

AGAINST CHILD ABUSE
RESPONDING TO CONSULTATION PAPER
ON
PROPOSED LEGISLATION FOR THE
PREVENTION OF CHILD PORNOGRAPHY

22 November 2001

1. The Against Child Abuse (ACA) sent in our response to the government on 28 December 1998 and 23 June 2000 regarding:
 - (a) The Proposed Legislation Against Child Pornography and Child Sex Tourism, and
 - (b) Protection of Youth from Obscene and Indecent Materials, Consultation paper on the 2000 Review of the Control of Obscene and Indecent Articles Ordinance.

Our views reflected in these papers still stand valid and we are enclosing them for your reference (Appendix I and II).

2. We support an open recognition that these problems existed in our community and formulating legislation in this regard will be a positive and necessary step forward in implementing our obligations under the Convention. However, unless a recognized channel is made available for such cases, data and information to be centralized and analyzed we will not be able to conclude upon the prevalence of such incidents in Hong Kong.
3. We support the spirit behind such proposed change of legislation as reflected in the consultation paper and we think that the enactment of the proposed legislation will enable the HKSAR to comply with the ILC 182.
4. Regarding the definition of child pornography we propose that one should not confine to images or pictures or only visual depictions. The posting of stories describing and detailing sexual practices involving children are as harmful.
5. We propose one standard in the definition for pornographic depiction involving children under 18 instead of adopting a two-tier definition. We urge for strong protection to all children under 18 and we consider the 16-18 equally vulnerable.
6. We support the spirit of making mere possession of child pornography an offence since possession indicates condoning the production of such materials. The rights to possess adult pornography still exist and thus no violation of human rights in this perspective is perceived. However, we are concerned that innocents are adequately protected through the implementation of the legislation in the future. Precise and up-dated guidelines must be prepared with the involvement of necessary experts and views of children should be taken into consideration whilst appropriate.
7. Efforts must be devoted in prevention and education and resources must be allocated to make this possible. Empowerment of children and community to understand, report and prevent the problem is essential.
8. Services in the recovery of sexually exploited children must be strengthened and relevant professionals must be trained to provide a competent service.
9. Pornography through the Internet has become more and more of a concern and yet the

community has not received adequate support to handle the problem. We welcome the government to research the problem, to create a central focal point to receive such reports and referrals in order to reflect prevalence and analyze trends and profiles.

Prepared by: Priscilla Lui

Responding to the Consultation Paper
On
Proposed Legislation Against Child Pornography and
Child Sex Tourism

1. The Against Child Abuse welcomes and supports the Consultation on these 2 important areas adversely impacting upon children's lives if the Consultation reflects the following:
 - a. An open recognition that these problems existed in our community.
 - b. We would like to join the international efforts to define them as serious crimes.
 - c. We would like to attach comparable penalties to sanction those committing such offences.
 - d. We consider such acts as equally undesirable in our local context as when they are committed in other countries.
 - e. We urge for international cooperation to prohibit and prevent such acts from happening.
2. In general, the paper is too brief and the consultation period is too short to allow thorough understanding of the issue and sensible recommendations for improvement.

Significant information such as the following are lacking and thus may block realistic feed back for improvement:

- a. Background section on Why Consulting Public Views at this time regarding these two issues. Whether there are and what are some of the triggering factors leading to the review and the proposed legislation?
- b. Extent of the problem:
 - Informal figures from various source reflected a much wider coverage than that the consultation paper cited in page 2 para 5.
 - 500 magazines
 - 405 floppy disks
 - 138 photos
 - 62 VCDs
 - 53 video tapes
 - 31 bulletin board system
 - one with 1,295 active users created by HK based pedophiles
 - 30 postings to a news group
 - 21 websites
 - 10 e-mail address
 - 4 CD-Roms
 - 2 Gigabytes
 - Could the Security Bureau clarify if such figures reflect the extent of the problem?
 - Implications and impact of the problem beyond statistics alone can tell were not discussed.
- c. Limitations of existing definition, legislation and practices were not discussed at all. This discussion is essential to reflect the urgency of a new set of definition and legislative improvements and whether the proposed definition and legislations are going to solve the problems.
- d. Overseas practices were quoted but not specifically discussed and analyzed to reflect upon strength as basis for improvement.
- e. To use One para to discuss about the Internet is far too simplistic to cover an extensive problem as such.
The threat of child pornography on the internet is not limited to the posting and

exchange of images of child pornography alone. The posting of 'stories' describing and detailing sexual practices involving children and adults are as harmful to the young users.

The difficulties involved for investigators to track the sending and receiving of child pornography were not mentioned and thus ways to tackle such difficulties were not explored.

The numerous problems created by advances in computer technology regarding child pornography is not discussed and thus ways to tackle them are not explored.

- f. The tackling of Child Sex Tourism with two short paragraphs is astounding. The lack of thorough discussion of 'extra-territorial legislation' and joint international efforts to combat such crimes reflected the lack of efforts and sincerity attached to this process of consultation.

3. Despite the fact that the consultation paper is brief and incomplete, we would like to present the following recommendations to the improvement of these 2 areas:

- a. Comprehensive Central Data Collection system to reflect prevalence and trace trends and profile, to avoid duplication in registration or cases missed.
- b. Such Data collected to be carefully studied and analyzed to understand characteristics, trends and needs, to improve methods of management and prevention.
- c. Definition to include 'audio and visual' materials. The quoted definition in page 2 para 6. (a) only focuses on 'images' that 'shows' and who 'looks like'. Audio materials are excluded under this definition.
- d. Attention must be given to:
 - cultural differences when interpreting child pornography,
 - distinction between child pornography and child erotica essential,
 - include sexual exploitation for commercial and non-commercial; for profit making and non-profit making purpose.
 - guidelines must be laid down to assist the interpretation and decision of what types of images are illegal.
- e. In principal we support the proposed legislation under page 2, para 6. (c),(d),(e).Regarding (b), we are particularly concerned about practical, human and efficient enforcement of such legislation and that infringement upon individual rights and privacy will be guarded. We understand that a comprehensive study on extra-territorial laws in eleven countries by ECPAT will be published in 1999 and such experience and information must not be overlooked.
- f. We support not only legislative changes but a comprehensive public campaign to include:
 - Empowerment of the community at large, children in particular, to understand the problems, their definition, legislation, service delivery system and their impact on children and families.
 - To start prevention early and to acquire an extensive coverage to include all spectrum in the community, professionals and public alike.
 - To identify and stop those who exploit and prohibit it from re-occurring.
 - To provide treatment and therapy for the victims and perpetrators, and help them to reintegrate into the community.

Prepared by: Priscilla Lui
Director

Date :28 December 1998

Against Child Abuse
Responding to
Protection of Youth from Obscene and Indecent Materials
Consultation Paper on
The 2000 Review of the Control of Obscene and Indecent
Articles Ordinance

1. The Against Child Abuse (ACA) supports the view that there is a need to protect children and young people from exposure to indecent articles. We think that the existing Control of Obscene and Indecent Articles Ordinance (COIAO) must be amended to reflect the following:
 - a. An open recognition of the seriousness of the problem in our community
 - b. A practical and up-dated definition of the problem to facilitate the problems identification, interpretation and prevention.
 - c. Comparable penalties be attached to sanction those committing such offences.
2. The existing COIAO seeks to restrict the publication circulation and display of such materials in a very passive and reactive way.

We propose to be more proactive and decisive by requiring compulsory submission for classification and censorship.

3. The definition of Obscene and Indecent Materials must be compiled and reviewed with extensive research and public consultation. The definition should be reviewed on a periodic basis.
4. The on-going involvement of young people in defining and comprehending the problem is essential. There should be special efforts dedicated to consult and reflect their views in policy and practice. A group of carefully chosen young people could be recruited under OAT. Their views and concerns in these endeavors can be reflected to OAT to facilitate their professional and prompt decision.
5. The proposal (summary of proposals 2.3) to provide additional guidance to the OAT for determining whether an article is obscene or indecent is essential. The existing guidance to Tribunal (Appendix 3: section 10 of the COIAO) is too general. There should be elaboration re the standards of morality, decency and propriety that are generally accepted by reasonable members of the community. Our proposal 3 & 4 may help to reflect such standards and definition of concerns.
6. Re 2.8 & 2.10 (ii) & 2.12 we propose that funding be allocated on a regular basis to enable the implementation of such prevention. The government should not solely rely on the good will of NGO's who may be deprived of resources and whose coverage may thus be limited and piecemeal.
7. A Comprehensive Central Data Collection System be established to reflect prevalence, trends and profiles. Such data be studied and analyzed to improve definition, identification, sanctions and prevention.
8. Regarding implementation, we are particularly concerned about practical, human and efficient enforcement of such legislation and that infringement upon individual rights and privacy will be guarded.

9. We are also very concerned about the progress of the proposed Legislation against Child Pornographic and Child Sex Tourism. The consultation ended 31 Dec 1998 but we have heard no further news ever since.

Submitted by : Priscilla Lui
Director

Date : 23 June 2000