12 417 written submissions, the Consultant identified 37 different templates and 6 533 written submissions formulated on the basis of those template formats;
- (c) Some written submissions were signed by more than one organisation/individual. There were 171 written submissions on which 11 684 signatures of members of the public were found;
- (d) Most submissions were submitted with names and contacts of the members of the public concerned, but there were 2 794 anonymous written submissions;
- (e) 203 written submissions were irrelevant to the review of the COIAO;

- (f) The length and depth of the written submissions varied. Comments on the dedicated online discussion forum were generally casual and brief; and
- (g) There were 397 written submissions submitted in the names of organisations/groups which were registered organizations, non-registered organizations or groups formed by individuals.

6. Written submissions (excluding the repeated ones) have been uploaded to the thematic website (<http://www.coiao.gov.hk>) for public viewing.

7. The Government commissioned HKUPOP to conduct a Telephone Public Opinion Survey which aimed at gauging public opinion towards the review of the COIAO. 1 531 members of the public were successfully interviewed and the overall response rate was 64.3%.

8. The Consultant also consolidated and analysed about 90 noteworthy editorials and commentaries. In the first round of public consultation, the Consultant conducted a weekly review of three popular online discussion forums, regularly visited several blogs which were written by people who are known to have influence in local public affairs, and browsed some social network online platforms to gather the views of Internet users on the review of the COIAO.

Chapter 3: Methodology

Principles of Compiling the Report

The Consultant has compiled this report having regard to the following five principles:

- (a) Consolidation of public views in an objective and comprehensive manner

The Government commissioned the Public Opinion Programme at the University of Hong Kong (HKUPOP) to conduct a Telephone Public Opinion Survey to gauge the views of those who did not actively express views on the Control of Obscene and Indecent Articles Ordinance (COIAO). Apart from this survey, the Government has not issued other survey questionnaires to gauge public views. As this is the first round of public consultation of the review of the COIAO, the Government would like to raise awareness among members of the public and encourage them to express their views as far as possible. Members of the public were welcome to express their views in whatever format. As reflected in the statistics listed in Chapter 2 of this report, the written submissions received by the Government were highly diversified in terms of format and content. The Consultant sought to consolidate and analyse all views collected in an objective, comprehensive and detailed manner;

- (b) Qualitative analysis of public views
Apart from the Telephone Public Opinion Survey conducted by HKUPOP, the Consultant did not attempt to analyse other views collected in a quantitative way for the following reasons:

- (i) Views were collected in various formats. There were submissions from organisations/individuals, written submissions with many signatures and written submissions in templates; furthermore, views and comments were collected from seminars, meetings, town hall meetings, focus group discussions and a dedicated online discussion

forum. Since the views collected were highly diversified in nature, it would be difficult to treat them in a standardised way and quantify them;

- (ii) The Government's main objective in the first round of public consultation was to find out and collect the public's expectations, views and suggestions concerning the COIAO. In addition, it aimed to consolidate and analyse public views in order to come up with more concrete proposals for a second round of public consultation; and
 - (iii) As this is the first round of public consultation, views of the minority and the majority are of equal importance. This report will reflect arguments from all sources and give equal weighting to all views;
- (c) Confidentiality of opinion providers
This report pays attention to the source of each and every opinion, but the names and contact information of opinion providers remain confidential. All written submissions submitted to the Government (excluding the repeated ones) can be viewed on the thematic website (<http://www.coiao.gov.hk/>), but the names and contact information of opinion providers will not be publicised for privacy reasons;
- (d) A concise and accurate report
During consolidation of the views received, the Consultant found that some members of the public raised some issues of concern other than those set out in the consultation booklet. After consolidating the views collected, the Consultant rearranged the key points listed in the consultation booklet and regrouped all areas of concern into eight categories (see Table 1) to facilitate the public's reading of the report. The Consultant has sought to ensure the accuracy of the facts stated in the written submissions when preparing this report; and
- (e) Independent analysis and professional review

The work of the Consultant is entirely independent. The analysis of this report reflects only the points of view of the Consultant's committee and may not reflect the Government's position. The Consultant has also invited Professor LUI Tai Lok of the Department of Sociology at The Chinese University of Hong Kong to be an independent third party reviewing the content and framework of this report.

Methods of Categorising Views

2. After consolidating and analysing the public views, the Consultant categorised all views collected into three groups according to their formats:

- (a) Self-initiated written submissions in response to the measures set out in the consultation booklet (as reflected in Part 1 of Chapter 4 of this report) through the following channels:
 - (i) Focus group discussions and town hall meetings;
 - (ii) Meetings, seminars and conferences held by the Legislative Council, different community organisations in different sectors;
 - (iii) Written submissions by various organisations and individuals; and
 - (iv) Comments on the dedicated online discussion forum;
- (b) Views which were not submitted to the Government but received indirectly from the Telephone Public Opinion Survey conducted by HKUPOP (as reflected in Part 2 of Chapter 4 of this report); and
- (c) Views which were not formally submitted to the Government but were presented in editorials and named (or in pseudonym) commentaries on newspapers and comments on major non-official online discussion forums which were considered to be of reference value (as reflected in Part 3 of Chapter 4 of this report).

Methods of Consolidating and Analysing Views

3. The Consultant has assigned dedicated personnel to review written submissions, comments on the dedicated online discussion forum, and minutes/summaries of focus group discussions, town hall meetings and seminars. All written submissions were categorised under different items for inclusion into the framework of this report.

4. The Consultant also consolidated the statistics collected from the Telephone Public Opinion Survey conducted by HKUPOP, and set out relevant conclusions and highlights for inclusion into the framework of this report.

5. The Consultant summarised some commentaries on newspapers and comments on major non-official online discussion forums which were of reference value for further analysis. Related key points were included into the framework of this report.

6. Some views collected from the above channels may be repetitive. The Consultant consolidated similar views to compile a user-friendly report.

7. Finally, the Consultant systematically presented the consolidated views in Chapter 4 of this report and put forth its analysis and conclusions in Chapter 5.

(Table 1) Framework of Part 1 of Chapter 4 of this report:

1 General Concern about COIAO

- 1.1 The COIAO is unnecessary
- 1.2 The COIAO is necessary
- 1.3 Who should shoulder the responsibility of articles control?
- 1.4 Other views and concerns towards the COIAO

2 Definition and Classification

- 2.1 Existing mechanism
- 2.2 To amend the titles of the COIAO and the classification system
- 2.3 Clarity of definition
- 2.4 Some members of the public suggested different ways to clarify the definitions under the COIAO
- 2.5 Principles of setting out the definitions
- 2.6 Establishing administrative guidelines
- 2.7 Views concerning Section 10 of the COIAO
- 2.8 Views about Section 28 of the COIAO
- 2.9 Views about the classification

3 Adjudication System

- 3.1 Existing arrangement
- 3.2 The public's concern about the existing Obscene

Articles Tribunal (OAT)

3.3 Whether to reform the existing adjudication system

3.4 Whether to allow all members of the public to submit articles to the OAT

3.5 Whether to require mandatory classification prior to laying of charges

4 New Forms of Media

4.1 Existing arrangement

4.2 Regulating new forms of media

4.3 Whether mandatory provision of filtering services for users by Internet service providers (ISPs) should be required

4.4 Forms and limitations of Internet filtering software

4.5 Whether the law should be tightened to regulate new forms of media

4.6 Suggestions and concerns which were not within the jurisdiction of local laws

4.7 Definition of publishing information on the Internet

4.8 Suggestions for new forms of media other than the Internet

4.9 Suggestions for parents or guardians

5 Enforcement

5.1 Public discussion

5.2 Division of labour among the enforcement departments

5.3 Enforcement approach

5.4 Views on enforcement priorities

6 Penalty

6.1 Public discussion

6.2 Whether the maximum penalty should be increased

6.3 Whether factors for consideration by the court when imposing penalty should be included

6.4 Penalty imposed to offenders who repeatedly offend the law

6.5 Other views related to penalty

7 Publicity and Public Education

7.1 Public discussion

7.2 Importance of publicity and public education

7.3 Publicity and public education by the Government

7.4 Roles of other stakeholders

7.5 Contents of sex education

8 Views about Public Participation

8.1 Public discussion

8.2 Views about the first round of public consultation

8.3 Views about the second round of public consultation

Chapter 4: Summary of Analysis of Views

Part 1: Comments collected from activities organised by the Government or community organisations and suggestions submitted by members of the public (these comments represent the views received and do not represent the position of the Government)

1. General Concern about the Control of Obscene and Indecent Articles Ordinance (COIAO)

1.1. The COIAO is unnecessary: during the discussion on the COIAO, some doubted the necessity of the COIAO and believed that it should be abolished for the following reasons:

- (a) The Government should not use legislative means to deal with moral issues. As there are other ordinances on child abuse, child pornography, sexual harassment, animal torture and other violent crimes, the COIAO can be abolished. The abolition would not affect the legality and effects of ordinances like the “Protection of Children and Juveniles Ordinance” and “Prevention of Child Pornography Ordinance”. These ordinances are relatively more consistent in their execution and meet the need and expectation of society in protecting children;
- (b) Some are worried that the COIAO might infringe human rights protected by the Basic Law. To comply with human rights laws, the Government should provide a set of guidelines for the public to decide how to comply with. It should not regulate information flow and the freedom of publication by means of legislation; and
- (c) Is the impact of such articles so significant that the Government has to enact a piece of legislation which would undermine the free flow of information? To ban the circulation of a particular article is a violation of somebody’s right of acquiring it. There is no evidence

supporting that viewing obscene or indecent articles will pose negative effects on people, including the youth. If we assume that an article is seductive and thus ban its circulation, it will be an infringement of human rights. The Government should not inculcate the message that “pornography is against morality” as this might result in youngsters developing feeling of disgust with their own bodies.

1.2. The COIAO is necessary: some members of the public stressed the need of the COIAO for various reasons:

- (a) Pornography has far-reaching impact on society and thus should be regulated

Victims	Related Comments
Youth	(i) Pornographic websites are interactive and leave impressions on viewers’ minds easily. As virtual animation and video clips shown on pornographic websites could be imitated, they will encourage and promote distorted concepts about sex, e.g. group sex and incest. The youth will circulate, comment and share pornographic information among themselves. Such behaviour is dangerous among youngsters, leading to an addiction of viewing pornography, and probably an imitation of that obscene and indecent behavior. If youngsters are addicted to pornographic information, it will be very difficult for them to control their minds and acts. There has been an increase in the number of sexual harassment cases in recent years. Lots of victims and culprits are very young (aged 12-15). The number of unmarried parents below the age of 15 also increases significantly;

Victims	Related Comments
	<p>(ii) Addiction to pornographic information will lead to distortion of proper concepts of sex among the youth. They might have distorted expectations of their future sex partners. It might even lead to sex addiction and pathological behaviour like sexual fantasy and sex crime;</p> <p>(iii) Some disagreed with the views of those organisations and groups which suggested that the negative impact of pornography had to be proved through stringent standards (survey or statistics) before legislation were to be introduced. It is not logical for the pansexualists to ask for the proof of 'the threat of pornographic publications'. Surely philosophy teaches us that there are cause and consequence in everything; yet such proposition should be applied in a reasonable way. We do not really need evidence in order to prove the impact of pornographic articles on the youth. As long as there is one case of juvenile sexual harassment caused by viewing pornography, we have to regulate such articles; and</p> <p>(iv) Parents in the grass-root families who have long working hours and have no time to take care of their children are mostly affected;</p>
Female	<p>(i) Pornography is not limited to nudity. It positions women as a sex tool or part of vice activities. Respondents object to treating sex as a commodity;</p> <p>(ii) Pornographic information will affect</p>

Victims	Related Comments
	<p>relationships between opposite genders. Some pornographic movies promote a culture of extreme authority of men over women in which the latter might have difficulties in rejecting the sexual requests from men, and, even requests for taking part in dangerous sexual activities. Culturally speaking, women are often burdened with the obligations of being obedient to fathers, husbands and sons. They are used to listening to men and are unable to refuse their requests. They might also have the illusion that love can be found in sexual relationships;</p> <p>(iii) Some pornographic publications and comics promote harmful messages, e.g. portraying women as an object for men to control and a target to vent their lust, belittling the dignity of women and depicting all of them as thirsting for sex or even longing to be raped. On the other hand, some pornographic publications describe men as born to be lascivious. Hence, it is normal for them to fail to resist temptation and rape a woman. The feelings of women can be ignored. The only purpose of sexual intercourse is to satisfy one's lust; issues like sexually transmitted diseases and pregnancy can be neglected as long as condoms are used. Dangerous sexual activities are depicted as normal and a woman would be regarded as conservative if she rejects these; and</p> <p>(iv) In our society, there are cases of women being harassed by men who are addicted to pornographic information;</p>

Victims	Related Comments
Family	<p>(i) Damage to marriage: quite a number of husbands would force their wives to mirror the manner described in the pornographic videos/magazines. They might even rape their own wives, switch wives, have group sex or ignore their wives because of their addiction to pornography;</p> <p>(ii) Pornographic articles convey a wrong message and mislead people into believing that sex is their reason to live, while neglecting true love, family and a long-lasting relationship; and</p> <p>(iii) Various kinds of sexual abnormality and sexual harassment result in lots of mental and physical problems, both at the personal and family level. The Internet plays an even more significant role than newspapers and magazines in posing such threats;</p>
Society as a whole	<p>(i) Pornography is addictive and damaging, hence should be regulated through legislation. Lots of people are constantly struggling to get rid of it, like those trying to get rid of gambling. The abolition of the COIAO will, in certain ways, promote lust and affect family relationship, creating conflicts between the two generations, as well as leading to an increase in sexual harassment and sexually transmitted diseases;</p> <p>(ii) One should not exaggerate society's need for and openness towards sex. Such openness distorts the original purpose and meaning of marriage and results in a</p>

Victims	Related Comments
	<div data-bbox="651 286 1123 331">divorce rate as high as 40%;</div> <div data-bbox="571 369 1358 627">(iii) Everyone has sex impulses. However, if we fail to control the distribution of obscene and indecent articles, some might indulge themselves in the name of freedom and bring about a “pornography tsunami” in the future; and</div> <div data-bbox="571 667 1358 840">(iv) Getting in touch with pornographic information may not bring an imminent damage, but it does not mean that it is damage-free.</div>

(b) There are certain moral standards in society and absolute freedom does not exist

- (i) There are certain values and boundaries in society. These cannot be distorted or we will deviate from the normal life of a person. Freedom of speech is important. However, regulating pornographic information does not mean controlling academic discussion and freedom of speech;
- (ii) Regulation might interfere with freedom of speech and information, but there is no absolute freedom and we cannot exaggerate one’s freedom indefinitely. Although freedom of speech is important, it must be regulated if such freedom interferes with others’ life. Society needs moral boundaries and people should learn how to respect both genders and lives. Moral standards are to be upheld;
- (iii) From the point of view of human rights, we should seek to protect each individual’s right to search for excellence, though different people may have different standards. We should also take into

account how parents should educate their children and strike a balance on these principles. A regulation-free approach is not recommended, but certain degree of freedom should be maintained;

- (iv) There are values behind each regulation. We can improve ourselves because of such regulations. If the public is aware of the serious consequences of violating the COIAO, they will comply with it; and
 - (v) If we let go of everything and allow personal rights to override everything, our society will become radical and dangerous.
- (c) Legislation is required to prevent children and the youth from being affected by obscene and indecent articles
- (i) It has become more and more difficult to educate the next generation. How should we draw the line between right and wrong? Because of such difficulties, there must be legislation regulating our behaviour. The main principle of such legislation should be the protection of social morality and the under-aged. While upholding freedom of speech, the well-being of youngsters should be protected, and this is an essential core value. The objective of the review should be the protection of youngsters. Although young people are both literate and proficient in using the Internet, they are still at the formative stage and need to be taught about right and wrong by the adults;
 - (ii) How should parents react when their children are exposed to pornographic information? Parents of the 21st century must be aware of the legislation. Without laws, it would be very difficult for them to teach their children; likewise, schools would have a difficult task to educate their students. Parents are anxious and scared

about these problems, and there must be a definition and a set of boundaries for them to follow. We now have absolute free flow of information. However, young people below the age of 18 are not mature enough and should be protected; and

- (iii) The aims of the COIAO are not to ban all pornographic information. Sales of such articles to people aged 18 and above are still possible with wrapping and warning. Reasonable regulation aims to avoid an overflow of pornographic information in society while caring for the need of youngsters.
- (d) The COIAO should be kept as a result of the changes in social climate and the drop of moral standards among the general public
 - (i) Currently, magazines and newspapers constantly test the bottom line of society. They would slightly refrain themselves when being prosecuted, and start to test it again after some time. Lots of members of society believe that morality has been corrupted by magazines and newspapers. At present, the major newspapers and magazines dominate the scene of public education and publicity. However, their practice may not be correct. The COIAO is a line of defence of morality that should not be broken. Meanwhile, the Government should strengthen education in this respect and provide more healthy information;
 - (ii) It is worrying that youngsters lack right concepts of morality about sex; and
 - (iii) Recently there has been a group of people promoting the liberation of sex and claiming that pornography is not harmful at all, leading to much controversy in society. Many pornographic images were classified as Class I articles,

indicating that the bottom line in Hong Kong is indeed very low. The COIAO is a bit outdated and it should be renewed and improved.

1.3. Who should shoulder the responsibility of articles control? Some believed that the Government should be responsible for the handling of articles and the COIAO is the key to such control. Some also stated that parents and schools were just as important in terms of education. Their views are set out as follows:

- (a) Parents should not shoulder the sole responsibility of protecting children from the influence of pornography; the Government has undeniable responsibility for it. Apart from education, the Government should also protect the moral environment and examine the prevalent moral standards. The Government cannot educate children on behalf of their parents, and hence the two approaches should go side by side. Parents and the Government should perform what is required of their roles. The Government should set the direction of regulation, uphold the mechanism, control and combat the source of publication. Legislation alone cannot resolve the problem of pornography, and education is the key to this problem. However, education alone is insufficient, and legislation can reflect the general views of society and is part of the education. Legislation and education should share the same goal, i.e. to establish certain values in society, so that the two are working within the same set of boundaries to be effective;
- (b) It is necessary for the Government to protect the public from being harmed. Fair trial is guaranteed in society that respects the rule of law. Those who harm others will be penalized. The review should not just focus on human rights or the sanctions from law. The COIAO should strike a balance between protection and judgment. Education and regulation should go side by side. Everything should be under the law and the human rights of the majority and minority should both be taken into consideration;

- (c) The Government is an institution that governs the community. It is irresponsible for it not to take a stance on various subjects. The Government should carefully analyse the views collected and show determination in establishing a systematic regulation and protecting young people who are immature;
- (d) There are lots of working parents in our society and many of them are not academically capable of regulating the online habits of their children. They rely heavily on the assistance of the Government. As there are parents with different qualifications, it is definitely not feasible to rely on family education alone without legal protection. The current COIAO is already too loose and the Government should not give up tightening it because of the difficulties in regulating. It should take the lead to regulate pornographic information and protect the youth who have yet the ability to make a choice for themselves; and
- (e) Parents are responsible for developing their children with an ability of distinguishing between right and wrong.

1.4. Other views and concerns towards the COIAO:

- (a) Other views about the COIAO by individuals/organizations
 - (i) Communities should respect the views of each other and reach a consensus through interaction in order to determine a generally acceptable bottom line;
 - (ii) As an open society, freedom of speech and publication is supreme. Unless speeches or publications pose obvious harm to members of society, judicial institution should not ban them. Retrospective compensation should be applied instead of prohibition in advance. The Government should not only follow the norms for

the sake of convenient execution. As regards literature and arts, the less regulation, the better;

- (iii) The COIAO should cover the information reachable by the general public; the information in question is not the immoral ones, but the harmful ones. Issues of morality should not be handled by legislation; the Government and the Judiciary should only uphold the lowest possible bottom-line acceptable to the general public. The cap should be lenient while the bottom-line should be strictly upheld. Unless certain information is proved to be harmful with sufficient evidence, e.g. promoting racism, hatred killing or crime, the public should be able to receive any information. One should not casually identify something as false/bad. Members of the public should be invited to determine it through sensible discussions;
- (iv) The COIAO can be amended to handle only obscene articles but not the indecent ones. Whether something is indecent is subjective and difficult to define. The definition of obscenity is clear and it is suggested that the Government should adopt stricter definition and leave alone the indecent articles so that people will not accuse it of interfering freedom of the press, learning and creativity. The control of indecent articles should be carried out by parents; or by a separate piece of legislation to avoid confusion and for the ease of adjudication;
- (v) There is no legislation that can ensure 100% protection for the youth and children. Society should have a rethink about its approach of protection – should it be targeted at pornography or the messages behind; while preventing youth from reaching unhealthy information, they should be encouraged to have critical mind to establish their own stance. They might have to receive various kinds of information before they can make

their own judgment. The younger generation should broaden their horizons. Repression will only lead to rebellion;

- (vi) Apart from comprehensive consultation, the Government can also draw lessons from the western countries on the ways of regulating related information in order to protect children and the youth; yet their approaches should not be blindly taken as good/liberal/advanced ways;
- (vii) Not all pornography shows scenes of women abuse or some incorrect concepts of the two genders. Certain “pornographic information” could be information required by the general public in their daily lives, and can help bring joy to individuals and facilitate sex between couples, bringing positive influence both physically and mentally. Adults should have access to pornographic publications and videos featuring contents other than pedophilia, incest, rape and bestiality so that they will not be obstructed in obtaining such information. Pornography of homosexuals and heterosexuals should also be treated equally;
- (viii) Some expressed their views about the age boundary. Some believed that the age of 18 should be the dividing line for regulation. However, some members of the youth below 18 are already engaging in various sexual behaviour. It is contradictory to prevent them from receiving sex information. Other views collected still stressed that the age of 18 is an appropriate cutting line;
- (ix) Magazines published overseas enjoy looser regulations. The way the Government regulates them should be considered with an international perspective. Hong Kong can exchange ideas and take preventive measures together with other international organisations like the United Nations,

End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes and International Criminal Police Organisation;

- (x) Currently different media are regulated by different legislation and Governmental bodies. It often leads to confusion; the classification of various media should be consistent. A certain object should not be illegal in a certain medium, while legal in another;
 - (xi) It is not preferred to have the COIAO empowering the Government to demand commercially confidential documents from the publisher; impact on the related industry should be taken into consideration before making any changes to the COIAO;
 - (xii) To regulate, one should first clearly determine the articles to be regulated and then think of practical ways of enforcement;
 - (xiii) The Government should tighten the COIAO but loosen its enforcement;
 - (xiv) The Government should make use of other provisions, i.e. the adjudication system under the COIAO, to supplement the insufficiency of the definitions under the ordinance;
 - (xv) Priority should be given to the review on the existing “definition” and “adjudication system”, not the “classification system”; and
 - (xvi) The objective of any changes should be “enabling the adjudicators to come up with commonly agreeable adjudication standards”. A set of simple yet clear adjudication principles should be established for the adjudicators to follow.
- (b) Concerns about other media/social phenomena by certain individuals/bodies

- (i) The Government should have a comprehensive plan when handling the regulation of the new media. Attention should also be paid to the legislation governing privacy and copyrights. For example, the incident of nude photos of pop stars should be treated equally with the existing standards whether it occurs with famous people or a normal civilian. Special attention should not be given to those who are famous. The mechanism of the Equal Opportunities Commission can be followed to help the victims of nude photos sue the offenders via civil liability. Such approach can avoid unwilling connivance just because there is a lack of resources for prosecution;
- (ii) All nudity, immoral cover and wording should not be printed on magazines that can be seen and purchased by youngsters. Newspaper stalls should be prohibited from selling pornography; the publication of pornographic newspapers and magazines should be reduced; the local publication of magazines which promote sex liberation or behaviour and treat human bodies in an inhumane way, or belittle natural sexual behaviour is not supported;
- (iii) The Government should order all mainstream newspapers to remove pornographic pages, and prohibit them from reporting about sex crimes on front page, in lengths or with images with sexual innuendos. Advertisers should be banned from showing advertisement of underwear or breast augmentation in public areas (e.g. at MTR stations, bus cabins and urban areas); mosaic effect should be applied to cover images showing sex organs; nude images or sculptures should be banned from public distribution/display. Children or under-aged girls/boys cannot be used as models of indecent publications/websites;

- (iv) Reference to the cigarette packages and print warnings on one half of its cover should be used as reference;
- (v) Publications distributed in school campus should go through various stages of monitoring. Laws should also be applicable on campus and offenders should also be prosecuted;
- (vi) To delete and block all pornography is no antidote to the problem. It will only benefit the pornography sellers in the black market. Legitimate channels should be provided for businessmen to provide such articles for sale to adults; and
- (vii) Particular sales points of pornography should be set up. The reduction in sales points might bring inconvenience and thus discourage customers from purchasing. The Government should issue licence to stores which sell restricted articles.

2. Definition and Classification

2.1. Existing Mechanism -

Among the comments collected from activities organised by the Government or community organisations and suggestions submitted by members of the public, lots of discussions were on the “definition” while there were fewer discussions about “classification”. These comments represent the views received and do not represent the position of the Government.

According to the Control of Obscene and Indecent Articles Ordinance (COIAO), “obscenity” and “indecenty” include “violence, depravity and repulsiveness”.

2.2. To amend the titles of the COIAO and the classification system – during the discussion on the COIAO, some stated that the title of the COIAO and certain terminologies within the COIAO should be changed as follows:

(a) Views about the word “control”

- The word “control” is annoying and should be deleted from the title of the COIAO. It would be better if the Ordinance is called “Classification of Obscene and Indecent Articles Ordinance”;

(b) Views about the terms “obscene and indecent”

- (i) Currently, the term “indecent” in the COIAO appears to some as equal to nudity and it belittles human body; it is the way of presentation that makes a difference in displaying scenes of nudity and sexual intercourse; the terms “obscenity” and “indecenty” can be replaced by “annoying information” to avoid controversy; classification can be carried out by categorization of “pleasing”, “moderately annoying” and “extremely annoying”;

- (ii) The COIAO should not be named as such. According to the COIAO, articles also include items that are violent and depraved; thus the name of the Ordinance should appropriately reflect such coverage; and
- (iii) The classification should be named by Class I, II and III instead of the terms “obscene” and “indecent” as such names in Chinese cannot clearly describe the nature of articles.

(c) Views about the articles

- The definitions of obscene and indecent articles were established 21 years ago and the term “article” might mislead people to think that it is referring to a physically existing object, and hence it becomes ambiguous whether the COIAO covers information on the virtual media like that on the Internet. It is suggested that the term “article” should be changed.

2.3. Clarity of definition –regarding whether we should clarify the definition, some showed support but some were concerned about it:

(a) Views in favour of clarifying the definition

- (i) The COIAO should be crafted in a more precise way so that the public will be aware of the circumstances under which they cannot exercise certain entitled rights of publication. To make the Ordinance clearer is not equal to tightening of the control;
- (ii) The terms “obscene” and “indecent” cannot clearly reflect the meaning of violence and depravity. For the ease of classification, different elements covered by the COIAO should be carefully separated;
- (iii) Members of the public are confused about the definitions of “obscene” and “indecent”. The two

terms should be defined separately and clearly; yet the new definitions should not be too stringent, otherwise the classification will become a moral judgment and lack flexibility; and

- (iv) Clearer provisions can help publishers and Internet users understand the COIAO better.
- (b) Concerns about more concrete definitions or redefining the terms
- (i) It is impossible to provide crystal clear definitions for “obscene” and “indecent” respectively; a prescriptive approach would be inflexible and create even more grey areas; and
 - (ii) Both “obscenity” and “indecent” are abstract concepts that cannot be defined objectively. There are clearly different effects if the same behaviour is presented in different ways; different people may also receive different messages from the same presentation. Some suggested clarifying the meaning of “obscenity” and “indecent” in an operational way, i.e. to link the definitions to specific behavior, e.g. ‘nudity means indecent’. However, such an approach would not address the crux of the problem that these two terms cannot be defined objectively. Art and educational items will easily become the prime victims. There should be more discussions on how to improve the mechanism.

2.4. Some members of the public suggested different ways to clarify the definitions under the COIAO -

- (a) Members of the public proposed the following definitions for “indecent”:
 - (i) “Indecent articles” may refer to objects that have smaller impact but are not suitable for youngsters (aged below 18). For example, magazines with

images of nude female or violent fighting can be classified as indecent;

(ii) “Indecency” should include all texts and images which encourage or promote sexual transaction, forced sex, inhumane ways of treating human bodies or incorrect concept of sex. Description that infers sexual intercourse, or sexual innuendos, prostitution guide, or publicity on vice establishments, pornographic discs and websites, or magazine covers and newspaper images which promote voyeurism should be classified as Class II, indecent article (some also stated that it should be banned from sale); and

(iii) The definition of “indecent” can be restricted as follows: postures of sexual intercourse in which sex organs are either covered or unclear; uncovered exposure of an adult male’s sex organ; uncovered exposure of the pudenda and pubic hair of female; uncovered exposure of a female’s breast and nipple.

(b) Members of the public also proposed the following definitions for “obscenity”:

(i) Follow New Zealand’s approach to define “depravity” or “obscenity” as:

- Propagate or support exploitation of the youth for sex; sexual violence neglecting the life of the others; sexual intercourse with those who cannot express their intention clearly e.g. dead people, the mentally retarded and the unconscious; demean and insult others with urine or excrement, or imply about sexual intercourse; bestiality; instigate abortion or miscarriage; group sex;
- Stories, scenes or images which propagate or encourage criminal behaviors or terrorism, overly exaggerating violence, blood, terror,

peculiarity, killing out of hatred and revenge, etc.; and

- Behaviour which demeans the nature of human bodies or treats human bodies in an inhumane way, and is done for the purpose of gaining happiness from the suffering of the others.

(ii) Follow Canada's approach to define "obscenity" as exaggeration of sex or behavior involving any of the following subjects: crime, terror, cruelty and violence.

(iii) Follow the USA's approach to define "obscenity" as:

- Generally accepted by reasonable members of the community as an exaggeration of pornography;
- Generally regarded by reasonable members of the community as describing or illustrating sexual intercourse in a repulsive way; and
- Pornographic articles generally accepted by members of the community as lacking of substantial literary, artistic, political or scientific value.

(iv) Restrict the definition of "obscenity" to include only:

- Pornographic sexual intercourse (with opposite sex, same sex or animals) with the intercourse of sex organs clearly shown and uncovered; or
- Images that can be confirmed to feature nudity of female aged below 18 or sexual intercourse of persons aged below 18.

2.5. Principles of setting out the definitions – many found it difficult to define “obscenity” with clarity; yet it is possible to establish a set of assessment criteria as follows:

- (a) To avoid controversy, provisions defining whether an article demeans female, annoys, or poses harm to the welfare of the public and social values; containing certain principles and reasonable standards, specifying what are generally accepted and what are not generally accepted in the Ordinance;
- (b) Unless the article involves explicit criminal offence, it should not be classified as “obscene”, suggest using “invading the body of other persons consciously” as the definition;
- (c) “Obscene” and “indecent” articles should be defined in two separate categories, one being texts and speech, the other being images as texts can be seductive even without mentioning sex organs and sexual intercourse;
- (d) Normal sexual intercourse of adults should not be regarded as “obscene”; the following content should not be classified as “obscene” or “indecent”: a mere exposure or display of sex organs or their outline, educational images and texts (as approved by the education authority), texts and images of arts (without content of “obscenity”); and
- (e) Protection of the freedom of speech should be ensured when introducing new definitions.

2.6. Establishing administrative guidelines – some members of the public expressed that, to maintain flexibility, detailed definitions of “obscenity” and “indecent” are not preferable; however, administrative guidelines may be established for the public and other stakeholders:

- (a) A clearer set of unified guidelines is needed; publishers should be given guidance on classification issued by

the adjudicating bodies; as texts, images and animation can all be found on the Internet, guidance should be provided to help the adjudicators classify different content combination;

- (b) Society has become more open as time changes, the provision of guidelines would be of great help but excessive guidance would result in rigidity; since definitions are hard to be established objectively, one should not expect to establish a set of absolutely objective guidelines for “obscenity” and “indecenty”; over-reliance on the existing way of interpreting definitions in an operational manner is not preferred either; the perspective of recipients should be taken into consideration. In other words, one should not only consider the messages being conveyed by the articles, but more importantly, the acceptability of such articles from the recipients’ point of view. Hence, it is suggested that the existing guidelines should be kept with the addition of other factors like cultural perspectives, and necessity when classifying an article; and
- (c) Different considerations should be included in the guidelines and the Government should conduct a comprehensive consultation so that the guidelines; cultural background and the background of creation of the articles concerned should be included in the course of consideration.

2.7. Views concerning Section 10 of the COIAO:

According to the COIAO, the following factors shall be considered when the Obscene Articles Tribunal (OAT) classifies an article:

- (a) standards of morality generally accepted by reasonable members of the community;
- (b) the dominant effect of the article as a whole;
- (c) the class or age of the likely recipients;
- (d) the location at which the article is displayed; and
- (e) whether the article has an honest purpose.

Public comments on Section 10 of the COIAO are as follows

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Factor of consideration	Public's interpretation and understanding
(a) Standards of morality generally accepted by reasonable members of the community	<p>(i) There should be an objective standard for morality, such standard being "should and should not, true and false, right and wrong". Suggested the inclusion of the cultural perspective on top of the standards of morality generally accepted by reasonable members of the community;</p> <p>(ii) Some disagreed with the idea of "reasonable members of the community" with regard to this kind of controversial issues. Moral standards of the majority should not be regarded as overriding, and there should not be only one set of moral standards; the existing adjudication system allows the moral standards held by some members of the public being imposed on the others, and such way of operation is itself immoral; some worried that morality might be exploited; and</p> <p>(iii) Before certain articles being classified as restricted for publication, we should first assess the impact of such action on the freedom of speech, creativity, information, press and expression of different sectors of the community, especially the minorities. If such restriction is in violation to these principles, the publication concerned should not be classified as restricted</p>

Factor of consideration	Public's interpretation and understanding
	articles.
(b) The dominant effects of the article as a whole	<p>(i) To protect the freedom of creativity, one may consider whether the purpose of certain article is purely seductive and see if an overall purpose can be deduced from the creation; one cannot assume nudity as pornography, such an assumption can be commonly found in the previous decisions made by OAT; yet this concept is itself arguable; and</p> <p>(ii) The “dominant effects of the article” should be kept as one of the factors in determining whether an article is “obscene” and “indecent”; yet what is meant by “effects as a whole” warrants further defining.</p>
(c) Class or age of the likely recipients	- Some suggested deleting the clause “Class or age of the likely recipients” because anyone can receive unhealthy information via various channels, e.g. the Internet, newspaper stalls, etc.
(d) The location at which the article is displayed	<p>(i) The overall and environmental factors should be considered during classification, e.g. the location of display; and</p> <p>(ii) The cultural background of the creation of certain articles should also be considered.</p>
(e) Whether	(i) Before classification, one should first

Factor of consideration	Public's interpretation and understanding
the article has an honest purpose	<p>identify the intention of the article and categorize it as normal/healthy and unhealthy;</p> <p>(ii) Commercial purpose should not be considered, and one should only consider whether an article is "obscene" or "indecent"; and</p> <p>(iii) "Whether the intention of publication matches with the needs" should also be considered.</p>
(f) Other concerns and suggestions	<p>(i) It is feasible to follow the practice of countries like the UK and Canada, where judicial adjudication is used. The standards upon which the courts use to determine a case require in-depth discussion in society. The principles may include whether the article contains violent elements of demeaning a person, contents in violation of freedom of speech, harmful content, etc. Furthermore, judgments of the courts are publicized and are thus monitored by the public; one can only propose a restriction in courts on the premise of harm which can be supported by evidence;</p> <p>(ii) To expand the scope of regulation to include, among others, publishers, printmakers, retailers, editors, authors, journalists, photographers, advertising companies (including agency, advertisement design and production) and their chief persons-in-charge, host of the Internet, writers, etc.;</p>

Factor of consideration	Public's interpretation and understanding
	<p>(iii) Moral standards concerning art have been changing over time in society; when establishing and implementing the COIAO, exemption of art should be considered. Well-informed and knowledgeable distinction between aesthetics and pornography is required;</p> <p>(iv) The adjudication system should comply with Article 27 of the Basic Law and the Bill of Rights. If an article is commonly regarded as significant in education, science, literature, history and art both locally and internationally, it should be exempted; all articles concerning sex education can also be exempted; and</p> <p>(v) To follow examples of other countries to conduct an "assessment of impact on children" when amending social policies.</p>

2.8. Views concerning Section 28 of the COIAO

According to Section 28 of the COIAO, "it shall be a defence to a charge under Part IV of the COIAO in respect of the publication of an article or the public display of matter if that publication or display, as the case may be, is found by a tribunal to have been intended for the public good on the ground that such publication or display was in the interests of science, literature, art or learning, or any other object of general concern". Members of the public expressed the following views on it:

- (a) Clearer definition of the term “academic” is required to avoid contents of bad tastes and unethical contents published in the name of academic purpose;
- (b) The background and purpose of the publisher should not be taken into account when a prosecution is made; but those should be a defence of the defendant; and
- (c) The purpose of publication should be one of the factors for consideration when determining whether an article is obscene or indecent.

2.9. Views about the classification

Under the COIAO, an article may be classified as:

Class I (Neither Obscene Nor Indecent)	- Class I articles may be published without restriction.
Class II (Indecent)	- Class II articles must not be published or sold to persons under the age of 18. Publications of Class II articles must comply with specified statutory requirements, including sealing such articles in wrappers and the display of a warning notice.
Class III (Obscene)	- Class III articles are prohibited from publication.

2.9.1. Members of the public expressed different views on the directions of improving the classification system as follows:

Overall directions	Suggestions on the directions of classification:
(a) No change	- The existing classification system has been effective and accepted by the general public, and hence it needs not be changed; the problem of publication

Overall directions	Suggestions on the directions of classification:
	<p>of pornographic information is not worsening and there are always people challenging the bottom-line of law, and there is not an increase in the number of people doing so; excessive classification will only lead to confusion and an increase in the cost of adjudication.</p>
<p>(b) Further categorize Class II into IIA and IIB</p>	<p>(i) There are already lots of controversies over the three classes of categorization among members of the public; to further separate Class II into Class IIA and IIB will only lead to more grey areas, and parents will be even more confused when selecting publications for their children; further division will not only result in more problems in execution, but also creating a misconception among persons aged between 15 and 17 that they are allowed to receive indecent articles;</p> <p>(ii) Such a proposal only serves to lower the legal age of receiving indecent articles to under the age of 15 and stands in contrary to the intention of alleviating impact on youngsters;</p> <p>(iii) Such a measure is very disturbing to the publishers; it may pose difficulties in execution; and</p> <p>(iv) Class IIA articles in the consultation booklet should be changed to being prohibited from publication to persons under the age of 12.</p>

Overall directions	Suggestions on the directions of classification:
(c) Support addition or amendment of the categories	<p>(i) Four categories: Class I articles may be published without restrictions; Class II articles should only be published or sold to persons at the age of 18 or above. Publications of Class II articles must comply with specified statutory requirements, including sealing such articles in wrappers and the display of a warning notice. Class III articles should only be published to persons aged 21 or above and such articles must be sealed in wrappers while Class IV articles (i.e. obscene articles) are prohibited from publication; and</p> <p>(ii) Add a category of “Harmful to the mind of the youth” and this kind of articles should be handled by the court.</p>
(d) Views about abolishing the category of obscene articles	<p>(i) Some requested to cancel Class III (Obscene) articles. According to existing legislation, Class III articles are prohibited from publication. As compared with controlling the form of publication of an article, prohibition from publication poses even greater harm to the free flow of information. Without evidence proving the genuine and serious harm of such articles, neither the Government nor the Judiciary should interfere with personal preference; and</p> <p>(ii) Adults should enjoy the freedom of choice; suggestions are put forward to cancel the provision which penalizes</p>

Overall directions	Suggestions on the directions of classification:
	those who possess and import “obscene” articles for the purpose of publication and abolish the prohibition of publishing “obscene” articles.
(e) Other views	<p>(i) The Film Censorship Ordinance should be merged with the COIAO, or to standardize the names of classes of the COIAO and the Film Censorship Ordinance;</p> <p>(ii) Many developed countries do not adopt such classification system. They handle obscene articles in some other ways; some refer to the common law system. The Government may consider abolishing the system and seek other ways of protecting children and the youth; and</p> <p>(iii) Age is not the most appropriate criterion for determination; instead, other aspects like family background, religion, level of education and social class may also be factors causing anxiety to the readers.</p>

3. Adjudication System

3.1. Existing arrangement –

Among the comments collected from activities organised by the Government or community organisations and views submitted through different channels, there were extensive discussions on this topic. These comments represent the views received and do not represent the position of the Government.

The Obscene Articles Tribunal (OAT) has exclusive jurisdiction to determine whether an article is ‘obscene’, ‘indecent’ or neither for the purpose of the Control of Obscene and Indecent Articles Ordinance (COIAO). Apart from enforcement agencies, prospective publishers may submit articles to the OAT on a voluntary basis to obtain classification rulings, so as to avoid breaching the law.

The OAT is part of the Judiciary. It comprises a presiding magistrate and two members of the public appointed by the Chief Justice to serve as adjudicators. Currently, there is a pool of some 300 adjudicators serving the OAT.

3.2. The Public’s concern about the existing OAT –

3.2.1. The public’s concern about the consistency and transparency of the OAT’s rulings – Some members of the public were concerned that an article might be given different classification rulings at different OAT hearings, which might weaken the credibility of the OAT. Others opined that the OAT should clearly state the reasons of interim classification to enhance transparency.

3.2.2. The public’s concern about the statutory set up – There were views that it might not be appropriate for the OAT to perform both administrative and judicial functions:

- (a) Under the COIAO, the OAT is required to perform two different functions: (i) According to Part III of the COIAO, it is an administrative function for the OAT to perform its duty to make a classification on a submitted article.

The OAT discharges this function as an administrative tribunal; (ii) Pursuant to Part V of the COIAO, the OAT makes a determination upon referral by a court or a magistrate arising from a civil or criminal proceeding, with regard to the issues set out in Section 29(1). The OAT does so as a court, possessing the powers and authority of a court;

- (b) Under the existing arrangement, the OAT has to perform the administrative classification function, in addition to the judicial determination function. The exercise of an administrative function by a judicial body may undermine the fundamental principle of judicial independence. It may not be inappropriate for the OAT, which is a judicial body, to perform administrative duties in respect of the control of obscene and indecent articles;
- (c) The OAT's administrative classification function might transgress the judicial function of determination of the OAT. An article might be submitted to the OAT for administrative classification, and later referred by the court to the OAT for judicial determination. Although the panel of adjudicators for a determination proceeding was different from that in the earlier classification proceeding, it was far from ideal for the OAT to perform these two distinct functions under different rules and procedures over the same article according to the same set of statutory guidelines; and
- (d) There were grave problems with the existing procedures when the OAT was performing the classification function as an administrative tribunal. The OAT dealing with classification, review and reconsideration of its own decisions, though with different panels of adjudicators, has given rise to criticisms that the OAT was also dealing with appeals against its own decision.

3.2.3. The public's concern about the existing system of adjudicators – Members of the public have expressed

concern about the appointment system and representativeness of the adjudicators as follows:

- (a) It might not be appropriate for the Chief Justice of the Court of Final Appeal, as the head of the Judiciary, to appoint adjudicators to perform administrative functions;
- (b) Under the existing arrangement, an interim hearing is conducted by a presiding magistrate and two adjudicators. If the interim classification is disputed, one may lodge a request for review. The OAT will arrange a public full hearing which is to be conducted by the presiding magistrate in charge of the interim classification and four or more adjudicators who were not previously involved in the interim classification. The presiding magistrate's view at the hearings might be a minority view. It might be inappropriate for the view of a judge to be subjected to the majority view of lay adjudicators;
- (c) Although the eligibility criteria for adjudicators are set out in the COIAO, it does not specify how these eligible persons can be identified and it does not prescribe under what circumstances a particular nomination should be approved or rejected. In the past, adjudicators were appointed either by invitation of the policy bureau or self-nomination. This was not an ideal appointment system, as it could neither ensure the representativeness of the adjudicators nor anticipate whether the adjudicators had the necessary knowledge and cultural level for the adjudication work. Moreover, it did not provide a mechanism to exclude members of the concerned industries who might be the publishers; and
- (d) Some criticised that the panel of adjudicators was not sufficiently representative and that rulings were made by a small group of adjudicators who could not reflect the moral standards generally accepted by the community. This perception of the public could not be

removed even if the total number of adjudicators were to be drastically increased.

3.3. Whether to reform the existing adjudication system

3.3.1. Some suggested that the administrative classification function should be removed from the OAT and the adjudicators system should be replaced by the jury system; others preferred to retain the existing OAT, but reform its appointment system and composition; yet others recommended to abolish the OAT and invite magistrates to classify articles.

3.3.2. To establish an independent classification board – some considered it feasible to remove the administrative function from the OAT and establish an independent board to classify articles:

(a) Requirements of a new classification board and suggestions

(i) To establish a two-tier system in which an independent adjudication board would make interim classifications on articles while the OAT would remain as a judicial body to consider appeals against the classification decisions of the board or deal with the determination of articles referred to the OAT by the court. No judicial power should reside in the independent classification board;

(ii) To appoint members from various sectors in the community to the new independent board;

(iii) Some suggested that the independent classification board should allow members of the public to apply as members who will serve on the board on part-time basis. Some also expressed that members of specified industries and sectors and representative members of the public should be invited; and

- (iv) The presiding magistrate of the independent board should be a current member of the Judiciary and work full-time to classify articles according to a set of clear guidelines.
- (b) Public views on establishing a new independent classification board were diverse. Some were supportive while others had reservations or expressed concern:

Reasons for Support	Reasons of Reservation and Concern about the Establishment of a new Independent Board
<ul style="list-style-type: none"> (i) The existing OAT had been given too much judicial power; and (ii) If the Ordinance was clearly defined, such measures could improve the adjudication system. 	<ul style="list-style-type: none"> (i) The OAT has been handling tens of thousands of adjudication cases annually, among which only a handful of them were controversial. The existing arrangement was effective and there was no need for fundamental changes. The OAT should improve its operation having regard to past experiences; (ii) How to select dozens of lay adjudicators as panel members might involve moral standard considerations. Some challenged that the so-called 'representative sectors' might not be truly appropriate. Some also worried that

Reasons for Support	Reasons of Reservation and Concern about the Establishment of a new Independent Board
	<p>the adjudicators might make decisions according to personal interests or in the interest of higher moral standards; and</p> <p>(iii) It was insufficient to have only 20-30 lay members on the new independent board. More members of the public should participate, e.g. representatives from the media and the youth should also be involved to reflect changes in the community.</p>

3.3.3. To improve the existing arrangement of the OAT – Some considered that the OAT could be retained, but should adopt improvement measures to increase the representativeness of its members in order to avoid criticism:

- (a) Whether to increase the total number of adjudicators – Members of the public had diverse views. Some suggested increasing the number from 300 to 500-1200, while others objected:
 - (i) Those supporting an increase in the total number of adjudicators opined that the existing number of adjudicators was unable to cope with the caseload. Others expressed concern about the voluntary nature of the appointment and were worried that the existing 300 adjudicators might

- not fully reflect the views of the community. Some considered the more adjudicators the better, as it would allow more people to participate in community affairs and avoid adjudicators becoming insensitive;
- (ii) Some who supported the increase stated that the total number should not be too high and each adjudicator should be experienced in order to ensure consistency in adjudication. They suggested that the number of adjudicators could be slightly increased, but should not exceed 500; and
 - (iii) Those who objected to increasing the number of adjudicators stressed that the COIAO and the adjudication system should not be complicated. Expanding the OAT would not improve the quality of adjudication, but would increase the resources required. There were also worries about the increase in time and operating costs.
- (b) Whether to increase the number of adjudicators at each hearing – the public generally favoured this option in order to balance the classification standards and enhance the representativeness of the OAT:
- (i) For example, to increase the number of adjudicators from 2 to 4 at interim hearing (some also suggested increasing to 5, 7-10 or 20); and from 4 to 6 at full hearing (some also suggested increasing to 5-7, 10 or 16); and
 - (ii) The existing arrangement whereby two adjudicators make decisions subjectively at the interim hearing should be changed. The demographic composition of adjudicators should be balanced, e.g. members should be drawn from both below and above the age of 35; one from each gender; and the board should make decision by the rule of majority, with reference to standards of the community.

- (c) Whether to select adjudicators from different sectors – Members of the public suggested different composition/ proportion of members and related considerations about the adjudication board:

Suggestion	Composition	Proportion	Reasons/ Limitation
(i)	To invite members from different organisations and sectors, with different gender and age (including the minority and professionals) to sit on the board	The proportion of adjudicators aged 21-31 was very low at present. Suggested increasing the number of adjudicators aged 21-31	Members of the public had diverse views on obscenity and indecency. The existing OAT comprising a small number of adjudicators was not representative. All adjudicators should undergo medical assessment to ensure psychological well-being
(ii)	To consider a two-tier adjudication arrangement, in which the public would conduct the first round of adjudication, and experts would assess the articles in the second round based	40% of the score would go to professional assessment while 60% to assessment by the general public	It might not be practical to include the artistic test if there were tens of thousands of articles submitted for adjudication each year. Professionals might not be able to cater for the moral

Suggestion	Composition	Proportion	Reasons/ Limitation
	on their scientific, literary and artistic character before deciding on the classification		standards of the general public
(iii)	To establish sectors like education, culture, social welfare, women and media	To allocate proportionately according to gender, e.g., there must be 1 female in every 3 adjudicators; 1 representative of media sector or culture/ education sector in every 4 adjudicators	This would facilitate discussion from different points of view in order to strike a balance
(iv)	Legislators and District Councilors to take turn to sit on the adjudication board		
(v)	To randomly select adjudicators for each		

Suggestion	Composition	Proportion	Reasons/ Limitation
	hearing. To arrange adjudicators from different sectors into specified groups and select adjudicators from each group for each hearing		

(d) To improve the appointment system of adjudicators – some members of the public suggested certain practical and detailed improvement measures as follows:

- (i) It would be better to specify the qualifications and legal knowledge of the adjudicators. Some suggested that adjudicators should be F.7 graduates or above (some also suggested they should be university graduates), while others worried that this might deter people from participating in the board and further decrease the number of adjudicators. Adjudicators should have thorough understanding of the COIAO, especially when the community was asking for more transparency, and the adjudicators had to explain the reasons of their classification decisions;
- (ii) It was unnecessary to follow the requirements of the jurors of High Court (i.e. university graduate). Suggestions were also put forward to exempt the female adjudicators from language requirements;
- (iii) Some suggested hiring full-time adjudicators to avoid the situation whereby only those who could

attend hearings during office hours could be appointed as adjudicators;

- (iv) To terminate the appointment of those adjudicators who did not always attend adjudication hearings; adjudicators should not be appointed for over 6 years;
 - (v) Instead of being appointed by the Chief Justice of the Court of Final Appeal, the Government should set up a selection committee to select, appoint and remove adjudicators. Some also recommended that the authority of appointment and removal should be resided in the Government; and
 - (vi) Adjudicators should not have any criminal record relating to sex offences, or should have no criminal record at all.
- (e) Training of adjudicators – Some members of the public recommended measures to enhance training of adjudicators in order to improve the quality of adjudication:
- (i) To provide short-term training for adjudicators. Since there were few adjudicator with over 3 years of experience, some suggested that experienced adjudicators should be allowed to sit on the board as professional advisors;
 - (ii) To assist adjudicators to learn and familiarize themselves with adjudication proceedings, e.g. providing overseas and local case studies or even channels of exchanges; and
 - (iii) The Government should not take the initiative to train the adjudicators. It should be done by independent organisations like the HKIEd.

- (f) Whether to appoint jurors as adjudicators – Members of the public had diverse views on the suggestion of selecting adjudicators from the list of jurors:

Support	Object/Concerns
<p>(i) The OAT should conduct administrative classification and allow for appeals. Appeal cases in the court should be decided by a jury. The backgrounds of the jurors were more diverse than those of adjudicators. There were about 598 000 names on the jurors' list, which could be applicable to the OAT as well. This system could resolve the problems of inadequate number of adjudicators and the unsatisfactory nomination system for adjudicators. It would more accurately reflect the standards of the community. The number of adjudicators at each hearing could exceed the current number and must</p>	<p>(i) During court proceedings, the judge could guide the jury to decide whether the defendant was guilty or innocent based on his/her legal knowledge and evidence. However, while the list of adjudicators would be expanded if the jurors' list was used in the adjudication of obscene and indecent articles, it would be difficult for the judge to lead the jurors in adjudication because moral standards could not be determined in a right-or-wrong way. The two systems were incomparable;</p> <p>(ii) Jurors are required to attain a specified level of education, which might exclude some minority group. This was unfair to them;</p>

Support	Object/Concerns
<p>remain as odd number. Decision should be reached by the rule of majority. Jurors attending OAT hearing once or more could be exempted for a reasonable period of time;</p> <p>(ii) Under the existing arrangement, those who took the initiative to participate in OAT work were those who had 'special concern' about obscene and indecent articles, e.g. persons with particularly strict moral standards or those who had concern about the standards of adjudication. They were only reflecting standards of some 'special members of the community' instead of the standards generally accepted by the community. To reflect the views of the general public, the adjudicators</p>	<p>(iii) Given the large number of jurors, each juror would not be able to participate in adjudication frequently, hence it would be difficult for them to grasp the classification standards. The Quality of adjudicators was the prerequisite for good adjudication. The jury system would only ensure the jurors' educational level, but did not guarantee their representativeness, fairness or enthusiasm;</p> <p>(iv) OAT adjudicators participated on voluntary basis while jurors were performing a statutory duty. Voluntary participants generally were more responsible and would adjudicate from a more appropriate perspective; and</p> <p>(v) Adopting the jury system would only widen the gap</p>

Support	Object/Concerns
<p>should be replaced by the jurors, while the role of the presiding magistrate should be redefined, i.e. similar to the judge of a court with a jury. The presiding magistrate would not participate in decision making, but would guide the jury according to the law and evidence. This could avoid the problem of the magistrate's view becoming a minority view; and</p> <p>(iii) In terms of cost effectiveness, selecting adjudicators from the jurors' list would not require a separate selection mechanism and would help simplify administrative arrangements, thereby should be feasible and cost-effective. However, this suggestion still neglected those who were not qualified to be</p>	<p>between different adjudication standards.</p>

Support	Object/Concerns
<p>jurors. Some suggested selecting adjudicators from two sources, one by random from the jurors' list, and the other by self-nomination, so that those who were concerned about classification issues but unqualified to be jurors could participate. The requirements on age, level of education and occupation should be relaxed to enable the general public to voice their views.</p>	

3.3.4. Some recommended developing a database of cases in Hong Kong, allowing members of the public to view relevant explanatory notes and precedent cases in order to enhance the consistency of adjudication.

3.3.5. Allow the Court to Classify Articles – Public views were diverse on whether the OAT should be abolished:

Reasons for Support	Reasons for Objection
<p>(i) It was unnecessary to provide classification rulings to publishers before publication, as they could seek legal advice or delete the part that might breach the law;</p> <p>(ii) The court should be asked to make reference to past cases in determining whether an article breached the standards accepted by the community and allow the defendant to defend himself; and</p> <p>(iii) The Government of HKSAR should consider establishing a special court for handling classification cases.</p>	<p>(i) Allowing a small group of people to determine the adjudication standards could not represent the moral standards of the general public.</p>

3.4. Whether to allow all members of the public to submit articles to the OAT

3.4.1. Section 13 of the COIAO sets out who can submit articles to the OAT for classification. The law enforcement agencies (e.g. the Television and Entertainment Licensing Authority (TELA), the Police and Customs and Excise Department (C&ED)) and the Secretary for Justice may submit articles to the OAT for classification. Publishers can also voluntarily submit articles to the OAT before publication to ensure compliance with the law. The existing arrangement seeks

to ensure that the OAT will not be over-burdened and rulings can be handed down in a reasonable time. Some suggested that all members of the public should be allowed to submit articles to the OAT. Some found this appropriate while others worried that the OAT would be over-burdened. Reasons for supporting and objecting this suggestion were as follows:

The public should be allowed to submit articles	Reservations about submission of articles by the public
<p>(i) It would be good public education if more people were allowed to show their concern and submit articles to the OAT for classification;</p> <p>(ii) Should consider allowing specified sectors to submit articles to the OAT for classification, e.g. educational bodies, social work organisations, etc.;</p> <p>(iii) To consider setting the maximum amount of submissions each month, or a submission must be supported by certain number of people (e.g. 10). The supporters should also submit their real names and ID numbers; and</p>	<p>(i) The Government should not spend huge resources on adjudication. Instead, it should provide more resources for public education;</p> <p>(ii) Expanding the mechanism would increase workload and give the adjudicators greater pressure. It would only give “negative” freedom to some people and paralyze the OAT. Members of the public should file complaints to the enforcement agencies or other departments, which should determine whether the complaints would be submitted. Submission should be done by executive departments instead of the general public; and</p> <p>(iii) If members of the public submit each and every</p>

The public should be allowed to submit articles	Reservations about submission of articles by the public
(iv) Some did not agree that only certain organisations were allowed to submit articles to the OAT. Each and every member of the public should have the right to complain.	article for classification, this would promote a strict censorship system, and would indirectly suppress creativity and freedom of publication.

3.4.2. Some expressed that if members of the public were allowed to submit articles for classification, they should be required to pay fees and the Government should consider the following when deciding the fee level:

- (a) The fee should strike a balance between the costs of classification and affordability of the public. It should also be higher than the fee paid by the owner of the articles. The fee should neither be too high nor too low. Otherwise, the less privileged classes would be deprived of such rights;
- (b) To prevent abuse of the system, a penalty mechanism should be established to penalize members of the public who abused the classification system. If evidence could be found to prove malicious intention or mischief, the authority should be authorised to suspend proceedings and collect additional fees; and
- (c) Some opposed to a fee system as everyone should be eligible to submit articles for the OAT for classification. A fee system would result in inequality between the rich and the poor, and civic-minded persons would be discouraged as well.

3.5. Whether to require mandatory classification prior to laying of charges

3.5.1. At present, there is no legal requirement that an article has to be classified before prosecution against the publisher is made. The enforcement agencies can choose to submit articles for classification before laying charges or to lay charges without seeking classification, depending on the merits of individual cases. The current arrangement provides flexibility for the enforcement agencies. Prosecution can be made more efficiently, taking into account the large volume of articles which may be involved in straightforward cases (e.g. over thousands of pornographic VCDs seized in one single video shop). Members of the public expressed the following views regarding the option of requiring mandatory classification prior to laying charges:

Support Mandatory Classification Prior to Laying Charges	Oppose Mandatory Classification Prior to Laying Charges
<p>(i) Enforcement agencies must submit articles to the OAT for classification before laying charges, or to make it compulsory for each publication institution to employ dedicated staff to handle information content. By doing so, each article can be treated in a fair and just manner;</p> <p>(ii) The approach of “prosecution before classification” was wrong and in violation of the “presumed innocent until proven guilty” principle of</p>	<p>(i) To retain the existing arrangement (i.e. The enforcement agencies can choose to submit articles for classification before laying charges or to lay charges without seeking classification, depending on the merits of individual cases.) However, clear guidance should be established to require the enforcement agencies to submit ambiguous cases to the OAT for classification before</p>

Support Mandatory Classification Prior to Laying Charges	Oppose Mandatory Classification Prior to Laying Charges
<p>the Hong Kong judicial system. It might lead to wrong convictions; and</p> <p>(iii) Laying charges prior to classification might help enforce the law against pornographic videos. Yet, it might have serious impact on literature as the judicial proceedings might last long and the person involved might need a legal representative and had to take leave from work to attend the hearing.</p>	<p>taking action;</p> <p>(ii) Existing arrangement was more flexible; and</p> <p>(iii) It was unnecessary and would be a waste of time if large quantities of pornographic VCDs were found in a video shop.</p>

4. New Forms of Media

4.1. Existing arrangement –

There were extensive discussions on the new forms of media among the public opinion collected from activities organised by the Government or community organisations and suggestions submitted through different channels. These comments represent the views received and do not represent the position of the Government.

The Television and Entertainment Licensing Authority (TELA) adopts a complaint-driven approach to control obscene or indecent content on the Internet. TELA works with the Hong Kong Internet Service Providers Association to encourage Internet service providers (ISPs) to follow the Code of Practice which was promulgated in 1997 following public and industry consultation. TELA normally does not take prosecution action against publishers of indecent articles on the Internet, but advises the webmaster to add the required statutory warning, or to remove or block access to the indecent articles. If the content is likely to be obscene, TELA will refer the case to the Police for follow-up including prosecution action.

4.2. Regulating new forms of media – Members of the public were highly concerned about this matter and were eager to express their views. Some principles were generally supported, e.g. protection of the freedom of speech and free flow of information, and appropriate protection for the youth. However, public views were quite diverse regarding the details of the above principles:

4.2.1. Views supporting the regulation of new forms of media

(a) Reasons for regulating new forms of media

- (i) The community should not react passively to the publication of obscene and indecent articles on the Internet. Relevant legislation and Internet regulation were needed to produce a deterrent**

effect. Standards of moral behavior on the Internet should be the same as those in the real world;

- (ii) The Internet was merely a platform for publishing information and distributing content, and its nature was not different from traditional forms of media; in terms of popularity, many youth were receiving tremendous amount of information from the Internet, as from traditional forms of media. Since traditional media have always been regulated by related legislation, it was necessary to regulate new forms of media in order to protect the youth from the impact of obscene and indecent articles;
 - (iii) It was not mutually exclusive to protect the freedom of speech on the Internet and to safeguard the youth from the influence of obscene and indecent articles; the two should not be viewed as contradictory; should not stop regulating new forms of media for the sake of protecting the freedom of speech; and
 - (iv) members of the public might not be able to keep pace with the advancement of the Internet and the changes of media. Parents might not be as competent as the youth in mastering the Internet and thus unable to install Internet filters effectively to avoid youngsters from receiving obscene and indecent articles. Therefore, the Government should take up the supervisory role and regulate new forms of media.
- (b) Members who supported regulation of new forms of media were divided on whether the Internet and traditional forms of media should be regulated under the same ordinance:

Favoring regulation under the same ordinance	Opposing regulation under the same ordinance
<p>(i) The media should be neutral and the standards for different media should be consistent. The Government should not regulate different media with different approaches. The focus of the Control of Obscene and Indecent Articles Ordinance (COIAO) was the information content, not the form of publication;</p> <p>(ii) Government should not have another set of moral standards for the Internet; and</p> <p>(iii) Members of the public were unclear about the definitions in the Ordinance. If different standards were applied to different media, it would be even more difficult for the public to understand.</p>	<p>(i) The operation of the new and traditional forms of media varied. For the new media, a lot of information was actively searched by the users;</p> <p>(ii) The operational costs of new and traditional forms of media varied. The publishers had to bear costs of distributing magazines and books, however, there was no additional cost for publishing information on the Internet other than the cost to purchase the required equipment and the service fees paid to the ISPs; and</p> <p>(iii) It might not be appropriate to include the regulation of new forms of media in the first round of consultation. Separate legislation should be enacted for the new forms of media so that the review of the COIAO would not be dragged by the controversies regarding the Internet.</p>

4.2.2. Views objecting any kind of regulation on new forms of media

(a) On grounds of principle

- (i) The Government always encourages the development of creative industry in order to develop Hong Kong into a knowledge-based economy. Regulating the Internet would only block the free flow of information, as well as the establishment and distribution of knowledge. An overly regulated legal framework for the Internet was not good for the development of the economy;
- (ii) Freedom of speech is one of the core values of Hong Kong. Hong Kong should remain open towards arts, literature and other controversial articles, and should not deprive everybody's right of accessing information on the Internet under the pretext of youth protection;
- (iii) Youngsters have been receiving sex education since they were young. The earlier they received relevant information from the new forms of media, the more their curiosity and sexual impulses could be reduced, thereby discouraging them from committing sex crimes;
- (iv) Regulation on the new forms of media would target not only at the media but all members of the public who might publish information on the Internet. Such regulation might also pave ways for monitoring users' emails and information transmitted via instant messaging software;
- (v) Adults have the need to receive pornographic information, which might improve the sex life of couples. Regulating the new forms of media at the expense of couples' right to receive such information might affect their sex life;

- (vi) Regulating the new forms of media would deter the public from discussing issues about sex. This was contrary to the open approach of discussing sex promoted by the women's groups, social welfare and education sectors in recent years; and
- (vii) The Government could not educate the children for the parents. As a free society, the information available in Hong Kong could be good or bad. Regulation of the media could be more lenient if it did not affect others. Hence it was unnecessary to regulate the Internet with one set of inflexible rules.

(b) Technical Reasons

- (i) To apply the existing COIAO effectively to the Internet, legal advice might have to be sought to clarify the unclear areas;
- (ii) Some obscene and indecent information is published overseas. Given the globalized nature of the Internet, huge amount of resources and social costs would be required if the Government regulated Internet information outside its jurisdiction; clashes between the ISPs and Internet users might also occur as the users might feel that their freedom of speech was restricted. Unless the Government could propose a credible regime for Internet regulation, the Government should cautiously consider whether such legislation was worthwhile; and
- (iii) The number of articles classified by the Obscene Articles Tribunal (OAT) in 2008 was 70 000. Workload of the OAT would be greatly increased if the constantly updated information on the Internet was to be regulated also.

4.3. Whether mandatory provision of filtering services for users by ISPs should be required – In the first round of consultation, the consultation booklet has listed out both pros and cons of this measure for public consideration. The following are the public opinion for and against this approach:

Support Mandatory Internet Filtering Services	Oppose Mandatory Internet Filtering Services
<p>(a) Currently lots of Internet usage was spent on viewing pornographic information. Some members of the public were under the impression that, if pornographic websites were filtered, the costs of the ISPs would be reduced. Although it might not filter 100% of the pornographic materials, it could prevent the youth from accessing huge amount of pornographic information easily;</p> <p>(b) With rapid technological advancement, parents who were not proficient in computer might not be able to prevent their children from accessing pornographic information in an effective way, hence mandatory filtering services by the ISPs was essential; and</p>	<p>(a) It was the youngsters who took the initiative to login to pornographic websites on the Internet. Parents should educate their children not to access pornographic websites and should not ask the Government to educate their children for them. Manatory Internet filtering was only an escape of responsibility;</p> <p>(b) To demand ISPs to provide mandatory filtering services was to ask ISPs to play the role of the OAT. ISPs might be delegated with too much authority;</p> <p>(c) It was unfair to ask ISPs to bear a non-business responsibility of Internet filtering. Some smaller scale ISPs might have difficulties in operation and might transfer the costs to the users;</p>

Support Mandatory Internet Filtering Services	Oppose Mandatory Internet Filtering Services
<p>(c) To reduce costs, ISPs could use a proxy server to reduce the volume of flow of the whole system and thus the cost, i.e. when Internet users browse the same website, materials would be downloaded to their domestic computers from the proxy server rather than from the website.</p>	<p>(d) ISPs were merely middlemen of information transmission and were unable to control the kind of information being uploaded by the users. It would be difficult to assign them the role of Internet monitoring;</p> <p>(e) It would lead to the development of software which decodes the filtering system. Internet filtering system was not economical and not cost-effective. Mandatory Internet filtering service would slow down the speed of Internet surfing; and</p> <p>(f) If the Government was involved in Internet filtering, the public might doubt whether it was a form of political censorship.</p>

4.4. Forms and limitations of Internet filtering software – The public were concerned about the principles and technology of Internet filtering:

- (a) Concerns about the forms of Internet filtering
 - (i) Standards of obscenity and indecency might differ from parent to parent according to their race, customs and religion. They should be able to

choose the kind of filtering software and standards of filtering they preferred. Parents should not escape from this responsibility just because they were unfamiliar with computers;

- (ii) Neutrality of the Internet should be respected. ISPs should maintain freedom on the Internet and a centralized filtering system should not be viewed as one of its corporate social responsibility;
- (iii) If pornography websites were being filtered by keywords, contents of some academic/educational websites would also be filtered. The Government should establish a regime which ensured that the filtering systems did not intrude the public's right of receiving information; and
- (iv) Some parents and individuals who did not know about the Internet might misunderstand that the problem could be dealt with entirely with the filtering system, and neglect the responsibility of making their own decisions and educating their children. Without the active participation and cooperation of parents, simply preventing the youth from accessing pornographic information might not achieve the desired effect.

(b) Limitations of filtering software

- (i) ISPs believed that Internet filtering system was not 100% trustworthy. Obscene and indecent websites could quickly change their names to avoid filtering; private ISPs might not have sufficient resources to catch up with the updates. Thus, effectiveness of the filtering services was doubted;
- (ii) Some filtering system could only filter texts but not images, pictures and audio-visual records;

- (iii) Filtering systems were generally purchased overseas and might not be able to meet local needs. Due to technical limitations, the filtering system might require users to use different login names and make it difficult for the parents; and
- (iv) Filtering system ran the risk of being hacked; it might not be effective in regulating personal Internet transmission.

4.5. Whether the law should be tightened to regulate new forms of media – During the first round of consultation, the consultation booklet has listed out both pros and cons of different modes of regulation for public consideration. The following views on the modes of regulation were expressed by the public:

- (a) Method 1: To require websites to provide warnings if they display indecent materials;
 - (i) To explore ways of enhancing the responsibility of publishing pornographic information in online forums, e.g. asked for more information from users for future investigation and to ensure that they were aware of their rights and duties. Although there were small wording indicating that participants should bear responsibilities for what they published, the owner of the forum and the webmaster should also be responsible; and
 - (ii) To regulate web search engine also. Members of the public were able to search tremendous amount of pornographic photos by the image search of the search engine. No warnings were found on those websites.
- (b) Method 2: To establish an access control system to verify the age of the web users. For example, web users are required to input their credit card data before getting access to webpage containing indecent materials to ensure that they have attained the age of 18 – public views collected generally expressed grave

concern about the effectiveness and problems brought about by this measure:

- (i) It might lead to security problems, Internet users might risk embezzlement of identity, leak of his/her whereabouts and personal privacy;
 - (ii) As many servers were established overseas, the requirement of keying in credit card information when entering adults website might not be applicable overseas;
 - (iii) Adults might not own credit cards but they should be eligible to receive various information regardless whether they owned credit cards. It was more important to encourage the public to report pornographic information than to verify users' identity with credit cards;
 - (iv) To consider issuing age verification card which stored only the name and age of the cardholder. Even if he/she lost the card, personal information would not be stolen;
 - (v) Digital verification technology might not require the user to confirm identity, and some only required the user to submit age information; distinct holography could be stored in the chips of ID cards to avoid counterfeit, and it would not lead to problems of security of personal privacy.
- (c) Method 3: To empower enforcement agencies, upon receipt of a judicial warrant, to issue a "take-down notice" to the indecent websites or ISPs concerned;

There was not much discussion on this among public views collected. Some members of the public were concerned that ISPs might be indirectly regulated without any specific statutory procedures.

- (d) Method 4: To prosecute Internet users who fail to comply with the statutory requirements

There was not much public discussion on this subject. Some suggested tightening the service contract between ISPs and users and add clauses to prevent users from publishing obscene and indecent articles. Agreement must be sought from the users. Once they violated the clause, enforcement agencies might take necessary action and the user could not dispute about it.

- (e) Other legislative control of new media proposed by the public
 - (i) To consider making it a statutory requirement for ISPs in Hong Kong to display a notice automatically on the computer screen after the user surfed the Internet for a period, in order to remind youngsters not to access pornography;
 - (ii) Internet filtering system should be installed in all public premises e.g. schools, Government institutions, cafes and restaurants so that users could not view unhealthy websites in public premises;
 - (iii) To consider enacting legislation to regulate the pornographic information found from search engine. If relevant information was needed for the academics, arrangements could be made with ISPs to make it available to specific institutions and individuals. Others would not have free access to the information for personal use;
 - (iv) Enforcement departments could arrest those who repeatedly published obscene and indecent information on the Internet according to their IP address. Legislation to restrict or even suspend providing Internet services to repeated offenders could also be considered.

4.6. Suggestions and concerns which were not within the jurisdiction of local laws – members of the public

expressed the following improvement measures on issues that were not mentioned in the first round consultation booklet:

(a) Establishment of a regulatory board

The Government might consider establishing a “Regulatory Board of the Mass Media” and invite representatives from sectors like information technology, legal, education and publication with a view to providing recommendations for regulating the media through negotiation adopting a gradual approach.

(b) International Treaties

In the long run, the Government should negotiate with other countries to draft international treaties regulating the Internet. Ways of verifying the age of Internet users effectively could be researched in the short run. However, as standards of obscene and indecent articles differed from nation to nation, it might not be easy to achieve international cooperation.

(c) Other suggestions

- (i) The Government should provide more training and financial support to parents who were interested in installing filtering system for their children;
- (ii) To consider forming a monitoring team to keep an eye on the pornographic materials on the Internet;
- (iii) To consider establishing a centralized prosecution unit to receive online public complaints about obscene and indecent articles on the Internet, and follow up the complaints by dedicated personnel;
- (iv) To continue to refer to the self-regulatory approaches of ISPs in other developed countries

and consider whether such measures were applicable in Hong Kong;

- (v) To establish code of conducts among ISPs and promote voluntary Internet rating system to encourage web administrators to label whether their websites were suitable for children and youth;
- (vi) The Government could consider cooperating with ISPs to provide two accounts and passwords for users, one for parents and the other for youngsters or children. The account for youngsters and children would not have access to pornographic websites while that of the adults would;
- (vii) The Government could consider cooperating with ISPs to require users to submit the telephone number provided upon application before browsing obscene and indecent websites, and ISPs would send text messages to the applicants about the information of those websites. By doing so parents would know whether their children have viewed obscene and indecent websites;
- (viii) The community could consider actively collecting information of pornographic websites and set up a database for reference of parents and the education sector; and
- (ix) To establish a list of websites which volunteered for self-censorship. Information of the websites and their owners would be handed to the Government to check regularly whether the websites have published pornographic materials.

4.7. Definition of publishing information on the Internet – the public expressed the following different views on identifying personal communication and the handling

of transmission of unhealthy information as personal communication or peer to peer transmission:

- (a) Definition of private or public distribution of pornographic information
 - (i) The standards of handling private or public distribution of pornographic materials should be the same. It should be illegal to publish obscene and indecent materials on personal websites or blogs. The Internet was a public space instead of a private area. The Government should regulate both public and private transmission of pornographic information in order to deter users from transmitting obscene and indecent materials in any ways on the Internet;
 - (ii) “Publishing on Internet” should be defined as: any information transmitted on the Internet, regardless of the number of recipients, should be regarded as publishing on the Internet;
 - (iii) It would be difficult to define “members of the public” on the Internet, as there was no “private” area. Only contents protected by password could be defined as personal. When other parties were required to enter the password being accessing the website, this could be regarded as private communication;
 - (iv) “Private” means the two parties are aware of the identification of each other. It should not be defined by the number of senders. Transmitting information to a stranger should be regarded as public distribution;
 - (v) Higher degree of freedom should be allowed for private communication. It was not appropriate for the authority to interfere with it, regardless whether the content was obscene or indecent.

Such precedents might lead to extension of such authority to other aspects; and

- (vi) The distributor might not intend to have certain pornographic writings or images published through search engine. The distributor could not control the number of viewers of the writings or images and was unable to control its readers from copying the texts and images for extensive publication.

(b) Peer to Peer Technology

- (i) Peer to Peer technology was often involved in public distribution. Information may be transmitted without the awareness of the person concerned, or the file may only be delivered partially. Under these circumstances, if the person concerned was found guilty of public distribution, it would be too stringent. As far as peer to peer technology was concerned, intentions of the distributor should be considered, i.e. whether he/she intended to distribute such articles for personal benefits or to harm other people;
- (ii) Peer to peer technology was neutral, and participants should not be viewed as a member of the public. Before downloading the complete version of files, participants of peer to peer technology might not be able to verify whether the content was obscene and indecent or not, thus it should not be viewed as an offence;
- (iii) Regulating information transmitted by peer to peer technology might intrude privacy;
- (iv) As most participants of peer to peer technology did not know each other while transmitting information, it can be regarded as public distribution. Taking software like BT as an example, each downloader is also an uploader in

theory, even if he/she is not the origin of the information involved or has not downloaded a complete file, he/she has already participated in the distribution of information and should bear the legal responsibilities; and

- (v) If the focus of this review was on the Internet safety of the youth, it was unnecessary to define whether regulation towards the public or individual user in information transmission/peer to peer technology was needed. As long as a user published obscene and indecent articles to underaged persons, it should already be an offence.

4.8. Suggestions for new forms of media other than the Internet – Some members of the public expressed the following concerns about new forms of media other than the Internet:

- (a) Mobile phone service providers should also put forth suggestions for Internet regulation as many youngsters went online with mobile phones these days;
- (b) Video games have tremendous impact on the youth, but not much attention was paid to the classification of video games. To prevent the harm of obscene and indecent video games, there must be education fostering the development of a harmonious campus and provision of proper sex education; and
- (c) To consider following the amusement game centres and separating Internet cafes into two categories: one for the adults and the other for youngsters. Mandatory filtering system should be adopted in Internet cafes intended for the youngsters.

4.9. Suggestions for parents or guardians – some members of the public believed that parents should play an important role in assisting children to use the Internet properly:

- (a) To encourage parents to put the computers in the living room, so that they might supervise the children appropriately when they were online and prevent them from browsing obscene and indecent websites; and
- (b) Parents' concerns about the proper use of the Internet by their own children were more important than any kind of Governmental regulation.

5. Enforcement

5.1. Public discussion

There was little discussion on enforcement among the public opinion collected from activities organised by the Government and community organisations and suggestions submitted through different channels. These comments represent the views received and do not represent the position of the Government.

5.2. Division of labour among the enforcement departments – At present, three Government departments, the Television and Entertainment Licensing Authority (TELA), the Police and Customs and Excise Department (C&ED) are responsible for the enforcement of the provisions under the Control of Obscene and Indecent Articles Ordinance (COIAO). The division of labour is as follows -

TELA	Focuses on the sale of indecent articles in the market by conducting inspections in sales outlets and monitoring publications on sale in the market; and also deal with indecent articles transmitted on the Internet through monitoring of sites and following up on complaints.
The Police	Focuses on the sale of obscene articles in the market and conducts joint operations with TELA from time to time; and also deals with obscene articles transmitted on the Internet.
C&ED	Tackles obscene and indecent articles at entry points.

There were different views among the public on the enforcement departments' division of labour.

5.2.1. To set up a professional team/department for enforcement:

- (a) Some expressed the view that a professional team should be set up to take up prosecution work under the COIAO; and
- (b) TELA should be renamed as “Electronic Media, Television and Entertainment Licensing Authority”; or it should set up an Internet Monitor Department to work with the Police to deal with crimes related to transmission of obscene and indecent articles on the Internet and other new media. The Internet Monitor Department should comprise a group of professionals who have knowledge in high-technology.

5.2.2. Enforcement power of TELA:

- (a) Some opined that TELA being a designated department, in addition to inspecting all sales outlets and monitoring publications on sale in the market, should handle the enforcement of the COIAO directly, and act as the major enforcement agency of the COIAO;
- (b) Some views suggested that TELA could be given more power and provided with extra manpower, equipment and training as appropriate to enable it to regulate, monitor, inspect, submit articles to the Obscene Articles Tribunal (OAT) for classification and follow up obscene and indecent articles sold or distributed locally, as well as obscene and indecent information transmitted locally through new media, such as the Internet and mobile phones; and
- (c) Some considered that Hong Kong did not need cultural police and the power of TELA should not be strengthened.

5.2.3. The public did not have a clear inclination on whether the Police's role in enforcing the COIAO should be strengthened:

- (a) Some considered that the Police should continue its enforcement duties, since they have received better training; but the Administration has to consider if the Police should focus on handling more serious crimes; and
- (b) The Police should enhance collaboration with overseas police forces to deal with crimes relating to the distribution of obscene and indecent articles.

5.2.4. To continue with joint enforcement by TELA, the Police and C&ED, but the division of labour should be clearly defined:

- (a) Some opined that TELA should adopt a complaint-driven approach and should only be responsible for handling obscene and indecent articles submitted for classification. Cases relating to the Internet should be handled by the Police;
- (b) The Police and C&ED should collaborate to handle all obscene and indecent articles obtained through illegal means, including information obtained from peer to peer technology. The Police should be responsible for handling information distributed locally, while the C&ED should be responsible for handling information transmitted from overseas. This could avoid confusion in division of labour. The Police and C&ED could also set up special departments to handle the transmission and distribution of such information; and
- (c) An effective and efficient communication mechanism should be developed among departments to ensure just and fair enforcement.

5.3. Enforcement approach – the public have expressed different views on which approach should be adopted:

- (a) Some expressed that it was difficult for the Government to monitor all obscene and indecent articles, and the Government could only monitor them by a complaint-driven approach. The Government could consider setting up hotlines for the public to lodge complaints against offending articles. It could also set up a complaint mechanism on the Internet, so that the public could provide web addresses of obscene and indecent websites to the Government departments concerned. The public might login to relevant Government departments and register as an inspector/Internet examiner voluntarily. If relevant Government departments received a certain number of complaints on their respective websites, they could submit the relevant articles to the OAT for classification;
- (b) Some considered that adopting a complaint-driven approach to monitor the distribution of obscene and indecent articles was a passive strategy. As the public might not be very familiar with the standards of regulating obscene and indecent articles, the complaint-driven approach would result in many inappropriate complaints, and substantial resources would be wasted in handling them. The enforcement departments should play an active role in enforcing the law instead of waiting passively for the public to lodge complaints. Apart from random inspection, the enforcement departments should actively inspect those who have breached the law repeatedly in order to enhance deterrent effect; and
- (c) Some considered that the existing approach should continue, with TELA stepping up public education to publicise the COIAO and enhance public participation through lodging complaints against dubious articles. In addition to dealing with public complaints, TELA should proactively monitor articles in priority areas.

5.4. Views on enforcement priorities

- (a) Some expressed the view that publications with extensive circulation should be the priority, while publications for minority groups should be treated more leniently;
- (b) As obscene and indecent content in electronic games or computer games might not be evident, there might be difficulties in monitoring them;
- (c) The Government should strictly carry out inspection on articles from the media and publication industry, and prohibit circulation and display of obscene articles in public areas. When monitoring publications sold in the market, TELA should consider the location where the publications were displayed. Indecent publications should be displayed in less prominent places;
- (d) The Government should examine the content of academic writings claiming to be “sex” studies; and
- (e) For the purpose of enforcement, it was appropriate to handle obscene and indecent pictures first, since the time spent on handling these articles was usually less than that on handling obscene and indecent writings.

6. Penalty

6.1. Public discussion

There was little discussion on penalty among the public opinion collected from activities organised by the Government and community organisations and suggestions submitted through different channels. These comments represent the views received and do not represent the position of the Government.

6.2. Whether the maximum penalty should be increased – At present, the maximum penalty of the publication of obscene and indecent articles under the Control of Obscene and Indecent Articles Ordinance (COIAO) is as follows:

Offence	Current Maximum Penalty	Proposed Maximum Penalty
Obscene Articles	A fine of \$1 million Imprisonment for three years	A fine of \$2 million Imprisonment for three years
Indecent Articles First conviction	A fine of \$400,000 Imprisonment for one year	A fine of \$800,000 Imprisonment for one year
Subsequent conviction	A fine of \$800,000 Imprisonment for one year	A fine of \$1.6 million Imprisonment for two years

The public has expressed different views on whether the maximum penalty should be increased.

6.2.1. Views in support of increase of maximum penalty

- (a) No publisher of obscene articles has been imposed the maximum penalty (i.e. a fine of \$1 million and imprisonment for three years) since the COIAO came into effect. Publishers might have taken into account the penalty when calculating their business cost. The penalty did not pose moral burden on publishers. Whether they could make a profit from publication of those articles was their main concern;
- (b) At present, publishers can voluntarily submit articles to the Obscene Articles Tribunal (OAT) for classification. If they chose not to submit articles for classification in advance, and if they were prosecuted later because the articles were classified as obscene or indecent, they should bear higher penalty;
- (c) If a publisher was found to have malicious intention, such as to blackmail or threaten others, he should bear higher penalty no matter it was the first conviction or not;
- (d) The penalty imposed on people who published obscene and indecent articles should be at the same level as that for rape, because obscene and indecent information if allowed to circulate without any regulation would be equivalent to “spiritual rape” or “mental rape”;
- (e) Some views suggested that the maximum fine should be increased to several hundred thousand or even over one million dollars; and the maximum imprisonment period should be increased to five to over ten years; and
- (f) The level of maximum penalty should be reviewed regularly to ensure that the deterrent effect was effective and up-to-date.

6.2.2. Some people have expressed reservation about increasing the maximum penalty

- (a) The executive departments should not interfere with the judicial system, but should allow the Judiciary to handle

judgment and decide penalty in line with existing procedures. The executive departments should not impose pressure on the Judiciary to increase the maximum penalty;

- (b) Cultural and artistic works might sometimes challenge the public's concept of sex. If the maximum penalty was set too high, creativity and development of culture and art would possibly be hindered;
- (c) The present maximum penalty was not low at all. Judges might not increase the actual fine or term of imprisonment accordingly even if the maximum penalty was increased. It was thus not necessary to increase the maximum penalty, but the court should have the flexibility to exercise discretion when imposing penalty;
- (d) The penalty for publishing obscene and indecent articles on the Internet should not be too high, since most Internet users who publish the articles did not intend to make a profit. However, higher penalty should be imposed on Internet users who published the articles for profit; and
- (e) Increasing maximum penalty might result in self censorship.

6.3. Whether factors for consideration by the court when imposing penalty should be included in the COIAO – During the public consultation period, people discussed whether factors for consideration by the court when imposing penalty should be included in the COIAO so that the court could consider those factors when meting out penalty and impose appropriate levels of penalties. The public has different views in this regard.

- 6.3.1. Views in support of including factors for consideration by the court when imposing penalty
- (a) When deciding appropriate levels of penalties, the court should also take into account the profit the offenders

have made from publishing obscene and indecent articles. If the offenders have made a profit from committing the offence, such profit should be confiscated completely;

- (b) Some suggested setting up minimum penalty, and deciding the appropriate levels of penalties based on factors such as the number of offences, the sales volume and the impacts of the published articles; and
- (c) Some opined that the number of readers should be a factor when deciding the appropriate levels of penalties. If the number of readers of a newspaper was several hundred thousand a day, the level of penalty should be higher; and for people who published one or two pictures on a blog and only ten or more people visited the blog, the level of penalty should be lower.

6.3.2. Some members of the public have expressed reservation about including factors for consideration by the court when imposing penalty

- (a) There would be practical difficulties if the circulation of the publication was to be included as a factor for consideration by the court when imposing penalty, since it would be difficult to decide the actual circulation of information transmitted through new media like the Internet; and
- (b) If money transaction was not involved in the publication of obscene and indecent articles, the concerned party should not bear any legal liability.

6.4. Penalty imposed on offenders who repeatedly offend the law – the public generally suggested that higher level of penalty should be imposed on repeat offenders. Their views were as follows:

- (a) Some suggested the adoption of progressive increment in the penalty system. As first-time offenders might publish obscene and indecent articles unintentionally, they could be imposed with lower level of penalty.

However, higher level of penalty should be imposed on repeat offenders;

- (b) Repeat offenders could be asked to stop selling the related articles. Linking the profit they earned from selling obscene and indecent articles to the amount of fine would increase deterrent effect;
- (c) At present, publishers can, if necessary, submit articles to the OAT before publishing them in order to obtain a ruling on the classification of the articles in advance to avoid violating the law. Repeat offenders might be required to submit all their publications for classification before publishing them;
- (d) Some suggested setting up a point-based system and calculate the number of offences committed. If publishers repeatedly offend the law within a short period of time, the Government might mandatorily require them to seal their articles in wrappers, or order the publishers to stop publishing the relevant articles as penalties; and
- (e) The Government should make public the list of repeat offenders, and arrange them to meet and listen to people affected by obscene and indecent articles.

6.5. Other views related to penalty

- (a) If a publishing company was convicted of an offence, the chief editor or the directors of the company should also be subject to prosecution;
- (b) There might be values in pornography. Offenders with deviant moral standards should be educated and not sentenced to imprisonment; and
- (c) There are many newspapers and magazines in Hong Kong, but most of them are owned by a few media groups. If certain books were prohibited from publication, its owner could publish a new book through

other means or with other names. The Government should consider how to deal with such situations.

7. Publicity and Public Education

7.1. Public discussion

Public opinion collected from activities organised by the Government or community organisations and suggestions submitted through different channels have lots of discussions on publicity and public education. These comments represent the views received and do not represent the position of the Government.

7.2. Importance of publicity and public education – The public attaches much importance to publicity and public education:

- (a) Despite the regulation by the Control of Obscene and Indecent Articles Ordinance (COIAO), pornographic materials would not be entirely filtered. Hence education and statutory regulation should be complementary to each other. While reviewing the COIAO, sufficient publicity and public education should be carried out to send correct messages on moral values to youngsters. The regulation by the COIAO should be regarded as the final fortress for protecting the youth from being affected by pornographic information;
- (b) The aim of education is not to “eradicate” unhealthy information, but to assist the youth to develop discernment and cultivate them correct concepts about sex. Education can enhance the youth’s knowledge about sex and enable them to openly discuss it from the point of view of ethics and aesthetics with an open and embracing attitude; and
- (c) The youth are much more familiar with the use of computers and the Internet. The Government should assist parents to understand more about computers and the Internet and the ways of preventing the youth from inappropriately viewing unhealthy information on the Internet.

7.3. Publicity and public education by the Government – the public gave the following views and recommendations on the implementation of publicity and public education by the Government:

- (a) Systematic plans of publicity and public education should be made in order to facilitate cooperation among various sectors, including information technology sector, schools, parents, social workers, etc.; the Government should provide due support so that the concerned parties would be aware of the division of labour among different enforcement agencies;
- (b) The Government may co-organise seminars for parents with parent-teacher associations to have in-depth discussions on the impact of new forms of media on the youth;
- (c) The Government may publish booklets and leaflets for the youth and their parents on healthy sex education, ways of selecting appropriate publications for children and safe use of the information on the Internet respectively. The Government may also produce documentaries interviewing women, youth and adults and reveal the negative impacts of obscene and indecent articles on them;
- (d) Apart from the traditional media for publicity (e.g. television, magazines or booklets), the Government should also publicize through new forms of media which are preferred and often used by the youth;
- (e) The Government may consider establishing a committee to follow up and coordinate the work of publicity and public education, so that resources can be focused on the proliferation of publication of unhealthy information;
- (f) District Councils can take up an important role in organising community activities and publicity; and

- (g) Enhance trainings on media education, critical thinking and value judgment.

7.4. Roles of other stakeholders – The public recognize the general importance of education and different stakeholders should take up their roles in promoting public education:

- (a) Schools – Members of the public suggested the following for schools:
 - (i) The Government may allocate more resources to primary and secondary schools to strengthen sex education and allow more time and space for teachers to take care of students' need. The Government should also support teachers by enhancing their teaching ability;
 - (ii) Primary and secondary schools may increase supplementary teaching materials and add appropriate materials to the curriculum of liberal studies to help students understand, think and debate on cases in respect of pornographic culture and establish appropriate sex concepts; some also suggested including correct ways of treating obscene and indecent articles in the compulsory curriculum of primary and secondary schools;
 - (iii) There is a suggestion of employing specialized personnel to teach sex education one day a week;
 - (iv) Schools should enhance education on information technology so that the youth will know the correct ways of retrieving appropriate information from the Internet;
 - (v) Schools may Invite academics and community organisations to hold workshops, organise forums and stage exhibitions at schools regularly in order to promote correct sex education; and

- (vi) Early teaching about sex education might arouse the youth's curiosity about sex prematurely. The Government should consider providing sex education for the youth who have reached suitable age only.
- (b) Families – Members of the public suggested the following for families:
 - (i) Some stressed that parents should have absolute responsibility for educating the youth about sex. However, many parents are unclear on the parameters of, and penalty for, publishing obscene and indecent articles. The Government should provide counselling for parents and issue relevant and up-to-date information to them on a regular basis;
 - (ii) Parents have the right of viewing pornographic pages on newspapers; hence the youth may have contact with such publications at home. The Government should encourage parents to be role models of the youth and educate their children about the effect of such publications on the youth. The Government should first allocate more resources on educating parents about sex, then encourage them to educate their children;
 - (iii) Families have their own backgrounds and parents should determine what kinds of information are suitable for their children. Some parents may lack for knowledge and resources and their children may be more prone to the impact of unhealthy information. The Government should pay more attention to the need of these parents; and
 - (iv) Parents should be made aware that communication with children on an equal basis (not unilateral prohibition) is the key to reinforcing parent-children relationship. Parents should

understand that the most effective way of handling pornographic information is to develop their children's discernment in face of various kinds of information, and not to think about a "germ-free" world for their children to live in.

7.5. Contents of sex education – Members of the public suggested the following on implementing sex education:

- (a) Apart from the biological structure of the genital organs of both genders and how to conduct sexual intercourse with condoms, correct concepts on relationship and the ability of determining right and wrong should also be included in sex education;
- (b) Respect for women, marriage of a man and a woman and the full understanding of the results of casual sex should be promulgated in sex education;
- (c) One may reinforce the education on anti-sexual violence and teach the youth about self-defence against sexual violence, encourage the youth to exchange ideas about ways of opposing sexual violence on the Internet; and
- (d) Sex education is not to tell the youth that "certain articles are harmful to the youth", but to provide them with a preliminary understanding about various sex issues for further thinking and develop open education about sex, aesthetics and ethics.

8. Views about Public Consultation

8.1. Public discussion

Apart from views on the issues raised in the consultation booklet, lots of members of the public commented on the arrangement of the public consultation and gave suggestions for the second round of public consultation. These comments represent the views received and do not represent the position of the Government.

8.2. Views about the first round of public consultation

- (a) Members of the public are diverse about a comprehensive review of the Control of Obscene and Indecent Articles Ordinance (COIAO):

In favour of a comprehensive review of the COIAO	Holding reservations about a comprehensive review of the COIAO
<p>(i) The COIAO is too outdated and requires amendments. Moral standards will change from time to time, regular review of the COIAO is suggested in the future; and</p> <p>(ii) It is necessary to review but a basic consensus should be reached before the review, e.g. should obscene articles be regulated? Can it be regulated? Then we can discuss about ways of regulation.</p>	<p>(i) The problems of unhealthy information is not that serious, a comprehensive review of the COIAO is unnecessary;</p> <p>(ii) It is doubted if there are problems of a severe lowering of moral standards, or whether there are numerous crimes and domestic disputes that require heavy-handed control of obscene and indecent articles; and</p> <p>(iii) Some expressed that regulatory protection (i.e. the COIAO building</p>

In favour of a comprehensive review of the COIAO	Holding reservations about a comprehensive review of the COIAO
	<p>barricade blocking unhealthy information and preventing the youth from receiving it) might result in side-effects. It might arouse curiosity of the youth and inspire them to receive unhealthy information. The community should reconsider whether regulation or education should be carried out in order to protect the youth.</p>

(b) Views about the consultation booklet – to encourage public participation, the Government prepared a user-friendly booklet for the first round of public consultation. Members of the public expressed various views about it:

- (i) The booklet categorizes and lists out different consultation items in detail, aiming to strike a balance between freedom of speech and protection of the youth; it is a positive direction of consultation;
- (ii) The booklet is oversimplified, without professional considerations, and views of the legal or relevant experts; it does not provide the public with sound research into the issue;
- (iii) The booklet should raise some more concrete issues for public discussion; and

- (iv) Contents of the booklet are relatively conservative; information should be published in a more open manner as time changes.
- (c) Views about the arrangement of consulting various sectors
 - (i) The Government should try to collect views of different age groups about the definitions of obscenity and indecency during the consultation period. Without a large-scale public opinion survey, the Government would not be able to understand the views of the majority in the community;
 - (ii) The youth are the major users of the new forms of media, the Government should consult their views and let them express their views freely about publishing information on the Internet without the supervision of principals, teachers and parents;
 - (iii) The Government should seek advice from the psychiatrists as they are able to improve the psychological health of the affected. Views based on academic studies should receive more consideration as well; and
 - (iv) The Government should reconduct the consultation and should not only listen to the most radical/outspoken individuals/organisations; the values of the majority in the community should be upheld.
- (d) Views about promoting the consultation

The Government should reinforce the promotion of the consultation, e.g. linking the dedicated website of this consultation with other websites to facilitate viewing by the public.
- (e) Other views

- (i) The aim of the first round of public consultation is to facilitate various sectors to reach a consensus about the direction and principles of the review. The review should be conducted with an open mind and a balance should be struck between regulation of obscene and indecent articles and protection of the free flow of information. Besides protecting the youth, it should also be ensured that they have the rights to receive appropriate sex information; they should not be deprived of the rights of receiving information in the name of protection;
- (ii) The public should also discuss the bottom line of morality in the community during the review;
- (iii) The Government should speed up the review and implement relevant suggestions as soon as possible. Regarding the regulatory regime, some members of the public are worried that the Government's parameters might differ from theirs;
- (iv) Discussions of different sex orientations should be included in the review of the COIAO; the concern of the sexual minorities should be taken into consideration by the Government during the review; and
- (v) It is difficult to reach a consensus about regulating obscene and indecent articles, hence the rule of majority should apply and views of the reasonable majority should be dominant. To cater for the need of the community as a whole, coordination and balance are essential, and viewpoints of the majority should be catered for. More consultation should be carried out to collect the views of more people.

8.3. Views about the second round of public consultation – Members of the public suggested the Government provide the following information in the second round of public consultation:

- (a) The Government should provide relevant materials on the handling of obscene and indecent articles in other countries/regions for the public reference;
- (b) Detailed plans should be provided for public consideration and comment;
- (c) The Government should explain the capability and incapability of the Internet filtering system; and
- (d) The Government should also consider providing concrete suggestions of improving the existing sex education.

Part 2: Quantitative analysis of data of the Telephone Public Opinion Survey

In December 2008, the Television and Entertainment Licensing Authority (TELA) commissioned Public Opinion Programme at the University of Hong Kong (HKUPOP) to conduct a Public Opinion Survey for the Review of the Control of Obscene and Indecent Articles Ordinance (COIAO). Target respondents of the survey were Cantonese-speaking population of Hong Kong of age 15 or above. The main objective of the survey was to gauge Hong Kong people's knowledge of and views towards the review of the COIAO. The comments received represent the views of the respondents and do not represent the position of the Government. This survey was part of the first round of public consultation.

2. The research instrument adopted in the survey was designed by the HKUPOP team after consulting TELA, while both HKUPOP and TELA had equal say in the final instrument. All fieldwork operations, data collection and data analysis were conducted independently by the HKUPOP team, without interference from any outside party. In other words, despite some comments on the design of the survey from TELA, HKUPOP was given full autonomy to design and conduct the survey, and HKUPOP would take full responsibility for all the findings reported herewith.

3. The official fieldwork was conducted during the period of 14 to 22 January 2009. A total of 1 531 qualified members of the public were successfully interviewed. The overall response rate was 64.3%.

4. The Consultant carefully considered the Report of the Public Opinion Survey for the Review of the COIAO submitted by HKUPOP and concluded relevant views as follows:

4.1. General Concern about the COIAO

- (a) Respondents' knowledge of the COIAO was just fair. Only a small number of people are clear about the target audience of "obscene" and "indecent" articles and that the COIAO does not regulate films, television and radio broadcast;

- (b) The respondents commonly agreed that there was a need for Hong Kong society to have legislation in regulating all publication of articles to the public. 80% of the respondents found it “necessary” for Hong Kong society to have legislation in regulating all publication of articles to the public, while only 20% found it “unnecessary”; and
- (c) Females were more inclined than males to believe that there was a need for Hong Kong society to have legislation in regulating all publication of articles to the public. The lower the education level, the more likely the respondents would agree that there was a need for Hong Kong society to have such legislation.

4.2. Definition and Classification

(a) Definition

- (i) For photographs or pictures with description of bestiality and necrophilia, 80% and 60% of the respondents considered that they were unsuitable for persons aged below 18 or should be banned for all ages respectively;
- (ii) Over 80% of the respondents considered that photographs or pictures revealing the contact of male and female genitals, displaying a human’s head separated from body and displaying human’s internal organs being exposed were not suitable for persons aged below 18, while nearly 50% of them believed that these photographs or pictures should be banned for all ages; and
- (iii) Females’ tolerance level towards articles deemed not suitable for persons under the age of 18 or for all ages was comparatively lower than their male counterparts.

(b) Classification

- As for the classification system adopted by the Obscene Articles Tribunal (OAT), i.e. articles that are neither obscene nor indecent and suitable for all persons as Class I; articles that are indecent and unsuitable for persons of age below 18 as Class II; articles that are obscene and unsuitable for persons of all ages as Class III, as high as 60% of the respondents considered this system “appropriate”, whereas over 20% and more than 10% respectively thought the existing classification system “inappropriate” and “half-half”.

4.3. Adjudication System

- (a) Over 90% of the respondents said they had “heard of” the OAT. Those with higher education level and males had more knowledge about the OAT. Among all, the respondents aged 51 or above were not so knowledgeable about the OAT;
- (b) Among those who had “heard of” the OAT, only less than one-tenth thought the work of OAT had been “well done”, while nearly half of them said “half-half/average”;
- (c) Nearly 80% of the respondents were in favour of increasing the number of adjudicators in each hearing, i.e. from two to four persons for interim hearings and from four to six persons for full hearings, and prescribing in the legislation that each hearing should consist of adjudicators from specified sectors;
- (d) Over 60% of the respondents supported establishing an independent classification board for making interim classifications on articles. Besides, about 60% of the respondents were in favour of replacing the existing adjudicators’ system with the jurors’ system, i.e. to draw adjudicators from a list of 570 000 jurors instead of a list of 300 adjudicators;
- (e) 40% of the respondents were in favour of the abolition of the OAT and the classification of articles by a magistrate while another 40% were in opposition; and

- (f) Analysis of HKUPOP found it difficult to blend together various unrelated or even contradictory suggestions.

4.4. The Internet and New Forms of Media

- (a) With regard to the regulation of the Internet, 75% of the respondents wished that the Government's regulation would be "stricter than it is now", of which almost half of them opted for "much stricter". Another 13% considered the current regulation was "appropriate", while only less than one-tenth wished that the regulation would be "more lenient than it is now";
- (b) The two most frequently cited means of regulation were "improving the existing regulatory system" and "raising the penalty" and were both supported by about 20% of the respondents;
- (c) Over 70% of the respondents were regular Internet users; among them, about half were concerned about the online publication of articles deemed unsuitable for persons aged below 18 and only about 20% of the Internet users used Internet filtering software regularly; and
- (d) More females than males wished for stricter regulation of obscene and indecent articles on the Internet and were more concerned about the display of articles not suitable for persons aged below 18. Those with tertiary education or above tended to consider that the existing Government's regulation was already appropriate or even hoped that it could be more lenient than now.

4.5. Enforcement

- If there was a practical need to allocate resources to specifically handle certain articles first, 30% of the respondents believed that TELA should prioritize local newspapers, while approximately 20% of them wished that TELA should prioritize local magazines and DVDs/VCDs.

4.6. Penalty

- (a) Three-quarters of the respondents expressed that the penalties for breaching the COIAO should be increased; and
- (b) Female, the older and less educated respondents were more inclined to be in favour of raising the penalties handed down by the court when the court dealt with obscene and indecent articles.

4.7. Public Education

- Nearly three-quarters of the respondents preferred television advertisements/programmes to be adopted by the Government as channels of educating the public about the COIAO.

Part 3: Comments retrieved from newspapers and the Internet

During the first round of public consultation, the Consultant collected views from those who did not formally submit views to the Government by retrieving noteworthy comments on newspapers and the Internet for analysis, which include:

- (i) Editorials and named (or pseudonym) commentaries on newspapers; and
- (ii) Comments on some major non-official online discussion forums.

2. These comments represent the views received and do not represent the position of the Government. After careful consideration of the comments on newspapers and the Internet, the Consultant has summarized salient points of related views as follows:

2.1. General Concerns about the COIAO

- (a) Quite a number of newspaper commentaries expressed concerns about the review of the COIAO:
 - (i) Some believed that the Government should strike a balance between protecting the free flow of information and freedom of speech and safeguarding the youth and a healthy society. The review of the COIAO can protect the youth from being influenced by unhealthy information. Some expressed that though sex can be healthy, obscene and indecent articles may lead to commodification of sex and discrimination of female, or even hinder the growth of the youth and impact their thoughts; and
 - (ii) Measures mentioned in the review might affect the free flow of information and some expressed worries of losing the core values of freedom on the Internet.
- (b) Most comments and views on the Internet focused on the discrepancies of moral standards and classification

criteria, instead of the enforcement details of the COIAO. The following is a summary of views about the necessity of the COIAO:

- (i) Those who saw the necessity of the COIAO tended to be concerned about the impact of pornographic articles on the impressionable youth and thus suggested regulating the relevant articles by the COIAO; and
- (ii) Those who considered the COIAO unnecessary tended to be concerned about the freedom of speech and the implementation of proper sex education. They believed that statutory regulation could not effectively protect youngsters from being influenced by obscene and indecent articles, and would only further damage the relationship between parents and their children. They inclined to prefer education.

2.2. Definition and Classification

- (a) Lots of discussions on the definitions of “obscenity” and “indecenty” could be found on newspapers, yet there were fewer comments about classification:
 - (i) Most comments on newspapers stressed that “obscenity” and “indecenty” are abstract concepts. People from different generations and communities would have different perceptions about the definitions and it would be difficult to reach a consensus, not to mention clear definitions written in laws;
 - (ii) Some expressed that the review provided supplementary information on “obscenity” and “indecenty” for public discussion;
 - (iii) Some suggested formulating a set of guidelines for classification according to the previous classification decisions made by the Obscene Articles Tribunal (OAT);

- (iv) Some felt that the Government was too conservative and the OAT classified images and texts with sexual intercourse as “obscene” and “indecent” without carefully considering the artistic elements therein; and
 - (v) Some believed that it was problematic to further divide the articles into Class IIA and IIB.
- (b) Most comments on those non-official online discussion forums expressed that the existing definitions of “obscenity” and “indecent” were ambiguous and there might be loopholes during enforcement.

2.3. Adjudication System

- (a) Both supporting and opposing views could be found in comments on newspapers concerning the existing adjudication system and no apparent inclination could be spotted. Relevant views are as follows:
- (i) Some supported separating the administrative and judicial functions of the OAT, i.e. establishing a new independent adjudicating board to make interim classification, while the existing OAT would remain as a judicial body and adjudicate cases referred to it by courts and magistrates. If the OAT remains as a judicial body, distributors of the classified articles would have the chance to defend and fair judgment could be achieved;
 - (ii) However, some believed that separating the administrative and judicial functions of the OAT would only make the system unwieldy and could not improve the quality of adjudication effectively. Some further pointed out that this option would create technical problems; also expressed that the existing system lacked transparency and some adjudicators were conservative. If the Government would select representatives from different sectors to form the independent

adjudication board, some challenged which sectors should be considered representative;

- (iii) Some expressed that the classification of the OAT should be more professional and adjudicators should work full-time at the tribunal. Individuals who are familiar with the law and classification of articles should be employed as full-time staff;
- (iv) Some suggested increasing the number of adjudicators and enhancing their representativeness;
- (v) Some worried that increasing the number of adjudicators might not help achieve consistency in adjudication of obscene and indecent articles;
- (vi) Some pointed out that certain adjudicators sometimes discussed cases with the media when the OAT was still processing them. Some recommended that adjudicators should abide by a set of stringent rules, including whether to make contact with the press;
- (vii) Some found it feasible to replace adjudicators by jurors in classifying obscene and indecent articles. The use of case law would also reduce the possibility of the classification decisions being challenged and doubted; and
- (viii) Some suggested abolishing the OAT and leaving the onus of classification of articles to ordinary courts and jurors.

- (b) No detailed discussion on this aspect was found on non-official online discussion forums.

2.4. New Forms of Media

- (a) Lots of comments on newspapers expressed concerns about the regulation of new forms of media in the

review of the COIAO; most of them regarded it as thorny and flawed:

- (i) Some expressed that the Internet was part of human life and there should not be too much restrictions. A philosophical question was also raised: should Internet users enjoy the same degree of freedom and right on the Internet as they do in real life;
- (ii) Some found it difficult to identify the responsibility of publication on the Internet. It would be hard to distinguish between distributors and recipients;
- (iii) Some pointed out that all technology-related laws in Hong Kong were technology-neutral. To be technology-neutral is to avoid legislation to be prescribed for a specific technology. To give up the principle of being technology-neutral for the sake of Internet regulation is a dramatic change in policy. More focused and comprehensive discussions are required;
- (iv) Some found it necessary to regulate the obscene and indecent articles transmitted on the Internet in order to protect the youth. Some expressed that it would be difficult to carry out regulation of obscene and indecent articles on the Internet. If there are sufficient grounds for regulation, the regulation per se could work as a moral rule, providing incentives for Internet service providers (ISPs) and parents to cooperate with such rules;
- (v) Some stated that education on the Internet morality should be enhanced. Schools, parents and social workers should all be concerned about this issue. Some found it more effective to allocate the money of regulating the Internet to sex education and civil education instead;
- (vi) Some expressed concerns about mandatory filtering software provided by ISPs –

- Some wondered if the Government would be able to regulate pornographic materials on the Internet effectively. There are rapid technological advancements. Filtering software might overkill in filtering and also slow down the Internet on one hand, and is decipherable on the other; and
 - Some challenged about what the criteria were and who should be responsible for establishing a list of unhealthy websites. If websites are classified as unhealthy and deleted without any classification, it would be regarded as cases of “prohibition prior to adjudication”. Some expressed that mandatory filtering was to hand the handling of free flow of information to commercial institutions. Such measures would be a nuisance to the public and increase the cost of operating the websites. Some also pointed out that ISPs should be neutral and should not bear the responsibility of filtering unhealthy information. There are sufficient filtering software available in the market;
- (vii) Regarding the display of warning before presenting indecent materials, some opined that it was similar to the existing requirements of the Code of Practice recommended by the Hong Kong Internet Service Providers Association, the only difference would be changing from a voluntary compliance to a mandatory requirement. The Government should explain to the industry and the public about the reasons for mandatory execution and its expected effects;
- (viii) Some expressed that it was too stringent to establish a control system for viewing indecent materials, e.g. requiring Internet users to enter credit card information to verify his/her identification with a view to ensuring that they are above the age of 18 before viewing indecent

websites. Information of credit cards might be leaked or stolen and this might lead to other issues of privacy; some suggested the Government replace credit cards with personal electronic accounts for age verification. Immigration Department may provide relevant services so that all holders of the Hong Kong Identity Card can apply for it; and

(ix) The Government should establish a set of clear and transparent guidelines and ordinance(s) in order to regulate material on the Internet; public consultation and extensive education are also necessary, so that the public would be aware of the Internet rules and thus their possible misunderstandings of the blockade of the normal flow of information by such laws could be eliminated.

(b) Comments on non-official online discussion forums were similar to those stated in (a) above. Relevant views are as follows:

(i) Some expressed that there were already sufficient regulation on the Internet. Tightening the regulation would restrict freedom on the Internet;

(ii) Internet users were especially concerned about mandatory filtering software provided by ISPs and found this practice unfeasible and ineffective. Some said that ISPs should not regulate the information available to Internet users, while some others worried that such services might be used for other purposes which might restrict the Internet users' right to know;

(iii) Most Internet users opposed the requirement of entering credit card information to verify the identity of Internet users who intend to enter indecent websites. They found this practice ineffective and saw the risk of intrusion of privacy;

- (iv) Some expressed that information transmitted on the Internet should also be regulated in order to protect the youth; and
- (v) Some stressed that education was of significant importance. The Government, schools and parents should educate the youth about how to determine whether certain information is right or wrong so that they would not be influenced by unhealthy materials.

2.5. Enforcement

- There were not many concerns about enforcement measures. No detailed discussion on this aspect was found on newspapers and non-official online discussion forums.

2.6. Penalty

- There were not many concerns about penalty. No detailed discussion on this aspect was found on newspapers and non-official online discussion forums.

2.7. Public Education

- (a) Most comments on newspapers regarded parents as the most suitable parties of supervising and educating the youth with proper values. Other views include:
 - (i) Some expressed that with a view to protecting children, one should not ban them from retrieving information, but provide them with proper education; instead of aiming at “purifying” the world of information, youngsters should be educated about ways of dealing with pornographic information and this could enhance their resistance and appropriate comprehension of such materials;

- (ii) Some said that parents should be role models and refrain themselves from viewing unhealthy information at home; and
 - (iii) Some believed that reinforcing publicity and public education were more long-lasting and effective in protecting the youth from being influenced by obscene and indecent materials.
- (b) Some comments on non-official online discussion forums stressed that more effort should be put into sex education, as the COIAO might not be very effective in regulation.

2.8. Views about the public consultation

- (a) Some comments on newspapers about the review of the COIAO are as follows:
 - (i) Some expressed that the review should focus on the criteria and regime of classifying obscene and indecent articles instead of the regulating the Internet; and
 - (ii) Some pointed out that, in the consultation booklet, there were not many texts discussing the review of the COIAO. There were not sufficient reference materials, e.g. case studies, overseas practices, etc., to facilitate public discussion.
- (b) No detailed discussion on this aspect was found on non-official online discussion forums.

Chapter 5: The Way Forward

We see in Chapter 4 a full summary of comments collected from activities organised by the Government or community organisations and suggestions submitted by members of the public, the quantitative analysis of data of the Telephone Public Opinion Survey and also comments retrieved from newspapers and the Internet. Having consolidated and analysed the views collected, the Consultant concludes that views on different issues are highly diverse and no consensus has been reached on any of the areas discussed. It is only on the importance of publicity and public education that members of the public are close to a consensus.

2. The views collected in the first round of public consultation reflect that members of the public are more concerned with three particular areas namely:

- (a) The definitions of 'obscenity' and 'indecent';
- (b) the operation of the OAT; and
- (c) the handling of the Internet and new forms of media.

Public views on these issues are significantly diverse. The Consultant considers that there must be support and understanding from the majority of the public before the Government makes a decision on whether and how changes should be made to the regulatory regime.

3. The Government has pledged to carry out a second round consultation and the Consultant recommends the Government should focus its attention and invite public views on the abovementioned issues again, try its best to reach a general consensus and understanding on them so as to draw up feasible measures to improve the existing regulatory regime on obscene and indecent articles.

**Public Opinion Programme (POP)
The University of Hong Kong**

**The Television and Entertainment
Licensing Authority (TELA)**

Jointly conduct

***Public Opinion Survey for the Review of the
Control of Obscene and Indecent Articles
Ordinance***

Survey Report

Everything in this publication is the work of individual researchers, and does not represent the stand of the University of Hong Kong. Dr Robert Chung is fully responsible for the work of the Public Opinion Programme (POP) of the University of Hong Kong.

I. Preamble

- 1.1 The Public Opinion Programme (POP) was established in June 1991 to collect and study public opinion on topics which could be of interest to academics, journalists, policy-makers, and the general public. POP was at first under the Social Sciences Research Centre, a unit under the Faculty of Social Sciences of the University of Hong Kong, it was transferred to the Journalism and Media Studies Centre in the University of Hong Kong in May 2000. In January 2002, it was transferred back to the Faculty of Social Sciences in the University of Hong Kong till now. Since its establishment, POP has been providing quality survey services to a wide range of public and private organizations, on the condition that they would allow the POP Team to design and conduct the research independently, and to bear the final responsibilities. POP also hopes that the results will be open for public consumption some time in future.
- 1.2 In December 2008, the Television and Entertainment Licensing Authority (TELA) commissioned POP to conduct this “Public Opinion Survey for the Review of Control of Obscene and Indecent Articles Ordinance”. Target respondents of the study were Cantonese-speaking population of Hong Kong of age 15 or above. The main objective of the survey was to gauge Hong Kong people’s knowledge of and opinion towards the review of the Control of Obscene and Indecent Articles Ordinance (COIAO). This survey was part of the public consultation underway.
- 1.3 The research instrument used in this study was designed by the POP Team after consulting TELA, while both POP and TELA had equal say in the final instrument. Fieldwork operations, data collection and data analysis were conducted independently by the POP Team, without interference from any outside party. In other words, POP was given full autonomy to design and conduct the survey, and POP would take full responsibility for all the findings reported herewith.

II. Research Design

- 2.1 This was a random telephone survey conducted by real interviewers under close supervision. All data were collected by our interviewers using a Computer Assisted Telephone Interview (CATI) system which allowed real-time data capture and consolidation. To ensure data quality, on top of on-site supervision, voice recording, screen capturing and camera surveillance were used to monitor the interviewers' performance.
- 2.2 To minimize sampling bias, telephone numbers were first drawn randomly from the residential telephone directories as "seed numbers", from which another set of numbers was generated using the "plus/minus one/two" method, in order to capture the unlisted numbers. Duplicated numbers were then filtered, and the remaining numbers were mixed in random order to produce the final telephone sample.
- 2.3 Target respondents of the study were Cantonese-speaking population of Hong Kong of age 15 or above. When telephone contact was successfully established with a target household, only one qualified person from the household was selected using the "next birthday rule". If the selected subject was aged below 18, the interviewer first introduced the survey to his/her parent or guardian and sought his/her consent before interviewing the subject.
- 2.4 To test the validity of the questionnaire and the time required to complete the interview, a pilot test was conducted between January 6 and 7, 2009, and a total of 20 local citizens of age 18 or above were interviewed. Both the length and some wordings of the questions were slightly fine-tuned according to the comments and results collected from this pilot study.
- 2.5 The official fieldwork was conducted during the period of January 14 to 22, 2009. A total of 1,531 qualified local citizens were successfully interviewed. The overall response rate was 64.3% (Table 2), and the sampling error for percentages was less than 1.3%. In other words, the sampling error for all percentages was less than plus/minus 2.6% at 95% confidence level.

- 2.6 To ensure representativeness of the findings, the raw data collected have been weighted according to provisional figures obtained from the Census and Statistics Department regarding the gender-age distribution of the Hong Kong population in mid-year 2008. All figures in this report are based on the weighted sample.

III Research Findings

The key findings of the survey are summarized below. Cross-references could be made with the frequency tables listed in Appendix 2. It is noteworthy that the figures in the text are rounded up to the nearest integers, whereas for figures with the first decimal being “5”, the second decimal place will also be considered to decide if the rounding-off is deemed appropriate.

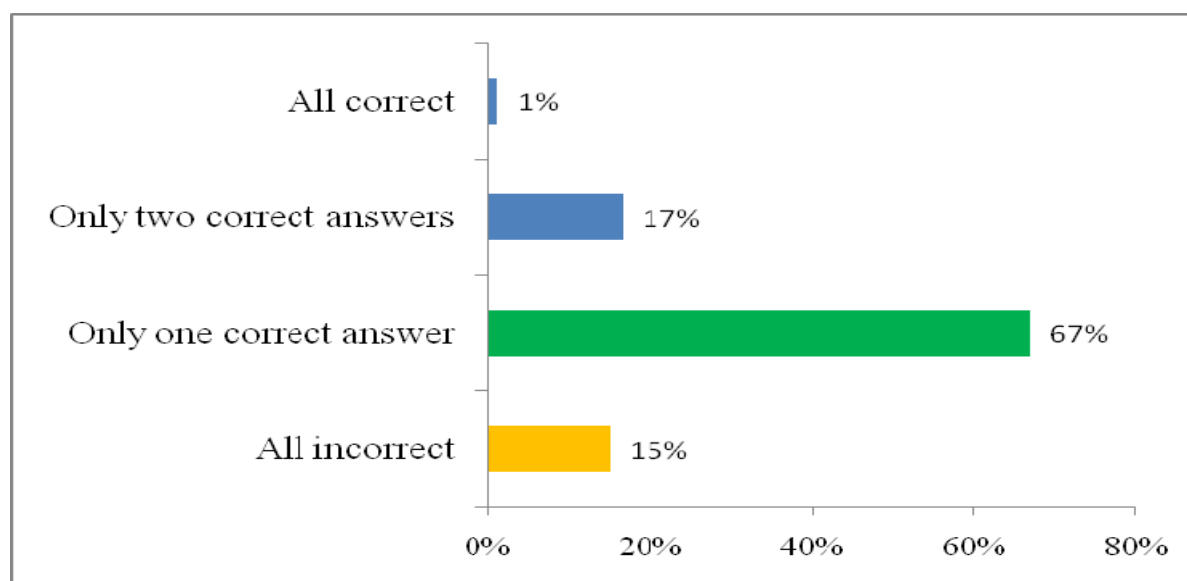
- 3.1 The survey began by gauging the respondents’ general knowledge of the COIAO. After the interviewers briefly introduced the existing definition for “articles” under the COIAO, all respondents were asked, based on their knowledge, for articles classified as “obscene” and “indecent”, to what age groups of persons they could be published? Results showed that 71% of respondents wrongly believed that articles classified as “obscene” could be published to persons of age 18 or above. Only 25% recognized that these articles were prohibited from publication to anybody. As for the “indecent” articles, 71% recognized that they were restricted to be published to persons of age 18 or above only, while 21% wrongly thought that they were prohibited from publication to anybody. Summing up, only 13% of the overall sample could answer both questions correctly, but more respondents (15%) answered both questions wrongly (Tables 3 to 5).
- 3.2 The survey continued to ask if “films for public exhibition”, “television broadcast” and “radio broadcast” were under the regulation of the COIAO. Results revealed that 8% respondents knew that “all three” of the abovementioned items were not under the COIAO’s regulation. 77% wrongly believed that “television broadcast” was included, 74% mistook “films for public exhibition”, and 69% wrongly thought “radio broadcast”, was under the COIAO’s regulation. A small proportion of respondents expressed no idea (5%; Table 6).
- 3.3 According to the results of the first three questions, respondents’ knowledge level of the COIAO could roughly be categorized into three types – 1) those who gave two to three correct answers were regarded as “more knowledgeable”, accounting for 18% of the total sample; 2) those who gave only one correct answer as “fairly knowledgeable”, taking up 67%; and 3) those who failed to give any correct answer as “less knowledgeable”, amounting to 15%. Although such a classification may not

be able to precisely reflect the respondents' knowledge with regard to the COIAO, it bears certain reference value when used as a variable to cross tabulate with other opinion questions. It should be noted that, since only a very small amount of people had answered all questions correctly, they were not singled out but also grouped under the "more knowledgeable" category.

Summary Table 1 Knowledge of the definition of "obscene" and "indecent" articles and the regulation area of the COIAO (Base = 1,531)

	<i>Frequency</i>	<i>Percentage</i>
All correct	18	1.2%
Only two correct answers	255	16.6%
Only one correct answer	1,028	67.1%
All incorrect	230	15.0%
Total	1,531	100.0%

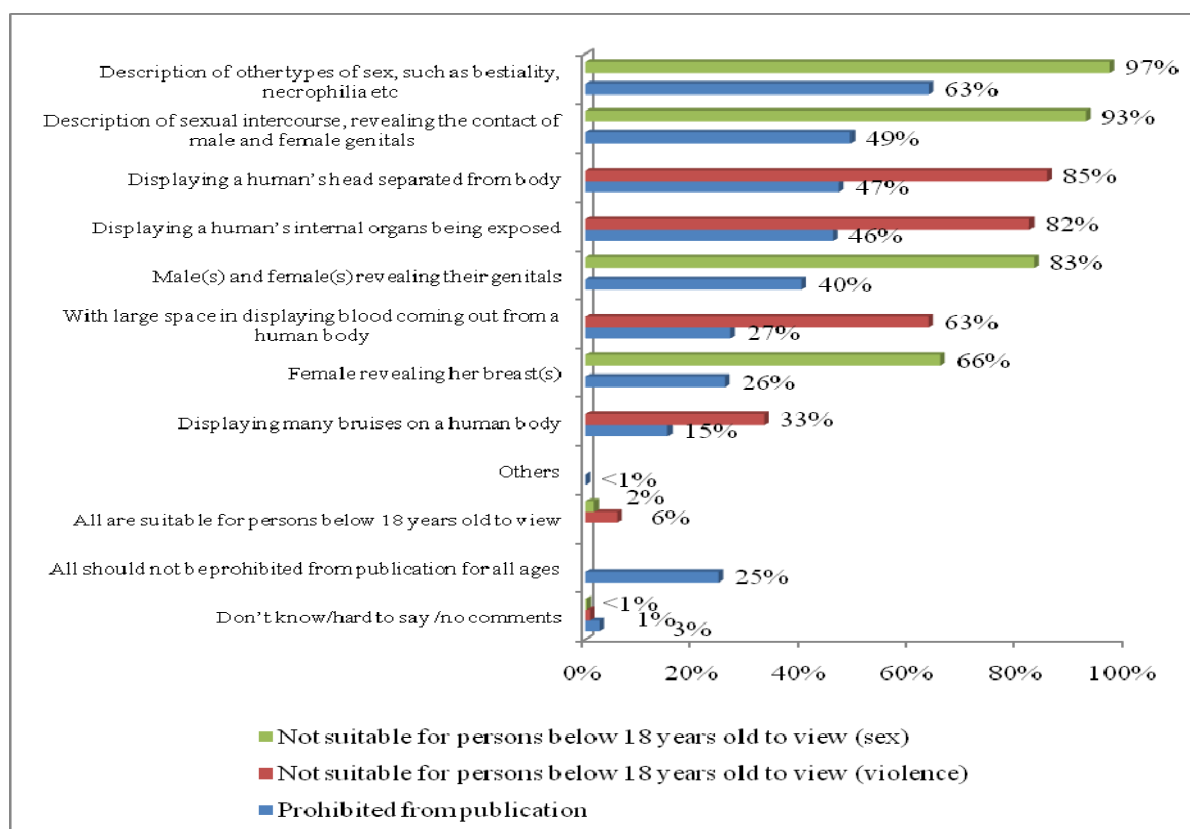
Summary Chart 1 Knowledge of the definition of "obscene" and "indecent" articles and the regulation area of the COIAO (Base = 1,531)



3.4 When asked if there was a need to regulate all published articles by law in Hong Kong, the majority of the respondents confirmed such a need (80%) while nearly 20% said "no such need" (18%). On the other hand, 2% of the respondents had no idea (Table 7).

- 3.5 As for the classification of articles related to sex, a landslide majority of the respondents considered photographs or pictures with description of “other types of sex, such as bestiality, necrophilia, etc.” and “ sexual intercourse, revealing the contact of male and female genitals” **not suitable for persons below 18 years old to view**. The corresponding percentage was 97% and 93%. Besides, 83% and 66% respectively considered photographs or pictures with “male(s) and female(s) revealing their genitals” and with “female(s) revealing her/their breasts” not suitable for persons below 18 years old to view, while only a very small amount of respondents (2%) considered all items suitable for persons below 18 years old to view (Table 8).
- 3.6 As for the classification of articles related to violence, over 80% of respondents considered photographs or pictures that “displaying a human’s head separated from body” and that “displaying a human’s internal organs being exposed” **not suitable for persons below 18 years old to view**, with 85% and 82% respectively. Meanwhile, 63% and 33% considered photographs or pictures “with large space in displaying blood coming out from a human body” and that “displaying many bruises on a human body” not suitable for persons below 18 years old to view. Only 6% thought all of the above mentioned items were suitable for persons below 18 years old to view (Table 9).
- 3.7 Should any of the above-mentioned articles be prohibited from publication for all ages? Results revealed that the largest proportion of respondents thought photographs or pictures with “description of bestiality and necrophilia” should be **prohibited from publication for all ages**, accounting for 63% of the total sample. Items that followed, in descending order, were photographs or pictures with “description of sexual intercourse, revealing the contact of male and female genitals” (49%), “displaying a human’s head separated from body” (47%), “displaying a human’s internal organs being exposed” (46%) and those with “male(s) and female(s) revealing their genitals” (40%), each took up a percentage ranging from 40% up to 50%. Besides, approximately 15% to 25% respondents thought photographs or pictures that “with large space in displaying blood coming out from a human body” (27%), “with female revealing her breast(s)” (26%) and “displaying many bruises on a human body” (15%) should be prohibited from publication for all ages. Finally, 25% of the overall sample thought all the above-mentioned items should not be prohibited from publication at all (Table 10).

Summary Chart 2 Public views on photographs or pictures considered to be not suitable for persons below 18 years old to view [Base (sex) = 1,457; Base (violence) = 1,458] and prohibited from publication for all ages (Base = 1,455)

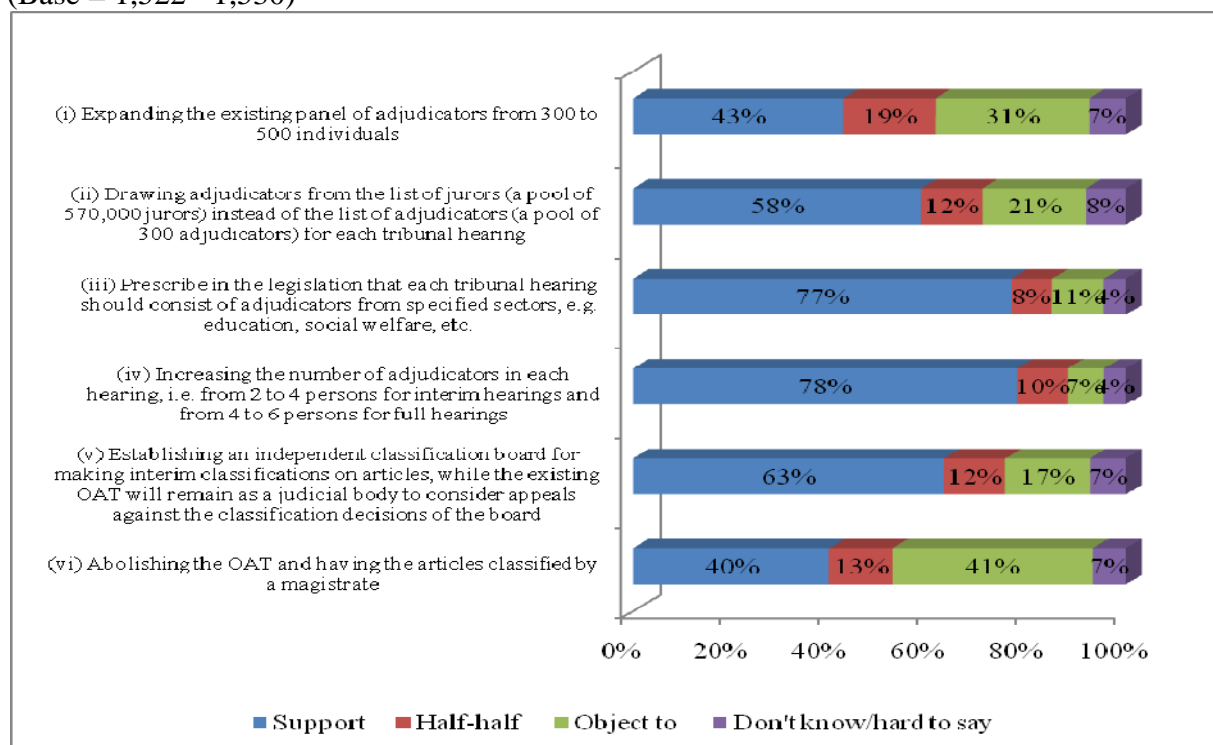


3.8 Regarding the adjudication system, over 90% of the respondents said they had “heard of” (91%) the Obscene Articles Tribunal (OAT) prior to the interview. However, among the sub-sample of those who had (1,387 respondents), only less than one-tenth thought the work of OAT had been “well done” (9%), which was significantly less than those who gave a negative assessment (33%), while almost half of this sub-sample said “half-half/average” (47%) and around one-tenth failed to give a definite answer to this question (11%; Tables 12 & 13).

3.9 After a brief description of the current adjudication system and the number of adjudicators serving on the OAT, the interviewers read out a total of six improvement proposals to gauge the respondents’ support level to each of the propositions. Findings showed that, nearly 80% were in favour of “increasing the number of adjudicators in each hearing, i.e. from 2 to 4 persons for interim hearings and from 4 to 6 persons for full hearings” (78%) and “prescribing in the legislation that each tribunal hearing should consist of adjudicators from specified sectors, e.g. education, social welfare, etc.” (77%). The proposal of “establishing an independent

classification board for making interim classifications on articles, while the existing OAT will remain as a judicial body to consider appeals against the classification decisions of the board” gained a support rate at 63%. Meanwhile, the opposition rates of the aforementioned proposals were 7%, 11% and 17% respectively. On the other hand, those who were in favour of “drawing adjudicators from the list of jurors instead of the list of adjudicators for each tribunal hearing” amounted to 58%, while 21% objected to this proposal. As for “expanding the existing panel of adjudicators from 300 to 500 individuals” (43%) and “abolishing the OAT and having the articles classified by a magistrate” (40%), the objection rates were 31% and 41% correspondingly (Tables 14 to 20).

Summary Chart 3 Support level to 6 improvement proposals of the adjudication system (Base = 1,522 - 1,530)



3.10 With regard to the regulation of obscene and indecent articles on the Internet, three quarters of the respondents wished that the government regulation would be “stricter than it is now” (75%), of which almost half of them opted for “much stricter” (47%). Another 13% considered the current regulation was “appropriate”, while only less than one-tenth wished that the regulation would be “more lenient than it is now” (8%). Excluding those who said “appropriate” and “more lenient”, the survey continued to ask those respondents how could the regulation be further tightened. Of all valid responses, the two most frequently cited ones were “improving the existing regulatory system” (21%) and “raising the penalty”

(19%), followed by “promoting the usage of computer filtering service” (8%), “stepping up the enforcement by police, increasing the frequency of online patrol” (5%), “enhancing public education and promotion” (5%), “verifying the age of Internet users” (4%), “verifying the identity of Internet users, enhancing international cooperation so as to facilitate the tracing of publishers” (2%) and “to establish a special working team to enforce the regulation by the government” (1%). Meanwhile, 44% said they had no idea (Table 21 & 22).

- 3.11 Out of the overall sample, more than 40% of respondents reported that they would spend no more than 14 hours a week on Internet (42%), meaning no more than 2 hours per day. Another 14% would use the Internet for 15-28 hours per week, and 8% for 29-42 hours per week. Those who indicated that they would use the Internet for 43-56 hours, 57-70 hours and 71 hours or more amounted to 3%, 2% and 1% respectively. The remaining 28% were non-Internet users. Excluding these non- users, about half of the users said they were “concerned” about the online publication of articles deemed unsuitable for persons below 18 years old. Those who opted for “not concerned” (26%) and “half-half” (25%) each accounted for around a quarter of the sample. At the same time, only 22% of the Internet users had used computer filtering software. As for the reasons of not using any filtering software, over half of the sub-sample said “no such need” (55%), 13% claimed “total ignorance in this software”. Other less popular answers included “lack of technical skills to operate” (3%), “to avoid the fuss” (3%), “good trust in his/her children/family, education and self-discipline being more important” (2%), “too expensive” (1%), “affecting the computer performance” (1%) and “results not ideal” (1%, Tables 24 to 26).
- 3.12 As for the classification standard set by the OAT, i.e. articles that are neither obscene nor indecent and suitable for all persons as Class I; articles that are indecent and unsuitable for persons of age below 18 as Class II; articles that are obscene and unsuitable for persons of all ages as Class III. As high as 60% of respondents considered this system “appropriate”, whereas 21% and 14% respectively thought the existing classification “inappropriate” and “half-half”. The remaining 5% had no idea (5%, Table 28).
- 3.13 If there was a practical need to focus its resources to handle certain articles first, respondents believed that TELA should prioritize as follows: “local newspapers” (30%), “local magazines” (19%), “DVDs/VCDs” (19%), “electronic game products including computer games” (17%) and finally “comic books” (6%). If

adding up the percentages of the “first” and “second” priorities, apart from swapping the orders of the first two items, the rankings of the other three remained unchanged. They were, in descending priority, “local magazines” (50%*), “local newspapers” (50%*), “DVDs/VCDs” (35%) and “electronic games including computer games” (30%) and “comic books” (19%). Conversely, if to rank by the percentages of “the fifth priority” obtained for each item, the results also matched and the orders were “comic books” (23%), “electronic games including computer games” (22%), “DVDs/VCDs” (21%), “local newspapers” (17%) and “local magazines” (9%, Table 29).

Summary Table 2 Respondents’ priority setting for different articles (Base = 1,524)

	Local newspapers	Local magazines	DVDs/VCDs	Electronic game products including computer games	Comic books
First priority	30%	19%	19%	17%	6%
Second priority	20%	31%	16%	13%	13%
Third priority	13%	16%	20%	19%	25%
Fourth priority	12%	18%	17%	21%	24%
Least priority	17%	9%	21%	22%	23%
Failed to clearly prioritize all items	3%	3%	3%	3%	3%
Don’t know/hard to say/no comments	5%	5%	5%	5%	5%

**Note: combining “first” and “second” priorities, percentage of “local magazine” was 50.3% and that of “local newspapers” was 50.0% in one decimal place.*

3.14 Overall speaking, three-quarters of the respondents expressed their wish that the penalties for breaching the COIAO should be “more severe than now” (75%). Meanwhile, 15% of respondents considered the current penalties as “appropriate”. Only 7% thought the penalties should be “more lenient than now” (Table 30).

3.15 The questionnaire ended by asking through what channels the respondents would prefer the government to publicize and educate the public about the COIAO in future. Results revealed that nearly three-quarters of the overall sample preferred “television advertisements/programmes” (74%), followed at a distance by “newspapers/magazines” (36%) and then “school talks” (34%). Those who opted for “radio advertisements/programmes”, “Internet” and “posters/pamphlets” amounted

to 23%, 18% and 10% respectively. Other less frequently mentioned channels included “community activities” (5%), “incorporated into the school curriculum” (2%), “advertising on public transportations” (1%) and “promotion in places where teenagers hang out, such as cyber cafes or amusement game centres” (1%, Table 31).

- 3.16 As shown from the cross-tabulation analysis based on gender, females were more inclined than males to believe that there was a need for Hong Kong to regulate the publication of all articles through legislation. Besides, females’ tolerance level towards articles deemed not suitable for persons under the age of 18 or for all ages was comparatively lower than their male counterparts. On the other hand, the knowledge level of the OAT was significantly higher among the males. Generally speaking, more females than males wished for stricter regulation of obscene and indecent articles on the Internet and were more concerned about displaying articles not suitable for non-adults online. As for the Internet users, a higher proportion of females than males had used computer filtering software. Also, females were more inclined than males to push the court for heavier penalties when dealing with offenders of the COIAO.
- 3.17 With respect to different age groups, relatively more respondents aged between 31-50 tended not to agree that Hong Kong society should call for legislation to monitor all publication of articles to the public as compared to the younger and older counterparts. Their acceptance level regarding the publication of sex-related articles to persons under the age of 18 was also higher than other groups in general. Nevertheless, as for whether or not the articles should be prohibited from publication for all ages, the older the respondents, the lower their tolerance level, implying stricter standards. Among all, respondents aged 51 or above were the least knowledgeable about the OAT. On the other hand, apart from the proposal “abolishing the OAT and having the articles classified by a magistrate”, the younger the respondents, the higher the support rate obtained for all five proposals tested in this study. Besides, the older the respondents, the higher the percentage seeking for stricter government regulations related to obscene and indecent articles on the Internet. Those aged between 31-50 were found to be most concerned about articles classified as unsuitable for persons below 18 years old displaying on the Internet. Overall speaking, older respondents were more in favor of raising the court penalties when dealing with obscene and indecent articles.
- 3.18 In terms of education attainment, the lower the education level, the more likely the respondents would agree that there was “a need” for Hong Kong society to have
-

legislation in monitoring all publication of articles to the public. They were also relatively stricter than the others when classifying articles that were unsuitable for non-adults or should be prohibited from publication for all ages. Those with higher education level showed significantly higher knowledge of the OAT. Regarding the various improvement proposals, except for “abolishing the OAT and having the articles classified by a magistrate”, the higher the education level, the higher the support rate obtained for the other five proposals. Those with tertiary education or above tended to think that the current government regulation of publishing obscene and indecent articles online was already “appropriate” or even hoped it could be more lenient than now. As regards the Internet users, respondents with secondary education level were more likely to have used computer filtering software. Similarly, respondents with secondary education level generally thought that the current classification system adopted by the OAT was “appropriate”. Finally, those with lower education were more likely than other education groups to ask for heavier penalties from the court when dealing with obscene and indecent article.

- 3.19 As far as occupation is concerned, cross-tabulation analysis found that the white collars were relatively more knowledgeable of the OAT when compared to other occupations as well as the non-working groups. Yet, it is also the white collars who tended to rate its work effectiveness as “poor”. Regarding the improvement proposals put to test, the student group was more inclined to agree with “expanding the existing panel of adjudicators from 300 to 500 individuals”, “drawing adjudicators from the list of jurors instead of the list of adjudicators for each tribunal hearing”, “prescribing in the legislation that each tribunal hearing should consist of adjudicators from specified sectors, e.g. education, social welfare, etc.” and “increasing the number of adjudicators in each hearing, i.e., from 2 to 4 persons for interim hearings and from 4 to 6 persons for full hearings”, whereas white collars showed more support to “establishing an independent classification board for making interim classifications on articles, while the existing OAT will remain as a judicial body to consider appeals against the classification decisions of the board” than the others. On the other hand, more blue collars tended to be in favour of “abolishing the OAT and having the articles classified by a magistrate”. Results also showed that, compared to people from other sectors, a relatively higher percentage of students considered the classification currently used by the OAT appropriate.
- 3.20 According to the cross-tabulation analysis with the respondents’ knowledge level of the COIAO, the “more knowledgeable” group was relatively stricter than the other two groups when deciding which articles were not suitable for persons under the

age of 18 or even prohibited from publication for all ages. Furthermore, the higher the knowledge level, the more likely the respondents would consider the current classification adopted by the OAT as “appropriate” and also the more likely to ask for heavier penalties from the court for the offenders of the COIAO.

- 3.21 On another front, it is found that respondents who rated the work effectiveness of OAT negatively were more likely to agree with “drawing adjudicators from the list of jurors instead of the list of adjudicators for each tribunal hearing” and “abolishing the OAT and having the articles classified by a magistrate”. In contrast, those who rated the OAT’s work effectiveness positively inclined to agree with “prescribing in the legislation that each tribunal hearing should consist of adjudicators from specified sectors”.
- 3.22 Last but not least, cross-tabulations between the Internet usage and respondents’ view on the government regulation revealed that the less frequent the usage, the more likely the respondents would call for stricter control of obscene and indecent articles online. Those who used the Internet for no more than 15 hours a week were classified as the first tier, among whom nearly 80% asked for stricter regulation. Those who used the Internet for 15 to 56 hours per week were classified as the second tier, and the corresponding figure was close to 70%. The third tier referred to those who used the Internet for more than 56 hours per week, and almost 50% of this tier shared the same view in this aspect. Finally, as shown from the cross-tabulation results, the more concerned about the online publication of articles deemed unsuitable for persons below 18 years old by law the Internet users were, the more likely they had used computer filtering software.

IV Concluding Remarks

- 4.1 This survey finds that people's knowledge of the COIAO is just fair. According to the results gathered from the first three questions of the questionnaire, 18% of the respondents answered two to three questions correctly and they can be classified as "more knowledgeable". Those who only answered one question correctly can be classified as "fairly knowledgeable", comprising 67% of the sample. Those who could not give any correct answer can be classified as "less knowledgeable", comprising 15% of the sample. Whether those questions are too difficult or too easy is, of course, a subjective matter. Nonetheless, dividing the respondents into three groups helps to analyze the reasons of their opinions.
- 4.2 The consensus among the respondents is that Hong Kong society needs legislations to monitor the publication of articles. Over 80% of the respondents agreed that photographs or pictures with descriptions of bestiality, necrophilia, revealing the contact of male and female genitals, with male(s) and female(s) revealing their genitals, those displaying a human's head separated from body, and those displaying a human's internal organs being exposed were not suitable for persons aged below 18 to view. Moreover, about two-thirds consensus is struck that photographs or pictures With female revealing her breast(s), or those with large space in displaying blood coming out from a human body were not suitable for persons aged below 18 to view.
- 4.3 As for articles which should be banned for all ages, only photographs or pictures with description of sexual intercourses related to bestiality and necrophilia got the support of two-third majority. Those revealing the contact of male and female genitals, displaying a human's head separated from body, and those displaying a human's internal organs being exposed got about 45% to 50% support.
- 4.4 This survey shows that most people are aware of the existence of the OAT, but they generally regarded its effectiveness to be "neither good nor bad". Among the six proposals for improving the adjudication system listed in the questionnaire, people seemed to be very 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% supported the establishment of a new independent adjudication system, and the replacement of

adjudicators by jurors. It would be a difficult task to blend together these rather unrelated and even contradicting suggestions.

- 4.5 As for the regulation of Internet, three-quarters of people urged the government to step up its regulation, mainly to improve the existing regulatory system and to increase the penalty. Survey results also show that around 70% of the respondents had the habit of using the Internet. Although they were rather concerned about the Internet displaying articles which were classified by law as not suitable for persons of age under 18, only about 15% of the sample used computer filtering software.
- 4.6 As for other more general questions, research results show that three-quarters of the people wished the court to increase the penalty for violating the COIAO, and that the government would educate the public through the television. Sixty percent considered the classification standards set by the OAT to be “appropriate”. Most said TELA should handle local newspapers first, followed by magazines and DVDs/VCDs.
- 4.7 In terms of demographic analyses, women were generally more inclined to ask for more regulations and heavier penalties than men, but their awareness of the OAT’s work was relatively lower. In terms of age, those between 31 and 50 were more open to different kinds of articles, and they were more concerned about problems over the Internet. Older respondents tended to ask for heavier penalties from the court, while their knowledge of the OAT was the lowest, but their rating of its effectiveness most negative. As for education attainment, those with lower education attainment tended to ask for more regulations and heavier penalties. Those with higher education attainment were more familiar with the OAT, and rated its effectiveness more negatively, but tended to think the current government regulation of the Internet was already adequate. In terms of occupation, white collars were more familiar with the OAT, but rated its effectiveness more negatively. Moreover, respondents who were more familiar with the COIAO seemed to have stricter standards in classifying different articles. Those who rated the effectiveness of the OAT more poorly tended to ask for greater changes to the existing adjudication system. The less frequent Internet users tended to ask for more government control on obscene and indecent articles on the Internet.

