

# Report No. 42 of the Director of Audit — Chapter 1

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

### Summary

1. In Hong Kong, the publication and public display of obscene and indecent articles are controlled under the Control of Obscene and Indecent Articles Ordinance (the Ordinance). The Ordinance prohibits the publication of obscene articles and restricts the publication of indecent articles to adults. The Television and Entertainment Licensing Authority (TELA) works with the Hong Kong Police Force (Police) and the Customs and Excise Department in enforcing the Ordinance.

#### Enforcement of the Control of Obscene and Indecent Articles Ordinance

2. **TELA's performance.** Since 2001-02, TELA has been provided with additional resources in enforcing the Ordinance. Following the increase in enforcement efforts, the number of prosecutions increased in 2001 and 2002, but dropped from 512 in 2002 to 186 in 2003. The sudden drop in 2003 is worth noting. *The Audit Commission (Audit) has recommended that the Commissioner for Television and Entertainment Licensing should conduct a review to ascertain the reasons for the drop in the number of prosecutions in 2003, and monitor closely its trend.*

#### Surveillance inspection programme

3. **Frequencies of surveillance inspections.** In 2000, TELA set the performance targets for inspecting high-risk retail outlets *at least once a month* and inspecting low-risk outlets *at least once every three months*. It also estimated that it would conduct 60,000 surveillance inspections a year. In 2003, TELA conducted 88,000 surveillance inspections which had more than met its target. For the six months ended September 2003, TELA had on average inspected high-risk outlets and low-risk outlets 1.6 times a month and 2 times every three months respectively. Because the performance targets have no upper limits (i.e. inspections are required "at least" once a month and once every three months), it is difficult to ascertain whether the actual inspection frequency is appropriate. *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 set the target inspection frequencies at specific levels for different types of outlets.*

4. ***Different levels of risk for different types of outlets.*** Audit analysis of the inspection results for three types of outlets (namely newspaper stalls, convenience shops and disc shops) indicates that the number of instances of breaching the Ordinance for convenience shops 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. For the six months ended September 2003, TELA had conducted 6,757 inspections on convenience shops, which accounted for 25% of the total inspections conducted. Substantial resource savings may therefore be obtained through reducing the number of inspections on convenience shops. *Audit has recommended that the Commissioner for Television and Entertainment Licensing should adopt a more risk-based approach in determining the inspection frequencies for different types of outlets.*

5. ***Regular inspection pattern.*** TELA inspection teams were used to conducting their surveillance inspections during office hours in the afternoon. They seldom conducted inspections during office hours in the morning. Inspections after office hours, such as in the evening or at night, were also extremely rare. The inspection pattern is too regular and predictable. *Audit has recommended that the Commissioner for Television and Entertainment Licensing should consider introducing a surprise element in the surveillance inspection programme to improve its effectiveness.*

6. ***Enforcement action on problematic outlets.*** On detecting a problematic outlet, TELA will notify the appropriate police district for follow-up. Audit analysis of 20 cases referred by TELA to the Police during the nine months ended September 2003 indicated that the enforcement action taken was slow. On average, TELA took 23 days to notify the Police. On several occasions, the problematic outlets were found to have closed down in the enforcement action. In view of the mobile nature of problematic outlets, prompt enforcement action is required. *Audit has recommended that the Commissioner for Television and Entertainment Licensing should, in consultation with the Commissioner of Police, review TELA's procedures for informing the Police of problematic outlets identified.*

## **Monitoring of publications and regulation of materials on the Internet**

7. ***Monitoring of publications.*** When TELA staff scrutinise publications and consider whether any materials in the publications are obscene or indecent, they make extensive reference to the information folders which contain samples of classifications by the Obscene Articles Tribunal (the Tribunal). Since June 2003, TELA had outsourced the work of monitoring publications to a non-government organisation. Audit noted cases where the non-government organisation had applied classification standards which were different from those of TELA. *Audit has recommended that the Commissioner for Television and Entertainment Licensing should consider compiling a comprehensive set of guidelines to facilitate consistent application of classification standards.*

8. ***Regulation of obscene and indecent materials on the Internet.*** The Internet Content Rating System (ICRS) is a content rating system that allows content providers to self-assess and self-label their own websites. In May 2003, TELA commissioned the Hong Kong Internet Service Providers Association to implement the ICRS. As at October 2003, only 148 websites and the websites of 10 out of 22 active Internet service providers (ISPs) were labelled. 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. *Audit has recommended that the Commissioner for Television and Entertainment Licensing should conduct a post-implementation review of the project upon its completion and, if it is decided that the project is to be continued, develop a publicity campaign to promote the use of the ICRS.*

### **Review of the Control of Obscene and Indecent Articles Ordinance**

9. ***The review in 2000.*** In 1998, 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. There were diverse views in respect of some major proposals put forward in the consultation paper. In January 2004, the Secretary for Commerce, Industry and Technology informed the Legislative Council of the Government's decision of not pursuing those proposals that would involve legislative amendments. He further advised that the Government would devote resources to stepping up enforcement actions and public education on the Ordinance. Audit is concerned that the Government had taken more than three years to bring the review to a close. Up to the end of 2003, those community-supported proposals arising from the 2000 review that would not involve legislative amendments had still not been implemented. *Audit has recommended that the Secretary for Commerce, Industry and Technology should expedite action to implement the community-supported proposals arising from the review.*

### **Panel of adjudicators of the Obscene Articles Tribunal**

10. ***Representation of the Tribunal.*** The Tribunal, a judicial body established under the Ordinance, is responsible for determining whether an article is obscene or indecent. The Tribunal comprises a presiding magistrate and two or more adjudicators drawn from a panel of adjudicators. Since the last recruitment exercise in 1996, the Judiciary has withheld the appointment of new adjudicators. As a result, the number of adjudicators has decreased and the adjudicators in the panel are ageing with time. The representativeness of the panel is also declining due to the uneven participation of the adjudicators in the sittings of the Tribunal. *Audit has recommended that the Secretary for Commerce, Industry and Technology should, in conjunction with the Judiciary Administrator, conduct an overall review of the administration of the panel of adjudicators.*

### **Response from the Administration**

11. The Administration has accepted the audit recommendations.

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