

Yau Tsim Mong District Council

Regulation of Internet Cafes

Introduction

This paper briefs Councillors on the Government's proposal on a licensing regime for Internet Computer Service Centres (ICSCs).

Background

2. The Home Affairs Bureau (HAB) has been reviewing the regulation of ICSCs since mid-2010. We have initiated focus groups discussions, collated views through the internet, organised an exchange session with youngsters and consulted the Commission on Youth (COY). These discussions aimed to gauge the views of the stakeholders on whether regulation of ICSCs should be enhanced, and if so in what aspect(s), to what extent and by what means.

Need for a Statutory Regime

3. While respondents generally agreed that an ICSC per se was not a business which should be discouraged, there was broad support for the Government to enhance regulation of these centres for public safety.

4. There was also concern on possible crimes associated with ICSCs. The public noted that the popularity of ICSCs among young people could have attracted the penetration of drug dealers or members of the triad society. They did not subscribe to the notion that young people or students should be allowed to patronize ICSCs beyond 'normal' hours even if they belonged to the under-privileged category

whose families could not afford computer sets and Internet connection fees at home. The problem of 'Internet addiction' among young patrons was a concern mainly shared by parents and social workers though they agreed that addiction could also occur at home.

5. Some acknowledged the strong demand for ICSCs as places of entertainment from adult patrons especially those working in the service/catering industries on shift, as well as demand for these premises from tourists. Thus, they supported that ICSCs should be allowed to operate long hours and even beyond midnight, provided that they did not cause nuisance to the neighbourhood.

6. Among those respondents who noted the introduction of a Code of Practice ("Code") by the Government in 2003 for voluntary compliance by ICSC operators, some opined that voluntary compliance was not reliable and others generally felt that compliance with the Code was not satisfactory.

7. However, some respondents from the trade did not see the need for any enhanced regulatory measures as these would carry compliance costs, thus driving small-scale ICSC operators out of business.

8. Noting the diverse mode of operation of ICSCs and the fast developing information technologies, there was general consensus that regardless of the details of the enhanced regulatory regime, certain establishments such as food premises, business centres of hotels, and computer centres of public libraries and community cyber centres run by non-profit-making bodies (especially youth organizations) should not be regarded and regulated as ICSCs merely because they also offered Internet access by members of the public, through either computer sets or wireless means, alongside their other operations/businesses.

9. Strictly on the basis of the incidents of crime, fire, nuisance and building safety infringements recorded so far, the problems

associated with ICSCs have not been particularly serious. Nonetheless, quite a lot of the respondents have demanded that the Government should cease to rely on the administrative Code and instead bring these premises under a proper licensing framework.

Proposed Licensing Regime

10. On balance, we propose to introduce a statutory licensing scheme for ICSCs by way of a new piece of legislation with the following objectives –

- (a) to ensure ICSCs' compliance with all the statutory and relevant requirements relating to fire prevention, building safety, crime prevention, ventilation, noise control, health, etc. as required by the relevant government departments for safety of the customers and nearby residents; and
- (b) to ensure that ICSCs are properly operated in order to prevent these centres from turning into hotbeds for illegal activities and to minimize their negative impact on nearby residents.

Key parameters of the proposed regulatory regime are detailed in the ensuing paragraphs.

Definition of ICSCs

11. An ICSC should generally be referred to as a business establishment where customers may make use of the computers provided by the operator with monetary consideration to gain access to the Internet for various purposes e.g. playing games, using word-processing softwares.

Exemption

12. As Internet facilities become more and more popular, some food premises, lounges provided by airline companies within the

airport and clubhouses of private residential housing estates also provide a few sets of computers or wireless Internet connection services to enable their clients to gain access to the Internet. There are also corner stores, whose major business is the sale of groceries to Foreign Domestic Helpers, providing a very small number of computer sets for their targeted customers to gain access to the Internet. Since the scale of problems, real or perceived, associated with these establishments as ICSCs is extremely small and food premises are already subject to separate licensing control, it is not our intention to subject these establishments to the proposed regulatory regime for ICSCs. Likewise, business centres, libraries, tutorial centres, schools and community cyber centres run by non-profit-making bodies should also be exempted from the proposed regime.

13. To cater for the above establishments, we recommend that ICSC as defined under the control regime will not cover –

- (a) establishments that are equipped with five or less computers;
- (b) establishments that offer Internet access by members of the public only through wireless means without the provision of computers;
- (c) business centres inside a hotel or lounges inside an airport;
- (d) clubhouses inside a private residential estate; and
- (e) computer centres which are run by non-profit-making bodies, educational institutions or youth organizations.

14. We will explore whether express provisions should be made in the new legislation or consequential amendments be made to the Amusement Games Centre (AGC) Ordinance (Cap 435) to the effect that ICSCs will not be subject to the licensing regime of AGCs under the AGC Ordinance.

15. As we further develop the details of the proposed system, we are prepared to consider other options of exemption, for example by defining premises where ICSC activity is carried out in an aggregate floor area not exceeding a certain size. Further consultation with the

trade will be required to ascertain the types, modes and descriptions of ICSCs which should be covered by the definition of ICSC under the proposed system, to avoid catching business establishments that are not ICSCs we intend to regulate, and to prevent conventional AGCs from disguising themselves as ICSCs for the purpose of evading the stringent licensing conditions under the AGC Ordinance.

16. In any event, exemptions provided under the proposed regulatory regime will not exempt any premises or persons from complying with other statutory requirements promulgated under other laws of Hong Kong.

Licensing conditions

17. We propose that regulatory elements set out in the Code form the basic and major licensing conditions as follows –

Criteria for application

- (a) requirement on the applicants – an applicant is a fit and proper person to operate an ICSC;
- (b) location – an ICSC under application is not located in a building where only residential purposes are allowed, in premises designed for domestic use only, in industrial buildings, or in the industrial portions of a building;
- (c) statutory and relevant requirements – an ICSC under application has to comply with all statutory and relevant requirements such as those relating to fire safety, building safety, crime prevention, safety of electrical installations, ventilation, health, etc. as required by the relevant government departments;

Conditions under a licence

- (d) crime prevention - no alcohol should be allowed to be sold or consumed on the premises; no partitions higher than 1.5 m shall be erected in areas accessible to the public;
- (e) fire safety – operators should comply with the statutory and relevant fire safety requirements at all times;
- (f) opening hours - ICSCs situated in buildings that are not solely used for commercial purposes should not be allowed to operate between midnight and 8 am;
- (g) access of patrons - children under 16 should not be allowed to remain in the centre from midnight to 8 am; and
- (h) control of indecent and obscene articles - operators should ensure that there are up-to-date devices filtering pornographic or violent content on the Internet and such devices should be activated at all times during business hours of the centres.

Other essential elements under the new legislation

18. We propose to provide for, under the new legislation, establishment and powers of the licensing authority, an appeal mechanism and levels of fees payable to recover the full cost in respect of ICSC licenses, power of entry and seizure for enforcement purposes, and different levels of penalty upon conviction. We will also consider whether to require ICSCs to install CCTVs with recording capabilities inside the premises during its operating hours for the purposes of ensuring public order and crime prevention, but this will necessitate careful consideration on how the installation and operation of such CCTVs as well as the handling and disposal of video records from such CCTVs should be regulated having regard to the need to protect the privacy of ICSC customers. We will draw up details on these aspects in consultation with relevant departments.

Implementation agencies

19. If it is decided that there should be a statutory regulatory regime for ICSCs, we propose that the institutional set-up for the implementation of the new licensing system, including the grant, revocation and suspension of licences as well as general inspection, be largely modelled on the existing licensing system for AGCs. To ensure ICSCs' compliance with the requirements under a licence, we will rely on the enforcement actions of various departments under relevant ordinances.

Transitional Period

20. We propose that a grace period of 12 months be allowed before the commencement of the new legislation. This would allow sufficient time for existing ICSC operators to take measures where appropriate to comply with the licensing conditions.

Way Forward

21. We appreciate that operators of the existing ICSCs will have concerns due to the expected compliance costs and entry barrier to the market. Small-scale ICSCs would likely be most affected and some of them may have to cease operation as a result. However, any business lost due to the regulatory regime may be absorbed by the more well-established ICSCs or those operated under chain-store mode. We will consult the trade on our proposal in the second and third quarters of 2011. We also propose to continue to discuss our proposal with other relevant stakeholders including the District Councils, parent-teacher associations and youth organizations. We aim to make a decision in early 2012 having regard to further feedback received.

Home Affairs Bureau
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