

CHAPTER 1

Television and Entertainment Licensing Authority

**Follow-up review of the
Television and Entertainment Licensing Authority's
control of obscene and indecent articles**

**Audit Commission
Hong Kong
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This audit review has been carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and have been accepted by the Government of the Hong Kong Special Administrative Region.

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FOLLOW-UP REVIEW OF THE TELEVISION AND ENTERTAINMENT LICENSING AUTHORITY'S CONTROL OF OBSCENE AND INDECENT ARTICLES

Contents

	Paragraph
PART 1: INTRODUCTION	1.1
Background	1.2 – 1.3
Control of obscene and indecent articles	1.4
The Ordinance	1.5 – 1.7
The Obscene Articles Tribunal	1.8 – 1.10
Organisation of TELA	1.11
Audit Review	1.12 – 1.13
PART 2: ENFORCEMENT OF THE ORDINANCE	2.1
Enforcement of the Ordinance	2.2
TELA's performance in the enforcement of the Ordinance	2.3 – 2.6
<i>Audit observations and recommendations</i>	2.7 – 2.8
Response from the Administration	2.9
PART 3: SURVEILLANCE INSPECTIONS	3.1
Background	3.2 – 3.3
Measures taken to strengthen TELA's enforcement action	3.4
TELA's surveillance inspection programme	3.5 – 3.15

	Paragraph
<i>Audit recommendations</i>	3.16
Response from the Administration	3.17
Better management information to support TELA’s regular review of the inspection strategy	3.18
<i>Audit observation and recommendation</i>	3.19 – 3.20
Response from the Administration	3.21
Enforcement action on problematic outlets	3.22
<i>Audit observations</i>	3.23 – 3.24
<i>Audit recommendations</i>	3.25
Response from the Administration	3.26 – 3.27
Enforcement action on problematic outlets selling indecent articles	3.28 – 3.31
<i>Audit observation and recommendation</i>	3.32 – 3.33
Response from the Administration	3.34
PART 4: MONITORING OF PUBLICATIONS AND REGULATION OF MATERIALS ON THE INTERNET	4.1
TELA’s system for monitoring of publications	4.2 – 4.4
<i>Audit observation and recommendation</i>	4.5 – 4.6
Response from the Administration	4.7
Regulation of obscene and indecent materials on the Internet	4.8 – 4.10
The Internet Content Rating System	4.11 – 4.13
TELA’s monitoring role	4.14
More recent efforts made to promote the Internet Content Rating System	4.15

	Paragraph
<i>Audit observations and recommendations</i>	4.16 – 4.17
Response from the Administration	4.18
PART 5: REVIEW OF THE ORDINANCE	5.1
Public consultation in 2000	5.2 – 5.4
Subsequent development after the 2000 review	5.5 – 5.7
<i>Audit observation and recommendation</i>	5.8 – 5.9
Response from the Administration	5.10
PART 6: PANEL OF ADJUDICATORS OF THE OBSCENE ARTICLES TRIBUNAL	6.1
Background	6.2 – 6.5
Composition of the panel	6.6 – 6.8
Procedures for selecting adjudicators for attending the Tribunal	6.9
Audit analysis of adjudicators' attendance in the Tribunal	6.10 – 6.11
<i>Audit observations and recommendations</i>	6.12 – 6.13
Response from the Administration	6.14 – 6.15
PART 7: PUBLIC OPINION SURVEYS	7.1
The need for regular public opinion surveys	7.2
The first public opinion survey	7.3 – 7.4
The second public opinion survey	7.5
<i>Audit observations and recommendations</i>	7.6 – 7.10
Response from the Administration	7.11

	Page
Appendices	
A : Organisation of the Entertainment Division of TELA	34
B : Analysis of timing of TELA's inspections for six months ended September 2003	35
C : Follow-up of 20 cases of problematic outlets	36
D : Chronology of a case in which TELA took four months to notify the Police	37
E : Comparison of profile of adjudicators in 2003 with that in 1997	38
F : Acronyms and abbreviations	39

PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines its objectives and scope.

Background

1.2 According to the Controlling Officer's Report, the Television and Entertainment Licensing Authority (TELA) is responsible for four programme areas, namely broadcast monitoring and regulation, film services, film classification and control of obscene and indecent articles, and entertainment licensing.

1.3 As at 1 December 2003, TELA had 217 staff, comprising 162 civil servants and 55 non-civil service contract staff. For 2003-04, its expenditure is estimated to be \$117 million, of which \$36 million (or 31%) is to be spent on the control of obscene and indecent articles.

Control of obscene and indecent articles

1.4 In Hong Kong, the publication and public display of obscene and indecent articles are controlled under the Control of Obscene and Indecent Articles Ordinance (Cap. 390 — hereinafter referred to as the Ordinance). TELA works with the Hong Kong Police Force (Police) and the Customs and Excise Department (C&ED) in the enforcement of the Ordinance (Note 1). TELA is responsible for:

- (a) regulating the publication and public display of obscene and indecent articles under the Ordinance through monitoring of articles published in the media and inspections of newspaper stalls, video and computer shops and other retail outlets;
- (b) submitting dubious articles to the Obscene Articles Tribunal (the Tribunal) for classification and taking appropriate enforcement action;
- (c) liaising with Internet service providers (ISPs) and the Hong Kong Internet Service Providers Association (HKISPA) on the regulation of obscene and indecent materials transmitted through the Internet;
- (d) organising education and publicity programmes to promote public awareness on the provisions of the Ordinance;
- (e) processing of complaints relating to the publication of obscene and indecent articles; and

Note 1: *The Police combats the sale of obscene articles by launching operations at black spot outlets either on its own intelligence or on information supplied by TELA. The C&ED tackles the problem at entry points and in the course of copyright enforcement work.*

- (f) conducting periodic public opinion surveys on the moral standards of reasonable members of the community.

The Ordinance

1.5 It is the Government's policy to strike a proper balance between protecting public morals and young people, and preserving the free flow of information and safeguarding the freedom of expression. The Ordinance serves two main functions. First, it prohibits the publication of obscene articles. Second, it restricts the publication of indecent articles to adults. As defined in the Ordinance, an article includes any printed matter, film, videotape, disc and article published by electronic means (Note 2).

1.6 Obscenity and indecency as defined in the Ordinance include violence, depravity and repulsiveness. Under the Ordinance, an article is obscene if it is not suitable to be published to any person and an article is indecent if it is not suitable to be published to a juvenile. An article may be classified as:

- (a) Class I if the article is neither obscene nor indecent;
- (b) Class II if the article is indecent; or
- (c) Class III if the article is obscene.

1.7 Class I articles can be published without restrictions. Class II articles must not be published to persons under the age of 18. Publication of Class II articles must comply with certain statutory requirements, including the sealing of articles in wrappers (opaque wrappers if the covers are indecent) and the display of a warning notice. Class III articles are prohibited from publication.

The Obscene Articles Tribunal

1.8 The Tribunal is a judicial body established under the Ordinance. It is responsible for and has the exclusive jurisdiction in determining whether an article is obscene, indecent or neither. The Tribunal comprises a presiding magistrate and two or more adjudicators drawn from a panel. The inclusion of adjudicators in the Tribunal is to enable public standards of morality to be reflected in the classification process.

1.9 In determining the classification of articles, the Tribunal has to follow the guidelines under Section 10 of the Ordinance. These guidelines include the following:

Note 2: *The Ordinance does not apply to films regulated by the Film Censorship Ordinance (Cap.392) and television broadcasts regulated by the Broadcasting Ordinance (Cap. 562).*

- (a) the 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) in case of matter publicly displayed, the location where the article is displayed and the class or age of the likely recipients; and
- (e) whether the article has an honest purpose.

1.10 There is no requirement that articles must be submitted for classification before publication. Publishers may voluntarily submit articles to the Tribunal for classification if in doubt.

Organisation of TELA

1.11 Within TELA, the Entertainment Division is responsible for the control of obscene and indecent articles. An organisation chart of TELA's Entertainment Division is at Appendix A.

Audit Review

1.12 In 1999, the Audit Commission (Audit) conducted a review of TELA's efficiency and effectiveness in controlling obscene and indecent articles, and its enforcement of the Ordinance. The result was reported in the Director of Audit's Report No. 32 of March 1999. In July 1999, the Public Accounts Committee (PAC), in its Report No. 32, urged TELA to promptly put in place measures and mechanisms for performing its entrusted duties under the Ordinance which had not been properly carried out.

1.13 Audit recently conducted a follow-up review. The scope of this audit focused on the following areas:

- (a) enforcement of the Ordinance (see PART 2);
- (b) surveillance inspections (see PART 3);
- (c) monitoring of publications and regulation of materials on the Internet (see PART 4);
- (d) the review of the Ordinance (see PART 5);
- (e) the panel of adjudicators of the Obscene Articles Tribunal (see PART 6); and
- (f) the conduct of public opinion surveys on article classification standards (see PART 7).

PART 2: ENFORCEMENT OF THE ORDINANCE

2.1 This PART describes Audit examination of the enforcement of the Ordinance.

Enforcement of the Ordinance

2.2 To enforce the Ordinance, TELA carries out the following duties:

- (a) ***Monitoring of publications.*** This involves the scrutiny of publications to see if there are breaches of the Ordinance. If there are breaches, TELA will consider submitting the article to the Tribunal for classification and decide whether prosecution action should be taken according to the classification;
- (b) ***Surveillance of outlets.*** This involves the conduct of covert inspections on retail outlets. For technical breaches such as an adult magazine's wrapper having come off, TELA staff will warn the outlet operators verbally to rectify the breaches. For more serious breaches involving indecent articles (i.e. Class II articles — see paras. 1.6 and 1.7), enforcement action will not be taken immediately on the spot. TELA staff will arrange enforcement operations involving the seizure of the indecent articles and prosecutions, with the Police's assistance. If obscene articles (i.e. Class III articles — see paras. 1.6 and 1.7) are found during the inspections, TELA will refer the cases to the Police for enforcement operations as TELA does not have power to seize obscene articles; and
- (c) ***Support to the Police in raid operations on black spot outlets.*** There are a number of black spots with many outlets selling pornographic VCDs and DVDs. They are located at different parts of the territory, such as Mongkok. The Police is responsible for conducting periodic raid operations on these black spot outlets. TELA's role in these cases is to provide the Police with intelligence and to assist the Police during its raid operations (Note 3).

TELA's performance in the enforcement of the Ordinance

2.3 In 2000, due to the community's concern about young people being exposed to obscene and indecent articles, the Government decided to step up its enforcement of the Ordinance. Since 2001-02, additional resources have been provided to TELA in enforcing the Ordinance. Table 1 shows TELA's performance in the enforcement of the Ordinance since 2000:

Note 3: *TELA staff assist the Police in such work by posing as buyers, identifying the articles to be seized, seizing articles from the outlets which have been broken in by the Police during raid operations, and arranging for the confiscation of seized articles. In February 2004, TELA staff advised Audit that their support to the Police in these areas had been enhanced in 2003.*

Table 1

TELA's performance in the enforcement of the Ordinance

	Performance indicators	2000	2001	2002	2003
(a)	No. of publications monitored	14,600	16,200 (+11%)	17,400 (+7%)	14,100 (-19%)
(b)	No. of surveillance inspections	26,200	59,600 (+127%)	85,400 (+43%)	88,000 (+3%)
(c)	No. of outlets on which enforcement operations have been taken	99	482 (+387%)	460 (-5%)	534 (+16%)
(d)	No. of articles seized	52,000	578,000 (+1,012%)	526,000 (-9%)	907,000 (+72%)
(e)	No. of prosecutions	229	366 (+60%)	512 (+40%)	186 (-64%)

Source: TELA records

Note: The percentages in brackets are year-on-year percentage changes.

2.4 The following are noted from Table 1:

- **Publications monitored (item (a)).** The number of publications monitored has not shown significant changes since 2000;
- **Increase in enforcement efforts (items (b), (c) and (d)).** The number of surveillance inspections, the number of enforcement operations and the number of articles seized have increased significantly since 2000; and
- **Changes in number of prosecutions (item (e)).** Following the increase in enforcement efforts since 2000, the number of prosecutions increased in 2001 and 2002. However, the number dropped from 512 in 2002 to 186 in 2003, showing a decrease of 64%.

2.5 The sudden drop in the number of prosecutions in 2003 is worth noting. As prosecutions mainly arise from the monitoring of publications and enforcement operations, Audit conducted a further analysis of the prosecutions from 2001 to 2003. See Table 2.

Table 2

Prosecutions in the years from 2001 to 2003

	2001	2002	2003
Number of prosecutions under the Ordinance arising from:			
• the monitoring of publications	97	140 (+44%)	28 (-80%)
• enforcement operations	269	372 (+38%)	158 (-58%)
Total	366	512 (+40%)	186 (-64%)

Source: TELA records

Note: The percentages in brackets are year-on-year percentage changes.

2.6 Table 2 shows that prosecutions arising from monitoring work and enforcement operations have both dropped in 2003. Upon Audit enquiries, in December 2003 TELA officers explained that due to TELA's increased enforcement efforts, publishers and outlet operators had become more law-abiding. In addition, because of the economic downturn in recent years, the market of obscene and indecent articles might have contracted in 2003, as evidenced by the decrease in the number of publications monitored (item (a) in Table 1).

Audit observations and recommendations

2.7 Audit notes the reasons given by TELA for the decrease in the number of prosecutions. Audit considers that another possible reason for the decrease in the number of prosecutions might be the slow enforcement action taken to follow up on problematic outlets (see paras. 3.22 to 3.24). Furthermore, TELA has not conducted a review of the reasons for the significant decrease in the number of prosecutions in 2003.

2.8 **Audit has recommended that the Commissioner for Television and Entertainment Licensing should:**

- (a) **conduct a review to ascertain the reasons for the drop in the number of prosecutions in 2003; and**

- (b) **monitor closely the trend in the number of prosecutions and ascertain the reasons for any continuous downward trend.**

Response from the Administration

2.9 The **Secretary for Commerce, Industry and Technology** has furnished a consolidated reply for the Commerce, Industry and Technology Bureau (CITB) and TELA. He has said that:

- (a) TELA has provided some of the plausible reasons for the decrease in the number of prosecution actions taken by the Department in 2003, as set out in paragraph 2.6. Further, it is observed that instead of a large number of shops selling indecent articles in breach of the Ordinance, the problem has shifted to the sale of obscene articles in a small number of outlets. The decrease in the number of target outlets may have contributed to the decrease in the number of prosecutions in 2003;
- (b) there was also a decrease in the number of prosecutions initiated by the other two enforcement agencies under the Ordinance (i.e. the Police and the C&ED) during the same period;
- (c) TELA accepts the Audit recommendations and will conduct a review to further ascertain the reasons for the decrease in the number of prosecutions in 2003; and
- (d) TELA will monitor closely subsequent developments and ascertain the reasons for any continuous downward trend.

PART 3: SURVEILLANCE INSPECTIONS

3.1 This PART examines TELA's conduct of surveillance inspections in enforcing the Ordinance.

Background

3.2 The Newspapers Registration Section of TELA is responsible for the enforcement of the Ordinance. Under this section, there are five regional inspection teams which carry out routine surveillance inspections of outlets. There are also three special duty teams which support the Police in carrying out surveillance inspections of black spot outlets (see para. 2.2(c)) and conduct quality checks of the inspections carried out by the regional teams.

3.3 To facilitate the conduct of surveillance inspections, TELA divides the territory into five regions. Individual regional teams are assigned to individual regions on a three-month rotational basis. An inspection team normally consists of one Inspector and six Assistant Inspectors. The Assistant Inspectors are the front-line staff who conduct surveillance inspections. During inspections, they watch out for the following:

- (a) suspected obscene articles;
- (b) indecent articles in breach of the statutory requirements (which require, for example, the sealing of indecent articles in wrappers); and
- (c) the sale or renting of indecent articles to juveniles.

Measures taken to strengthen TELA's enforcement action

3.4 In 1999, the PAC recommended TELA to promptly put in place measures and mechanisms for performing its entrusted duties under the Ordinance (see para. 1.12). In late 1999, TELA compiled a guidance manual for its inspection staff. TELA also reviewed its strategy on surveillance inspections and developed a revised strategy in 2000 to tackle high-risk outlets (Note 4). Since 2001, TELA has been provided with additional recurrent resources to step up its enforcement efforts, including the conduct of more surveillance inspections.

Note 4: *TELA classifies high-risk outlets as those which have been convicted under the Ordinance in the past three months. All other outlets are classified as low-risk outlets.*

TELA's surveillance inspection programme

Frequencies of surveillance inspections

3.5 In 2000, when TELA bid for additional resources to step up enforcement action, it set the target for inspecting high-risk retail outlets *at least once a month* and inspecting low-risk retail outlets *at least once every three months*. TELA also estimated that it would conduct about *60,000 surveillance inspections a year*.

3.6 During the three years from 2001 to 2003, TELA had doubled its strength of Assistant Inspectors from 24 to 50 (including 33 non-civil service contract staff). With the increased resources, TELA had more than met its target for conducting 60,000 surveillance inspections a year. The number of inspections increased from 26,200 a year in 2000 to 88,000 in 2003.

3.7 TELA's frequencies of surveillance inspections by outlet type for the six months ended September 2003 are shown in Tables 3 and 4.

Table 3

TELA's frequencies of inspections of high-risk outlets

Type of outlets	No. of outlets	No. of inspections for the six months ended September 2003	No. of inspections in a month
	(a)	(b)	(c) = (b) ÷ 6 ÷ (a)
Disc shops (Note)	194	1,855	1.6
Disc rental shops (Note)	2	10	0.8
Book shops	<u>2</u>	<u>7</u>	0.6
Overall	<u>198</u>	<u>1,872</u>	1.6

Source: TELA records

Note: Disc shops or disc rental shops are shops selling or renting out VCDs and DVDs. They are referred to as VCD shops in this report.

3.8 Table 3 shows that there were 198 high-risk outlets, which were on average inspected 1.6 times a month. Because the performance target for inspecting these outlets is stated as “at least once a month” and the target is not pitched at a specific level, it is difficult to ascertain whether the actual inspection frequency is appropriate.

Table 4
TELA’s frequencies of inspections of low-risk outlets

Type of outlets	No. of outlets	No. of inspections for the six months ended September 2003	No. of inspections in every three months
	(a)	(b)	(c) = (b) ÷ 2 ÷ (a)
Newspaper stalls	1,781	7,171	2.0
Convenience shops (Note)	1,600	6,757	2.1
Disc shops	849	3,475	2.0
Disc rental shops	253	1,028	2.0
Book shops	437	1,617	1.9
Comic book rental shops	391	1,608	2.1
Video game shops	486	1,952	2.0
Cyber-café	376	1,451	1.9
Sex shops	32	135	2.1
Overall	6,205	25,194	2.0

Source: TELA records

Note: Convenience shops include supermarkets and other chain-shops which sell VCDs, DVDs and publications.

3.9 Table 4 shows that there were 6,205 low-risk outlets, which were on average inspected 2 times every three months. Again, because the performance target for inspecting these outlets is stated as “at least once every three months” and is not pitched at a specific level, it is difficult to ascertain whether the actual inspection frequency is appropriate.

3.10 Audit notes that the performance targets for surveillance inspections have no upper limits because, for high-risk and low-risk outlets, inspections are required “*at least*” once a month and “*at least*” once every three months respectively. This could lead to more frequent inspections than were necessary, resulting in ineffective use of staff resources. As the actual performance exceeded the lower limits by 60% and 100% respectively for high-risk and low-risk outlets, there is a risk of excessive inspections. Furthermore, the actual number of inspections of 88,000 in 2003 far exceeded the estimated number of 60,000 (see para. 3.6). Audit considers that TELA needs to set more specific performance targets for surveillance inspections of outlets.

Different levels of risk for different types of outlets

3.11 Audit selected for further analysis the three types of outlets for which the numbers of inspections carried out during the six months ended September 2003 were largest. The types of outlets selected were newspaper stalls, convenience shops and disc shops (i.e. shops selling VCDs and DVDs). The results of the analysis are in Table 5.

Table 5
Three types of outlets
which received the largest numbers of inspections

Type of outlets	No. of inspections	Technical breaches (Note 1)		More serious breaches (Note 1)		Total	
		(no. of cases)	(no. of cases per 1,000 inspections)	(no. of cases)	(no. of cases per 1,000 inspections)	(no. of cases)	(no. of cases per 1,000 inspections)
Newspaper stalls	7,171	25	3.5	0	0	25	3.5
Convenience shops	6,757	2	0.3	1	0.15	3	0.45
Disc shops (Note 2)	2,522	12	4.8	14	5.5	26	10.3

Source: TELA records

Note 1: Technical breaches will result in the issue of verbal advice by TELA inspection teams whereas more serious breaches will result in enforcement operations (see para. 2.2(b)).

Note 2: The figures show the results of routine surveillance inspections on ordinary outlets. Surveillance inspections on black spot outlets are excluded.

3.12 From Table 5, Audit noted that for the six months ended September 2003, there were only two technical breaches and one more serious breach detected in inspections of convenience shops, despite the high number of inspections (6,757 inspections). The number of breaches was substantially lower than that for newspaper stalls or disc shops. This suggests that the risk of convenience shops breaching the Ordinance is relatively low. This may be due to the fact that convenience shops are generally chain shops which are better managed and are more capable of ensuring compliance with the Ordinance. According to TELA's surveillance inspection programme, there were 1,600 convenience shops in Hong Kong (see Table 4). For the six months ended September 2003, TELA had conducted 6,757 inspections on these convenience shops, which accounted for 25% of the total inspections conducted (i.e. 27,100 inspections). Substantial resource savings can be obtained through reducing the number of inspections on convenience shops. **Audit considers that TELA needs to adopt a more risk-based approach in determining the inspection frequencies for different types of outlets. This can be done by introducing more risk categories to take cognisance of the fact that some well-managed convenience shops have a lower risk of breaching the Ordinance.**

3.13 TELA's method of risk classification of outlets has not taken into account other relevant factors, such as the nature of the outlets and whether the outlets are under prosecution action but have not yet been convicted. **Audit considers that TELA needs to review its method of risk classification.**

Regular inspection pattern

3.14 TELA inspection teams were used to conducting their surveillance inspections during office hours in the afternoon. In the morning, they spent their time on scrutinising publications for potential breaches of the Ordinance (see para. 4.3) and writing reports on inspections conducted on the previous day. As a result, they seldom conducted inspections during office hours in the morning. Inspections conducted after office hours, such as in the evening or at night were also extremely rare. An analysis of the timing of inspections for the six months ended September 2003 indicates that over 99% of TELA's inspections were carried out between 2:00 p.m. to 6:00 p.m. (see Appendix B).

3.15 **Audit considers that the existing inspection pattern is too regular and predictable. TELA needs to consider introducing a surprise element in its surveillance inspection programme.**

Audit recommendations

3.16 **Audit has recommended that the Commissioner for Television and Entertainment Licensing should conduct a review of TELA's surveillance inspection programme. In particular, she should:**

- (a) **for different types of outlets, set the target inspection frequencies at specific levels (see para. 3.10);**

- (b) **consider reducing the frequencies of inspections, having regard to the actual number of inspections in 2003 (see para. 3.10);**
- (c) **adopt a more risk-based approach in determining the inspection frequencies for different types of outlets, and consider introducing more risk categories to take cognisance of the fact that some well-managed convenience shops have a lower risk of breaching the Ordinance (see para. 3.12);**
- (d) **review the method of risk classification of outlets, taking into account the nature of the outlets and whether the outlets are under prosecution action but have not yet been convicted (see para. 3.13); and**
- (e) **consider introducing a surprise element in the surveillance inspection programme to improve the effectiveness of inspections (see para. 3.15).**

Response from the Administration

3.17 The **Commissioner for Television and Entertainment Licensing** agrees with the Audit recommendations. The **Secretary for Commerce, Industry and Technology** has also said that:

Setting more specific inspection targets

- (a) the target inspection frequencies of “at least once a month” and “at least once every three months” for high-risk and low-risk outlets respectively were set in 2000 when additional resources were given to TELA to enhance enforcement actions. TELA will set more specific target inspection frequencies in the light of operating experience;

Reducing the frequencies of inspections

- (b) TELA believes that the rigorous enforcement actions taken in the past few years have contributed to the improvement in the control of obscene and indecent articles. Indeed, the Administration has announced at the meeting of the Legislative Council Panel on Information Technology and Broadcasting (ITB Panel) in January 2004 that it will, among other things, continue to step up enforcement actions under the Ordinance (see para. 5.7). Nonetheless, TELA will examine whether there is scope for adjusting the frequencies of inspections for different types of outlets having regard to their respective risk levels;

Introducing more risk categories

- (c) TELA will consider introducing more risk categories and adjusting the target inspection frequencies accordingly (e.g. by reducing the frequency of inspections

of the well-managed outlets which have a lower risk of breaching the Ordinance);

Reviewing the method of risk classification

- (d) TELA will conduct more frequent inspections on those outlets which, by their nature, have higher risks and those that are under prosecution but have not yet been convicted; and

Introducing a surprise element in inspections

- (e) TELA has conducted most of its surveillance inspections on the high-risk outlets between 2 p.m. to 6 p.m., which are also the busy hours of these outlets. TELA will consider carrying out inspections at other times of the day, having regard to the availability of staff resources and the cost-effectiveness of such inspections.

**Better management information to support
TELA's regular review of the inspection strategy**

3.18 TELA has a computer system which assists it in the enforcement of the Ordinance. Comprehensive data such as the particulars of outlets and details, including results of surveillance inspections conducted, are kept in the system. TELA has been using its computer system to generate various types of management reports, including the number and types of articles monitored, enforcement statistics, inspection lists, reports on inspections, conviction records, etc.

Audit observation and recommendation

3.19 Management information on the frequency of inspections and inspection findings for different types of outlets (see Tables 3 to 5) can facilitate the management to review the effectiveness of TELA's surveillance inspection strategy and revise it if necessary. However, such management information reports are not produced by the system for use by TELA's senior management.

3.20 **Audit has recommended that the Commissioner for Television and Entertainment Licensing should consider making better use of the data kept in the computer system to produce more management information reports as part of the process of conducting regular reviews and revision of TELA's surveillance inspection strategy.**

Response from the Administration

3.21 The Secretary for Commerce, Industry and Technology has said that TELA will consider how it could optimise the use of its computer system to assist in mapping out the inspection strategy, e.g. to help determine the frequencies of inspections for different types of outlets.

Enforcement action on problematic outlets

3.22 As mentioned in para. 2.2(b), in conducting surveillance inspections, TELA staff may identify “problematic” outlets. An outlet is considered problematic if it is found selling indecent (i.e. Class II) articles not in compliance with the statutory requirements (which require, for example, the sealing of indecent magazines with wrappers, and using opaque wrappers if the magazine covers are indecent). TELA will take enforcement action with the Police’s assistance. When a problematic outlet is found to be selling obscene (i.e. Class III) articles, TELA will refer the case to the Police for enforcement action.

Audit observations

3.23 On detecting a problematic outlet, TELA will notify (by confidential memoranda) the appropriate police district for follow-up. Audit has conducted an analysis of 20 cases relating to VCD shops. These cases were referred by TELA to the Police during the nine months ended September 2003. The results of the Audit analysis are as follows (more details are at Appendix C):

- ***Long time taken to inform the Police.*** On average, TELA took 23 days (item III at Appendix C) to notify the Police. This was much longer than the average of 10 days as noted in the last audit review in 1999. In one extreme case (*case 6* at Appendix C), TELA took four months to notify the Police (a chronology of events of the case is at Appendix D). The Police subsequently found that the VCD shop concerned had closed down; and
- ***Long time taken for enforcement action.*** In 5 of these 20 cases (item I at Appendix C), the Police advised TELA that they had already taken enforcement action based on its own intelligence. In the remaining 15 cases (item II at Appendix C), the Police, or the Police jointly with TELA, on average took enforcement action 38 days after TELA’s notification. In 3 cases (*cases 8, 10 and 15* at Appendix C), enforcement action was taken 56, 51 and 94 days respectively after TELA’s notification. The VCD shops were found to have closed down in the enforcement action.

3.24 **Audit is concerned that the enforcement action taken on the problematic outlets identified in TELA’s surveillance inspections was slow.** TELA needs to review its procedures of informing the Police of problematic outlets identified and to step up its liaison with the Police so as to speed up the exchange of intelligence data and follow-up action. In view of the mobile nature of problematic outlets, it is necessary for TELA and the Police to take enforcement action on them promptly before they are closed down. Otherwise the effectiveness of surveillance inspections is undermined. TELA needs to liaise with the Police to set performance targets on the time required to exchange intelligence data and to take enforcement action.

Audit recommendations

3.25 **Audit has recommended that the Commissioner for Television and Entertainment Licensing should, in consultation with the Commissioner of Police:**

- (a) **review TELA's procedures for informing the Police of problematic outlets identified;**
- (b) **enhance TELA's liaison with the Police to improve the exchange of intelligence data and follow-up action; and**
- (c) **set performance targets on the time normally required to exchange intelligence data and to take enforcement action on problematic outlets identified.**

Response from the Administration

3.26 The **Secretary for Commerce, Industry and Technology** has said that TELA accepts the Audit recommendations. He has also said that:

- (a) some of the cases that took longer than the average time to notify the Police for enforcement action involved prior referral to the Tribunal for classification; and
- (b) TELA will, in conjunction with the Police, review the situation and introduce necessary measures to expedite enforcement action on problematic outlets. Such measures may include the setting of performance targets for action to be taken by the parties concerned on problematic outlets.

3.27 The **Commissioner of Police** has said that whilst the enforcement of the Ordinance is not one of the Police's core responsibilities, the Police has made every endeavour to support TELA in their core business areas as best as it can, commensurate with the Police's own core responsibilities. This can be illustrated by the number of joint operations conducted by the Police and TELA. The Police will continue to conduct joint operations with TELA, as often as it can, given its many other core business commitments.

Enforcement action on problematic outlets selling indecent articles

3.28 Section 36B of the Ordinance empowers TELA staff who are authorised by the Commissioner for Television and Entertainment Licensing to seize, remove and detain any indecent article in a public place if they reasonably suspect that an offence under the Ordinance has been committed or is being committed. TELA staff may seize, remove and detain anything in a public place which they reasonably suspect to be, or to contain, evidence of an offence being committed.

3.29 In its Report of July 1999, the PAC expressed concern that although the Ordinance empowers TELA's inspection staff to seize indecent articles, the power of seizure had *never* been exercised by TELA staff *independently* in the years to 1999.

3.30 Subsequent to the issue of the PAC Report, TELA has laid down its procedures on how to exercise the power under Section 36B. According to TELA's procedures, the power of seizure should be exercised with extreme care as the suspected indecent articles or matter displayed publicly are within private properties. Inspectors and Assistant Inspectors are advised not to exercise such power unless they have been properly authorised and have reasons to believe that the condition for the exercise of such power as stated in Section 36B is met. Inspectors and Assistant Inspectors are also advised not to exercise such power of seizure when suspected breaches of the Ordinance require the Police's or the C&ED's investigation and enforcement action.

3.31 Audit recently found that from 1999 to 2003, TELA staff had rarely exercised the power of seizure *independently*. Audit noted that during 2002 and 2003, TELA staff had only carried out enforcement action independently twice. In practice, they would call for the Police's assistance in such law enforcement action. In response to Audit enquiries, TELA officers advised that the Police's assistance was always required in cases where potential resistance or confrontation from the outlet operators was anticipated. Besides, the Police's involvement was very often required in order to execute a search warrant which would empower TELA staff to search for indecent articles in the outlet.

Audit observation and recommendation

3.32 Audit appreciates that it is difficult for TELA staff to handle independently those outlets which are run by triads. Nevertheless, Section 36B of the Ordinance empowers TELA staff to take enforcement action on offences relating to indecent articles *independently* (i.e. without the Police's assistance). This can improve TELA's operational efficiency.

3.33 **Audit has recommended that the Commissioner for Television and Entertainment Licensing should, where appropriate, endeavour to take more independent law enforcement action on outlets which are suspected to have committed offences relating to indecent articles.**

Response from the Administration

3.34 The **Commissioner for Television and Entertainment Licensing** has generally agreed with the Audit recommendation. The **Secretary for Commerce, Industry and Technology** has said that:

- (a) while the Ordinance empowers TELA staff to take independent enforcement action on outlets suspected to have breached the Ordinance, the Police's assistance is very often required when such enforcement action is taken for practical and safety reasons. It is indeed difficult for TELA to anticipate, prior to the enforcement action, whether the suspected outlet is run by triads and whether confrontation or resistance will result; and
- (b) nonetheless, TELA will try to identify suitable occasions where enforcement action can be taken by its staff without the Police's assistance.

PART 4: MONITORING OF PUBLICATIONS AND REGULATION OF MATERIALS ON THE INTERNET

4.1 This PART examines TELA's monitoring of publications and its regulation of materials on the Internet in the enforcement of the Ordinance.

TELA's system for monitoring of publications

4.2 Under the Ordinance, TELA has a law enforcement role of monitoring publications published in Hong Kong. Such publications include newspapers, magazines and comic books.

4.3 Regional inspection teams of TELA are responsible for the monitoring of publications. To discharge their duties, every morning the Assistant Inspectors scrutinise the publications published on that day to look for potential breaches of the Ordinance. Publications are considered to be in breach of the Ordinance in the following situations:

- (a) when Class I publications (such as newspapers) contain obscene or indecent materials;
- (b) when Class II publications (such as adult magazines) contain obscene materials; and
- (c) when Class II publications do not comply with the statutory requirements (which require, for example, the sealing of publications with indecent covers with opaque wrappers).

4.4 On noting publications considered breaching the Ordinance, the Assistant Inspectors report their findings (with the publications attached to their reports) to their Inspectors, who then report to the Executive Officers. The Executive Officers review the cases and, if they agree with the Assistant Inspectors' findings, will recommend to the senior management of TELA to refer the articles concerned to the Tribunal for classification ruling. If the Tribunal's classification ruling confirms that there has been a breach of the Ordinance, TELA will prosecute the publisher by issuing a summons.

Audit observation and recommendation

4.5 There are at present no operational guidelines on what constitutes a potential breach of the Ordinance. When TELA staff (including Assistant Inspectors, Inspectors and Executive Officers) consider whether any materials in the publications are obscene or

indecent, they make extensive reference to the information folders which contain samples of Tribunal classifications and other relevant materials to ensure that they have a clear understanding of the prevailing Tribunal standards. Audit noted that, since June 2003, TELA had outsourced the work of monitoring publications to a non-government organisation (NGO — Note 5). The NGO staff had to undergo intensive training provided by TELA. However, Audit noted that there were still cases where the NGO had applied classification standards which were different from those of TELA. It is desirable for TELA to develop a comprehensive set of guidelines to ensure consistency in applying the classification standards.

4.6 **Audit has recommended that in monitoring publications, the Commissioner for Television and Entertainment Licensing should consider compiling a comprehensive set of guidelines to facilitate consistent application of standards in the assessment of potential breaches of the Ordinance.**

Response from the Administration

4.7 The **Secretary for Commerce, Industry and Technology** has said that, in the light of the Audit recommendation, TELA will review the content of the information folders and include more samples of Tribunal classifications for reference by the NGO staff as appropriate.

Regulation of obscene and indecent materials on the Internet

4.8 Materials which are published on or transmitted through the Internet also fall within the ambit of the Ordinance. With the popular use of the Internet, there has been growing concern in the community about potentially harmful materials posted on the Internet. There has been a sharp increase in the number of complaints received by TELA about materials on the Internet, rising from 35 in 2001 to 134 and 128 respectively for 2002 and 2003.

4.9 The variety of contents available on the Internet is virtually unlimited. Given the difficulty of active monitoring of all information transmitted through the Internet due to its vast volume and transient nature, the Hong Kong Internet Service Providers Association

Note 5: *In June 2003, TELA implemented a pilot scheme of outsourcing its work of publication monitoring to an NGO. Under the scheme, the NGO is responsible for monitoring some 30 publications on behalf of TELA.*

(HKISPA) has opined that legislative control alone cannot solve the problem entirely. In this connection, Internet service providers (ISPs) have a role to play in protecting young people from potentially harmful materials on the Internet. Such regulation of materials on the Internet is at present enforced mainly by self-regulation among ISPs. ISPs are encouraged to follow a Code of Practice issued by the HKISPA. According to the Code, ISPs which are members of the HKISPA should:

- (a) take reasonable steps to prevent users of their services from placing on the Internet or transmitting through the Internet Class III materials. Members should block access to those websites under their control that contain Class III materials;
- (b) advise local content providers that all Class II materials put up by them should be accompanied by the statutory warning notice;
- (c) cancel the accounts of any users if they repeatedly breach the Ordinance;
- (d) act promptly and conscientiously on complaints about obscene and indecent materials on the Internet; and
- (e) where complaints cannot be resolved through the conscientious efforts of the members, refer the complaints to TELA which may, in collaboration with relevant enforcement agencies (such as the Police and the C&ED), institute legal action against the relevant parties.

4.10 Prior to June 2003, TELA handled complaints it received about obscene and indecent materials on the Internet. Since June 2003, with the implementation of the Internet Content Rating System (ICRS), TELA has referred such complaints it received to the HKISPA for follow-up. TELA monitored the HKISPA's follow-up action, based on monthly progress reports furnished by the HKISPA.

The Internet Content Rating System

4.11 The ICRS, adapted from a similar system developed by the Internet Content Rating Association (ICRA) in the United Kingdom, is a content rating system that allows content providers to self-assess and self-label their own websites through a pre-defined, objective and cross-cultural means. The ICRS comprises two elements, as follows:

- (a) content providers fill in an online questionnaire describing the content of their websites, simply in terms of what is and what is not present. The ICRS then generates content labels for the content providers to add to their websites; and

- (b) Internet users can download a filter software (called the ICRA filter) and set their Internet browsers to allow or disallow their computer access to websites according to the criteria declared in the labels and users' own-defined preferences.

4.12 In May 2003, TELA commissioned the HKISPA to implement the ICRS which was launched in June 2003. An amount of \$1.2 million was provided to finance the operation of the ICRS for one year.

4.13 The ICRS project serves the following objectives:

- (a) to further promote the awareness of the general public about undesirable contents on the Internet which are harmful to young people;
- (b) to translate and customise the system developed by the ICRA into Chinese for local adoption;
- (c) to promote the ICRS to webmasters, content providers and Internet users; and
- (d) to set up a hotline to handle enquiries about the ICRS and complaints about obscene and indecent articles on the Internet.

TELA's monitoring role

4.14 Since May 2003, TELA has been monitoring the progress of the ICRS project. The Chinese version of the ICRA filter was fully available in November 2003. As at October 2003, five months after the launching of the ICRS, the performance figures were as follows:

- (a) 148 websites were labelled;
- (b) the websites of 10 out of 22 active ISPs were labelled; and
- (c) 13 of the 100 most popular websites were labelled.

More recent efforts made to promote the Internet Content Rating System

4.15 In an effort to promote the ICRS project to bureaux and departments, in mid-January 2004, the Secretary for Commerce, Industry and Technology issued a circular memorandum inviting them to participate in the ICRS project by labeling the websites under

their purview. Briefing sessions were also organized by TELA and the HKISPA for bureaux and departments.

Audit observations and recommendations

4.16 For the ICRS to be successful, it should be used by most webmasters, content providers and Internet users. Given that there are 70,000 websites and 220 ISPs in Hong Kong, there is still much scope for the expanded use of the ICRS. As the project will last for 12 months, i.e. until May 2004, TELA needs to conduct a post-implementation review of the project upon its completion to assess its effectiveness and to see if further promotional efforts are needed.

4.17 **Audit has recommended that the Commissioner for Television and Entertainment Licensing should:**

- (a) **having regard to the objectives of the ICRS project, conduct a post-implementation review of the project upon its completion;**
- (b) **if it is decided that the project is to be continued, develop a publicity campaign to promote the use of the ICRS; and**
- (c) **set performance targets on the implementation of the ICRS project (e.g. on the number of websites labelled, the number of ISPs with their websites labelled, and the number of Internet users who use the ICRA filter).**

Response from the Administration

4.18 The Secretary for Commerce, Industry and Technology has said that various activities have been launched to promote the ICRS in the community since it was first launched in June 2003. It is indeed TELA's intention to review the project 12 months after its launch (i.e. in June 2004). Should a decision be taken to extend the project, TELA will invite the HKISPA to devise appropriate performance targets and promotion strategies to maximise the publicity of the ICRS.

PART 5: REVIEW OF THE ORDINANCE

5.1 This PART reports the Government's progress in its review of the Ordinance.

Public consultation in 2000

5.2 The Government's policy on the regulation of obscene and indecent articles is to strike a proper balance between protecting public morals and young people on the one hand, and preserving the free flow of information and safeguarding the freedom of expression on the other. To ensure that the regulatory regime is able to meet the changing needs and expectations of the community, the Government conducts regular reviews of the operation of the Ordinance.

5.3 In the Chief Executive's 1998 Policy Address, the Government undertook to conduct a review of the Ordinance. In April 2000, the Government published a paper containing policy proposals for public consultation. The consultation period ended in June 2000.

5.4 During the two-month consultation period, some 3,800 submissions were received. While there was by and large consensus in the community in respect of some proposals, which included strengthened measures to protect the youth from obscene and indecent articles, there were diverse views in respect of some major proposals. According to the CITB's records, it was reported that:

- (a) the proposed two-tier classification system (Note 6) attracted a lot of debate in the community during the consultation. While some respondents supported the two-tier classification system, some were concerned that through appointing members of the Obscene Articles Classification Board (OACB) and transferring the bulk of the classification work of the Tribunal to the OACB, the Government could interfere with the article classification process, impose its values and standards on the community and control the media;

Note 6: *This involved the setting up of an Obscene Articles Classification Board (OACB) to take up the classification function of the Tribunal. With the setting up of the OACB, the Tribunal would remain a judicial body to consider appeals against the classification decisions of the OACB and to deal with the determination of articles referred to it by a court or a magistrate.*

- (b) the proposed serial publication order system (Note 7) also attracted a lot of debate in the community. Newspapers, journalists associations, newspaper hawkers and major political parties expressed strong opposition. They were concerned that the proposal would restrict press freedom. In particular, newspaper hawkers opposed strongly the requirement that publications under such an order could not be sold to persons under the age of 18, citing substantial operational difficulties for them to enforce this requirement in their everyday work; and
- (c) the proposal of identifying newspapers with indecent materials by, for example, a red diagonal line printed on every page was not supported by many respondents who considered that this would affect the layout design of newspapers and magazines, the reputation of Hong Kong's press industry and ultimately Hong Kong's international image. Even supporters of clear identification for newspapers with indecent content were concerned that the proposal would be too drastic and might inadvertently arouse young people's curiosity.

Subsequent development after the 2000 review

5.5 In September 2001, the CITB planned a phased approach to implement the various proposals. Under this approach, the Government would first implement those policy proposals that were generally supported by the community, which included:

- (a) the adoption of a new set of nomenclature for the article classification system;
- (b) the increase of the maximum penalties for offences under the Ordinance; and
- (c) the provision of additional guidance in the Ordinance for the classification of articles.

The Government would then take time to review whether to pursue the controversial proposals (e.g. the two-tier classification system and the serial publication order system) or not.

Note 7: *This involved the introduction of a serial publication order to deter publication of those serial publications (i.e. publications published at regular intervals including newspapers) that have repeatedly violated the Ordinance. Publications under a serial publication order could not be sold to persons under 18.*

5.6 In 2003, based on the CITB's records, the Government was considering another approach to bring the 2000 review of the Ordinance to a close. In essence, the CITB intended that it would *not* pursue those proposals that would involve legislative amendments, but would pursue those proposals that were supported by the community and would not involve legislative amendments (such as enhancing the representativeness of the Tribunal and stepping up public education and publicity on the use of Internet filtering tools).

5.7 On 16 January 2004, the Secretary for Commerce, Industry and Technology advised the ITB Panel that the Government would *not* pursue those proposals that would involve legislative amendments. He explained that the community was highly divided on most of the legislative proposals put forward in the consultation paper, and with the vigilant enforcement in the past few years, the Ordinance had been regulating obscene and indecent articles effectively. The Secretary further advised the ITB Panel that the Government would devote its resources to stepping up its enforcement actions under the Ordinance, publicity and public education on the Ordinance.

Audit observation and recommendation

5.8 The Government has taken more than three years to bring the 2000 review of the Ordinance to a close. Up to the end of December 2003, those community-supported proposals arising from the 2000 review that would not involve legislative amendments had still not been implemented.

5.9 **Audit has recommended that the Secretary for Commerce, Industry and Technology should expedite action to implement the community-supported proposals arising from the review exercise.**

Response from the Administration

5.10 The **Secretary for Commerce, Industry and Technology** has said that:

- (a) the CITB has considered very carefully the views received during the public consultation. The community has expressed divergent views on almost all of the legislative proposals put forward in the consultation paper;
- (b) pending a decision on the way forward for the review of the Ordinance, the Administration has adopted a two-pronged approach since 2000 to enhance the operation of the existing Ordinance, namely, stepping up enforcement actions and strengthening publicity and public education on the Ordinance. Since 2001,

TELA has been given additional resources to enforce the Ordinance. As a result, the number of inspections conducted by TELA has increased from 26,000 in 2000 to 88,000 in 2003, while the number of obscene and indecent articles seized by TELA has increased 16-fold from 52,000 in 2000 to 907,000 in 2003. On the other hand, TELA has also been working closely with NGOs and professional bodies in organising a wide range of publicity and public education activities, such as school talks, filtering software courses, the Cyber Ambassador Award, the Ten Healthy Websites Contest, the ICRS, etc. The Administration believes that the enhanced enforcement actions and publicity/public education have contributed to the improvement in the operation of the existing Ordinance;

- (c) on 16 January 2004, he informed the ITB Panel that the Administration had decided not to pursue the legislative proposals in the consultation paper (see para. 5.7). It would instead continue to devote resources to the following areas so as to enhance the operation of the Ordinance and reduce the harmful effects of obscene and indecent articles on the youth:
 - (i) stepping up enforcement actions further;
 - (ii) strengthening publicity and public education on the Ordinance;
 - (iii) promoting the ICRS in the community; and
 - (iv) enhancing the representation of the Tribunal; and
- (d) the CITB will expedite action on the various initiatives mentioned in (c), which are supported by the community. The CITB will closely monitor the implementation of these initiatives and review their effectiveness as and when necessary.

PART 6: PANEL OF ADJUDICATORS OF THE OBSCENE ARTICLES TRIBUNAL

6.1 This PART examines the administration of the panel of adjudicators of the Obscene Articles Tribunal (the Tribunal).

Background

6.2 The Tribunal is a judicial body established under the Ordinance. Under the Ordinance, the Tribunal has the exclusive jurisdiction in determining whether an article is obscene or indecent.

6.3 The Tribunal comprises a judicial officer serving as the presiding magistrate and two or more adjudicators drawn from a panel of adjudicators. The inclusion of lay adjudicators in the Tribunal is to enable public standards of morality to be reflected in the classification or determination process.

6.4 Adjudicators are appointed by the Chief Justice under the Ordinance (Note 8). A person is eligible to be appointed to the panel if he is ordinarily resident in Hong Kong, has so resided for at least seven years and is proficient in written English or written Chinese. Since 1987, an adjudicator has been paid at \$400 per half day and \$800 per day. The Chief Justice may remove an adjudicator from the panel if the adjudicator ceases to be ordinarily resident in Hong Kong, is convicted of any offence, declared a bankrupt, or neglects or is unable to perform his duty.

6.5 In 1995, the Government carried out a review of the Ordinance, which resulted in introducing measures to enhance the transparency and representativeness of the Tribunal. One of the measures was to strengthen the panel by increasing its size and representativeness. Subsequently, the Government carried out a recruitment exercise in 1996. Upon the completion of this recruitment exercise in July 1996, the number of adjudicators was increased from 76 to 174.

Note 8: *Adjudicators are appointed on the basis that persons from different age groups, education levels, professions and occupations will be selected so that the standard adopted by the Tribunal is as akin to the social norm as possible and is representative.*

Composition of the panel

6.6 The adjudicators are appointed for a tenure of three years and are eligible for re-appointment. It is the usual practice of the Judiciary to re-appoint adjudicators unless they have resigned, declined the offer, or cannot be contacted. Since the last recruitment exercise in 1996, the Judiciary has withheld the appointment of new adjudicators, awaiting the outcome of the Government's 2000 review of the Ordinance which included a proposal of setting up a two-tier classification system (see para. 5.4(a)).

6.7 Since 1996, the number of adjudicators has decreased. The number dropped by 41% from the highest level of 174 in 1996 to 102 as at December 2003.

6.8 Because no new adjudicators have been appointed in the past seven years, the adjudicators in the panel are ageing with time. This has resulted in a changed profile of the adjudicators (see Appendix E). For example, the proportion of the 21 to 30 age group has decreased from 15% of the total number of adjudicators in 1997 to just 1% in 2003.

Procedures for selecting adjudicators for attending the Tribunal

6.9 Two weeks before a Tribunal session (which usually lasts for half a day) is to be held, the Tribunal registry will select adjudicators from the panel list. The adjudicators are selected manually by the registry staff on a random basis. The Tribunal comprises a presiding magistrate and two or more adjudicators when a session is held for an interim classification or determination of articles. When the session is for the full hearing review or reconsideration of the classification of articles, the Tribunal comprises a presiding magistrate and four or more adjudicators. If the selected adjudicators cannot be contacted or they decline to accept the invitation, the registry staff will select other adjudicators from the panel list.

Audit analysis of adjudicators' attendance in the Tribunal

6.10 Audit examination of the Tribunal registry's records indicated that the attendance rates of the adjudicators varied significantly, as shown in Table 6.

Table 6

**Number of sittings of adjudicators
in the 11 months ended November 2003**

No. of sittings	(A)		(B)	
	Adjudicators who attended the sittings		Total no. of sittings of adjudicators in (A)	
	No.	%	No.	%
0	16	15	Nil	Nil
1 to 10	67	64	282	40
11 to 20	12	12	179	25
More than 20	9	9	246	35
	} 21		} 425	
	} 21		} 60	
Total	104	100	707	100

Source: Audit analysis of the Tribunal registry's records

6.11 Table 6 shows that 16 adjudicators (or 15% of the panel) had *not* sat on any of the Tribunal sessions in the 11 months. Twelve adjudicators (or 12%) had sat on 11 to 20 sessions, and another nine adjudicators (or 9%) had sat on more than 20 sessions. These 21 adjudicators were the more active ones and between them they had sat on 425 sessions in the 11 months, representing 60% of all 707 sittings in the period. They had more or less taken up the bulk of the work of the Tribunal. This calls into question the representativeness of the panel of adjudicators.

Audit observations and recommendations

6.12 Audit considers that the CITB needs, in conjunction with the Judiciary, to conduct an overall review of the composition and size of the panel, taking into account the decrease in the number of adjudicators, their age profile, and the uneven participation of the adjudicators in the sittings of the Tribunal. Besides, the existing manual selection of adjudicators from the panel list to sit on the Tribunal does not ensure that there is sufficient randomness. The use of other means of random selection is desirable.

6.13 **Audit has recommended that the Secretary for Commerce, Industry and Technology should, in conjunction with the Judiciary Administrator:**

- (a) **conduct an overall review of the administration of the Tribunal panel of adjudicators;**
- (b) **appoint new members to the Tribunal panel;**
- (c) **consider not re-appointing those adjudicators who have repeatedly declined to sit on Tribunal sessions; and**
- (d) **use a computerised random selection process in selecting adjudicators to sit on the Tribunal.**

Response from the Administration

6.14 The **Secretary for Commerce, Industry and Technology** has said that he accepts the Audit recommendations. He has also said that on the appointment of new Tribunal adjudicators, the CITB has already issued a letter in late January 2004 inviting members of around 100 community organisations and professional bodies in Hong Kong to apply to the Chief Justice for appointment as Tribunal adjudicators. The CITB will work closely with the Judiciary Administrator in this exercise.

6.15 The **Judiciary Administrator** agrees to review the appointment and re-appointment of members to the Tribunal panel and the use of technology in the process of selecting adjudicators to sit on the Tribunal.

PART 7: PUBLIC OPINION SURVEYS

7.1 This PART examines the conducting of public opinion surveys by TELA in connection with the enforcement of the Ordinance.

The need for regular public opinion surveys

7.2 According to Section 10 of the Ordinance, in classifying articles, the Tribunal shall have regard to the standards of morality, decency and propriety that are generally accepted by reasonable members of the community. As these standards change from time to time, it is important to gauge them regularly. In this connection, TELA has so far commissioned two public opinion surveys on article classification under the Ordinance.

The first public opinion survey

7.3 TELA commissioned its first public opinion survey in July 1998, 11 years after the enactment of the Ordinance in 1987. The first survey, which was completed in April 1999, was targeted not only at gauging the community standards of morality but also the community's views on the operation of the Ordinance. Therefore the scope of the survey covered various areas, including the effectiveness of the regulatory system, public perception of the classification framework, community standards of morality, and the effectiveness of public education and publicity efforts.

7.4 The survey results indicated that:

- (a) there was a general acceptance of the arrangement of classifying obscene and indecent articles according to the moral standards generally accepted by the community;
- (b) in respect of obscene articles, the prevailing classification standards adopted by the Tribunal were generally in line with the expectation of the community. However, the standards for the classification of articles in newspapers, magazines and comic books containing indecent materials did not match with the more conservative standards of the respondents of the survey; and
- (c) it was generally perceived that civic education and parental guidance were the most effective means to prevent the youth from reading indecent articles.

The second public opinion survey

7.5 TELA commissioned the second public opinion survey in July 2000, which was completed in December 2001. The scope of this survey was only to gauge the community standards of morality for article classification under the Ordinance. The survey comprised a household survey and a focus group study. The survey results indicated that:

- (a) the majority of the household respondents and focus group participants cited “protecting the teenagers” as the reason for classifying the sample articles shown to them for review as Class II (Indecent) or Class III (Obscene);
- (b) “the morality standards of the general public” and “the influences of the article on children and teenagers” were often cited as the guiding principles for article classification under the Ordinance; and
- (c) most of the focus group participants considered that the prevailing classification standards adopted by the Tribunal were too lenient.

Audit observations and recommendations

7.6 The results of the surveys had provided TELA with useful input to assist it in devising its strategy for enforcing the Ordinance. For example, the 2001 survey had provided TELA with a clear message that the youth should be protected from the harmful influences of obscene and indecent articles. TELA had also passed the results of the surveys, through the Judiciary, to the Tribunal for its reference.

7.7 The standards of morality generally accepted by the community change over time. It is necessary for TELA and the Tribunal to gauge them regularly. Therefore, public opinion surveys on the community standards of morality should be conducted regularly. However, TELA has not laid down a requirement on how frequently these surveys should be conducted. The first survey was completed 12 years after the enactment of the Ordinance, while the second survey was completed more than two years after the first survey.

7.8 Audit considers that TELA needs to set a requirement on the frequency of conducting public opinion surveys. In this connection, Audit notes that, TELA has already set a requirement of conducting public opinion surveys *once every two years* to assess the community’s acceptance of the film classification system operating under the Film Censorship Ordinance.

7.9 As the second survey in respect of the community standards of morality for article classification under the Ordinance was completed in 2001, it is an opportune time for TELA to plan for the third survey.

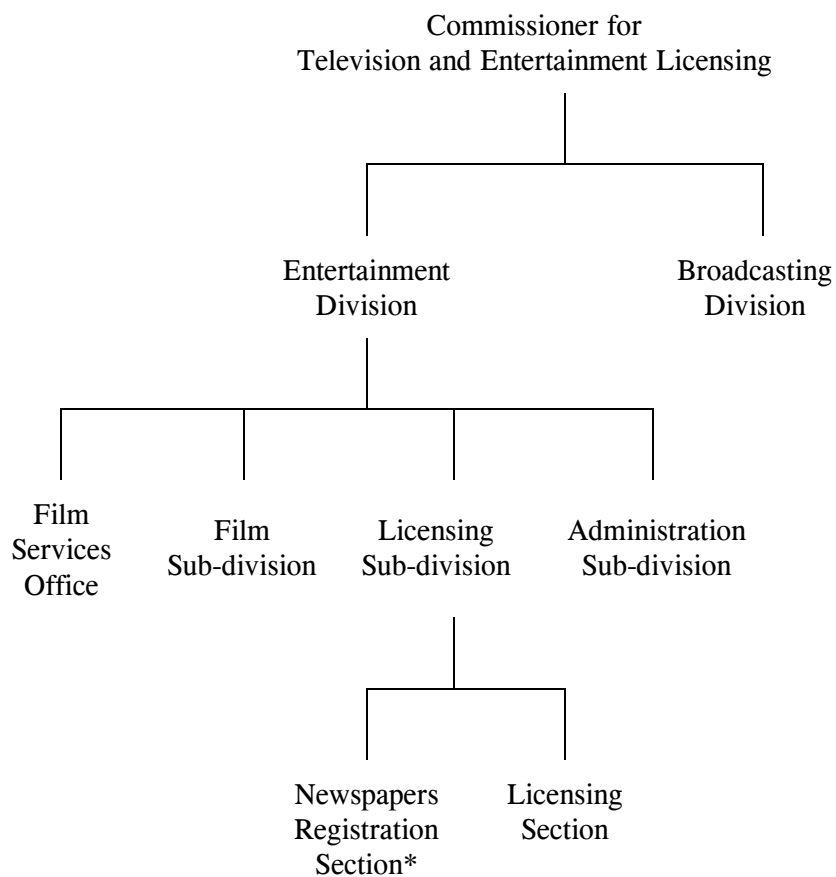
7.10 **Audit has recommended that the Commissioner for Television and Entertainment Licensing should:**

- (a) **consider setting a requirement on the frequency of conducting public opinion surveys to gauge the community standards of morality for article classification under the Ordinance; and**
- (b) **draw up an action plan for carrying out another survey.**

Response from the Administration

7.11 The **Secretary for Commerce, Industry and Technology** has said that TELA plans to conduct the next (third) public opinion survey in late 2004. Preparatory work has already commenced. TELA will also consider conducting such surveys at a specified frequency (e.g. once every two years).

Organisation of the Entertainment Division of TELA



* Responsible for the enforcement of the Ordinance

Source: TELA records

Appendix B
(para. 3.14 refers)

**Analysis of timing of TELA's inspections
for six months ended September 2003**

Time of inspections	No. of inspections (Note)	Percentage of total
Before 11:00 a.m.	2	—
11:00 a.m. — 2:00 p.m.	147	0.6%
2:00 p.m. — 4:00 p.m.	13,606	51.2%
4:00 p.m. — 6:00 p.m.	12,719	47.9%
	} 26,325	} 99.1%
6:00 p.m. — 8:00 p.m.	81	0.3%
Total	<u>26,555</u>	<u>100.0%</u>

Source: TELA records

Note: The analysis covers only those inspections with the time of inspection recorded. There were some 500 inspections without the time of inspection having been recorded.

Follow-up of 20 cases of problematic outlets

Case no.	Date of identifying problematic outlets	Date of notification	No. of days for notifying Police	Date of Police's action based on its intelligence	Date of action based on TELA's notification	No. of days from notification to enforcement action	Remarks
	(a)	(b)	(c) = (b)-(a)	(d)	(e)	(f) = (e)-(b)	
I. 5 cases in which Police took enforcement action based on its own intelligence							
1.	14.2.03	13.3.03	27	14.2.03	N.A.	N.A.	
2.	28.2.03	10.3.03	10	25.2.03	N.A.	N.A.	
3.	12.3.03	17.3.03	5	11.3.03	N.A.	N.A.	
4.*	11.4.03	9.6.03	59	5.5.03	N.A.	N.A.	
5.	19.5.03	26.5.03	7	12.5.03	N.A.	N.A.	
II. 15 cases in which Police (or Police and TELA jointly) took enforcement action							
6.*	13.11.02	10.3.03	117	N.A.	12.5.03	63	Shop was closed down.
7.	9.12.02	3.1.03	25	N.A.	28.1.03	25	
8.	17.2.03	12.3.03	23	N.A.	7.5.03	56	Shop was closed down.
9.	6.3.03	11.3.03	5	N.A.	9.4.03	29	
10.	13.3.03	17.3.03	4	N.A.	7.5.03	51	Shop was closed down.
11.	13.3.03	25.3.03	12	N.A.	26.4.03	32	
12.	18.3.03	20.3.03	2	N.A.	16.4.03	27	
13.*	20.3.03	12.5.03	53	N.A.	21.7.03	70	
14.	25.3.03	5.6.03	72	N.A.	18.6.03	13	
15.	15.5.03	21.5.03	6	N.A.	23.8.03	94	Shop was closed down.
16.	19.5.03	28.5.03	9	N.A.	6.6.03	9	
17.	23.5.03	30.5.03	7	N.A.	24.7.03	55	
18.	30.7.03	31.7.03	1	N.A.	14.8.03	14	
19.	11.8.03	22.8.03	11	N.A.	23.8.03	1	
20.	4.9.03	16.9.03	12	N.A.	10.10.03	24	
Average no. of days before taking enforcement action:						38	
III. Average no. of days before notifying Police for all 20 cases: 23							

*Legend: * In these three cases, TELA had referred dubious VCDs purchased from the outlets to the Tribunal for classification before notifying Police.*

Source: Audit analysis of TELA records

**Chronology of a case in which
TELA took four months to notify the Police**

	Event	Date	Number of days elapsed since last event date	Cumulative number of days elapsed since the problematic shop was identified
(a)	An Assistant Inspector found a VCD shop at the ground floor of a factory building in Cheung Sha Wan selling dubious VCDs. The Assistant Inspector purchased a VCD from the shop.	13 November 2002	Not applicable	Not applicable
(b)	TELA referred the VCD purchased to the Tribunal for classification.	27 December 2002	44	44
(c)	The Tribunal classified the VCD as a Class III article.	3 January 2003	7	51
(d)	The Tribunal's interim classification became final.	18 January 2003	15	66
(e)	TELA issued a confidential memorandum to the Police to request it to take enforcement action.	10 March 2003	51	117
(f)	The Police replied that the shop had been closed down for more than a month.	12 May 2003	63	180

Source: *Audit analysis of TELA records*

Appendix E
(para. 6.8 refers)

Comparison of profile of adjudicators in 2003 with that in 1997

Profile	Position as at November 1997		Position as at December 2003	
	No. of adjudicators	Percentage of total	No. of adjudicators	Percentage of total
<i>Sex</i>				
Female	66	42%	41	40%
Male	91	58%	61	60%
Total	157	100%	102	100%
<i>Age</i>				
21-30	24	15%	1	1%
31-40	52	33%	25	25%
41-50	56	36%	29	28%
51-60	24	15%	40	39%
61-70	1	1%	7	7%
Total	157	100%	102	100%
<i>Education level</i>				
Secondary	47	30%	38	37%
Post Secondary	110	70%	64	63%
Total	157	100%	102	100%

Source: Tribunal registry's records

Acronyms and abbreviations

Audit	Audit Commission
CITB	Commerce, Industry and Technology Bureau
C&ED	Customs and Excise Department
HKISPA	Hong Kong Internet Service Providers Association
ICRA	Internet Content Rating Association
ICRS	Internet Content Rating System
ISPs	Internet service providers
ITB Panel	Panel on Information Technology and Broadcasting
NGO	Non-government organisation
OACB	Obscene Articles Classification Board
Ordinance	Control of Obscene and Indecent Articles Ordinance
PAC	Public Accounts Committee
Police	Hong Kong Police Force
TELA	Television and Entertainment Licensing Authority
Tribunal	Obscene Articles Tribunal