

# Review of the Control of Obscene and Indecent Articles Ordinance

## Focus Group Summary Report – District Council, Hong Kong

Date: 27 Oct, 2008  
Time: 1930-2130  
Location: Cultural Activities Hall, 2/F, Sai Wan Ho Civic Center

### Attendants:

Councilor Man Chi-wah	Central and Western District Council
Councilor Koo Kwai-yiu	Eastern District Council
Councilor Lui Chi-man	Eastern District Council
Councilor Leung Chi-kong	Eastern District Council
Councilor Leung Suk-ching	Eastern District Council
Councilor Chiu Shing-kee, MH	Eastern District Council
Councilor Chan Lee Pui-ying	Southern District Council
Councilor Mak Kwok-fung	Wan Chai District Council
Councilor Siu Chi-hung	Wan Chai District Council
Councilor Lam Kin-wah, MH	Kwun Tong District Council
Councilor Ng Man-keung, MH	Yau Tsim Mong District Council

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I. A briefing on the consultation documents of the Review of the Control of

Obscene and Indecent Articles Ordinance (COIAO) by Mr. Gregory So, Under Secretary for Commerce & Economic Development of HKSAR. He also invited all attendants to express their opinions.

II. 11 attendants shared general comments towards COIAO:

- Attendants said that obscene and indecent articles should be regulated by two separate ordinance for the ease of adjudication and to avoid confusion;
- Media abuses the use of indecent, obscene and violent content in order to increase sales and ignores its impact on the youth. The COIAO should be amended and updated;
- The definition of obscene and indecent in the society would change over time, for how long can the new standards be kept after this review?

III. Suggestions for the review raised by the attendants are summarized as follows:

**Opinions raised and areas of concern:**

**1 Definition**

1.1 Opinions towards the existing system:

1.1.1 As time changes, the definition of obscene and indecent is getting more and more open, even masterpieces of literature would include description of sex. Images are comparatively easier to adjudicate than text.

1.2 Recommendations for review:

1.2.1 Attendants said that quite a lot of people in the society were confused about the definition of obscene and indecent, hence it is necessary to identify the two and define them more clearly;

1.2.2 Attendants thought that the moral standards of Chinese should be considered when defining obscenity and indecency, the targets and venue of distribution should also be clarified;

1.2.3 There should be two categories of obscene and indecent articles, one is

text and verbal expressions while the other is visual objects; text description can be pornographic without the mentioning of sex organs and sexual intercourse;

1.2.4 Attendants pointed out that the term ‘obscene’ and ‘indecent’ failed out portray clearly the meaning of ‘violence’ and ‘depravity’, it should be transformed into concrete regulations and categorize all other elements that are included so that it would be easier for people to adjudicate;

1.2.5 Agreed that the definition of obscene and indecent needs to be clarified, yet it should not be overly tightened, otherwise it would become a moral judgment and hinder the reporting of newspaper;

1.2.6 Some attendants stated that the definition of obscene and indecent should be outlined in the ordinance; however, as guidance of the ordinance, it should be described in are clearer and more concrete way, so that the content of guidance can be amended easily as time changes.

## 2 Adjudication System

### 2.1 Opinions towards the existing system:

2.1.1 Since everyone can apply for and become an adjudicator, the standard of adjudication might differ

2.1.2 The existing system is more flexible as it is not mandatory for the enforcement bodies to submit articles to the OAT before prosecution; but there are also opinions stressing that classification is required before prosecution to prevent the innocent from being prosecuted; other attendants pointed out that such cases would still happen even with the pre-prosecution classification;

2.1.3 Attendants said that the standards of adjudicating cases like the sex photos should be consistent no matter it is happening on an ordinary citizen or a star, the authority should put stress on the case just because of the publicity of the person(s) concerned.

### 2.2 Recommendations for the review:

2.2.1 Tests on case studies and classification standards should be offered to the applicants in order to ensure that their adjudication would reach certain level of standards; attendants also recommended to provide an

objective adjudicating standards for the adjudicators in order to strike a balance between different definitions of the terms in the society;

2.2.2 The number of adjudicators should be increased, people from different sectors should be involved in order to increase its representation;

2.2.3 The requirements of review cases in the existing adjudication system should be amended. The current system requires a comprehensive hearing of the case hosted by the previous magistrate. Attendants suggested that another magistrate should be invited so that the adjudicators would not be led by similar view points again.

### 3 Classification System

3.1 Some attendants agreed to take reference to the 4 classes of ‘Film Censorship Ordinance’ and further classify the current 3 classes, so that it will be easier for the community to choose appropriate articles for children;

3.2 Attendants discussed on the classification on the Class II articles with age reference. Some thought that further classifying articles as suitable for 15 and 18 or above would lead to difficulties in enforcement, because it is not easy to determine the age of a teenager. It is easier to identify people who are above 18. Another attendant pointed out that there won’t be any articles that are unsuitable for youth of 11 and 12, but suitable for teens of 13-18. Hence, it is reasonable to draw the line at 18 years old.

3.3 Some stressed that changing the class of an article from IIA to IIB might give a boost to its sales, therefore it should be handled with care.

### 4 New Forms of Media

4.1 Lots of the grassroot and newly immigrated parents are incapable of using computer and therefore unable to check whether their children are receiving unhealthy information. The government should provide assistance to them;

4.2 Attendants agreed to provide free filtering software for the parents, as it can help protect young children from being influenced by the obscene and indecent articles distributed on the internet. However, those measures should not be made mandatory as it might hinder the freedom of information recipient;

- 4.3 Photos and articles are always distributed on the internet without the consent of the others, the ordinance should be perfected and tightened.
- 5 There was no discussion on Enforcement
- 6 Penalty
- 6.1 In general, attendants believed that penalty needed not to be raised as judges tend not to raise the punishment or penalty even after the amendment. Therefore, deterrence would not be enhanced by doing so. Some considering factors can be added to the COIAO, e.g. the history of repeated offenses, amount of profit etc;
- 6.2 Attendant pointed out that different people have different standards about obscene and indecent, if the penalty is high; it's more likely to lead to appeal and cases.
- 7 Publicity and Public Education
- 7.1 Public education, including the understanding of the internet and the building of correct value judgment, should be strengthened;
- 7.2 The government should allocate more resources on publicity and public education; the others stated that resources should be given to schools for implementing this, or set up funds that aim at helping parents know more about the internet, interested schools can apply for it;
- 7.3 Some believed that the government should not only focus on educating the youth what kinds of websites are inappropriate for them, as over-suppressed would only result in rebellion. Attendant recommended to encourage the youth to do more exercise and participate in group activities.