



尋道會

**Spiritual Seekers Society
Hong Kong**

**Submission to Legislative Council for
First Round Public Consultation on
Review of the Control of Obscene and Indecent Articles Ordinance**

The Spiritual Seekers Society is a liberal religious organization which upholds freedom, reason, and tolerance. The Spiritual Seekers Society proposes the followings regarding the review of the Control of Obscene and Indecent Articles Ordinance (COIAO):

Abolition of the classification of “indecent article”

With the “reasonable person” standard of obscene and indecent articles stated in COIAO Chapter 390 Section 10, the terms “obscene” and “indecent” are subject to individual personal definitions. As a civil society, the law should hold the principle of allowing the broadest interpretation and ensuring the maximum amount of freedom for flow of information. Therefore, we suggest the abolition of the classification of “indecent,” as decency and indecency should not be controlled by law. On the term of “obscene,” we would suggest applying to materials which are deemed suitable only for mature readers and not suitable for children such as those containing explicit sex acts and violence.

With the abolition of the “indecent” definition, the caseload for the Obscene Articles Tribunal (OAT), Television and Entertainment Licensing Authority (TELA), and the Police will be lessened and efforts can be concentrated into regulating obscene articles only.

Section 10 should be expanded with details on definitions so that a reasonable person could understand what standard is being applied to classify an article as “obscene” according to the law, and be able to avoid violation of the law inadvertently.

Obscene articles should not be banned

We strongly recommend that nothing should be banned from publication unless it has violated another existing law such as child pornography. Any article that has been classified as “obscene” by OAT should carry the warning label for consumers to judge if they want to buy the product or not, and for parents to prevent their children from viewing such materials. Nothing should be banned as the adult population is not children and hence does not need the government to assume the parental role. The maximum amount of freedom of press should be allowed to let the public make appropriate judgments for itself.

Reformation of the Obscene Articles Tribunal (OAT)

The current system has placed the OAT as both judge and jurist. And the judging process lacks the necessary transparency to be considered fair.

We suggest that the OAT to take on an administrative role only. Any classification passed down by the OAT should be non-binding and the publishers would take on the OAT’s recommendation on voluntary basis. If the OAT suspects an article has violated other laws that require court attention, the case could be forwarded to the court for consideration. Also, any complaint against a publisher for not following the OAT recommendation could be forwarded to court, along with any appeal from the publisher that challenges the OAT's classification. The court then can consider issuing a

court order to make the OAT's classification binding. The principle is that only the court has the right to decide if an OAT classification is binding or not.

We also suggest abolishing the system of having people applying to be part of the OAT. For consistency, the OAT should have a few trained staff to explain the duty and running of classification of articles. The actual persons who put the classification should be chosen from the list of jurists so that the OAT would have a better reflection of the standard of the reasonable persons of the public.

On regulating indecent and obscene article on the Internet

We are strongly against any censorship of free flow of information on the Internet. On protection of children, computer parental control softwares are widely available for parents to set suitable guidelines for their children on using the Internet. Government should not interfere with the free flow of information on the Internet, and should just allow parents to limit what could be viewed by their children instead.

On enforcement

We recommend retaining the current division of labour among TELA, Police, and Customs and Excise Department (C&ED) with only one change that they would all be concentrated on obscene articles classified by the OTA.

For the TELA, articles which are suspected to be obscene but have not been classified by the OAT or articles which have violated the non-binding recommendations of OAT could be sent to the OTA for follow up.

As for the Police, they could bring the suspected obscene articles to the OAT to be classified. Police could concentrate on articles that violate other laws that make the publication unsuitable, for example, those containing elements of child pornography.

For the C&ED, any article that is suspected to be obscene would be put forth to the OAT for classification before bringing to court for other violation.

On Penalty

The penalty should be only set when the case has come to court. The penalty for first time violation should be at a lower point, with consideration of the volume that has been distributed and the money that was made by the violation. Penalty for consistent violation should be set higher as deterrent for non compliance.

On Public Education

It is important to raise awareness of the public with the change of the classification in order to build a more tolerance society. Children should not be used as an excuse for not talking about sensitive subjects that may involve sex and sexuality. Parents and teachers should be more equipped in discussing openly with children and students on the subject when the government takes the lead in breaking some of the most common taboos in term of sexuality.

Conclusion

We hope that the above recommendations can strike a balance between free flow of information and protection of children from obscene articles.