

3. Classification System



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Main Issues

The community seems to consider that there may be a need to tighten up the classification system. There are views that the coverage of Class II (Indecent) article under the existing regime seems to be too broad.

Focal Question

How do you improve the classification system to achieve better consistency and to meet the changing standards of the community?



Detailed Discussion

(1) Existing Arrangement

1.1 Under the COIAO, an article may be classified as: -

Class I (Neither Obscene nor Indecent)	- Class I articles may be published without restriction.
Class II (Indecent)	- Class II articles must not be published or sold to persons under the age of 18. Publications of Class II articles must comply with specified statutory requirements, including sealing such articles in wrappers and the display of a warning notice.
Class III (Obscene)	- Class III articles are prohibited from publication.

1.2 The principles behind the classification of publications are to ensure that materials which seriously offend against community standards should be banned; access of children to materials which may harm them should be restricted; and warnings should be provided to consumers as to contents.

1.3 The classification system provides a mechanism to enable publishers to obtain rulings on publications in advance for compliance with the law. Decisions on the acceptability of dubious publications can also be sought quickly to help contain the circulation of offending materials.

(2) Areas for Improvement

Retaining the classification system with improvements

2.1 One option is to improve the existing classification system by making improvements where appropriate, including expanding the definitions of “obscenity” and “indecent”, providing more elaborate guidelines for classification and improving the operation of the OAT (please refer to Chapters 1 and 2). *The challenge is how to achieve consistency in classification decisions bearing in mind the wide range of articles covered under the Class II (indecent) category.*

Reference Question:

How would you improve the existing classification system to ensure that it would not unduly restrict what adults are allowed to receive while affording appropriate protection to children and young people?

Introducing sub-classes

2.2 Another approach is to adopt a new classification system by introducing sub-classes under Class II (Indecent) in order to help the public better understand the level of indecency of the concerned article. One

possible way is to sub-divide Class II articles according to age, e.g. -

Class I – Unrestricted

Class IIA – Restricted to persons above 15 years old

Class IIB – Restricted to persons above 18 years old

Class III – Refused classification; obscene articles banned for all ages

2.3 Under this approach, it is possible to subject the sub-classes to different legal requirements, for example, Class IIA articles would be required to provide statutory advice and subject to wrapping requirement, while Class IIB articles would be subject to wrapping requirement and could only be displayed in premises restricted to persons above 18 years old. To achieve this, it is necessary to draw up clear guidelines for each class of articles.

2.4 Sub-dividing Class II would assist parents in choosing appropriate reading materials for their children by providing more information on the content of the publications. It would also better protect children while giving elder teenagers wider choice and greater discretion as to what they choose to read or look at.

2.5 *The major challenge is that introducing sub-classes would create more grey areas leading to disputes and litigations thus aggravating the problem of inconsistency in classification. It is necessary to consider how to draw up appropriate guidelines for different sub-classes, which agency to draw up such guidelines (bearing in mind the difficulties of the judiciary in drawing up detailed administrative guidelines – please refer to Chapter 1*

on Definitions), and how to address the practical difficulties in introducing different requirements for different sub-classes, for example, 'premises restricted to persons above 18 years old'.

Reference Questions:

How do you sub-divide Class II? Do you consider age an appropriate basis for the sub-division? What do you consider to be the advantages and disadvantages of sub-dividing Class II?

Classification by the court

- 2.6 Another option may be to abolish the classification system altogether and revert to the practice before the enactment of the COIAO in 1987, i.e. the decision as to whether a particular article is objectionable would be made by a magistrate, who is required to reflect the community views instead of applying his own standards. Experience in overseas countries indicates that ordinary courts are capable of dealing with the classification of articles.
- 2.7 *The major challenge is how to ensure a single magistrate could reflect community standards. It is also necessary to consider the issue of publishers not being able to obtain classification rulings in advance to enable compliance with the law as the court will not provide the administrative classification service; and that of the heavy burden imposed on the court leading to long waiting time.*

Reference Questions:

Do you think it is appropriate to abolish the classification system? Do you consider it appropriate for the court to deal with classification of articles? How do you address the issues of representativeness, the needs of publishers and the court's ability to cope with the caseload?

2.8 Both the COIAO and the Film Censorship Ordinance (FCO) maintain a three-tier classification system. Some members of the public find the two systems confusing and wonder whether there should be consistency in standards and improvement in the nomenclature of the systems.

2.9 In view of the different nature of the two systems (i.e. the FCO system being a pre-censorship system while the one under the COIAO is not) and the smooth operation of the FCO system, we will not review the FCO system in this exercise so as to avoid complicating this review. An improvement we may consider at the moment is to adopt a new nomenclature for the COIAO to avoid confusions between the two three-tier classification systems, e.g.-

Existing nomenclature under FCO

- I Suitable for all ages
- IIA Not suitable for children
- IIB Not suitable for young persons and children
- III Persons aged 18 and above only

Existing nomenclature under COIAO	Alternative nomenclature under COIAO
Class I (Neither obscene nor indecent)	Unrestricted
Class II (Indecent)	Restricted to 18 and above
Class III (Obscene)	Banned

Reference Questions:

Do you think we should adopt a new nomenclature for the COIAO to avoid confusion with the FCO?
What are the advantages and disadvantages?

