Citizen media action and the transformation of indecency and obscenity censorship in Hong Kong

By Lam Oi Wan

In October 2008, the Hong Kong government released a consultation document on the Amendment of the Control of Obscene and Indecent Articles Ordinance (COIAO, also called 'the Ordinance' below), focusing on "new media". In this document, the government puts forward suggestions like control over peer-to-peer (P2P)[1] communication and mandatory filtering at the Internet service provider (ISP) level to track login user's age.

This document emerged in a climate that includes a series of confrontation among Internet users, conservative civic groups and government since early 2007. The debate, initially, was on the implementation of a censorship system, its negative impact towards freedom of expression and reform. However, after a dramatic twist in early 2008 when photos showing local famous pop stars having intercourse circulated on the Internet, the debate was hijacked by conservative forces intent on extending government control over the Internet and peer to peer communication. Though the consultation document does not specifically points out mobile phone, it will also affect mobile communication in the future.

From the following brief overlook of the recent history of indecency and obscenity regulation in Hongkong, we will see a reconfiguration of local civic forces on issues related to morality, youth protection, sex and sexuality, press freedom and human rights in a wider colonial and post-colonial political context.

Origins: a native movement for obscenity regulation

Hong Kong, now a Special Administration of the People's Republic of China, was a colony of the United Kingdom (UK) from 1842 to 1997. The COIA was introduced during the British colonial period, but unlike other repressive regulations of the era introduced 'from above', the COIA was the outcome of a local movement of social elites. A coalition of Christians, teachers and social workers successfully pushed for this ordinance in the 1970s, which was a relatively progressive period in Hong Kong's colonial history. This coalition of civic forces, with a pervasive presence of Christianity-related social institutions, came into being after the 1966 and 1967 riots in Hong Kong[2] , mobilized by the colonial government for carrying out a series of social reforms, in particular in education and youth-related social development in order to relieve social and political discontent and conflict (Hong Kong Government Printer: 1967). In fact, the Christian-related social and education institutes have successfully helped the colonial government to discipline its citizenry to conformity.

At the same time, the politically charged anti-colonial protest movement of the 60s was gradually transformed into a variety of cultural movements, such as the Chinese language movement (1968-1974), demanding that the government respected Chinese culture. Government-sponsored social institutions such as social worker organizations, and social movement organizations such as the teacher's union, converged into a pro-censorship civic force pushing through the Objectionable Publications Ordinance in 1975, against violent comics, and the COIAO in 1987, against pornography.

When the introduction of COIAO was discussed in the Legislative Council in February 1987, its supporters took a strongly moralistic stance referring to Chinese and Christian values to justify its introduction. Legislator Cheong Kam-Cheun stated:

> "Pornography is false art and comes under mental adultery in sexual behaviour. There is an

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1 Peer-to-peer (P2P) is a network communication technology. Individual user serves as a node for delivering information, which results in a de-centered information dissemination structure. Commonly used P2P tools are e-mail, Bit Torrent, online chatting devices, and etc..

2 The Hong Kong 1966 Riots was a series of disturbances that took place over three nights on the streets of Kowloon. They started as peaceful demonstrations against the British Colonial government's decision to increase the fare of the Star Ferry's foot-passenger harbour crossing by 25 percent. Most of the protesters were young people. The 1967 Riots were started up by pro-communist leftists in Hong Kong, who turned a labour dispute into large scale demonstrations against the British colonial rule.

appropriate Chinese saying, if one commits adultery with others' wives and daughters and enjoys it, how would one feel if his wife and daughters committed adultery with another man? Well, how would pornography publishers feel if their wives and daughters run naked in the streets? This is the acid test... In conclusion, may I borrow some wisdom from the Lord 's Prayer and say Lead our younger generation not into temptation by pornography and deliver them from the evils of sexual crimes, venereal diseases, unwanted babies and the wrong idea of our fairer sex, Amen!" (Hong Kong Legislative Council: 1987)

Another local legislator, Leen Cheong, referred to Confucian values for supporting the introduction of the Ordinance:

"I support the Bill which reflects the community's concern to protect the moral well-being of juveniles to a reasonable extent and also reflects the community's desire to uphold the Confucian concept of a well-ordered society" (Hong Kong Legislative Council: 1987).

Bearing in mind such cultural difference, and attempting to show due respect for Chinese cultural values, the colonial government avoided defining "indecency" and "obscenity" in the COIAO. Instead, whether or not an article in a print publication is indecent or obscene depends on

1. the general moral standard of the public
2. the overall effect of the article
3. the audience's background and age group, and
4. the intent of the article.

The Ordinance also gives exemptions to articles related to art, academic and public interest, etc. Since the members of the Obscene Articles Tribunal (OAT, or 'the Tribunal' below) are to advise on the moral standards of the community, they are to be drawn from different backgrounds and interests, representing a wide cross-section of the community.

Colonial Transition

The colonial Hong Kong government started to prepare for the handover to China in the early 1980s. As a result, the 90s were marked by a series of human rights reforms. The Bill of Rights was adopted in Hong Kong in 1991 and the colonial government amended the Public Order Ordinance and Association Ordinance respectively in 1992 and 1995 to protect citizens' freedom of association and assembly. The government also amended the COIAO, requiring the Tribunal to specify the indecent and obscene parts of the article when conducting interim classification and increasing the number of adjudicators in the appeal session from 2 to 4.

However, the Chinese government opposed the law amendment and on July 1, 1997, soon after Hong Kong was handed over to the People's Republic of China, the local provincial legislation body declared the establishment of the government of Hong Kong Special Administrative Region (SAR) and the restoration of the Public Order Ordinance and the Association Ordinance. Since then, local human rights groups' have been monitoring the implementation of the above two ordinances for violations of rights of association and assembly. On the other hand, social workers and Christian groups continue to pressure the SAR government for tightening control of indecent and obscene articles, even though such control has a great potential for violating citizens' rights to freedom of press and expression.

In 2000, in response to the pro-censorship forces, the SAR government put forward a policy proposal regarding COIAO. Proposed measures included: 1. Newspapers would be required to have an identification mark or warning printed on every page; 2. new regulations for censoring the Internet would be introduced, and 3. more frequent police patrols would be conducted in the streets and in the district level communities. However, as a result of a half million people protesting against the legislation of Article 23 (a series of state security laws), the SAR government was forced to withhold all its legislation work. Still, the government administrative body succeeded at implementing some measures that do not require legislative amendments, such as increasing the pool of adjudicators, setting up education funds for non-governmental organizations (in practice, socially conservative ones), encouraging the public to file complaints and promoting internet filtering. Instead of working towards a public consensus on the implementation of COIAO, the government tried to 'manage' civil society by allocating resources to pro-censorship groups and 'subcontracting censorship' to non-governmental

organizations (Hong Kong Audit Commission: 2004).

In 2004, the Audit Commission, a government department for evaluating the efficiency of administrative bodies, found a 64% drop in prosecution under the COIAO in 2003 and criticized the lack of efficiency in the Television and Entertainment Licensing Authority's (TELA'a) work. It also found the composition and attendance of adjudicators failed to represent the general public and that only 1% of the adjudicators belonged to the age group 21-30 (Hong Kong Audit Commission: 2004). In response to the audit report, TELA recruited around 200 adjudicators between 2004-2006 and encouraged pro-censorship groups to help monitor publication and the Internet by filing complaints.

However, politicians were not satisfied with the TELA's arrangement. Fred Li, an elected legislator of Catholic background from the Democratic party, continued to criticize the lack of efficiency of the administrative body over censorship practices. He pointed out that in the latter half of 2005, complaints against publications made by parents and social workers substantially increased whereas the number of articles classified as Indecent and Obscene articles substantially decreased (Hong Kong Legislative Council: 2006). The pro-censorship force found the conviction rate of indecent and obscene articles too low even though the TELA explained the decrease was due to the effective police crack down of the selling of indecent and obscene material (Hong Kong Legislative Council: 2006). It was also likely that the administration was overloaded with non-legitimate complaints, however, due to the political pressure of the "people's representative", the administration had to increase its efficiency by receiving complaints on indecent and obscene materials circulating on the internet.

From Print to Internet Censorship

The COIAO was originally designed for print publications. For the Internet, the Hong Kong government, after consultations with the industry, adopted a public-private co-regulation regime in 1997. It did so for several reasons. First, monitoring the vast volume of information on the Internet would be administratively difficult for a governmental agency, and second, the government aimed to establish Hong Kong as an Internet hub in the Asia-Pacific region. In October 1997, a code of practice was promulgated, jointly developed by the government and the Hong Kong Internet Service Providers Association (HKISPA) based on the COIAO. In a public consultation document on the review of COIAO in 2000, the government considers limiting the ISP's liability if they "were not aware of, or hand reasonable grounds for believing not to be obscene or indecent" (Hong Kong Legislative Council: 2000). Under the 1997 code of conduct agreement, the ISP must remove or block access to obscene articles upon notification. This leaves ISPs and website owners well protected, while individuals become the vulnerable target of censorship. There are more and more cases when ISP and website owners disclose user private information to the police during investigation without asking for a court order, nor noticing their users.

In January 2007, the police arrested and prosecuted an Internet user for posting a number of hyperlinks[3] pointing to overseas pornographic photos in a local adult forum. The case is disturbing as it extends the definitions of 'distribution' and 'publishing' from 'uploading a text or image' to 'linking through hypertext code' and 'streaming'[4] even if the information sources linked to are from overseas. Adopting such wide definitions would have wide-reaching effects on all cases dealing with publication and distribution cases, both civil ones such as libel, and criminal ones such as copyright infringement.

Pro-censorship groups have transformed from pressure groups into part of the government body or sub-branches through funding, subcontracting of censorship work and the complaint system. Internet users have responded by filing complaints against the Bible (which contains stories about incest and rape which can be considered indecent under COIAO) and posting hyperlinks to indecent articles on their own blogs and Internet forums. Sexual minorities have criticized unrealistic and repressive moral judgements and rulings in censorship cases. There were also a few legal actions in challenging the practice of OAT. I myself posted an artistic nude photo from the photo sharing site flickr on local citizen media site, inmediahk.net, on May 11 2007 as an act of civil disobedience (Ah Oi 2007). In this climate of civic protest came a High Court verdict which criticized OAT classification procedure stating that "the

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3 A hyperlink is a series html code, or hypertext, for linking reference, including text, image, video from one website to another. In this case, the hyperlinks are image source code, which means the links directly grasp the photo image from a website to another one.

4 streaming is a kind of hypertext that grasps image, sound file or video from one website to another.

exemption from its duty to give reasons [for classification] has unwittingly caused the Tribunal to adopt a lax approach in dealing with its duty" (High Court: 2008).

Even though the censorship system has lost public trust, the momentum for liberal reform was disrupted by the release of pop stars' nude photos in February 2008. The scandal occupied local media's front pages for 21 days and the nude photos were circulated via overseas websites and peer-to-peer communication on the Internet. While the progressive and human rights organizations criticized the police for abuse of power in crushing the distribution of photos in a local Internet forum, conservative groups turned the issue into a moral crisis and pushed for tightening of Internet censorship.

In October, the Hong Kong government released the latest consultation on the revision of COIAO stressing the need to protect youth from unhealthy information and devoting a whole section on the need for censorship of new media, while sidetracking the need to address the arbitrary censorship system. The two most controversial suggestions are first, filtering of Internet content via a mandatory filtering system at the level of the ISP with a compulsory age sensitive login system for all internet users; and secondly, extending the control of indecency and obscene articles to peer-to-peer communication. While the Internet industry, human rights organizations, the liberal sector and active Internet users have formed a coalition against the proposal, pro-censorship civic forces collaborate with pro-establishment organizations of parents and Christian groups in demanding stricter moral control over publications and the Internet. At the point of writing, it seemed likely that the government would sponsor the pro-censorship groups for advocating filtering software.

Regulatory contestation and the role of citizens' media

The reconfiguration of oppositional political forces in Hong Kong has become more obvious in the past few months because of the contest over the new censorship system. Civic groups emerged from the riots in the 1960s, and the anti-colonial cultural movement in the 1970s were key players in pushing for social and political reform. They mobilized in particular after Deng Xiao-ping, then de facto leader of the People's Republic of China, put forward the agenda of reunification with Hong Kong in 1984. Local elites have been the major driving forces for the present indecency and obscenity censorship system from its beginning and have become more active in controlling and monitoring social morals since the enactment of COIAO in 1987. Pro-censorship NGOs have turned into a sub-branch of government after the 2000 consultation on the amendment of the Ordinance.

The human rights and sexual minority movements emerged as a new civic force in the 1990s, organizing around the introduction of the Bill of Rights in 1991 and the establishment of the Equal Opportunity Commission in 1996 for the implementation of the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, the Family Status Discrimination Ordinance and the Race Discrimination Ordinance. These new social movement groups are committed to promoting diversity and equality and fostering an inclusive society. They are highly critical towards the moralistic stance of the pro-censorship force. Since the reunification of Hong Kong with China in 1997, local progressive movements are unified in a movement for universal suffrage, but are divided in the implementation of Sexual Orientation Discrimination Ordinance. For example, in the recent amendment of Family Violence Ordinance, some elected legislators from the democratic coalition openly rejected the inclusion of gay and lesbian couples in the protection against family violence. The series of moral debates and conflicts around sexual orientation, rights to diverse sexual expression and censorship practice has eroded the democratic alliance. Indeed in the past few years, the Democratic Party has split into the Civic Party and the League of Social Democrats, and each political party has their own stand on the above moral debate.

In the latest round of contests, Internet users and citizens' media have entered the scene. Internet-based citizens' media are part of a civic movement advocating participatory democracy, free speech, social and community engagement. In the Internet era, every individual has her or his own media. When the COIAO is applied to the Internet, law enforcement is used to intimidate individual users and citizens' media while commercial publishers are largely protected. The Internet-using public hence joins force with human rights activists and sexual minorities for an anti-censorship movement with popular strategies, such as online civil disobedient acts and political spoofs. In addition, minority groups see the potential of online media as a public platform to cultivate more diverse expressions about body and sex, and to make visible the diverse values of the marginalized social groups (lower class, youth, sexual and

ethnic minorities) against the homogenizing and hegemonic Christian or Chinese value systems operating in the censorship system.

At the time of writing, the political reconfiguration is still emerging. The present round of consultations on the COIAO will be completed in January 2009 and a more concrete proposal will be released around autumn 2009. We can see that the pro-Beijing political groups, who were victims of political censorship during the colonial period since 1949, are trying to win the support from the conservative Christian by acting as the hardcore in advocating censorship. Such interaction and reconfiguration of pro- and anti-censorship forces in the coming years will set the political tone for the Legislative election campaign which has a significant impact on the universal suffrage movement in 2012 and 2017.

The obscenity censorship mechanism in Hong Kong began in the 1960s with a colonial project for forcing the rebellious youth in the 1960s to conformity and then turned into a moral debate in the 1990s between the old civic groups and new minority rights group. It is likely to be further politicized in the near future as the making of a conformed and patriotic citizen has again become a major agenda in the post-colonial era. The control over indecent and obscene articles implies a governing technique that controls the behaviour and thought of individuals. In the Internet era, when individual thinking and action are mediated by new media, once a censorship mechanism has been installed, it can be applied to intimidate, monitor and tame every individual into an ideal citizen according to the standard of ruling elites, which is already the practice in the People's Republic of China. Citizen resistance to this kind of control cannot be limited to a rejection of censorship mechanisms based on technical reasons and a conservative image of an ideal citizen. The issue is to cultivate an attitude of tolerance and a culture of open debate around sex and morality. The coming together of minority rights groups and active internet users against censorship will open up a new dimension for a social movement.

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