

BY EMAIL AND FAX

Secretary for Justice
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11 Nov 2019

Response to the Interim Order (High Court Intended Action 202/2019)

Dear Sirs,

By instruction of the aforementioned Interim Order, HKISPA would like to register to the Secretary for Justice (and its legal representatives) the following comments.

1. The HKISPA objects to the vague classification of Restrains, in particular, the classification of paragraph 1(b):

“Assisting, causing, counselling, procuring, instigating, inciting, aiding, abetting or authorizing others to commit any of the aforesaid acts or participating in any of the aforesaid acts.”

By definition, Internet Service Providers are all knowingly and willfully Assisting and Abetting its customers to get connected to the Internet and its applications, including connecting to Telegram and LIHKG. Any single one of its customers who are later proven willfully conducting the acts restrained by the order, completes the prima facie evidence against the ISP concerned.

Notwithstanding whether the ISP concerned will eventually be found committing an offence, it will put the ISP to unfair legal uncertainty, and may necessitate the ISP to prove itself innocent.

Therefore, the HKISPA objects to the vague classification of this Interim Order.

2. The [Statement of HKISPA on Selective Blocking of Internet Services](#), addressed to the Executive Council on 28 August 2019, has explained the technical difficulty of seeking to block any services through ISPs because service providers do not have knowledge of what are contained in the encrypted data packets through their networks. It is open and based on facts and we welcome challenges. Given these technical difficulties, we object to the vague classification of Restrains of this Interim Order and any Order that may put Service Providers to unfair legal risks and costs.
3. As a fair solution, the HKISPA demands that Internet Service Providers, Telecom Operators and Platform Providers who are merely acting as conduits of data between its end-users be explicitly exempted from any potential liability stemming from this Interim Order and any such orders.
4. The HKISPA has been spending its effort to clear the public’s misconception about the role of Internet Service Providers. We wish that the DoJ may assimilate these facts into their considerations for any further actions.
5. The HKISPA will also support any party in exercising its legal rights to challenge against this Interim Order along these misconceptions.

Thank you for your kind attention.