Hong Kong Transparency Report 2018

Executive Summary

1. Communications surveillance and transparency in the digital age

➢ **Background**

- Edward Snowden's global surveillance disclosure of the massive US spy programme in 2013 has prompted many jurisdictions to introduce legislations or amendments on communications surveillance, contributing to better transparency.
- In 2016, the Hong Kong government refused to expand the scope of surveillance regulation by adding the access to user data and stored communications.
- HKTR conducted a survey on the matter in South Korea, Taiwan, Australia, the UK and the US, with the hope that their experiences could help to shed light on potential solutions for Hong Kong.

➢ **Findings**

1) <u>The Interception of Communications and Surveillance Ordinance (Cap.589) fails to regulate access to user data in cyberspace by law enforcement agencies.</u>

- The ICSO, enacted in 2006, only regulates telecommunications and postal interception, and other real-time surveillance. However, surveillance laws with similar titles in other jurisdictions also regulate access to stored communications, metadata and personal information (user data).

- *Warrant requirement*

	Hong Kong	**South Korea**	**Taiwan**	**Australia**	**UK**	**US**
Interception	✓	✓	✓	✓	✓	✓
Stored communications	✓	✓	✓	✓	✓	✓
Metadata	✗	✓	✓	◯	◯	✓
Personal information	✗	◯	◯	◯	◯	◯

◯: No warrant required but detailed guidance to law enforcement agencies is available

For access to user data in Hong Kong, there are neither a warrant requirement, nor detailed rules for law enforcement agencies to follow. Even though some jurisdictions also do not require a warrant to access metadata or personal information, they make guidance and codes of practice publicly available.

2) There is a lack of transparency in electronic communications surveillance: neither guidance to law enforcement agencies, nor routine disclosure to the public.

- *Routine disclosure*

	Hong Kong	South Korea	Taiwan	Australia	UK	US
Interception	◯	✓	✓	✓	✓	✓
Stored communications	✗	✗	✓	✓	✓	✓
Metadata	✗	✓	✓	✓	✓	✓
Personal information	✗	✓	✗	✓	✓	◯

◯: Such information is not specified but contained in numbers of a higher categorical rank, e.g., the report in Hong Kong only mentions the number of judges' authorisations for interception but does not specify how many telecommunications or postal interceptions.

All six jurisdictions regularly disclose information about surveillance, including statistics and explanation of the mechanism in plain language. Both Taiwan and the US have publicly available data portals to disclose relevant statistics.

However, the surveillance commissioner's report in HK does not specify the types of communications. The statistics of access to stored communications, metadata and user information are not disclosed on a routine basis.

➢ **Recommendations**

- Introduce legislation or amendments to the current surveillance law.

  Article 30 of the Basic Law guarantees the "freedom and privacy of communication" as one of the citizens' "fundamental rights", and Article 29 protects Hong Kong residents from "arbitrary or unlawful search". In the digital age, the Hong Kong government should introduce legislation or amendments to fulfil its obligation for protecting citizens' privacy.

- Issue guidance to law enforcement agencies.
- Improve routine disclosure to increase transparency.

2. User data and content removal requests

➢ **User data requests**

- From 2011 to 2017, the HK government had issued an annual average of 4,470 user data requests to ICT companies. The number has reached the highest in 2013 (5,351), and come down to the lowest in 2017 (3,541).
- Eight international ICT companies have released statistics of user data requests from HK. The corporate data comprised 42% of all such requests made by the HK government since 2013. Their number has decreased from 1,722 in 1H2013 to 572 in 1H2017. The average compliance rate by the companies was 60%.
- The largest government requester was the Police (88%), and the major reason was for crime prevention and detection (99%).

➢ **Content removal requests**

- From 2011 to 2017, the HK government had issued an annual average of 355 requests to ICT companies. The number has reached the highest in 2013 (657), and come down ever since, except for a rebound from 2016 (194) to 2017 (336).
- The largest requester was the Department of Health (50%), and the major reason was to remove online content related to illegal sale of medicine (44%).