

LCQ3: Information that is false and prejudicial to public safety

Following is a question by the Hon Kwok Wai-keung and a reply by the Secretary for Home Affairs, Mr Caspar Tsui, in the Legislative Council today (December 9):

Question:

In the latter half of last year when riots raged on in Hong Kong, information which was false and prejudicial to public safety, such as those discrediting the Police and inciting hatred, was prevalent on the Internet, resulting in the riots becoming increasingly violent and causing social dissension. However, there is currently no dedicated legislation in Hong Kong targeting acts of wilfully spreading such information. On the contrary, a number of countries have enacted legislation in recent years targeting such acts. For example, Germany enacted the Network Enforcement Act in 2017, France enacted the Law Against the Manipulation of Information and the Law Against False Information in 2018, and Singapore enacted the Protection from Online Falsehoods and Manipulation Act in 2019. In this connection, will the Government inform this Council:

(1) whether it has formulated a mechanism to proactively make clarifications on false information; if so, of the details;

(2) of the legal provisions that law enforcement agencies may invoke to combat acts of wilfully spreading false information, as well as the contents of such provisions, the threshold for conviction and the penalties; and

(3) whether it will consider enacting dedicated legislation to combat acts of wilfully spreading on the Internet information that is false and prejudicial to public safety; if so, of the details and the legislative timetable; if not, the reasons for that?

Reply:

President,

Having consulted various departments including the Security Bureau, our reply to the Hon Kwok Wai-keung is as follows:

Hong Kong residents enjoy the freedom of speech under the Basic Law, but that freedom is not absolute. According to the International Covenant on Civil and Political Rights as applied to Hong Kong and the Hong Kong Bill of Rights Ordinance (Cap 383), the exercise by anyone of the right to freedom of expression carries with it special duties and responsibilities, and may therefore be subject to certain restrictions as provided by law as necessary for (i) respect of the rights or reputations of others, or (ii) the protection of national security or of public order, or of public health or morals.

(1) All bureaux and departments have been monitoring information being circulated, and will clarify proactively by various channels, such as issuing press releases or social media posts, etc. as necessary. In view of the social incidents since mid-last year, the Information Services Department (ISD) has set up a dedicated webpage on clarifications by the Government. A clarifications column was also set up on the website of news.gov.hk in mid-July last year to give the public better access to the Government's clarifications.

Bureaux and departments have always kept in view closely rumours or untrue reports on the Internet. They have made prompt clarification by multiple channels once there is wide circulation of incorrect information which has led to misunderstanding or negative sentiment in the society, with a view to curbing the spread of rumours and allaying public concerns.

Government bureaux and departments put their press releases and information on their webpages and social platforms for browsing by members of the public. The Government has also actively introduced various Internet- and social media-based channels, for instance, websites and the "Tamar Talk" Facebook Page, for disseminating information to the public with a view to setting the record straight. ISD also widely disseminates clarification messages through social media platforms.

In addition, ISD and the Hong Kong Economic and Trade Offices overseas make clarifications on untrue reports by foreign media. Those clarifications have been uploaded on the "Hong Kong Update" thematic webpage.

(2) The Internet is not an unreal world that is beyond the law. As far as the existing legislation in Hong Kong is concerned, most of the crime-prevention laws in the real world are applicable to the online world. Any acts inciting others to break the law or engage in cyber-bullying, as long as they involve criminal offences, are regulated by the relevant laws regardless of whether they were committed online. For example, criminal intimidation under section 24 of the Crimes Ordinance (Cap 200) (maximum penalty for which is five years imprisonment) and blackmail under section 23 of the Theft Ordinance (Cap 210) (maximum penalty for which is 14 years imprisonment) are also applicable to online acts. Furthermore, inappropriate speech published online may also contravene other offences, such as the data protection principles under the Personal Data (Privacy) Ordinance (Cap 486), infringement of copyright, or libel, etc. Publishing information online that might threaten public safety may also infringe the common law offence of incitement to commit public nuisance (maximum penalty for which is seven years imprisonment).

Meanwhile, according to Section 89 of the Criminal Procedure Ordinance (Cap 221), any person who aids, abets, counsels, or procures the commission by another person of any offence shall be guilty of the like offence. Under common law, inciting others to commit any substantive offence is also itself an offence. In short, any act of inciting others to commit an offence is already an offence.

(3) Hong Kong has long been one of the safest cities in the world. In the past year or so, Hong Kong has experienced social unrest, severely damaging social order and the rule of law, and posing threats to people's lives and properties. To turn around this situation, we must take stringent law enforcement actions. If there is evidence that someone violates the law, the offender must face legal sanctions.

Article 27 of the Basic Law has ensured the enjoyment of the freedom of speech and of the press by Hong Kong residents. At the same time, however, any message could be disseminated rapidly through the Internet platform to a large number of recipients. It has been abused to incite others to act against the law. This presents unique challenges to law enforcement agencies. Furthermore, the proposal to introduce specific legislation targeting deliberate dissemination of rumours would involve many complicated and controversial issues, and whether the introduction of specified criminal offence would be the most effective measure in tackling the issue, etc.

Under the existing legal framework, if an act that would be illegal in the real world was committed online, the Police can enforce the law with the relevant legislation. As just mentioned, we have been paying close attention to acts of committing or aiding and abetting others to commit online offences and their trends.

We have also been keeping in view legislations overseas relating to the online publication of information that is false or may prejudice public safety. We will observe their effectiveness and enforcement process to see if there are loopholes to be plugged in Hong Kong.

We reiterate that most of the laws in the real world are applicable to the online world. Hence, members of the public have to act legally and responsibly in using the Internet, and refrain from committing any criminal offence. We appeal to members of the public to be vigilant against rumours and pay attention to information released by the Government, so as to avoid being misled by rumours.

Thank you, President.