

Tackling Cyberbullying: A Comparative and Interdisciplinary Symposium

The University of Hong Kong

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Cyberbullying from a Personal Data Privacy Perspective

保障・尊重個人資料
Protect, Respect Personal Data

Stephen Kai-yi Wong, Barrister
Privacy Commissioner for Personal Data, Hong Kong

Presentation Outline

- 1 Cyberbullying - Introduction
- 2 Cyberbullying acts and the Personal Data (Privacy) Ordinance (PDPO)
- 3 Cyberbullying acts and other laws in Hong Kong
- 4 Position in other jurisdictions
- 5 The way forward

A cartoon character with a round, orange face and a sad expression, wearing a red plaid shirt. A thought bubble above the character's head contains the number '1'. A large white circle with a red border and the number '1' is overlaid on the left side of the character's face.

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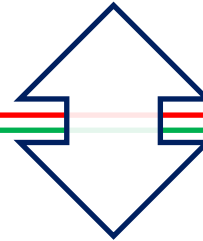
Cyberbullying - Introduction

How does cyberbullying come along?

Frequent use of Instant Messaging and Social Media

Pros

- Sharing of ideas, daily life experiences
- Building relationships and have fun
- Access / Sharing of information at ease



Cons

- Irresponsible use by distributing offensive or embarrassing information, whether by friends or strangers
- People's lives "offline" maybe adversely affected as a result of **cyberbullying**

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Forms of cyberbullying

- **Cyberbullying generally refers to:-**
 - the activity of **using the internet to harm or frighten** another person, especially by sending them unpleasant messages



“Human Flesh Search”

- “Human flesh search” (人肉起底) is rampant
- The targeted person(s) would be subject to **harassment, denigration, disclosure of real-world identities, framing, impersonation, trickery and exclusion.**
- **Children** as well as **adults** can be the victims



Examples of cyberbullying (1)

- “Standard” Wedding Gift?

Incident

A bride-to-be passed remarks on a social networking site, expressing her dissatisfaction with the wedding presents received. Shortly afterwards, users of various Internet forums criticised her attitude, and her wedding date and venue were made public. She was put under tremendous pressure and had to apologise in public.

Tips

There is no simple “Delete” button that can delete the information disclosed online.

Though you may regret making an off the cuff remark on the Internet and wish to delete it after posting, but by then, it may have already been read and forwarded to a great many other people.

What goes online stays online. Hence do not post any information online that you would not share publicly offline. Always assume that your “private” conversations will be published and become known one day, either by mistake or through the acts of your “friends”.



Examples of cyberbullying (2)

- **Bus Incident**

Incident

Two passengers on a bus quarrelled over a seat. The dispute was captured by another passenger with a smartphone camera who then shared it online. Internet users went on to disclose the names and phone numbers of the protagonists on the Internet after uncovering their identities, who as a result faced tremendous pressure. Criticisms of the two passengers' behaviour swamped most online forums.

Tips

Beware that smartphone users often capture incidents that take place in public and then publish the same online, and if you are picked on for your uncivil behaviour or just for a practical joke, you may attract bad publicity on the Internet.

Beware that there are some Internet forums known for their members' prowess in uncovering the identity of the persons featured in the online video clips. Even if you and your friends have only left fragmented information about you on different sites, others can find ways to collate all information about you without your knowledge.

For minor incidents of cyber-bullying, e.g. a mean or nasty comment, the best response could be no response.



Examples of cyberbullying (3)

• Internet Justice?

Incident

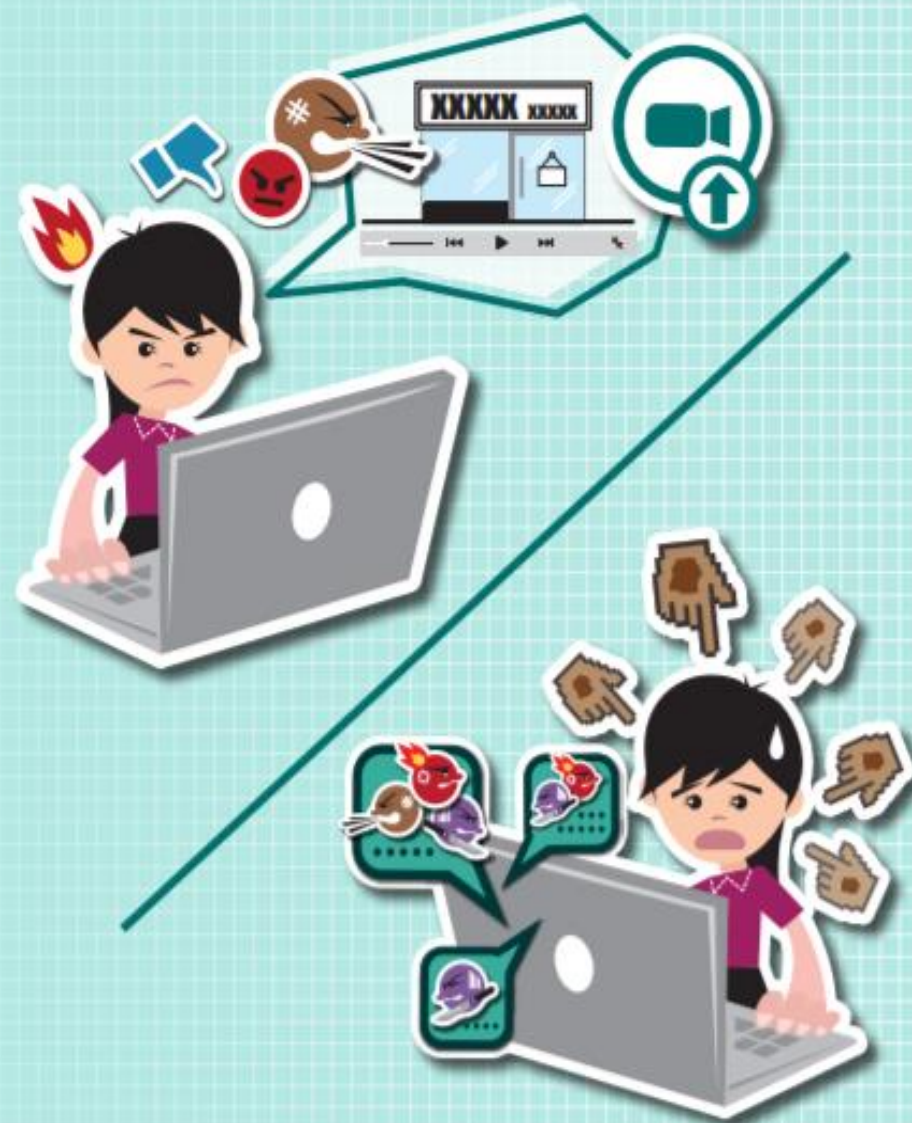
A grumpy customer posted a video to rally netizens' opposition against a shop for its poor customer service. She expressed her anger at the shop with nasty words. To her surprise, netizens found her actions unreasonable and she became the target of attack. Her photo, home and office addresses were published on the Internet. A social network group was set up calling for her apology.

Tips

What you say or share online can draw scrutiny beyond your expectation.

The information you shared with others could be targeted by cyber-bullies naming and shaming individuals in the name of Internet justice. They put you on trial over your online words or behaviour and give their verdicts. It is not uncommon that an "attacker" may end up as a victim when the tide turns.

Think twice before joining a heated discussion. Treat others the way you would like to be treated. You could be the next victim!



Cyberbullying vs Bullies in the physical world

- Easier to hide real identities
- Continuous onslaught unstrained by physical boundaries
- Difficult to curb cyberbullying effectively



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Cyberbullying acts and the Personal Data (Privacy) Ordinance (PDPO)

Personal Data (Privacy) Ordinance (Cap 486)

- Enacted in **1995**
- **Independent** Privacy Commissioner for Personal Data (not part of the HKSAR Government)
- Comprehensive **personal data** protection law
- Covers the **public** (government) and **private sectors**
- Referenced to 1980 OECD Privacy Guidelines and 1995 EC Data Protection Directive

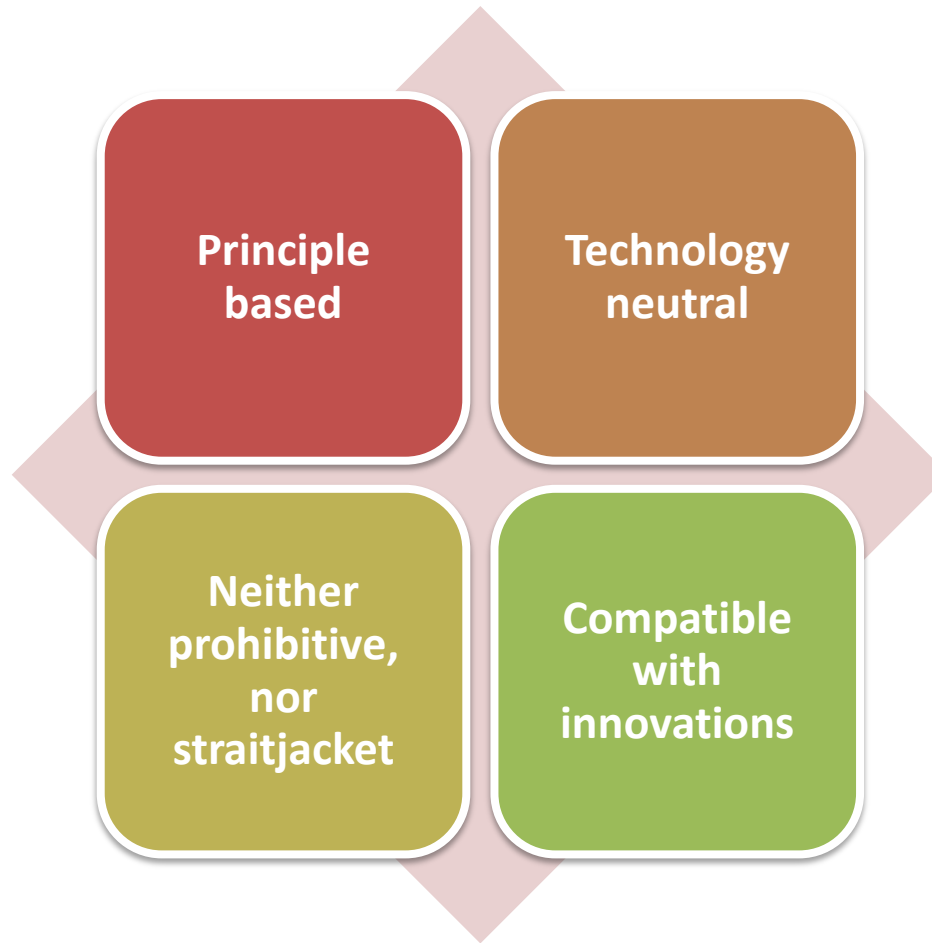


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Legislative Intent

- **Business Perspective** – To facilitate business environment, maintain Hong Kong as a financial and trading hub
- **Human Rights Perspective** – Protect individuals' personal data privacy

Characteristics of the PDPO



What is “Personal Data”?



- (a) Relating directly or indirectly to a living individual
- (b) Practicable for the identity of the individual to be directly or indirectly ascertained
- (c) In a form in which access to or processing is practicable

Regulation under the PDPO

- If a cyberbullying involves the collection and use of personal data of the targeted person, the conduct is regulated under the PDPO and the **six Data Protection Principles (DPPs)**.



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DPP 1



DPP1(1)

- No collection unless
 - (a) Lawful purpose directly related to a function or activity of the data user
 - (b) Collection is necessary for or directly related to that purpose
 - (c) Data adequate but not excessive

DPP1(2)

- Means of collection must be
 - (a) lawful; and
 - (b) fair in the circumstances of the case

DPP 3

- Personal data must not be used for a “**new purpose**” (**新目的**), i.e. any purpose other than (a) the purpose for which the data was collected or (b) directly related purpose unless “**prescribed consent**” (**訂明同意**) from the data subject is obtained
- “**use**”, in relation to personal data, includes *disclose or transfer the data* (section 2(1))
- Prescribed consent means **express** consent of the person given **voluntarily** and which has not been withdrawn in writing (section 2(3))

Applying to cyberbullying situations...

- **DPP 1 – Unlawful Collection**
 - Collection of the targeted person's personal data **for an unlawful purpose** (e.g. for criminal intimidation)
- **DPP 3 – Change of Use**
 - **Subsequent use** of the targeted person's personal data collected, either from **public or private domain**, for cyberbullying
 - Such use is unlikely to be directly related to the original collection purpose or with the targeted person's prescribed consent

Role of online forum provider/ webpage operator

- Only acts as an **intermediary** that merely provides a facility for web users to post information on websites
- **NOT a data user in a cyberbullying incident (sections 2(1) and 2(12) of the PDPO)**
- PCPD is **not empowered to direct a forum provider / webpage operator to remove the cyberbullying content**



Exemption

- To strike a balance between protection of personal data privacy rights and online dissemination of information
 - S.52 Domestic Purpose (Part 8 of the PDPO):
 - Personal data held by an individual and—
 - (a) concerned only with the management of his personal, family or household affairs; or
 - (b) so held only for recreational purposes,is exempt from the provisions of the data protection principles, Parts 4 and 5 and sections 36 and 38(b).
 - **Caution:**
 - NOT a blanket exemption
 - Cyberbullying may well be out of the scope of “domestic purpose”

Contravention of DPPs

- Contravention of a DPP is not an offence per se
- PCPD may serve an enforcement notice (執行通知) on the relevant data user (section 50)
- **Non-compliance with an enforcement notice is a criminal offence** (section 50A)



Offence under the PDPO

- **Offence (section 64):**
- **A person discloses personal data obtained from a data user without the latter's consent**
 - with intent to obtain gain for himself or another person or to cause loss to the data subject, or
 - if the disclosure causes psychological harm to the data subject.
- **The maximum penalty for the offence is a fine of HK\$1 million and imprisonment for 5 years**

Investigation powers of Privacy Commissioner

- **General powers of investigation under Part 8 of the PDPO:**
 - power to be furnished with any information, document or thing (section 43(1)(a))
 - power to summon before him any person and to examine such person (section 44)
 - power to conduct a hearing (section 43(2))
- **Limitation of Privacy Commissioner's powers**
 - May enter premises occupied by the relevant data user only with prior written notice unless a warrant has been issued by a Magistrate (section 42)



Civil Remedies

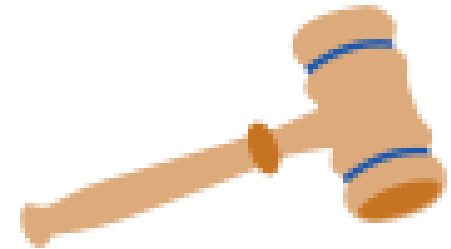
- **Victim of cyberbullying**
 - May claim monetary compensation from the data user
 - May seek legal assistance from the PCPD
 - Potential Limitation:
 - Common offenders of cyberbullying are youngsters / students
 - They may have no means to pay any damages awarded / costs of the proceedings



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Civil Remedies

- The Commissioner is not empowered to:
 - award compensation to a victim
 - impose monetary penalty on the data user
 - direct the data user to tender an apology to the data subject



A cartoon character with a sad face and a thought bubble containing the number 1. The character has a large, round, orange head with two small black dots for eyes and a small, downturned mouth. It is wearing a red, textured sweater. A thought bubble above its head contains the number 1. The background is a light blue color.

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Cyberbullying acts and other laws in Hong Kong

Cyberbullying acts and other laws in Hong Kong

(1) Crimes Ordinance (Cap 200)

- **HKSAR v Ko Kam Fai (CACCC 83/2001)**
 - **Unlawful acts performed by the defendant:**
 - hacked into the victims' email accounts,
 - transferred data from the victims' computer to his own,
 - altered data therein, and
 - sent tons of emails containing obscene materials and threatening messages to the victims causing their email accounts inoperative.
 - **Conviction: Criminal Intimidation and Criminal Damage (sections 24 and 60, Crimes Ordinance)**

Cyberbullying acts and other laws in Hong Kong

(1) Crimes Ordinance (Cap 200) (cont'd)

- *HKSAR v Wong Dawa Norbu Ching Shan (DCCC 70/2013)*
 - **Unlawful acts performed by the defendant:**
 - took photographs of the underage victim without the latter's knowledge while having sexual intercourse with her
 - made demands for further sex by threatening to publish the victim's nude photographs on the Internet
 - the victim acceded to the demands as a result of the threat
- *HKSAR v Liang Fu Ting (DCCC 535/2011)*
 - **Similar unlawful acts performed by the defendant**
 - **Conviction: Both defendants were convicted of procurement to do an unlawful sexual act by threats (section 119, Crimes Ordinance)**

Cyberbullying acts and other laws in Hong Kong

(1) Crimes Ordinance (Cap 200) (cont'd)

- **HKSAR v Sze Ho Chun (KCCC 4003/2008)**
 - **Unlawful acts performed by the defendant (a laptop repairman):**
 - retrieved intimate photos from his customer's laptop entrusted to the repair company and uploaded them onto the Internet.
 - **Conviction: "accessing to a computer with dishonest intent" (section 161, Crimes Ordinance)**



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Cyberbullying acts and other laws in Hong Kong

(2) Theft Ordinance (Cap 210)

- **HKSAR v Chai Mei Kwan (DCCC 412/2011)**
 - **Unlawful acts performed by the defendant**
 - sending SMS messages to the victim threatening to distribute a video clip capturing their intimacies to “everyone” unless the victim gave her money
 - **Conviction: blackmail (section 23, Theft Ordinance)**



Cyberbullying acts and other laws in Hong Kong

(3) Summary Offences Ordinance (Cap 228)

- Section 20 “Offences in connection with telephone calls or messages or telegrams”

(4) Control of Obscene and Indecent Articles Ordinance (Cap 390)

- Section 21 “Prohibition on publishing obscene articles”

Cyberbullying acts and other laws in Hong Kong

(5) Civil Remedies

- Victim may bring a civil suit in tort, including a claim for an injunction, against the wrongdoer
- **Possible offence of “Trespass” or “Defamation”**
- **Cons:**
 - costly
 - time-consuming
 - emotionally draining





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Position in other jurisdictions

Canada

- One of the few countries that have specific legislation addressing cyberbullying at Federal Level
- ***Protecting Canadians from Online Crime Act***
 - Offence: Share intimate image without consent
 - *Extensive powers granted to the Court and the Police*
- **At Provincial Level**
 - Local legislation: in 5 provinces: **Alberta, Manitoba, New Brunswick, Ontario and Quebec**
 - **Nova Scotia - Intimate Images and Cyber-Protection Act** (effective from: 5 July 2018)

The United Kingdom

- **No Specific legislation dealing with cyberbullying**
- **Addressed by various existing laws**
 - ***Protection from Harassment Act 1997***
 - ***Malicious Communications Act 1988***
 - ***Communications Act 2003***
 - ***Criminal Justice and Courts Act 2015***
- **Schools' responsibilities**
 - ***Education and Inspections Act 2006***
 - ***Children Act 1989***

Australia

- ***Enhancing Online Safety for Children Act 2017***
 - Establishment of e-Safety Commissioner
 - Can demand websites to remove cyberbullying materials posted online

- ***Enhancing Online Safety (Non-Consensual Sharing of Intimate Images) Bill 2018 (passed by the House of Representatives on 16 Aug 2018)***
 - Aimed at protecting citizens against people who distribute non-consensual intimate images / videos online (or colloquially known as “revenge porn”).

New Zealand

- ***Harmful Digital Communications Act 2015***
(10 Communications Principles)
- ***Digital communications should not:***
 - disclose sensitive personal facts about an individual
 - be threatening, intimidating or menacing
 - be used to harass an individual

The United States

- **Forty-five states have cyberbullying provisions**
- **Laws require schools to have policies in place to prohibit cyberbullying and most of them prescribe school-based sanctions for participating in cyberbullying**
- **A few states specify criminal sanctions such as fines and jail sentence for cyberbullying**

mainland China

- **Tort Liability Law (中華人民共和國侵權責任法)**
 - **right to privacy in the online context is protected**
 - **a civil right of action for illegal disclosure of personal information**

- **“The Supreme People’s Court Regulations Concerning Some Questions of Applicable Law in Handling Civil Dispute Cases Involving the Use of Information Networks to Harm Personal Rights and Interests” (最高人民法院關於審理利用信息網絡侵害人身權益民事糾紛案件適用法律若干問題的規定)**
 - **a civil right of action for illegal disclosure of personal information**

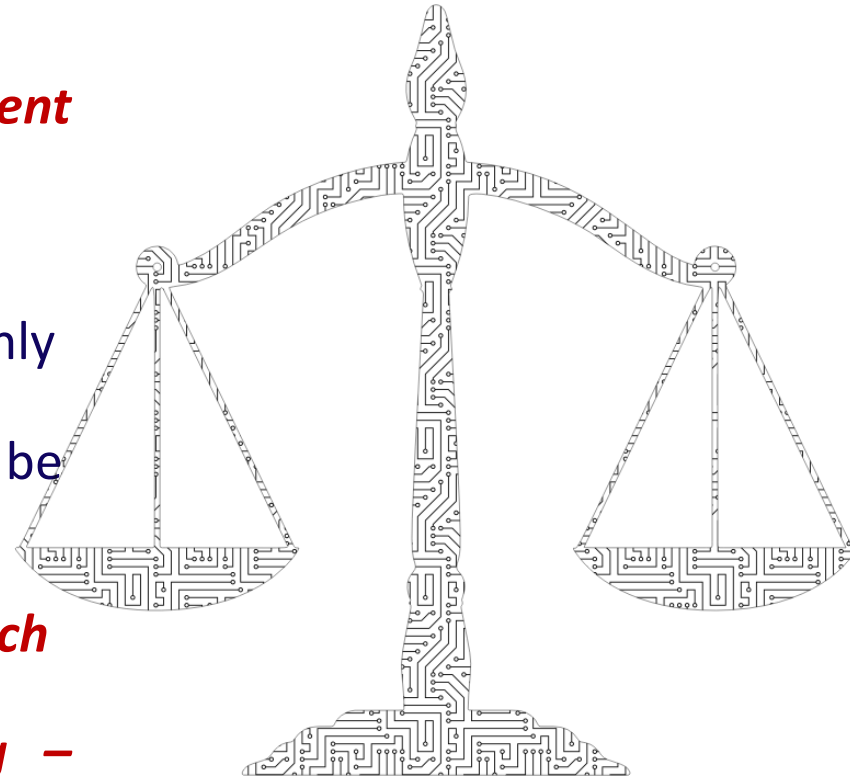


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The way forward

(1) The need for specific legislation of cyberbullying?

- ***Current laws adequate to deal with cyberbullying effectively?***
- ***How to draw the line? – Different circumstances***
 - Isolated, trivial, and innocuous incidents?
 - Serious and enduring torment? Or only minor teasing?
 - At which point should the behaviour be criminalised?
- ***Other public interest – Freedom of speech***
- ***More serious forms of cyberbullying – sufficiently defined and covered by current offences in Hong Kong***



(2) Criminal or civil sanctions?

- **Criminal Sanction** – too harsh for young people, especially from the education perspective?
- **Civil Remedies** – sufficient?
 - compensation for damages (for physical injuries, injury to feelings and other monetary loss caused by cyberbullying),
 - Injunction
 - order for apology

(3) Liability for online service or forum providers?

- **Liability of online service or forum providers – Not dealt with by any legislation in Hong Kong**
- **Further thoughts:- online service or forum providers may be in the best position to address the problems:-**
 - to block, remove or filter the materials in question,
 - to identify the anonymous users who commit cyberbullying, or
 - to suspend services to those users.
- ***Enhancing Online Safety for Children Act in Australia : online service or forum provider liable if he has knowledge of cyberbullying or received notice from victim or otherwise, and fails to take reasonably practicable steps to curb the incident (e.g. removing content swiftly)***

(4) Education and Promotion Campaign of PCPD

- PCPD's education and promotion campaign targeted at youngsters / students
- Thematic Website – PCPD “Youth Privacy Portal”
 - *Cyberbullying – What you need to know*
 - *Collection and Use of Personal Data through the Internet – Points to Note for Data Users Targeting at Children*
 - *Children Online Privacy – Practical Tips for Parents and Teachers*
 - *Protecting Online Privacy – Be Smart on Social Networks*
 - *Protecting Privacy – Using Computers and the Internet Wisely*




(5) The role played by schools

- **Impose statutory duties on schools to establish anti-bullying policies?**
- **Introduce new policies and procedures?**
- **Other interim measures? E.g.: Lessons to students / training to teachers to handle cyberbullying cases? Counselling of affected students?**

A cartoon illustration of a man with a large, grey, bushy mustache and a red, checkered shirt. He is holding a yellow telephone receiver to his ear. The background is a light blue color. In the top right corner, there is a thought bubble containing the number '1'.

Q & A

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- Hotline 2827 2827
- Fax 2877 7026
- Website www.pcpd.org.hk
- E-mail enquiry@pcpd.org.hk
- Address Room 1303, 13/F
Sunlight Tower
248 Queen's Road East
Wanchai, Hong Kong