

Comments on Consultation Papers-
CIVIL LIABILITY FOR INVASION OF PRIVACY

The members of the Hong Kong Women Professionals and Entrepreneurs Association welcome the proposal of issuance of codes of practice by the Privacy Commissioner for Personal Data and Broadcasting Authority respectively to regulate surveillance, advertising standards and use of personal data in advertising with respect to the invasion of personal privacy.

We are of the opinion that some form of guidelines has been long overdue given the explosive speed of progress of the electronic age. The advancement of technology, in particular the computer, has changed the way of the collection, storage and accessibility of personal data. Our current laws and legislations are slow or insufficient to deal with abuses by a minority of employers and the general public with regards to the use or obtaining of personal data. The recommendation to extend the existing laws to provide wider protection for the privacy of the individual is a good and efficient approach (recommendation 16) although additional measures need to be implemented with regards to the handling of personal data on the internet.

The codes of practice, howsoever comprehensive, must be effective and binding on its objects. Without the force of law and deterrence the codes of practice will be but a paper tiger. It is unclear what the consequences of breach will be for those who do not comply with the proposed codes of practice of the Broadcasting Authority. We would suggest the imposition of fines and/or suspension of licence where appropriate in addition to the recommendations to compensate the victim (recommendations 21-23).

Special attention must be drawn to the power given to certain authorities like the IRD, ICAC and the police with regards to the obtaining and use of personal data. Although it is of paramount importance that such authorities must be empowered to uphold law and order and to investigate into possible tax evasion and corruption, the interest and privacy of the individual must also be considered. For example, many entrepreneurs are already complaining that the IRD has unlimited power in demanding the submission of personal data and causes unnecessary disruptions to their businesses in their tax investigations. The powers of these authorities must be suitably controlled in order to give entrepreneurs sufficient freedom and confidence in continuing to operate their businesses in Hong Kong or starting new businesses in Hong Kong, otherwise they will move their businesses elsewhere and this will eventually hurt our economy. We suggest that a solution may

be found by imposing the codes of practice mentioned above to these authorities as well. The Law Reform Commission may also consider taking this opportunity to review and revise the powers of the various authorities in question.

Finally, we would emphasize that in the process of controlling and regulating the invasion of personal privacy, care must always be given to strike a fair balance between public interest and the need for protection of privacy of the individual.