

Privacy Commissioner Prize in Privacy and Data Protection Law 2020-21

Topic 4: Doxxing in Hong Kong — Way Forward

1. Introduction

In 2019, amidst social movements, the number of doxxing cases surged in Hong Kong. Some members of the public, driven by anti-police sentiments, doxxed police officers and their family members. Meanwhile, several journalists also complained that their private data has been publicised by the police without the former's consent.¹ Alarmed by the possible risks which doxxing may impose on social security, politicians, judges and various sectors of the society all see the need to regulate doxxing activities.

The word 'doxxing' actually originates in the Internet slang 'dropping dox': 'dox' being the short form of 'documents', and 'dropping dox' meaning the act of 'compiling and releasing a dossier of personal information on someone'.² Dropping dox, now known as doxxing, used to be performed by hackers only in 1990s.³ Things began to change after the emergence of social media platforms. As it became much easier to gather and disseminate information, one does not have to be a hacker to doxx other people. Reasons why a person doxxes another vary. Perhaps the person is a vigilante and believes that doxxing is a way to carry out justice. It is also possible that the person is a bully who finds pleasure in disrupting other people's lives. Whatever the reason is, the consequences of doxxing can be grave. Victims whose personal data has been disclosed may suffer from irreparable psychological injury; the lives of their family members may also be adversely affected. By all means, doxxing is intolerable in a civilised society. It should be regulated, but the question is how?

To determine the right way forward, one has to first understand the present. Through evaluating existing laws and the latest legislative amendment proposals, this essay explores the means by which Hong Kong should adopt in regulating doxxing activities. It argues that while existing laws are inadequate, the recently proposed amendments to the Personal Data (Privacy) Ordinance (Cap 486) ('PDPO') serve as a good starting point as they not only reflect that the Hong Kong government takes the problem of doxxing seriously, but also raise public awareness. Looking into the proposal's substantive content, this essay further argues that the introduction of a new offence under section 64 of the PDPO and the empowerment of the Privacy Commissioner of Personal Data ('PCPD') are appropriate. Yet, there are rooms for improvement: the proposals could have contemplated whether cases falling within the new offence should all be dealt with by way of formal court proceedings, and addressed issues concerning intermediary liability, extraterritorial effect of the PCPD's actions and restriction

¹ Tsui Lokman, 'Doxxing and press freedom in Hong Kong' (2020) 47:3-4 *Media Asia* 172, 173.

² Mat Honan, 'What Is Doxxing?' (*WIRED*, 3 June 2014) <<https://www.wired.com/2014/03/doxxing/>> accessed 5 June 2021.

³ Lisa Lim, 'Doxxing: the powerful "weapon" in the Hong Kong protests had a petty beginning' *South China Morning Post* (Hong Kong, 11 November 2019) <<https://www.scmp.com/magazines/post-magazine/short-reads/article/3036663/doxxing-powerful-weapon-hong-kong-protests-had>> accessed 5 June 2021.

of access to public registers. Improving on these respects will open a path forward for regulation of doxxing activities in Hong Kong.

This essay is divided into 6 parts. Following this introduction, Part 2 investigates into the problem of doxxing in Hong Kong; Part 3 critically examines existing laws; Part 4 discusses whether the proposed amendments to the PDPO can effectively rectify issues under existing laws; recommendations are given in Part 5; and finally, Part 6 concludes this essay.

2. The problem of doxxing in Hong Kong

The prevalence of doxxing in Hong Kong is observed in the Legislative Council Paper released in May 2021, which states that the PCPD has received and handled over 5,700 doxxing-related cases between June 2019 and April 2021.⁴ An Information Note published by the Legislative Council Secretariat further provides that around 60% of the cases involved members of the public, 36% involved police officers and their family members, and the remaining 4% involved government officials.⁵

In fact, to stem the tide of doxxing cases, the Secretary for Justice and the Commissioner of the Police sought an interim injunction order from the Court of First Instance on 25 October 2019, restraining any person from ‘using, publishing, communicating or disclosing to any other person’ the personal data of and concerning any police officers and their family members without the latter’s consent; ‘intimidating, molesting, harassing, threatening, pestering or interfering with’ any police officers and their family members; and ‘assisting, causing, counselling, procuring, instigating, inciting, aiding, abetting or authorising others’ to commit any of the above two acts (the ‘Doxxing Injunction’).⁶ The Doxxing Injunction was granted and subsequently continued.⁷

⁴ Legislative Council Panel on Constitutional Affairs, *Proposed amendments to the Personal Data (Privacy) Ordinance (Cap. 486)* (LC Paper No. CB(4)974/20-21(03)) [2].

⁵ Research Office, Legislative Council Secretariat, *Information Note: Measures to address doxxing in selected places* (IN09/19-20) [2].

⁶ *Secretary for Justice v Persons Unlawfully and Wilfully Conducting Etc* (HCA 1957/2019, 25 October 2019). Note that the Doxxing Injunction was amended on 28 October 2019, whereby it was added that any person is restrained from ‘using, publishing, communicating or disclosing to any other person the personal data of and concerning any Police Officer(s) and/or their spouse and/or their respective family members ... *intended or likely to intimidate, molest, harass, threaten, pester or interfere with any Police Officer(s) and/or their spouses and/or their respective members (namely, parents, children or siblings)*, without [their] consent’ (amendment emphasised). This was followed by a re-amendment on 31 October 2019, which involved alteration of the effective date of the Doxxing Injunction.

⁷ Continuation was granted on 8 November 2019: *Secretary for Justice v Persons Unlawfully and Wilfully Conducting Etc* [2019] 5 HKLRD 500; and 13 November 2019: *Secretary for Justice v Persons Unlawfully and Wilfully Conducting Etc* [2020] 5 HKLRD 638 (where the Court of First Instance ordered that the Doxxing Injunction shall continue until trial or further order of the Court). Note that on 8 November 2019 the Court of First Instance clarified that the order did not prohibit disclosure of personal data for the purpose of any news activity and revoked the prohibition on interference of any police officers and their family members. Also note that pursuant to the amendment on 11 December 2019, special constables as appointed under the Public Order Ordinance (Cap 245) were covered by the Doxxing Injunction as well.

Nonetheless, despite the Doxxing Injunction, doxxing activities still went on. It was reported that 60 cases have been referred to the Department of Justice by the PCPD on suspicion of breaching the Doxxing Injunction.⁸ Eventually, four defendants were convicted of civil contempt of court and among them, one was sentenced to an immediate custodial sentence of 21 days,⁹ others were given suspended sentences.¹⁰ In one of these cases, Coleman J commented, ‘the deeply ugly behaviour of doxxing has not been limited to doxxing police officers, or doxxing activities by only one “side” of the recent social unrest against the other “side”. Any doxxing activity by any person or group against any other person or group is equally unacceptable, and equally seriously endangers society as a whole.’¹¹

Indeed, there is pressing need to regulate doxxing activities in Hong Kong. Injunction orders granted by courts are hardly a sustainable solution as it costs time and resources for affected persons or groups to file an application and for courts to hear cases and hand down decisions. It is not possible to resort to injunction orders every time for every suspected case of doxxing. Furthermore, convicting persons who have performed doxxing of civil contempt of court instead of doxxing itself may give the public the impression that doxxing itself is not unlawful. A case study carried out by Social Policy Research and Faculty of Law of the University of Hong Kong, presented in a symposium on tackling cyberbullying in 2018, reveals that more than 25% of secondary school students in Hong Kong have come across doxxing, around 2% of them have even participated in doxxing activities.¹² Although these results were obtained before the social movements and no updates can be found, given students are constantly an active group on the Internet, it is contended that the number of students who took part in doxxing activities very likely has increased over the years. Recall the four defendants who were convicted of civil contempt of court, they were all youngsters in their twenties or thirties. The numbers and facts aforementioned reflect that there is a lack of awareness, particularly among the young generation, that doxxing is an abhorrent act.

Therefore, when compared to injunction orders, outlawing the act of doxxing is more effective in creating deterrence and developing public consciousness of the importance of protecting private data. The question then arises is: how? How should the law in Hong Kong regulate doxxing activities?

⁸ n 4 above, [4].

⁹ *Secretary for Justice v Yiu Ka Yu* [2021] 1 HKLRD 607.

¹⁰ *Secretary for Justice v Chan Oi Yau Riyo* [2020] 3 HKLRD 494; *Secretary for Justice v Cheng Lai King* [2020] 5 HKLRD 356; *Secretary for Justice v Chan Kin Chung* [2021] 1 HKLRD 563.

¹¹ *Yiu Ka Yu* (n 9) [50].

¹² Ruby Lo Tsz Fung and Michael Cheung, ‘In-depth Case Study of Doxing in Hong Kong’ (Tackling Cyberbullying: A Comparative and an Interdisciplinary Symposium, Hong Kong, 4 September 2018) <<https://www.hku.hk/f/upload/18335/Ruby%20Lo.pdf>> accessed 6 June 2021.

3. Critical examination of existing laws

Before discussing how the law should react, this part critically examines existing laws. At present, section 64(2) of the PDPO, the offence of criminal intimidation, the tort of intimidation and the tort of harassment regulate activities that may involve unconsented disclosure or misuse of personal data. It is submitted that existing laws are inadequate for two reasons. First, the requirement to show that the defendant has not obtained consent from the data user prior to disclosure of personal data of a data subject under section 64(2) of the PDPO presents evidential difficulties to the prosecution. Second, the safeguards under criminal law and tort law are not comprehensive enough to regulate all reprehensible doxxing activities.

(a) The PDPO

The PDPO, despite being the cornerstone of privacy and data protection law in Hong Kong, contains loopholes in regulating disclosure of personal data obtained without consent. According to section 64(2) of the PDPO,¹³ it is unlawful for a person to ‘(a) ... disclose[] any personal data of a data subject which was obtained from a data user without the data user’s consent; and (b) the disclosure causes psychological harm to the data subject.’ The distinction between ‘data subject’ and ‘data user’ is important here. As provided under section 2 of the PDPO, ‘data subject’ refers to ‘the individual who is the subject of the data’ whereas ‘data user’ refers to ‘a person who, either alone or jointly or in common with other persons, controls the collection, holding, processing or use of the data.’ What this means is that, suppose a person X obtained another person Y’s personal data from a web application owned and controlled by a Company ABC, and then disclosed such data on the Internet. The disclosure was unlawful only if X has not obtained consent from Company ABC prior to disclosure and the disclosure causes psychological harm to Y. In the context of doxxing, the requirement that consent from the data user must be obtained before disclosure creates evidential difficulties to the prosecution. This is because for most of the time, it is virtually impossible to trace the source of information being disclosed. Where the prosecution cannot identify the data user, it also cannot prove whether consent from the data user has been obtained.

It is only under exceptional factual circumstances that a person who has disclosed personal data of another person will be convicted by virtue of section 64(2) of the PDPO. *HKSAR v Chan King Hei*¹⁴ provides a good illustration. This case involved the first person being found guilty of doxxing police officers and their family members during the social movements in 2019.¹⁵ The defendant Chan King Hei was charged of three counts of ‘obtaining access to a

¹³ Section 64(2) of the PDPO reads:

‘A person commits an offence if—

- (a) the person discloses any personal data of a data subject which was obtained from a data user without the data user’s consent; and
- (b) the disclosure causes psychological harm to the data subject.’

¹⁴ (DCCC 164/2020, 9 October 2020).

¹⁵ Jasmine Siu, ‘Hong Kong protests: two years’ jail for first person found guilty of doxxing police, families amid anti-government unrest’ *South China Morning Post* (Hong Kong, 3 November 2020) <<https://www.scmp.com/>

computer with a view to dishonest gain for himself or another’ under section 161(1)(c) of the Crimes Ordinance (Cap 200), one count of ‘disclosing personal data obtained without consent from data users’ under section 64(2) of the PDPO and one count of loitering under section 160(3) of the Crimes Ordinance. As far as the charge under section 64(2) is concerned, the court found that the data disclosed was in the possession and ownership of the defendant’s employer Hong Kong Telecommunication (‘HKT’). HKT was the data user. The defendant failing to obtain consent from HKT before downloading the data from his office computer and disclosing such data on Telegram has therefore not obtained consent from the data user. Psychological harm caused to the data subject, that is the police officer and his family members, has also been proved with the support of a psychologist’s report. Based on these findings, the court found the defendant guilty under section 64(2) of the PDPO. This is a case in which the data user can be clearly identified, thereby enabling the prosecution to prove that the defendant has not obtained the data user’s consent prior to disclosure of personal data. However, the facts of this case are not typical of how doxxing happens. More often, after personal data is disclosed, it will be circulated so rapidly and widely that it becomes not possible to find out the root of the data or the person who first discloses the data.

As a result, section 64(2) of the PDPO is not so effective in regulating doxxing activities because it fails to take into account the feasibility of identifying the data user in the age of instantaneous sharing of information.

(b) Criminal intimidation, tort of intimidation and tort of harassment

Other than the PDPO, criminal law and tort law provide some safeguards against activities which may involve inappropriate use of data. Section 24 of the Crimes Ordinance prohibits any person from threatening any other person with any injury to that other person or any third party, or their property or reputation; or with any illegal act.¹⁶ Meanwhile, the common law tort of harassment provides recourse to victims who suffer from loss and damage because of any act of harassment or intimidation. Although these safeguards forbid malicious uses of data, they do not manage to cover all harmful doxxing activities.

[news/hong-kong/law-and-crime/article/3108216/hong-kong-protests-two-years-jail-first-found-guilty](https://www.hkfp.com/news/hong-kong/law-and-crime/article/3108216/hong-kong-protests-two-years-jail-first-found-guilty)> accessed 6 June 2021.

¹⁶ Section 24 of the Crimes Ordinance reads:

‘Any person who threatens any other person—

- (a) with any injury to the person, reputation or property of such other person; or
- (b) with any injury to the person, reputation or property of any third person, or to the reputation or estate of any deceased person; or
- (c) with any illegal act,

with intent in any such case—

- (i) to alarm the person so threatened or any other person; or
- (ii) to cause the person so threatened or any other person to do any act which he is not legally bound to do; or
- (iii) to cause the person so threatened or any other person to omit to do any act which he is legally entitled to do,

shall be guilty of an offence.’

To be convicted of criminal intimidation under section 24 of the Crimes Ordinance, it must be shown that a threat to cause injury or perform any illegal act has been made by a person to another person. Some doxxing cases may indeed involve such kind of threat. For instance, in *Secretary for Justice v Chan Oi Yau Riyo*,¹⁷ the defendant Chan Oi Yau Riyo uploaded a post on Facebook which contained personal data of a police officer and his family members coupled with words, ‘An eye for an eye [name of police officer (PW1)] and all dirty cops’ and ‘#forward’.¹⁸ These words likely constituted a threat to injure the police officer and his family members and reflected the defendant’s intent to alarm them. Chances are the defendant would have been found guilty of criminal intimidation. However, contrast this case with *Secretary for Justice v Cheng Lai King*.¹⁹ While the latter also involved doxxing of police officers and their family members, it is rather unclear whether the defendant has committed criminal intimidation. The defendant Cheng Lai King wrote in her post on Facebook, alongside with the personal data of a police officer, ‘If this officer has conscience, please surrender! An eye for an eye.’²⁰ Calling the police officer to surrender hardly was a threat to cause injury or to perform any illegal act, and ‘An eye for an eye’ was arguably too vague to suggest that any action would be taken. Consequently, despite injury has been caused to the police officer, the defendant was unlikely to have committed criminal intimidation. If not for the Doxxing Injunction, Cheng Lai King might have escaped punishment while Chan Oi Yau Riyo might still be convicted. The fact that the former has not made a threat while the latter has not done so does not really justify a difference in treatment given both defendants have caused injury to police officers or their family members by disclosing their personal data without their consent. In this regard, criminal intimidation is insufficient for the purpose of combating doxxing activities.

The analyses above also apply to the tort of intimidation, which has been recognised in Hong Kong.²¹ To make out a case of intimidation under tort law, it must be shown that the defendant has made an unlawful threat to the plaintiff with intent to cause harm with the threat, and that the plaintiff has suffered losses.²² As mentioned, doxxing does not necessarily involve threats, but the omitted cases deserve judicial attention as well because they are also capable of causing injury to the data subject.

Even for the common law tort of harassment, the same problem can be found: only a fraction of doxxing activities is covered. Following *Lin Man Yuen v Kin Ming International Holdings*²³ and *Law Lai Kwan v Intrend Finance Ltd*,²⁴ it is now settled that there is a tort of harassment

¹⁷ *Chan Oi Yau Riyo* (n 10).

¹⁸ The words were originally in Chinese, which said ‘血債血償[PW1]及眾黑警’ and ‘#轉’: *ibid*, [20].

¹⁹ *Cheng Lai King* (n 10).

²⁰ *ibid*, [21].

²¹ *Law Ka Yan Thompson v Ho Kang Wing* (HCA 1926/2015, 2 April 2020), [38].

²² *ibid*.

²³ (HCA 216/2008, 3 June 2015).

²⁴ [2017] 4 HKLRD 1.

in Hong Kong.²⁵ The elements of this tort are ‘a course of conduct by a person, whether by words or action, directly or through third parties, sufficiently repetitive in nature as would cause, and which he ought reasonably to know would cause, worry, emotional distress or annoyance to another person’.²⁶ However, doxxing cases usually involve one-off actions — a person posts personal data of another person on a social media platform, and that is all. It is possible for a person to post someone else’s personal data on different platforms incessantly, but it is rare. As a result, the requirement that there has been a repetitive course of conduct renders the tort of harassment inapt for the purpose of combating doxxing.

(c) Summary

In gist, existing laws are inadequate for regulating doxxing activities in Hong Kong. Although section 64(2) of the PDPO regulates unconsented disclosure of personal data, it is somewhat unhelpful as it assigns the difficult task of proving that the defendant has not obtained consent from the data user prior to the disclosure to the prosecution. As for the offence of criminal intimidation, the tort of intimidation and the tort of harassment, while they prohibit acts that may involve malicious use of personal data, they fail to regulate doxxing activities that do not amount to intimidation or harassment but equally deplorable.

4. Evaluation of the proposed amendments to the PDPO

The Hong Kong government is under a duty to ensure that the law is adequate and sufficient for the protection of the right to privacy, which is enshrined in Article 14 of the Hong Kong Bill of Rights.²⁷ It is therefore encouraging to see that the government has acknowledged loopholes in existing laws and taken the initiative to propose amendments to the PDPO.

This part evaluates the recent proposals to amending the PDPO and discusses whether the proposals can effectively regulate doxxing activities in Hong Kong. As seen below, two important amendments have been proposed. First, a new offence should be added to section 64 of the PDPO. Second, the PCPD should be empowered to investigate, initiate prosecution, and demand related persons to take rectification actions in relation to all offences under section 64 of the PDPO (including the proposed offence).

It is submitted that generally speaking, these proposed amendments are on the right track as they have been designed to fill most of the existing loopholes. However, looking into the details, missing pieces still exist. In particular, the legislators could have given more thoughts as to

²⁵ See also *Secretary for Justice v Persons Unlawfully and Wilfully Conducting Etc* [2019] 5 HKLRD 500 (n 7) [22].

²⁶ *Malcomson v Mehta* [2001] 4 SLR 454, 470H–474A, cited by Anthony Chan J in *Lau Tat Wai v Yip Lai Kuen Joey* [2013] 2 HKLRD 1197, [62].

²⁷ Article 14 of the Hong Kong Bill of Rights Ordinance (Cap 383) reads:

- (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family home correspondence, nor to unlawful attacks on his honour or reputation.
- (2) Everyone has the right to the protection of the law against such interference or attacks.’

whether formal court proceedings are the most appropriate way to deal with all cases that are caught by section 64 of the PDPO. Also, issues concerning intermediary liability, extraterritorial effect of the PCPD's actions and limitation of access to public registers could have been addressed in greater detail.

(a) New offence under section 64 of the PDPO

The first proposed amendment is to introduce a new offence under section 64 of the PDPO. Accordingly, a person commits an offence if he or she 'discloses any personal data of a data subject without the data subject's consent, (a) with an intent to threaten, intimidate or harass the data subject or any immediate family member, or being reckless as to whether the data subject or any immediate family member would be threatened, intimidated or harassed; or (b) with an intent to cause psychological harm to the data subject or any immediate family member, or being reckless as to whether psychological harm would be caused to the data subject or to any immediate family member; and the disclosure causes psychological harm to the data subject or any immediate family member.'²⁸ It is further proposed that any person who contravene any of the offences under section 64 of the PDPO shall be 'liable on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 5 years, or on summary conviction to a fine of \$100,000 and to imprisonment for 2 years.'²⁹

This proposed amendment is commendable for being able to identify and fill the loopholes of existing laws. As mentioned previously, the current PDPO and safeguards under criminal law and tort law are inadequate as they only cover a fraction of doxxing cases.³⁰ This problem has been resolved under the proposal as the proposed offence is broader than the current offence under section 64(2) of the PDPO: it removes the requirement that consent be obtained from the data user prior to disclosure, and adds that unconsented disclosure which amounts to threat, intimidation or harassment is also unlawful. Furthermore, an increase in penalties for offences under section 64(2) can create more deterrence. As far as doxxing is concerned, the proposed penalties are much heavier when compared to that received by the four defendants in the Doxxing Injunctions cases.

While the new offence is wide enough to cover all harmful doxxing activities, the proposal has missed out a practical issue: should all cases that fall within section 64(2) of the PDPO be dealt with by way of formal court proceedings? In fact, this is an issue which the current section 64(2) has not properly addressed. But it does not cause much concern — this may be attributed to the limited number of cases being brought under the provision. However, it is submitted that since the issue can potentially hinder the effectiveness of regulation of doxxing activities, legislators should take this opportunity to give the issue more serious consideration.

²⁸ n 4 above, [10].

²⁹ *ibid*, [11].

³⁰ See part 3 above.

If the proposed new offence is introduced, citizens will be convicted more easily. Consider these three categories of cases: (i) people like the four defendants in the Doxxing Injunction cases, who have publicised information of police officers and their family members out of anti-police sentiments; (ii) people who have disclosed others' personal data just to make fun on the latter (it is not uncommon for friends to obtain personal data such as photos and videos and then upload them onto social media platforms); and (iii) school bullies who have posted personal data of their schoolmates on social medial platforms. The first category of cases is very serious in nature as it can jeopardise social stability. It is sensible to deal with such cases by way of court proceedings. But what about cases that fall within the second and third categories? They will be caught by the newly introduced offence as the person who disclosed personal data of another without the latter's consent has intended to cause psychological harm to the latter, or at least has been reckless as to whether psychological harm would be caused. People under the second and third categories of cases will be susceptible to prosecution. But are formal court proceedings the most appropriate way to deal with them? This is something that legislators apparently have not given much thought when writing up the proposal.³¹

Certainly, given doxxing can disrupt and even destroy people's lives, it should be prohibited by the law. However, it is equally important to consider which is the most cost-effective way to help defendants learn the lesson and deter the public. As will be discussed further in Part 5, it is recommended that while doxxing cases of serious nature should be heard by the courts, informal proceedings should be established to settle less serious cases.

(b) More powers be granted to the PCPD under section 64 of the PDPO

The second proposed amendment is to empower the PCPD to carry out investigation and initiate prosecution under section 64 of the PDPO;³² and to demand related persons to rectify doxxing contents.³³

The empowerment in general allows better administration of doxxing cases. This is because the PCPD, equipped with better expertise in privacy and data protection law, can get more involved in all stages of any doxxing cases. At present, the PCPD is only entitled to receive complaints of suspected doxxing cases. In case the PCPD takes the view that any law has been breached, it shall refer the case to the Department of Justice and the police. If the proposal comes into effect, the PCPD certainly will become more dominant in handling doxxing-related cases. This at the same time implies that the Department of Justice and the police will become less involved in the investigation and prosecution stages of such cases.

³¹ There were also worries that the proposed offence is too broad: Jeffie Lam and Chris Lau, 'Hong Kong's proposed doxxing law is too broad and more safeguards are needed, legal experts say' *South China Morning Post* (Hong Kong, 12 May 2021) <<https://www.scmp.com/news/hong-kong/politics/article/3133218/hong-kongs-proposed-doxxing-law-too-broad-and-more>> accessed 7 June 2021.

³² n 4 above, [12]–[15].

³³ *ibid*, [16]–[19].

Moreover, granting the PCPD power to demand related persons to take rectification actions allows the PCPD to protect victims whose personal data has been disclosed in a timelier manner, as problems that it now faces when handling doxxing-related cases will be greatly eased. Under the current law, the PCPD has no legal power to mandate related persons such as social media platforms to remove doxxing contents.³⁴ Consequently, notices issued by the PCPD to these persons are ineffective in stopping any suspected doxxing activities and further dissemination of the victim's personal data: recipients of the notices either are very slow in response or even ignore the notices. If the PCPD is legally granted to demand removal of doxxing content, injury caused to the victim can be minimised.

While the proposal seeks to smoothen the PCPD's work in handling doxxing cases by granting the PCPD wider statutory powers, it has not delved much into intermediary liability and extraterritorial effect of the PCPD's actions. In this connection, as seen in Part 5 below, it will be suggested that legislators should look deeper into these aspects.

(c) Protection of public registers?

Currently, in Hong Kong, everyone can freely get access to and inspect personal data of any person on public registers like the electoral register. Such arrangement is uncondusive to regulating doxxing activities as it allows members of the public to obtain other people's personal data easily. The problem is conspicuously demonstrated in *Junior Police Officers' Association of the Hong Kong Police Force v Electoral Affairs Commission*.³⁵ This was a judicial review pursued by some members of the Hong Kong police force, who argued that the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap 541A) violates the right to privacy guaranteed under Article 14 of the Hong Kong Bill of Rights³⁶ by exposing police officers and their families to the risk of doxxing. They also sought an interim injunction order barring the public from getting access to the electoral register. In granting an interim injunction order, the Court of Appeal observed that in light of the need to protect the privacy of the police and their families, the order is necessary and does not compromise the integrity of elections in Hong Kong.³⁷

The issue concerning free access to public registers is in fact spotted on in the Information Note published by the Legislative Council Secretariat,³⁸ but it is unclear why no comments have been made in the latest legislative amendment proposals. In this regard, it is suggested in Part 5 below that access to public registers should be limited.

³⁴ n 5 above, [1.4].

³⁵ [2019] 5 HKLRD 291.

³⁶ n 27 above.

³⁷ n 36 above, [53].

³⁸ n 5 above, [2.5]–[2.7].

5. Recommendations

In light of the evaluation above, three recommendations are given. First, doxxing cases should not all be dealt with by way of court proceedings. It is suggested that informal proceedings can be established to settle less serious doxxing cases, whereas court proceedings can still be used to deal with more serious ones. Second, clearer rules on intermediary liability and extraterritorial effect of the PDPO should be made. Third, public access to personal data in public registers should be limited. Each of these recommendations is elaborated below.

(a) Establish informal proceedings for less serious doxxing cases

As the proposed new offence has removed evidential hurdles and is broader in scope, it is anticipated that the number of prosecutions will increase. However, the proposals have yet to consider whether it is appropriate to deal with all doxxing cases that fall within section 64 of the PDPO by way of court proceedings.³⁹ It is suggested that to maintain cost-efficiency, informal proceedings should be set up for dealing with doxxing cases of less serious nature, whereas serious doxxing cases should remain to be adjudicated by the courts.

This suggestion is actually inspired by the approach taken in New Zealand. In New Zealand, the Harmful Digital Communications Act ('HDCA') provides that doxxing cases should be resolved by any of these three ways. First, the online content host and the person who posts the doxxing content can attempt to settle the complaint.⁴⁰ If they reach settlement, the case is resolved. A straightforward example is where a person agrees that the doxxing content be removed after learning about the complaint from the online content host. Second, the parties can refer the case to an Approved Agency if they fail to settle, or simply make a referral without trying to settle beforehand.⁴¹ An 'Approved Agency' is any person or organisation appointed under the HDCA with the power to receive and investigate doxxing complaints and 'use advice, negotiation, mediation and persuasion (as appropriate) to resolve complaints.'⁴² Currently, there is only one Approved Agency in New Zealand, which is NetSafe, an independent non-profit organisation.⁴³ In 2019-2020, NetSafe has received 3,394 complaints, and more than half of them were resolved.⁴⁴ Third and finally, if the above two ways does not work, the parties can bring the case to the District Court.⁴⁵

While it may be difficult for all doxxing cases in Hong Kong to be dealt with by way of informal proceedings like in New Zealand owing to grievances about how doxxing has been weaponised during social movements, Hong Kong may consider permitting only doxxing cases

³⁹ See Part 4(a) above.

⁴⁰ Sections 23 to 25 of the HDCA. See also n 5 above, [3.5].

⁴¹ Section 8 of the HDCA. See also n 5 above, [3.6]–[3.7].

⁴² Sections 7 and 8 of the HDCA.

⁴³ See also n 5 above, [3.4].

⁴⁴ NetSafe, *Annual Report 2019/2020* <<https://www.netsafe.org.nz/wp-content/uploads/2018/11/Netsafe-FY20-Annual-Report.pdf>> accessed 4 June 2021.

⁴⁵ Sections 11 to 14 of the HDCA. See also n 5 above, [3.8].

of less serious nature to be processed informally. Suppose parties involved in a doxxing case opt for informal proceedings, the PCPD can play a similar role like NetSafe in assisting the parties to reach settlement. But of course, the parties can pursue their case in a Hong Kong court if they fail to settle.⁴⁶ Allowing less serious doxxing cases to be dealt with by way of informal proceedings has the advantages of saving court time and resources, and at the same time enabling the parties to come up with solutions that meet all their needs and concerns.

(b) Make clearer rules on intermediary liability and extraterritorial effect of the PCPD's actions pursuant to section 64 of the PDPO

As mentioned previously, the proposals to the PDPO do not say much about intermediary liability and the extraterritorial effect of the PCPD's actions.⁴⁷ Nonetheless, these two issues deserve attention because doxxing contents are often posted on social media platforms, and doxxing activities are not confined by geographical borders. It is therefore recommended that clearer rules be promulgated.

While the proposed amendments provide that the PCPD should enjoy the power to demand related persons to remove doxxing content under section 64 of the PDPO, they do not elaborate on the responsibilities and liabilities of online content hosts. Yet, it is crucial to set clear and certain rules regarding intermediary liability so that online content hosts can carry out measures to regulate activities on their platforms. Such measures play a significant role in the overall regulation of doxxing activities as they can directly affect how information can be created and disseminated on the Internet. In this regard, one key issue which legislators should consider is whether safe harbour provisions should be designed to protect online content hosts. There are currently similar rules under the law dealing with defamatory materials found online, but careful consideration should be made in deciding whether those rules can be adapted to doxxing cases and if so, how adaptations should be made. For example, would an online content host fall foul of the safe harbour provision once it fails to comply with a notice issued by the PCPD? What consequences would the online content host have to bear? These are questions that legislators ought to think about and consult the public.

On the issue of extraterritoriality, the law should clarify the PCPD's jurisdiction. Does it have power to investigate, initiate prosecution and demand rectification actions be taken as long as the perpetrator or the victim is a Hong Kong resident? Or the doxxing content has been disclosed on a medium that is in the control of a Hong Kong resident or company? Some government officials suggested that local authorities should be allowed to ban overseas

⁴⁶ Reference can also be made to the role of the Equal Opportunities Commission ('EOC'). Under the current regime, complainants who have suffered from discrimination can choose to refer their case to the EOC or the District Court: section 64 of the Sex Discrimination Ordinance (Cap 480); section 62 of the Disability Discrimination Ordinance (Cap 487); section 44 of the Family Status Discrimination Ordinance (Cap 527); section 59 of the Racial Discrimination Ordinance (Cap 602).

⁴⁷ See Part 4(b) above.

websites if they fail to remove doxxing content.⁴⁸ However, without knowing how the ban is to affect rules on intermediary liability and details of the ban, such as procedures for local authorities to apply for and impose the ban and duration of the ban, it is doubted that the suggestion is desirable. Meanwhile, the suggestion reflects the need for the government or the PCPD to establish collaborative relations with authorities in other jurisdictions and reach consensus as to how doxxing cases which involve cross-border data flows or residents from different parts of the world should be handled.

(c) Limit public access to personal data in public registers

Finally, while this issue has been omitted in the amendment proposal,⁴⁹ it is suggested that access to personal data in public registers, particularly the electoral register, should be restricted. It is not unprecedented for a government to limit access to public registers. For instance, in Singapore, there is limited duration which the public can inspect the electoral register.⁵⁰ Meanwhile, in the United Kingdom, public inspection is regulated by local authorities.⁵¹ In the Royal Borough of Kensington and Chelsea, information from the voters list under the Register of Electors may not be obtained if the elector has opted out of the list.⁵²

As for Hong Kong, a stricter application process should at least be implemented. One way to do so is to require that anyone who wishes to obtain any personal data from any public register shall not only declare his or her purpose of so obtaining, but also adduce evidence for the purpose of verification. Also, relevant departments may do random checks to ensure that the personal data obtained has been properly used for stated purposes. Ultimately, bearing in mind the Court of Appeal's judgment in the judicial review sought by the Junior Police Officers' Association, any limitation should strike a balance between on the one hand, public interest in protecting privacy rights and on the other hand, public interest in maintaining the integrity of public administrative systems.⁵³

6. Conclusion

Long before doxxing received attention in Hong Kong, many overseas jurisdictions such as the United Kingdom, the United States, Singapore and New Zealand have already revised their

⁴⁸ Selina Cheng, 'Authorities may prosecute Hong Kong staff or ban overseas websites if they fail to remove doxxing content' *Hong Kong Free Press* (Hong Kong, 18 May 2021) <<https://hongkongfp.com/2021/05/18/authorities-may-prosecute-hong-kong-staff-or-ban-overseas-websites-if-they-fail-to-remove-doxxing-content/>> accessed 7 June 2021.

⁴⁹ See Part 4(c) above.

⁵⁰ Section 20 of the Parliamentary Elections Act (Chapter 218). See also n 5, [4.13].

⁵¹ The Electoral Commission, 'Public Inspection of the full register' <<https://www.electoralcommission.org.uk/running-electoral-registration-scotland/access-and-supply-electoral-register-and-other-associated-documentation/public-inspection-full-register>> accessed 8 June 2021.

⁵² The Royal Borough of Kensington and Chelsea, 'Public Inspection of full Register of Electors' <<https://www.rbkc.gov.uk/council-councillors-and-democracy/local-democracy-and-elections/reg-vote/public-inspection-full>> accessed 8 June 2021.

⁵³ n 38 above.

laws to regulate doxxing activities. It was not until the overwhelming number of doxxing cases emerged during the social movement in 2019 that the Hong Kong society was minded to update its privacy and data protection law. Better late than never.

In determining the way forward for regulating doxxing activities in Hong Kong, this essay has evaluated existing laws and the recently proposed legislative amendments and given recommendations accordingly. It has argued that existing laws are inadequate in that section 64(2) of the PDPO has created unnecessary evidential difficulties for the prosecution; and the offence of criminal intimidation, tort of intimidation and the tort of harassment only cover a fraction of doxxing cases. Encouragingly, the proposed amendments to the PDPO fill most loopholes by introducing a new offence under section 64 of the PDPO and empowering the PCPD to investigate, initiate prosecution and demand rectification actions be taken. But still there are areas to work on. Three recommendations have been given: first, to establish informal proceedings for doxxing cases of less serious nature; second, to make clearer rules on intermediary liability and extraterritorial effect of the PCPD's actions under section 64 of the PDPO; third and finally, to limit public access to personal data in public registers such as the electoral register.

Having embarked on the way improve its laws and regulating doxxing, it is hoped that Hong Kong legislators can devote more effort into improving the proposals so that the city can take a leap on its path to protecting the privacy right of its citizens.

(6884 words, excluding references)

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