

**Code of Practice**  
**Practice Statement on Regulation of Obscene and Indecent Material**

**Preamble**

1. To protect young people and public morals, this Practice Statement recommends guidelines for Members of the Hong Kong Internet Service Providers Association (“HKISPA”) to follow in their provision of services insofar as the regulation of obscene and indecent material transmitted on the Internet is concerned.
2. For the avoidance of doubt, this Practice Statement does not absolve any Member of the HKISPA from the relevant legislation (including the Control of Obscene and Indecent Articles Ordinance (“COIAO”) (Cap. 390) and the Telecommunication Ordinance (Cap. 106)) currently in force in Hong Kong, and its obligations under the terms of the Public Non-Exclusive Telecommunications Service License granted by the Communications Authority.
3. This Practice Statement shall be reviewed as and when necessary.

**Terminology**

4. For the purpose of this Policy Statement,

“enforcement agencies” means government agencies responsible for the enforcement of the Control of Obscene and Indecent Articles Ordinance, namely the Customs and Excise Department, Hong Kong Police Force (HKPF) and Office for Film, Newspaper and Article Administration (OFNAA);

“Member” means a Member of the HKISPA;

“URL” stands for “Uniform Resource Locator” which is the address of a file of content on the Internet;

“Web Page” means a file of content accessible on the World Wide Web by a single URL;

“World Wide Web” means the network of content accessible on the Internet using the Hypertext Transfer Protocol (“http”).

## **Conduct**

5. Members will take reasonable steps to prevent users of their services from placing on the Internet, or transmitting using the Internet, material likely to be classifiable as Class III (obscene) under the COIAO. A summary of main provisions of the COIAO is at Appendix I.
6. Members will advise subscribers that access to the Internet by a person under the age of 18 years needs to be supervised by a person over the age of 18 years.
7. Members will inform their users that material likely to be classifiable as Class II (indecent) under the COIAO should not be published or made available to persons under the age of 18 years.
8. Members will advise local content providers and distributors that all material put up by them which are likely to be classifiable as Class II (indecent) under the COIAO should be accompanied by the following on-screen warning on the Web Page before the content can be viewed:

**WARNING : THIS ARTICLE CONTAINS MATERIAL WHICH MAY OFFEND AND MAY NOT BE DISTRIBUTED, CIRCULATED, SOLD, HIRED, GIVEN, LENT, SHOWN, PLAYED OR PROJECTED TO A PERSON UNDER THE AGE OF 18 YEARS.**

警告：本物品內容可能令人反感，不可將本物品派發、傳閱、出售、出租、交給或出借予年齡未滿18歲的人士或將本物品向該等人士出示、播放或放映。

9. A Member shall be regarded as having complied with paragraph 5 above if :
  - (a) the Member has informed its users that they shall not place on the Internet or transmit material likely to be classifiable as Class III (obscene) under the COIAO;
  - (b) when a Member becomes aware that a user has placed on the Internet or transmitted using the Internet material likely to be classifiable as Class III (obscene) which remains at a Web Site or other content database within its control, the Member :

(i) promptly blocks access to the Web Site or database which contains offending material;

(ii) promptly informs the user that the user's conduct may constitute an offence under the COIAO and if the user is a subscriber, such conduct is a breach of the subscriber's service conditions;

(iii) promptly cancels the account of any subscriber that repeats offending conduct despite being informed that the subscriber's conduct may constitute an offence under the COIAO and is a breach of the subscriber's service conditions;

(iv) reports to the relevant enforcement agencies, with a copy to the HKISPA, on action(s) taken in accordance with paragraph 9b(i) and/or b(iii) above.

10. When a Member becomes aware that a user has placed on the Internet or transmitted using the Internet material likely to be classifiable as Class II (indecent) without putting up a warning notice in accordance with the requirements stipulated in paragraph 8, the Member shall:

(a) promptly advise the user to place a warning notice in accordance with the requirements stipulated in paragraph 8;

(b) promptly inform the user that the user's conduct may constitute an offence under the COIAO and if the user is a subscriber, such conduct is a breach of the subscriber's service conditions;

(c) promptly cancel the account of any subscriber that repeats offending conduct despite being informed that the subscriber's conduct may constitute an offence under the COIAO and is a breach of the subscriber's service conditions;

(d) report to the relevant enforcement agencies, with a copy to the HKISPA, on action(s) taken in accordance with paragraph 10(a) and/or (c) above.

11. Members and the HKISPA may seek the assistance of OFNAA if they have doubt about the classification of material on the Internet.

12. Members will make available a URL link to material which is of use in educating Internet users, parents and guardians on the use of filtering software (including a list

of such software) to help protect persons under the age of 18 years from Class III (obscene) or Class II (indecent) material on the Internet.

### **Complaints Handling Procedures**

13. Complaints on presence of Class III (obscene) or Class II (indecent) material on the Internet may be lodged with Members and the HKISPA by members of the public.

14. A Member should refer such complaints to the relevant enforcement agencies upon receipt, with a copy to the HKISPA. The Member will also act promptly and conscientiously on the complaints with a view to resolving them in compliance with the COIAO, and will notify the relevant enforcement agencies in writing as soon as the complaints have been settled (including the means of settlement).

15. Where a complaint is made by a member of the public directly to the HKISPA, the HKISPA will refer the complaint to the relevant enforcement agencies and the Member being complained. The Member will, upon receipt of the complaint, act promptly and conscientiously on the complaint with a view to resolving it in compliance with the COIAO, and will notify the relevant enforcement agencies in writing as soon as the complaint has been settled (including the means of settlement).

16. Where a complaint is made by a member of the public against a Member who has failed to act on a complaint or resolve a complaint in compliance with the COIAO, the HKISPA will take on the complaint and act promptly and conscientiously with a view to resolving it in compliance with the COIAO. The HKISPA will consider the full nature and extent of the complaint and will consult the Member concerned. The Member shall co-operate fully with the HKISPA. The HKISPA shall be entitled to consult relevant parties prior to determining the complaint. The HKISPA shall be responsible for communicating its determination of the complaint to the Member and the complainant.

17. When the relevant enforcement agencies receive complaints referred by the HKISPA and/or its Members, they will handle the complaints promptly in accordance with their relevant complaint handling procedures.

18. Nothing in paragraphs 13 to 17 above will preclude the enforcement agencies from taking direct enforcement action against a Member if the circumstances so warrant.

19. Members or the HKISPA may seek OFNAA's assistance in referring cases to the Obscene Articles Tribunal established under section 6 of the COIAO for classification advice on whether material transmitted on the Internet is Class III (obscene), Class II (indecent) or neither.

### **Sanctions**

20. Members must comply with any conclusion reached by the HKISPA, including a decision to promptly block access to a Web Site or database which contains material likely to be classifiable as Class III (obscene), or to impose a sanction on a Member for breach of this Practice Statement.

21. Where a Member is able to act on the advice of the HKISPA but unreasonably refuses to do so, or where a Member is found repeatedly to be in breach of this Practice Statement, the HKISPA will take appropriate disciplinary action against the Member for breach of this Practice Statement.

22. The sanctions to be imposed by the HKISPA shall be regularly reviewed.

### **Appendices**

Appendix I Summary of Main Provisions of the Control of Obscene and Indecent Articles Ordinance

Appendix II Section 10 of the Control of Obscene and Indecent Articles Ordinance

**Summary of Main Provisions of the**  
**Control of Obscene and Indecent Articles Ordinance (“COIAO”)**  
**Chapter 390**

1. Articles are classified into three categories : Class I (neither obscene nor indecent); Class II (indecent); and Class III (obscene).
2. Class I articles are for general consumption and may be published without any restriction. Class II (indecent) articles may be published to persons of 18 years old or above with certain restrictions such as a warning notice to the effect that the article must not be made available to persons under the age of 18. Class III (obscene) articles are banned from publication.
3. Publishing or possessing for the purpose of publishing an obscene article is liable to a maximum fine of \$1 million and imprisonment of three years. Publishing or possessing for the purpose of publishing an indecent article without complying with the statutory requirements is liable to a maximum fine of \$400,000 and imprisonment of 12 months; a repeated offender is liable to a maximum fine of \$800,000 and imprisonment of 12 months.
4. “Obscenity” and “indecent” include violence, depravity and repulsiveness.
5. A person publishes an article if he, whether or not for gain, distributes, circulates, sells, hires, gives or lends the article to the public or a section of the public.
6. Articles may be submitted to the Obscene Articles Tribunal (“OAT” ), a judicial body, for classification. In making its classification, the OAT follows the statutory guidelines as set out in section 10(1) of the COIAO (at Appendix II).
7. Articles submitted to the OAT for classification are kept in a repository. Members of the public may, upon payment of fees, view articles kept in the OAT repository (Address : 9/F, Tower A, West Kowloon Law Courts Building, 501 Tung Chau Street, Sham Shui Po, Kowloon, Hong Kong).

**Section 10 of the Control of Obscene and  
Indecent Articles Ordinance (Chapter 390)**

**10. Guidance to Tribunal**

(1) In determining whether an article is obscene or indecent or whether any matter publicly displayed is indecent, or in classifying an article, a Tribunal shall have regard to –

(a) standards of morality, decency and propriety that are generally accepted by reasonable members of the community, and in relation thereto may, in the case of an article, have regard to any decision of a censor under section 10 of the Film Censorship Ordinance (Cap. 392) in respect of a film within the meaning of section 2(1) of that Ordinance;

(b) the dominant effect of an article or of matter as a whole;

(c) in the case of an article, the persons or class of persons, or age groups of persons, to or amongst whom the article is, or is intended or is likely to be, published;

(d) in the case of matter publicly displayed, the location where the matter is or is to be publicly displayed and the persons or class of persons, or age groups of persons likely to view such matter; and

(e) whether the article or matter has an honest purpose or whether its content is merely camouflage designed to render acceptable any part of it.

(2) The opinion of an expert as to any of the matters to which a Tribunal must or may have regard under subsection (1) may be admitted in any proceedings before a Tribunal either to establish or negative that matter.