

# Contents

## Introduction and recommendations

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## Section 1

RTHK'S ASPIRATIONS DASHED .....	6
Government denies change of status .....	6
Concern over role of board of advisers.....	7
Public purposes cause concern.....	8
Government gives RTHK community broadcasting mandate .....	9
Citizens radio loses another judicial review.....	10
Revised telecoms ordinance falls short .....	11
Commercial operator accepts political "adverts" .....	12

## Section 2

HK REPORTERS FACE INCREASED SUPPRESSION.....	14
Chengdu takes the lead .....	14
Xinjiang follows suit.....	15
A dangerous suggestion emerges .....	16
Local authorities harass journalists .....	16
Macau follows mainland China's lead .....	17
The North tightens its grip on media freedoms.....	18

## Section 3

HKJA RENEWS CALL FOR ACCESS LAW .....	20
Access cases reveal serious flaws .....	20
HKJA calls for action on access law.....	21
Pressure grows for Hong Kong to enact anti-subversion law.....	22
Government takes harsher line against dissent.....	23
Is it all part of a trend?.....	24
Government delays review on obscenity law .....	24

## Section 4

CRITICS CALL FOR GREATER TV COMPETITION .....	26
Turbulence rocks Asia television .....	27
So who owns Asia television?.....	27
Government investigates Wang's role .....	28
Ownership problems at Sing Pao .....	29

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## Introduction and recommendations

The political scene in Hong Kong is turning decidedly sour—and that is having repercussions for freedom of expression in Hong Kong. Analysts point to growing disenchantment with Hong Kong's chief executive, Donald Tsang, and his government, in particular among younger people—the so-called post-80s generation. This in turn is prompting the government to take a less tolerant approach towards dissent—in particular during protests. That is why we feel that the vice is tightening on freedom of expression—in its broader sense.

Indications of growing intolerance include arrests and prosecutions of protesters, as well as scuffles between police and demonstrators. One of the most serious involved a protest in January 2010 against a new express rail link. Police used pepper spray against some of the demonstrators.

In late June 2010, there was a significant development on the political scene. The Chinese and Hong Kong governments accepted a proposal from the Democratic Party for political reform in 2012. This concerned the election method for five new functional constituency seats in the Legislative Council. The deal ensured the passage of the reform package for 2012, but led to a serious split within the pan-democratic camp. Critics argued that the deal failed to give any indication about whether functional constituencies would be abolished. It remains to be seen how this will play out in the coming months—and the effect it will have on the sour mood we referred to above.

The deal was hammered out between Chinese officials based in Hong Kong and leaders of the Democratic Party. This process raised concern about China's growing influence on Hong Kong—and in particular on political reform after 2012. This is crucial because Beijing is allowing Hong Kong to elect its chief executive by universal suffrage in 2017 and the Legislative Council in 2020. What remains uncertain is how this will happen—and whether internationally accepted democratic norms will be implemented. Critics have serious doubts on this.

The growing influence of the Chinese government has become more evident in the past few years. Growing deference on the part of the Hong Kong government towards Beijing has also been a significant trend. There have been several noteworthy examples. In September 2008, Hong Kong officials sent a mainland dissident across the border in controversial circumstances. The US-based dissident, former student leader Zhou Yongjun, arrived from Macau on a fake Malaysian passport. In January 2010, a court in Sichuan sentenced Mr Zhou to nine years in prison for financial fraud. The alleged crime—if it ever happened—took place in Hong Kong and involved a Hong Kong bank.

Mr Zhou's supporters in Hong Kong questioned why Mr Zhou had been sent to the mainland, instead of Macau or back to his home in the United States. They expressed concern that Mr Zhou had been handed over to mainland authorities too easily.

Concerns were also raised about the independence of the judiciary, following alarming comments by Chinese officials. In July 2008, vice-president Xi Jinping said the three branches of government—the executive, the legislature and the judiciary—should give each other mutual support and understanding. In December 2009, a deputy director of the State Council's Hong Kong and Macau Affairs Office, Zhang Xiaoming, praised Macau's judiciary for cooperating with the territory's government and legislature, saying this was “constructive” for society. Critics suggested this was oblique criticism of Hong Kong's judiciary.

In January 2010, Hong Kong's outgoing chief justice, Andrew Li, highlighted the importance of the judiciary remaining independent. He said: "It is important for the role of the independent judiciary in Hong Kong to be reiterated and strongly emphasised and for its role to be clearly understood. The Hong Kong system involves checks and balances between the executive, the legislature and the judiciary."

These incidents give a taste of the political atmosphere in Hong Kong—an atmosphere in which—as we noted above—there is growing intolerance of dissent and greater emphasis on social harmony—a catchphrase used in mainland China to denote adherence to the Communist Party line.

In these conditions, the government made several decisions which will have a profound effect on freedom of expression. First and foremost was the decision that the government-owned Radio Television Hong Kong (RTHK) should remain a government department—despite pleas from the public and non-governmental organisations, including the Hong Kong Journalists Association (HKJA), that it should be separated from the administration to become an independent public service broadcaster.

The government is stressing that RTHK—ironically as a government department—will have full editorial independence—and that this will be enshrined in a charter to be signed by the government's chief secretary. The HKJA and others condemned this line of thinking—and urged the government to reverse its decision.

The government has also made superficial changes to the Telecommunications Ordinance, which governs the licensing of radio broadcasters. The changes were put forward after a pro-democracy radio station—Citizens Radio—challenged the system—both by making illegal broadcasts and challenging the constitutionality of the licensing system. Critics—including the HKJA—are calling for a radical shake-up of the existing system—an approach that the government is unwilling to take.

The government is equally unwilling to adopt a more open approach towards government information. An investigation by the Ombudsman found considerable misunderstanding of the provisions in the government's code on access to information and unfamiliarity with its procedural requirements. The HKJA has long been pressing the government to give legal backing to the system – by enacting freedom of information legislation. The government once again turned down the HKJA's demand.

Then there is the general attitude of the government towards the media. In October 2009, the chief executive, Donald Tsang, hit out at major Chinese-language newspapers which had criticised him for putting family interests ahead of his duties as Hong Kong's leader. Mr Tsang referred to allegations that one relative would benefit from a government plan to encourage the use of energy-saving light bulbs and that another had received early compensation for her investment in failed minibonds.

Mr Tsang called the reports "absolute fabrications and vicious attacks". He went on to say: "I believe the public and any person who has a passion for freedom of speech will not support this kind of action."

However, political commentators were not sympathetic towards Mr Tsang's outburst. Ivan Choy from Chinese University said the outburst would undermine Mr Tsang's popularity. He said: "The fact that the media could keep the story on the front page for two weeks demonstrated that public mistrust towards Mr Tsang had risen to a new high. But not only has he not recognised this, he has attacked the

media.”

There was also strong concern among journalists about media arrangements for a June 2012 debate on political reform between the chief executive and the leader of the Civic Party, Audrey Eu. The government insisted that journalists could not sit in the government press conference room where the event was taking place. Instead, they were pushed into small glassed-in rooms overlooking the venue. The HKJA noted that this arrangement was symptomatic of deteriorating openness and accountability on the part of the administration.

Another area of concern was the tepid response of the government towards the harassment of journalists in mainland China. There were two major incidents in the year under review—involving the detention of a journalist and a cameraman in Chengdu on trumped up drug charges, and the beating and detention of one journalist and two cameramen in Urumqi. The government promised to follow up on these cases, but nothing concrete emerged.

These various incidents show that the government has failed to meet its international commitments—under the International Covenant on Civil and Political Rights—to uphold freedom of expression and press freedom. The HKJA believes the administration needs to take a much more robust approach, by taking the following steps to bolster media freedoms:

- 1) Reverse its decision to retain Radio Television Hong Kong as a government department. The decision runs counter to international trends and UNESCO calls for state-controlled media to be turned into independent public service broadcasters. The government should—as a matter of urgency—launch plans to separate RTHK from the government. The broadcaster should be re-constituted by legislation guaranteeing its independence in clear and unambiguous terms.
- 2) Create an independent platform for public access television and radio services. The current plan for RTHK to host and organise such broadcasting runs counter to the principle that it should be independent of government control. The HKJA doubts whether the current arrangement will produce the kind of robust broadcasting that critics—such as those running Citizens Radio—envisage.
- 3) Carry out a comprehensive review of broadcasting legislation to ensure that the airwaves are open to all those who wish to set up broadcasting operations, irrespective of political orientation. In particular, the government must create an independent body to oversee electronic media development, including the handling of licence applications within a reasonable timeframe and according to objective criteria. It must also provide for an independent appeal mechanism.
- 4) Enact freedom of information legislation to ensure access to government information and documents. The legislation should be based on the principles of maximum disclosure, limited and narrowly drawn exemptions and an effective and independent appeal mechanism.
- 5) Resist pressure to enact national security legislation. The HKJA believes that such legislation is unnecessary—and if the government does decide to proceed with it, then the law must contain safeguards that are robust enough to protect freedom of expression and press freedom. The minimum standards are the adoption of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as well as proper public interest and prior publication defences.
- 6) Review its policy and attitude towards dissent, including policing, arrests and harassment of protesters. This should be done on several levels, including a review of restrictive provisions in the Public Order Ordinance, which bars unauthorised

marches and rallies. The government should also review whether its actions against protesters are in line with its obligations under the International Covenant on Civil and Political Rights.

7) Take a robust line with Beijing over the treatment of Hong Kong journalists carrying out legitimate duties in mainland China, given the serious nature of incidents in Chengdu and Urumqi in August and September 2009. The government should make it clear to Chinese leaders that harassment and detention of journalists are totally unacceptable. It should also urge the government in Beijing to scrap all regulations that impose restrictions on Hong Kong-based journalists working on the mainland, including those that deny access for journalists working for publications which are considered to be unfriendly to Beijing.

## SECTION 1

**RTHK's aspirations dashed**

In September 2009, the Hong Kong administration finally ruled that Radio Television Hong Kong (RTHK) should not be turned into an independent public service broadcaster—contrary to the hopes of the public, senior management and many staff. Instead, it would remain a government department—albeit with expanded services. The announcement was made 20 months after the government originally intended to release a consultation document on the issue. Clearly the task of deciding what to do about the government broadcaster was difficult.

RTHK's future has been controversial ever since 1984, when a government-appointed broadcasting review panel was created to consider—among other things—whether RTHK should cease to be a government department. It recommended that the broadcaster should be separated from the administration—to become a BBC-style corporation under the control of a board of governors. The Hong Kong government eventually proposed this approach—but China rejected the plan in 1992, during diplomatic negotiations.

The Beijing element has dogged RTHK for many years, prompting concern that mainland officials wanted to turn RTHK into a propaganda mouthpiece. Indeed, pro-Beijing leaders in Hong Kong expressed the view for some time that RTHK, being a government department, should show greater sympathy for administration policies.

The issue of whether RTHK should be hived off from the government came to the fore again in January 2006, when Hong Kong's chief executive, Donald Tsang, appointed a seven-member panel to examine the future of public service broadcasting in the SAR. It proposed in March 2007 that an entirely new independent public service broadcaster should be set up. It argued that RTHK—being a government department with a civil service mentality—was not fit for the task. It also suggested that with the creation of the new independent broadcaster, RTHK's role would diminish.

RTHK management and staff—as well as influential sections of the public—responded angrily to the review panel's proposals, insisting that RTHK should be hived off from the government to become the new public service broadcaster. The government pledged to issue a consultation paper on the future of RTHK, community radio and public access broadcasting. This document had been scheduled for release in January 2008. However, the government was forced to admit—somewhat implausibly—that other issues, including a review of the Telecommunications Ordinance, spectrum policy and community broadcasting, had complicated the issue.

In the meantime, RTHK management and staff were becoming increasingly frustrated by what they saw as government indecision. Pan-democrats suggested that the government was leaving RTHK to slowly die. And some RTHK staff expressed the view that it would be better to have some sort of decision—even if this meant that RTHK would remain a government department. Indeed, about 300 staff held a protest at their headquarters in July 2009, to express concern that the government was dragging its feet on RTHK's future.

**GOVERNMENT DENIES CHANGE OF STATUS**

In September 2009, the government finally announced that RTHK would remain a government department. But it failed to give reasons for why the broadcaster could

not be hived off from the administration, apart from noting that a survey it commissioned—and which was never published—indicated that 60 percent of respondents thought RTHK should remain part of the administration.

While the government rejected the main thrust of the review panel's recommendations—that an independent public service broadcaster should be created from scratch—it accepted many of the detailed proposals it put forward. For example, the administration proposed the appointment of a board of advisers, the drafting of a charter for the new RTHK and the adherence to a long list of performance indicators—all side issues to the core issue of whether RTHK should be separated from the government.

The government official responsible for RTHK, secretary for commerce and economic development Rita Lau, said: “With more than 80 years of operation and as the guardian of much of the collective memory of the community, RTHK is best placed to be the public service broadcaster in Hong Kong.” She went on to note: “RTHK has been consistently ranked in public surveys as the most credible electronic media in Hong Kong. It is now perceived locally and internationally as a bellwether for the health of freedom of speech in Hong Kong—one of the core values of Hong Kong people.”

RTHK's director of broadcasting, Franklin Wong, welcomed the announcement. He said it provided certainty for the station and its staff. He also said he would not see the advisory board as a monitor, but rather a partner working together with the broadcaster. However, the chairwoman of the RTHK Programme Staff Union, Janet Mak, expressed regret over the decision, saying that the broadcaster should be turned into an independent public service broadcaster. She also expressed concern over editorial independence under the new arrangement.

### **CONCERN OVER ROLE OF BOARD OF ADVISERS**

One month later, in October 2009, the government released a consultation document called “The New RTHK: Fulfilling its Mission as a Public Service Broadcaster”. It failed to tackle the principle—whether RTHK should be turned into a real independent public service broadcaster along the lines of the BBC, CBC or ABC. Instead it focussed on detail—public purposes, the board of advisers, the charter, performance evaluation, the adoption of digital radio and television broadcasting, and new programming opportunities.

The most contentious issue was the board of advisers. The government proposed that up to 15 members should be appointed. Their mandate would be to advise the director of broadcasting on a variety of issues, including editorial policy, programme standards and programme quality. They would include people with industry and professional experience and lay members. The director of broadcasting would be an ex-officio member. The government envisages that some members would come from the media, journalism, education, arts and culture, technology, the law, accounting and finance. Executive and legislative councillors, as well as public and judicial officers, would be barred.

Critics questioned whether the board would become more than just an advisory body, and whether over time it would develop a de facto executive role, in particular over programme and editorial policy. Indeed, the suspicion among RTHK staff was so great that about 80 percent of employees surveyed by the staff union opposed the creation of a board. And 61 percent of staff surveyed by RTHK management expressed the fear that the board might place restrictions on the broadcaster's editorial policy.

Legislators from the pan-democratic camp also expressed fears over the role of the board. Civic Party legislator Ronny Tong said a board was unnecessary. Democratic Party legislator Lee Wing-tat doubted the government pledge that the board would not interfere with individual programmes. He added: “The staff might pick less sensitive topics to avoid getting into trouble.”

In its submission on the consultation document, RTHK management said that if a board was set up, it should not have the power to interfere in editorial policy matters and day-to-day operations, the director of broadcasting should have the final say in all matters, the board should operate in a transparent way by opening up its meetings to the public, and board members should share RTHK’s core values, including editorial independence and impartial and accurate reporting. RTHK management also called for board members to be appointed through a process of public engagement, including consultation with the director, and for the government to consider the inclusion of one RTHK staff representative—as demanded by the RTHK Programme Staff Union.

For its part, the HKJA highlighted the contradiction between retaining RTHK as a government department, while at the same time proclaiming it a public service broadcaster. The HKJA urged the government to withdraw its decision so that the broadcaster could be hived off from the government in accordance with a resolution adopted by UNESCO at the 27th session of its General Conference in 1993. The resolution is aimed at encouraging “the development of journalistically independent public service broadcasting in place of existing State-controlled broadcasting structures.” The HKJA also called for RTHK’s editorial independence to be guaranteed by legislation.

The HKJA was not the only supporter of this stance. Non-governmental organisations present at a Legislative Council panel meeting in November 2009 shared this view. Regrettably, the government rejected their calls for the station to be turned into a genuinely independent public service broadcaster.

In April, the government released a draft charter for RTHK. It reiterated that the chief executive would appoint a board of advisers, which would advise the director of broadcasting on RTHK’s services. The board would also—according to the charter—not be involved in day-to-day RTHK operations. The document also stated that “RTHK is editorially independent” and that—as editor-in-chief—the director of broadcasting “is accountable for editorial decisions taken by RTHK programme producers”.

However, the board will be responsible for—among other things—“advising the Director on all matters pertaining to editorial principles, programming standards and quality of RTHK programming”. There is also no check on the powers of the chief executive to appoint board members, whether through some form of election, or selection following a process of public advertising for potential board members—a process employed for BBC governors. Critics expressed fear that the chief executive might appoint individuals who will press RTHK to tone down its news and public affairs coverage. These critics will certainly scrutinise the political orientation of the appointees, once they are named towards the end of 2010.

## **PUBLIC PURPOSES CAUSE CONCERN**

The October 2009 consultation document was problematic in other areas. One such area was a list of public purposes. The document proposed that RTHK should focus on sustaining citizenship and civil society, fostering social harmony and promoting pluralism, establishing education value and promoting lifelong learning, and

stimulating creativity and excellence to enrich the multi-cultural life of Hong Kong people.

While on the surface these public purposes may be laudable, they contain potential hidden traps. For example, the concept “social harmony” is used as a political tool in mainland China. President Hu Jintao uses it to mean that society should unite in pursuing the Communist Party’s goals for the country. Critics see it as an instrument to suppress dissent. To avoid straying into a political minefield, RTHK management argued that this public purpose should be amended to read: “encouraging social inclusion and pluralism.”

The draft charter brought about some changes in this regard. Reference to “social harmony” was dropped—replaced by the wording “promote social inclusion and pluralism”. An additional purpose was added, to “provide an open platform for the free exchange of views without fear or favour”. These were moves in the right direction.

However, the government rejected a call by the RTHK Programme Staff Union to include in the public purposes the concept of “monitoring the government”. The union said it was gravely dissatisfied that this proposal had not been taken up, given that more than 80 percent of staff supported inclusion. However, RTHK management did not endorse this proposal, partly because it felt that every media organisation has the role to monitor the government, as well as the business sector and the community.

### **GOVERNMENT GIVES RTHK COMMUNITY BROADCASTING MANDATE**

Another controversial proposal in the October 2009 consultation document was the decision to foist community broadcasting on RTHK. Community groups, including the HKJA, had for several years been asking the government to allow public access television and radio services. Analysts expressed the view that the government was unlikely to permit such broadcasting because opposition groups—or even the Falun Gong spiritual group—might take to the airwaves to explain their views. (The Falun Gong was banned in mainland China after challenging the government there. It remains legal in Hong Kong.)

The government’s October 2009 consultation document set out the way ahead for community broadcasting. It stated that “in line with the Government’s general mission to foster freedom of expression and encourage a plurality of voices in the community, we propose that the new RTHK should be tasked to devote part of its airtime and resources within the development of its digital services to provide a platform for community participation in broadcasting”.

The government proposed that RTHK should administer a Community Broadcasting Involvement Fund “to encourage community organisations to bid for resources for producing television and radio programmes, and would arrange to broadcast these contents on RTHK’s channels”. The document points to ethnic minority groups and non-governmental organisations as potential programme providers, but fails to mention politically-oriented groups such as Citizens Radio, which has faced prosecution action for transmitting programmes without a licence.

RTHK is also confused by this role. The broadcaster’s management noted that in other countries, community broadcasting is usually operated by individual licensees with an independent body overseeing their activities, and that community broadcasters are held directly responsible for their editorial content and hence bear all legal consequences. Questions therefore arise over whether RTHK will have legal liability over what is broadcast and whether this will prompt the broadcaster to

take a cautious approach over which groups to take on board for community broadcasts and which topics to be covered. Analysts suggest that topics of a highly political nature may not be encouraged—through an editorial control system administered by RTHK and strongly influenced by the board of advisers.

These questions are speculative at the moment, as final decisions have yet to be taken. This is true for all aspects of RTHK's future. The government is more enthusiastic about putting the charter in place and appointing the board of advisers. It appears less enthusiastic about funding for new services proposed for the new RTHK. These consist of digital audio broadcasting (DAB), digital television (DTT) and community broadcasting.

### **CITIZENS RADIO LOSES ANOTHER JUDICIAL REVIEW**

One of the issues which the government cited as a reason for holding up decisions on RTHK's future was the challenge from Citizens Radio. This pro-democracy station has been broadcasting without a licence since October 2005. Those running the station—including legislator Leung Kwok-hung and former legislator Tsang Kin-shing—declared that their action was a “first step in the fight to open up the airwaves”. The group applied for a radio broadcasting licence, but the government rejected the bid one year after the application was submitted, saying the applicants did not have the technical capability and financial backing to maintain a sound broadcasting service.

The government started raiding the station in August 2006. Several activists were arrested, including Mr Leung and Mr Tsang. These arrests led to challenges over whether the law governing sound broadcasts – the Telecommunications Ordinance—was constitutional.

In December 2008, the court of appeal overturned a ruling by a magistrate, Douglas Yau, that the charges should be dropped. The magistrate had ruled that provisions in the Telecommunications Ordinance on illegal broadcasts were unconstitutional because they curbed freedom of expression provisions in the Basic Law and Bill of Rights, and that the existing system gave the Executive Council “unfettered executive power”.

The court of appeal did not rule on the constitutional issue—but instead maintained that a constitutional challenge to the licensing regime could not be a defence to a crime.

The activists then launched another challenge to the law, bringing into question a provision that was being used against eight participants in a programme broadcast in April 2008. They included legislators Emily Lau, Lee Cheuk-yan and Lee Wing-tat, as well as veteran activist Szeto Wah. They were accused of “delivering messages for transmission by unlicensed means of telecommunications”.

The activists argued that the relevant provision in the Telecommunications Ordinance placed an unnecessary restriction on their freedom of expression, and that other sections of the law could be used to regulate the airwaves, to ensure normal operations for other users, including licensed radio broadcasters and cell phone users.

However, the chief magistrate Tong Man ruled in September 2009 that the provision was constitutional. He said the restriction on the participants' right to freedom of expression was justified under the ordinance. He accepted the prosecution's argument that the law must outlaw the activities of those who deliver messages through the illegal use of radio spectrum, and not just those who operate

such services.

The eight, plus Ocean Technology, which operates Citizens Radio, then faced trial. In December 2009, the chief magistrate found them all guilty—and fined them HK\$1,000 each. Mr Tong noted that the defendants “had not committed the offence for their own benefit, but as a challenge to what they regard as an outdated and unjust radio licensing law”. Szeto Wah said the level of the fines was indicative of how the magistrate viewed the matter. In an act of defiance, the station resumed broadcasts that same evening.

One month earlier, in November 2009, five activists and Ocean Technology were each fined between HK\$3,000 and HK\$12,000 for broadcasting without a licence. These fines resulted from the appeal ruling that prosecutions for illegal broadcasting could go ahead, despite the constitutional challenge. The five included Mr Leung and Mr Tsang.

Despite these actions, Citizens Radio is continuing to broadcast. Indeed, in May 2010, it broadcast five forums ahead of Legislative Council by-elections later that month. Prior to the broadcasts, the government warned those taking part against attending the forums. Without elaborating, the government noted that it was a criminal offence to deliver messages through illegal radio broadcasts. Nine candidates attended the forums—without incident. However, Citizens Radio was raided—for a sixth time—later in May.

The problem of pirate radio stations is not disappearing. In November 2009, an unlicensed music station, FM101, took to the airwaves. It too was raided. It remains to be seen how the government will handle such cases, and whether such broadcasters can be accommodated in some form in RTHK’s community broadcasting programmes.

## **REVISED TELECOMS ORDINANCE FALLS SHORT**

One of the side-effects of the dispute with Citizens Radio—and its legal challenges to the constitutionality of the Telecommunications Ordinance – has been a government move to amend the law as it relates to applications for radio licences. In July 2009, the government announced a set of criteria for applicants to follow. The HKJA declared that the changes were insufficient and that an in-depth review of the entire licensing system was needed. Nevertheless, the Legislative Council endorsed the government bill in January 2010, with one amendment.

In announcing the changes, the government did not link them to the Citizens Radio challenges. The government set out nine criteria for the Executive Council to consider in deciding whether to grant a sound broadcasting licence, subject to availability of radio spectrum and its suitability for a particular service. The criteria include financial soundness, managerial and technical expertise, technical soundness, quality control, programme variety, quantity and quality, and the benefits to the local broadcasting industry, the audience and the community as a whole.

The government argued that the licensing criteria “could help increase the transparency of the existing licensing regime under the Telecommunications Ordinance.” A government spokesman said the criteria were based on local experience and best overseas practice.

In a submission to the Legislative Council, the HKJA expressed deep disappointment that the proposals fell short of catching up with the world trend in sound broadcasting. It urged the government to reconsider its proposals and carry

out a proper review of the licensing system, to ensure that it complies fully with international freedom of expression requirements and meets the needs for community radio.

In particular, the HKJA argued that the changes proposed by the government will “maintain the unfettered discretion given to the deciding authorities and will therefore fall short of protecting freedom of expression.” It called on the government to carry out a comprehensive review of broadcasting legislation, with top priority given to allowing Hong Kong people to enjoy greater freedom of expression. This, it argued, is “doubly important in a far from democratic polity like Hong Kong”.

The HKJA called for the establishment of an independent body to be responsible for the award of radio licences, with the primary responsibility of ensuring media diversity. The independent body, the HKJA insisted, “should be protected against interference, particularly of a political or commercial nature. Its institutional autonomy and independence should be guaranteed by law, and it should operate in an open, transparent and impartial manner.” The HKJA also called for an independent appeal mechanism.

The government rejected these calls. At the end of the day, the Legislative Council endorsed one additional criterion put forward by Democratic Party legislator Emily Lau—that the Executive Council must take into account “the opinion of the public” in considering a licence application. The secretary for commerce and economic development, Rita Lau, said she would not oppose the change, but she thought it was unnecessary as public opinion was “always heeded”.

The revised law was endorsed by 33 to 16 votes. Those opposing it included Democratic Party and League of Social Democrat legislators, plus some independent pan-democrats. The pan-democrat Civic Party backed the changes.

### **COMMERCIAL OPERATOR ACCEPTS POLITICAL “ADVERTS”**

Controversy erupted in April 2010 when a private sector operator, Commercial Radio, accepted a political advertisement from a pan-democrat legislator and sponsored programming from a pro-government political party. The Broadcasting Authority’s code of practice on advertising standards bars political advertisements without prior authority approval. However, there is no specific provision on programme sponsorship by a political party.

The greatest concern focussed on a series of programmes sponsored by the pro-Beijing Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). The party paid more than HK\$500,000 for the right to co-host the overnight programmes—called “Night Rider 18”. A junior DAB member interviews youngsters and takes calls during the programme.

The political advert—from Democratic Party vice-chairwoman Emily Lau—called on people to take part in a march for universal suffrage in May 2010. Ms Lau paid HK\$38,000 for a series of advertising slots.

Reacting to the DAB programmes, the Democratic Party called on the Legislative Council to review the rules governing political sponsorship. The party's chairman, Albert Ho, said: “The DAB is trying to test the water. If nobody reacts strongly to their show in the early hours, next time government allies can buy up large chunks of prime airtime and promote themselves.” The DAB reacted by pointing to Ms Lau's paid announcement, which it called “political propaganda”.

Commercial Radio defended its acceptance of the advertisements. The broadcaster’s

director of strategic planning, Vincent Wong, denied that Ms Lau's advert was political. He also defended the DAB programme sponsorship.

In May, the Broadcasting Authority announced that it was investigating complaints about both items. As of early June, it had received 906 complaints about the DAB programmes—and 322 about Ms Lau's advert.

The government broadcaster, RTHK, also came under fire for broadcasting announcements of a political nature. These were unpaid announcements of public interest calling for people to support the government's political reform proposals for 2012. The criticism came from pan-democrat legislators. One of them, Democratic Party legislator Lee Wing-tat, asked why RTHK was repeatedly playing the adverts, but there is no airtime for opposition groups to voice their opposition.

The Commerce Secretary, Rita Lau, said the government did not consider the announcements—which by law must also be played on commercial stations – to be political, and that they complied with the normal practice on promoting government policy. Critics disagreed. Representatives of the Democratic and Civic parties said radio stations told them they could not buy time slots to counter the government advertisements—which up until June 10th had prompted 18 formal complaints.

In the meantime, the chief executive, Donald Tsang, said the government had no plans to relax restrictions on political advertisements in the electronic media. He told legislators that the situation in Hong Kong is different from that in other places, where political advertising is allowed. He said: "The Registration and Electoral Office has clear rules requiring equal airtime for and fair reporting on all (election) candidates. There is no plan to change the existing arrangements now." There is no bar on political advertising in the print media.

## SECTION 2

**HK reporters face increased suppression**

Hong Kong reporters have never found it easy covering news in mainland China. The year under review has seen some of the most serious difficulties for 10 years. The frequency of reporters being harassed increased, as did the severity of this harassment. And in another disturbing trend, in a bid to stop legitimate journalistic work, the authorities made unfounded accusations against reporters that carried potentially harsh legal consequences.

Serious incidents took place in Chengdu in Sichuan province and Urumqi in the Xinjiang region in 2009. They reflected a general tightening of freedom of expression in mainland China since mid-2008—a trend which worsened in the following year. Analysts pointed to three sensitive events: The Olympic Games, the 20th anniversary of the Tiananmen crackdown and the 50th anniversary of the failed uprising against Chinese rule in Tibet. They said such events prompted the authorities to impose more stringent rules and adopt a harsher attitude towards reporters. Others pointed to increased unrest on the mainland as a reason for taking a harder line.

Regrettably, Hong Kong's neighbour—the special administrative region of Macau—followed suit. Both Hong Kong activists and reporters were barred from entry to Macau at sensitive times, such as the 10th anniversary of Macau's return to China.

If the Hong Kong special administrative region has to dance to the changing political tune in mainland China, then the territory's freedom of expression will be at risk.

**CHENGDU TAKES THE LEAD**

In August 2009, now TV reporter Wong Ka-yu and her cameraman were accused of possessing drugs. Policemen stopped the pair as they were on their way to cover the open trial of a human rights defender, Tan Zuoren, who was charged with inciting subversion of state power. She was taken back to her hotel room for a search. Nothing was found, and the policemen left more than six hours later—after the trial was over. The officers also ordered the pair to erase a videotape showing footage of the search. The journalists believed the incident was simply an excuse to stop the media from covering the trial.

The HKJA issued a statement condemning the police intervention and calling for an explanation. However, none was forthcoming. The HKJA also protested against the erasing of the videotape, saying it was a serious and illegal act of suppression of press freedom, in addition to being an infringement of now TV's property.

The chairman of the Democratic Party, Albert Ho, protested against the police search. The leader of the Civic Party, Audrey Eu, expressed concern that it was a sign that the mainland authorities were taking a more stringent line against the Hong Kong media. She also urged Hong Kong's chief executive, Donald Tsang, to follow up the case.

The reaction from the Hong Kong government was lukewarm. The government said that they would look into and follow up the matter. However, nothing further was heard. There was nevertheless a reaction from Beijing's Liaison Office in Hong Kong. In an unprecedented move, it answered a letter from the HKJA, saying that the HKJA's concerns had been conveyed to the mainland authorities. It also reiterated that legal press activities would be protected.

As is usual in such cases, activist Tan Zuoren faced harsh retribution. In February 2010, he was jailed for five years for “inciting subversion of state power” over activities relating to the 1989 Beijing massacre. Analysts thought the authorities actually wanted to silence him for investigating shoddy construction standards at schools that collapsed in the 2008 Sichuan earthquake, leaving as many as 8,000 students dead.

Chengdu police once again took action against Hong Kong reporters as Mr Tan was sentenced. Nearly a dozen reporters were detained for more than an hour to stop them filming and interviewing Mr Tan’s family members and supporters. There was a report that a policeman put a stranglehold on one TV cameraman. One radio reporter had her camera-phone snatched away. It was returned only after she deleted all the photos relating to the police action.

### **XINJIANG FOLLOWS SUIT**

A more serious incident happened in September 2009. Three Hong Kong TV journalists faced the wrath of the police while covering ethnic protests in Urumqi—the capital of Xinjiang region. Han Chinese protesters took to the streets in anger at reports that Uighurs were launching syringe attacks against fellow Han. The protests came two months after ethnic rioting broke out in Urumqi, leaving almost 200 dead and more than 1,000 injured.

The three—TVB reporter Lam Tsz-ho, his cameraman Lau Wing-chuen and now TV cameraman Lam Chun-wai—were kicked, punched, shoved to the ground and handcuffed by police. They were taken away before being released about three hours later.

Hong Kong journalists and politicians from different camps condemned the Xinjiang government’s actions against media workers who were simply doing their job. The HKJA organised a petition outside Beijing’s Liaison Office three days after the incident. Over 30 reporters took part—many of them with experience of covering news in mainland China. The beaten journalists also took part to explain what happened and to call on the mainland authorities to carry out an investigation and stop all violent interference against media workers. The International Federation of Journalists put the same message across in an open letter to China’s vice-president Xi Jinping and premier Wen Jiabao.

The petition was answered in a devastating manner. The Xinjiang Press Office announced the results of its own investigation without informing the affected media outlets. It accused the three Hong Kong journalists of “inciting unrest” in Urumqi and accused them of covering the riots without permission. The incitement allegation is very serious—and can lead to a lengthy prison term.

The HKJA condemned the findings, calling the allegations a total fabrication. Even a vice-chairman of the Chinese People’s Political Consultative Conference (CPPCC), former Hong Kong chief executive Tung Chee-hwa, expressed sympathy for the plight of the Hong Kong reporters and pledged to investigate the matter. Other politicians close to Beijing also expressed concern, including National People’s Congress delegate Cheng Yiu-tong.

The HKJA and the Foreign Correspondents’ Club of Hong Kong organised a march to Beijing’s liaison office, to express anger and demand that the journalists be cleared of all wrongdoing. About 1,000 journalists and press freedom advocates took part in the march.

The two organisations also conducted an industry-wide signature campaign to

express anger about the incidents in Chengdu and Xinjiang. They called on the Sichuan and Xinjiang governments to investigate the events in a comprehensive, fair and open manner and to declare that the reporters involved committed no crime; that the two governments must punish the officials who committed wrongdoings and stop all suppressive actions against the media; that the central government in Beijing abolish the system whereby reporters must obtain press accreditation before working on the mainland; and that a formal channel be set up between the Chinese government and frontline journalists.

A total of 1,350 journalists and journalism students and teachers signed up to the petition, which was published in four newspapers in late September 2009. There was no formal response from the Chinese government.

One month later, legislative councillors held a formal debate on Beijing's attitude towards Hong Kong journalists. The motion condemned the rough treatment meted out to the reporters and called on the Hong Kong government to do more to protect journalists and press freedom. The motion was moved by the Democratic Party's Emily Lau—a former HKJA chairperson—who said the incidents had seriously undermined the freedom to cover news on the mainland and the public's right to know, as well as damaging the core values of press freedom. In a blow to those campaigning for better treatment for Hong Kong journalists working on the mainland, pro-government and pro-Beijing legislators voted down the motion.

### **A DANGEROUS SUGGESTION EMERGES**

During the outcry, the HKJA lobbied for follow-up action from individual legislators and members of the National People's Congress (NPC) and the CPPCC. It called for better protection for reporters, as well as the formulation of methods to facilitate them in their work on the mainland.

However, individual NPC delegates made some unhelpful suggestions. One delegate thought that reporters were beaten up in Xinjiang because their status was not properly understood. The delegate suggested that misunderstandings could be avoided if reporters carried a government badge marked with the word "press". She said this might also guarantee the safety of journalists. The suggestion garnered some support from mainland officials.

The HKJA chairperson, Mak Yin-ting, wrote in a message to members that such a press badge "may inadvertently expose the identity of journalists and open the way for the stoppage of news coverage." Moreover, she said it may consolidate the current system of having to apply for a permit before covering news on the mainland and may actually place more obstacles in the path of reporters who can be more easily identified by officials and others who have something to hide.

Nothing further was heard about the press badge proposal. But at the same time, there was no relaxation of the regulations which require journalists to apply for press accreditation—despite constant calls for their abolition.

### **LOCAL AUTHORITIES HARASS JOURNALISTS**

A vivid example of the way that the accreditation system can hinder news operations came in 2010, when the authorities denied permission for reporters from Apple Daily to cover the Shanghai World Expo. Apple Daily is highly critical of the Chinese government—and is routinely denied permission to report on the mainland. There was one notable exception—in 2008. Two reporters were allowed to cover the Beijing Olympics. One had initially been refused permission, but was later allowed in after a protest was lodged. The Apple Daily case might be related to the

fact that accreditation was handled by the International Olympic Committee.

The mainland authorities gave no reply to Apple Daily over its applications to cover the Shanghai Expo. Neither did they give an explanation. Analysts note that it is common for the Liaison Office in Hong Kong to ignore an application, if it comes from a media organisation considered to be unfriendly. Other organisations in this category include Next Magazine, Open Magazine, Cheng Ming Magazine, The Trend magazine and Radio Free Asia. The result is that no press permit is issued and journalists have to bear the risks of covering news illegally.

In fact, many reporters covering news that they consider to be sensitive to the Chinese government are willing to take such a risk. The intention is to avoid informing the mainland authorities of their plans and to protect their mainland sources.

A reporter told the HKJA that it is common to be followed by local police. But he was surprised to find that he was followed more closely on an official trip for which he applied for a press permit. In 2009, he visited Sichuan to report on rebuilding activities following the 2008 earthquake there. He said he had been followed by at least six policemen and one police car during a visit to a rehabilitation centre. He subsequently dropped some interview plans to protect his sources.

There are other problems for journalists armed with official press permits. Local authorities may not recognise a press permit and ask a reporter to obtain accreditation from the local level, so that more stringent controls can be imposed. During the 2009 Xinjiang riots, accredited media, including Beijing correspondents, were asked to apply for a special permit from the local government. This allowed the Urumqi government to keep close tabs on reporters' activities.

In certain cases, journalists who secure a variety of accreditations also face harassment. In May 2010, Cable TV correspondent Lam Kin-sing travelled to Sichuan—with a press permit—to cover reconstruction work there. The police confiscated the memory card on which he had recorded pictures of sub-standard construction work. It was clear that the police did not want the reporter to expose government maladministration—even though he carried proper accreditation.

Another Hong Kong reporter—Ming Pao's Manson Shum—accompanied Mr Lam. He faced the same problems, showing that there was no difference in treatment for the two journalists—one with a press permit and the other without.

## **MACAU FOLLOWS MAINLAND CHINA'S LEAD**

While China continues to take a hard line against media coverage of stories relating to dissent, Macau is not lagging far behind. This was especially the case in the run-up to the enactment of national security legislation in February 2009 and the 10th anniversary of Macau's return to China in December of the same year.

In February 2009, a photographer with the South China Morning Post, Wong Chi-keung, was twice barred from entering Macau to cover the high-profile trial of the former public works minister, Ao Man Long, on corruption charges. No reason was given for barring the photographer. He was finally allowed back to Macau in July 2009. Legislators, activists and academics were also denied entry in the run-up to the enactment of the legislation.

The sensitivity of the Macau authorities was on display again in December 2009—as president Hu Jintao arrived for celebrations marking the 10th anniversary of the establishment of the Macau special administrative region. A Ming Pao reporter, Ho

So-man, was denied entry even though she had been accredited to cover the celebrations. Ironically, a colleague was allowed to enter Macau.

At the same time, a reporter with Next Magazine, Ada Lee, who planned to visit Macau with her family, was also denied entry. Her family members were granted entry. Ms Lee noted: "I have never done a single story in my 10-year career that is politically sensitive." The HKJA expressed regret over the cases, saying they were an unacceptable abuse of the territory's internal security law. The legislation states that people can be barred if they may endanger Macau's security or are linked to international terrorist groups.

A group of 15 activists, including League of Social Democrats legislator Leung Kwok-hung, were also turned away from Macau. They intended to petition Mr Hu on the need for universal suffrage in Hong Kong. On the following day—the 10th anniversary—three more activists were sent back to Hong Kong. Two of them—Richard Tsoi and Chui Pak-tai—said Macau security officers roughed them up. Mr Chui said he was dragged, kicked in the groin and pushed to the ground.

The HKJA and the Foreign Correspondents' Club both expressed concern about the denial of entry to Hong Kong journalists. The HKJA expressed concern in particular at the potential adverse impact of the internal security law on reporters. It said the move may jeopardise the reporters' other news activities if a violation of the law is recorded. It therefore asked for the journalists to be cleared of any wrongdoing.

The chief executive, Donald Tsang, took up the case with his counterpart in Macau, the newly-elected Fernando Chui. A Macau legislator, José Pereira Coutinho, submitted a written question to the authorities. He asked about the legal grounds for using the law against journalists, and stated that freedom of expression and press freedom were vital for all in society. However, the Macau government refused to give any comment.

Hong Kong's Secretary for Security, Ambrose Lee, was not much more forthcoming on the issue. He said only that the government respected the way that other jurisdictions enforced their laws.

## **THE NORTH TIGHTENS ITS GRIP ON MEDIA FREEDOMS**

The various incidents reported in this section are not isolated. They are all related to a tightening by Beijing of its approach towards media freedoms, in a bid to avoid the dissemination of information that may prompt further social unrest in mainland China.

A commentator on China affairs, Johnny Lau Yui-sui, noted that there were 120,000 cases of social unrest in 2009, compared with 9,000 cases in 1992, when such figures were first made public. The incidents usually involved 1,000 people or more.

The upsurge has alarmed Chinese leaders, who are worried that reporting may lead to copycat cases or provoke further discontent. They therefore issued tougher media policies, in the name of maintaining harmony in society. Taking note of the spirit of the instruction, officers at different levels tightened their grip on the media. At the same time, the Communist Party's propaganda department issued direct orders that mainland media organizations must not cover particular incidents.

Analysts say the chances that officials will adopt a more liberal approach towards the media are extremely slim. They say a harsher line is more likely, especially in the run-up to leadership changes in 2012 and 2013. They say no potential power holder will dare to allow anything to happen that will endanger his position or

prospects for advancement—and that the harsher line is likely to continue for another two years as the new leadership consolidates its power.

In the meantime, Mr Lau encourages the Hong Kong media to keep a close eye on mainland media organisations which try hard to break through the limits. He expressed the hope that mutual support would benefit both the Hong Kong and mainland media.

## SECTION 3

**HKJA renews call for access law**

In January 2010, the Ombudsman, Alan Lai, released a disturbing report about how the government handles its Code on Access to Information. It found that certain government departments displayed "considerable misunderstanding of the provisions and unfamiliarity with the procedural requirements of the Code after well over a decade of implementation."

The code was brought into effect in 1995—following a campaign by the HKJA and several other groups to press for freedom of information legislation, which gives the public the right to access government information and documents. Instead, the British colonial government—under the last governor, Chris Patten—opted for the then British model: An administrative code without legal teeth.

The code states that government departments and agencies must release information and documents to the public, unless they fall within 16 broad areas of exemption. Anyone who is unhappy with a decision can complain to the Ombudsman. The problem is that the code does not carry legal weight—and officials can therefore find ways to get round the law without facing the threat of sanction.

This is exactly what the Ombudsman found, following an investigation launched in February 2009. The final report was highly critical of certain departments. It noted: "Some have refused requests for information without giving any reason or with reasons not specified in the Code; others have misused the reasons specified in the Code. Some have failed to inform requesters of the avenues of departmental review and complaint to our Office, while others have overlooked their responsibility to coordinate replies involving multiple departments."

**ACCESS CASES REVEAL SERIOUS FLAWS**

The investigation focussed on several cases, including the government's refusal to release some melamine test results for dairy products, and its refusal to reveal the salaries of political appointees. These appointees later gave out this information on their own initiative. There was also a case in which the government refused to hand over information about suicides at mass transit railway stations—citing privacy concerns. The government finally relented—shortly before the Ombudsman ruled that it had breached the code.

The Ombudsman referred to a litany of failings by government departments. For example, it said that no training was provided between 1997 and 2004 to those responsible for implementing the code; there was no positive media publicity from 1997 to 2008; and inadequate promotion within the government from 1997 to 2007. The report noted that there had been improvements since then, partly because of the launch of the inquiry.

The Ombudsman went on to propose several improvements, including more training, to ensure that departmental guidelines on the code are clear, correct and up-to-date, and to require all departmental homepages to introduce the code and to be hyperlinked to the webpage on the code. However, the Ombudsman did not consider whether a freedom of information law would be more effective in providing access to government information.

The Constitutional and Mainland Affairs Bureau, which oversees the scheme, said it accepted the recommendations made in the Ombudsman's report. Specifically, it pledged to step up promotion and training within the government, monitor

complaints lodged with the Ombudsman closely and require all departments to introduce the code more effectively. It also pledged to press public bodies which do not adhere to the code, to do so.

However, the bureau rejected calls for access legislation. A spokesman said the government had “no plan to enact legislation on freedom of information. Experience so far demonstrates that the Code on Access to Information provides an effective framework for the public to access a wide range of information held by the government.”

### **HKJA CALLS FOR ACTION ON ACCESS LAW**

The HKJA and other groups and individuals strongly disagreed. In a statement, the HKJA said it “strongly believes that it is time for the government to enact legislation to ensure the implementation of the people's right to know, rather than just improving the code which is full of flaws.”

The HKJA continued: “The negligence of the government in promoting the Code demonstrates the cynical attitude of the government in its open policy. The HKJA have reasons to believe that the government is using the Code to dodge the need to enact a law on access to information. By not doing anything, the government can maintain its secretive way of policy making and administration. Such secretive ways of administration came to surface in a survey conducted by the HKJA in early 2007. According to that survey, it was commonly held by news workers that the government was less open than the government in 1997.”

Indeed, the 2007 survey echoed the findings of a survey conducted among HKJA members in January 1998, which found that 69 percent of respondents considered that the government had become less open since the 1997 handover to Chinese rule. They were particularly scathing of the chief executive's office. As many as 72 percent of respondents called for legislation to replace the administrative code.

That was 12 years ago. Since then, many governments have enacted freedom of information legislation. These include the former colonial power, Britain, which enacted an access law in the year 2000, and China, which put into effect “The Provisions on the Disclosure of Government Information” in 2008. Under this law, all government departments must respond to requests for information. While the law has been criticised for containing overly broad exemptions, at least Hong Kong's sovereign has legal provisions on access to information. Several Asian neighbours also have such laws, including South Korea, Japan and Thailand.

The government always trumpets its statistics on the administrative code. In its response to the Ombudsman's report, the administration noted that various bureaus and departments had handled 25,125 requests between March 1995—when the code was first introduced—to the end of September 2009. It said that 95.5 percent of requests had been met in full. It added that 2.2 percent were met in part and 2.3 percent (576 requests) were refused for reasons set out in the code.

The HKJA has for long questioned the acceptance rate. It tested the system in late 1997 by sending out 81 requests for documents mentioned or clearly identified in the government's 1997 annual progress report, which reviewed the work of the administration over the previous year.

The response rate belies the official figures given out on a regular basis by the government. Only 28 HKJA requests were given in full and seven in part. A total of 46 were either withheld or not available—a refusal rate of 57 percent. These figures may be more accurate of the real failure rate, given that many requests from the

public are thought to be trivial in nature.

Another pertinent fact is that complaints to the Ombudsman are on the rise. There were just five in 2006. This figure rose to 25 in 2008. This may well be the reason why the Ombudsman decided to investigate how the code on access to information is working—although the HKJA regrets the fact that the Ombudsman did not consider the merits of giving individuals a statutory right to access government information and documents.

The HKJA believes the Hong Kong government has been stalling too long on this vital issue. A freedom of information law is essential to ensure stronger democracy and to promote open and accountable government—which is a stated goal of the government. The HKJA believes that such legislation must set out clear principles on maximum disclosure of documents and information, limited and narrowly drawn exemptions and an effective and independent appeals mechanism, with final recourse to the courts.

### **PRESSURE GROWS FOR HONG KONG TO ENACT ANTI-SUBVERSION LAW**

In December 2009, the Chinese president, Hu Jintao, praised Macau for enacting national security legislation. The Macau legislative assembly endorsed the law in February 2009. Speaking at a ceremony marking the 10th anniversary of the Macau Special Administrative Region, Mr Hu said: “The smooth completion of the legislation based on Article 23 of Macau’s Basic Law early this year shows that the Macau government, the legislature and people of various sectors have a strong sense of responsibility to uphold national security and interest.”

Intriguingly, Mr Hu also made reference to Hong Kong in his Macau speech. He called for Beijing, Hong Kong and Macau to make joint efforts to make the one-country two-systems principle work. This prompted analysts to suggest that Chinese leaders wanted Hong Kong to take action on national security legislation. However, the secretary for constitutional and mainland affairs, Stephen Lam, reiterated the government line—that it had no plans to proceed with such legislation.

Both Hong Kong and Macau have to enact national security legislation under Article 23 of each territory’s Basic Law. The legislation bans treason, sedition, subversion, secession and the theft of state secrets. Hong Kong tried to enact such legislation in 2003, but the government shelved the draft law after half a million people took to the streets to oppose it.

In February 2010, a Hong Kong delegate to the National People’s Congress (NPC), Peter Wong, launched a new bid to get national security legislation on the government agenda. He said he would submit a formal proposal on the issue to the annual NPC session in March. He questioned why Hong Kong was taking so long to enact such a law, when Macau had done so very quickly. He added: “Terrorism has become a global issue. Would terrorists from Xinjiang, Tibet and foreign countries use our city as a base for their activities? Hong Kong is a very vulnerable place.”

Mr Wong submitted a paper to the NPC, calling on the government to launch a public consultation exercise on the issue. In his paper, he cited terrorist threats, as well as slogans used by the Civic Party and the League of Social Democrats, including “uprising” and “liberate Hong Kong”. The two parties used these slogans ahead of Legislative Council by-elections in May 2012. They were campaigning in favour of full democracy.

Mr Wong’s initiative does not appear to have taken root. He was the only speaker

on the issue at a meeting of Hong Kong NPC delegates. However, it raised questions about whether the government would act in the remaining two years of Mr Tsang's term. The chairman of the Democratic Party, Albert Ho, said: "I believe there must be some reason for these Beijing loyalists to raise this topic despite the current political atmosphere. It is possible the central government wants (chief executive) Donald Tsang to get this unpopular task done within his term." Indeed, Mr Tsang has never completely ruled out the possibility that he will move on the issue before he steps down in June 2012.

## **GOVERNMENT TAKES HARSHER LINE AGAINST DISSENT**

In April 2010, about 300 activists took to the streets to protest against "political persecution" of their group—the Hong Kong Alliance in Support of Patriotic Democratic Movements in China. They were angry that the police arrested six people in connection with a protest outside Beijing's Liaison Office on Christmas Day 2009. They had taken to the streets—and briefly entered the Liaison Office compound—to express their anger at a harsh 11-year prison sentence handed down by a court in Beijing against mainland dissident Liu Xiaobo.

Five of those arrested came from the Hong Kong Alliance, including legislators Lee Cheuk-yan and Leung Kwok-hung. The six were later charged with unlawful assembly.

The protesters claimed the arrests were politically motivated and that the police had acted on orders from Beijing. The chairman of the Hong Kong Alliance, Szeto Wah, said: "It is political suppression. The government wants to silence our voice. But we shall not be frightened off. We shall continue to fight and voice our views over human rights and democracy."

The police denied that the arrests were politically motivated. A spokesman said all arrests and prosecutions were based on facts and evidence, and not on an individual's political demands and background.

The Hong Kong Alliance faced further problems in May 2010—in the lead-up to the annual anniversary of the June 4th suppression of the 1989 pro-democracy movement in China. Three pieces of art—two statues of the Goddess of Democracy and one relief titled "Tiananmen Massacre"—were seized on two consecutive days in late May. The police said the organizers did not have public entertainment licences to display the artworks. The organisers noted that they had mounted an exhibition in October 2009—without a licence or repercussions.

There were also several arrests. On the first day, 13 Hong Kong Alliance activists were arrested. On the second, two were detained. Legislator Lee Cheuk-yan was arrested on both days. They were all released on bail.

Mr Szeto called the first seizure "evidence that political pressure on the movement is increasing". The chairman of the Democratic Party, Albert Ho, said there should be freedom of expression in public areas. He noted: "We've organised activities here several times and it's the first time that we received such brutal treatment."

The Hong Kong Alliance demanded that the police release the works. This happened three days before the June 4th vigil. Organisers proclaimed the release a victory. But those arrested still face prosecution.

Ironically, vigil organisers said the government action contributed to a turnout that was beyond expectations. The organisers put the figure at 150,000 people. Even the police reported their highest figure for a June 4th vigil—113,000 participants. The organisers' estimate matched that for 2009—the highly symbolic 20th anniversary

of the Beijing massacre.

Organisers pointed to other actions that contributed to a big turnout—including the refusal of immigration authorities to allow the US-based sculptor of one of the statues to enter Hong Kong and the initial refusal of Chinese University to allow students to erect a statue on their campus. Mr Szeto said: “The crackdown imposed on us this year was the biggest ever in the past 21 years, but we smashed it.”

### **IS IT ALL PART OF A TREND?**

Observers have noted several cases where activists have been arrested following protests—many involving issues that are sensitive to China. One high-profile case involved student activist Christina Chan, who was detained outside the headquarters of Radio Television Hong Kong, where she had been taking part in a programme. She was arrested in connection with another pro-democracy protest at Beijing’s Liaison Office—and later charged with assaulting a police officer. She pleaded not guilty and will face trial in August 2010. Ms Chan was among 10 activists who broke through a cordon and charged towards the office. The host of an underground radio station was also arrested in connection with the incident.

Ms Chan hit the headlines in May 2008, when she and other protesters were removed from the scene of an Olympic torch relay. They had been staging a pro-Tibet rally. Ms Chan later challenged the police action in a judicial review. Ms Chan argued that the action infringed her constitutional rights to peaceful demonstration and freedom of expression as guaranteed in the Basic Law and the Bill of Rights. However, the judge, Mr Justice Andrew Cheung, disagreed. He ruled in August 2009 that the police action was necessary to keep the peace in the face of threatening behaviour by pro-Beijing protesters, who outnumbered the pro-Tibet activists.

Observers pointed to other disturbing incidents. In January 2010, the government denied work visas to six foreign members of a US-based dance troupe that was invited by the Hong Kong Falun Gong spiritual group. The performance was to have included reference to mistreatment of Falun Gong followers in mainland China. The shows were cancelled following the visa rejections.

The dance troupe said in a statement that it regretted that Hong Kong people had been denied the right to watch the performance. It added that this was “a violation of their freedom”. The government refused to comment on the visa rejections.

In April 2010, two Diaoyu Islands activists were each fined HK\$1,350 for carrying passengers on their boat without a licence. They planned to transport several activists to the islands to show support for China’s claim to the islands, which are held by Japan. Diaoyu activists have previously had no problem undertaking the voyage. The latest attempt was blocked after a government official inspected the vessel, which was licensed only for fishing. The pair said the charges were political in nature.

### **GOVERNMENT DELAYS REVIEW ON OBSCENITY LAW**

In July 2009, the government announced the results of a consultation exercise on proposed changes to the obscenity law. It announced that it had received “diverse views” on the issue—and pledged to release a second, more focussed consultation document by the end of 2009. As of press time—July 2010—no document had been published.

The focus of the debate was the Control of Obscene and Indecent Articles

Ordinance, which has been in force since it replaced a more draconian predecessor in 1987. The ordinance became an issue following the publication of a semi-nude photograph of actress Carina Lau and photos of singer Gillian Chung taken in a dressing room in Malaysia. There was also intense controversy over the publication on the internet of nude photographs of pop star Edison Chen and several female artistes in sex poses.

The consultation document put forward a series of options for change, including a clearer definition of obscenity and indecency, changes to the classification system, increased fines and a strengthened system for determining whether articles are obscene, indecent or neither.

The commerce under-secretary, Greg So, said at the time of publication of the consultation document that the proposals would not curb freedom of speech. The HKJA called for “a liberal approach towards this complex subject, rather than imposing further restrictions on obscene and indecent articles.”

The July 2009 paper noted starkly: “Having consolidated and analysed the views collected, the Consultant (hired by the government) concludes that views on different issues are highly diverse and no consensus has been reached.”

The paper gives several examples. For example, on control of the internet, it notes that “industry members and Internet users strongly opposed, both in principle and on technical grounds, any increased control over the Internet...” It went on: “On the other hand, many members of the public, especially parents and educators, expressed concern about the impact of the Internet on youngsters through dissemination of obscene and indecent information and they supported enhanced regulation of the Internet.”

The subject is clearly very complicated for the government. This might explain why it has delayed publication of its second consultation document, which was meant to set out concrete proposals arising from the various options put forward in the first paper.

## SECTION 4

## Critics call for greater TV competition

Calls for greater TV programming choice have increased in the year under review. This has partly been prompted by a mid-term review of the existing free-to-air operators, Television Broadcasts (TVB) and Asia Television (ATV). Their 12-year licences expire in 2015. TVB enjoys the major market share. ATV, on the other hand, has for long periods been struggling financially. More recently, it has also faced serious ownership problems.

The calls for greater diversity have also been prompted by a growing feeling that the existing operators are offering far from critical news coverage. One highly symbolic manifestation of this has been “Whatever Man”. This individual stood behind a TVB reporter doing a live stand-up during a vigil in June 2009 to mark the 20th anniversary of the 1989 Beijing massacre. The placard read: “TVB News, Whatever”, implying that the broadcaster’s news was wishy-washy.

In July 2009, the secretary for commerce and economic development, Rita Lau, appeared to open the door to greater competition in the free-to-air TV market. She said the administration would encourage competition because it would mean more choice for the public.

Indeed, three existing pay-TV operators have submitted bids to operate free-to-air services. They are i-Cable Communication, which operates Hong Kong’s major cable network; PCCW, which operates the broadband now TV network; and City Telecom, which runs a service called Hong Kong Broadband Network. The government says it is processing the applications and will consult the public before making a recommendation to the Executive Council.

However, questions have been raised about whether existing pay-TV operators would be allowed to run a free-to-air service, given cross-media ownership restrictions. That is one issue facing i-Cable Communications, which has a cable TV licence. A spokesman for the operator noted that TVB had been given an exemption to operate a pay television service called TVB Pay Vision. The spokesman asserted: “It is obvious that the regulatory regime favours the major stakeholders in the free-TV market”.

A broadcasting policy commentator, Charles Mok, called on the government to review cross-media ownership rules. He noted: “In the information age, the influence of cross-media ownership might not be as big as it was in the last century. One can hardly influence the public, even if you own many newspapers and many TV stations.”

Another consideration in this argument is the development of digital broadcasting, which permits many more channels than are currently available. Indeed, the government has until recently argued that the spectrum cannot accommodate more than two free-to-air broadcasters. Digital broadcasting should in theory allow far greater media diversity.

In another sign of growing unease about the current situation in the free-to-air market, ATV formally accused TVB of unfair competition. It did so in a complaint lodged in December 2009 with the Broadcasting Authority, which regulates television and radio broadcasting in Hong Kong.

ATV made several allegations against TVB. It accused the broadcaster of monopolising the talent pool by signing exclusive contracts with actors and singers, and offering discounted advertising rates to clients. ATV also complained that the

government-owned Radio Television Hong Kong (RTHK) supplied its most popular programmes exclusively to TVB.

TVB's deputy controller of external affairs, Tsang Sing-ming, defended the station's practices. He said that contracts signed between artists and the broadcaster were agreed willingly, and that it was normal for TVB to protect its interests. He also said that clients demanded the best advertising packages. At press time, the Broadcasting Authority was still processing ATV's complaint. The results of the mid-term review of ATV and TVB's licences had also not been announced.

## **TURBULENCE ROCKS ASIA TELEVISION**

The year under review has been difficult for ATV. In January 2009, Taiwanese billionaire Tsai Eng-meng confirmed that he would bring much needed investment to ATV. But one year later he was involved in a bitter legal dispute with the broadcaster's controlling shareholder. This is the Cha family—in particular brothers Payson and Johnson Cha. They are known to be close to Beijing. Indeed, they want to bring in a new investor—a mainland property tycoon called Wang Zheng.

Mr Tsai was meant to be the white knight to save the financially ailing ATV. He bought a 23.3 percent stake from the bank ABN Amro and Louis Page, who used to be the station's chief executive. In March 2009, ATV appointed former Taiwanese actress Nancy Hu as the station's chief executive.

This happened after ATV appointed two telecoms veterans to the top posts in the broadcaster. In December 2008, the former chief executive officer with Cable and Wireless HKT, Linus Cheung, became executive chairman, while the chairman of City Telecom, Ricky Wong, was named chief executive officer. Mr Wong resigned just 12 days after taking up the post—amid differences with Mr Cheung and dissatisfaction with Mr Wong's comments that the station “should not depend excessively” on China and that the broadcaster needed “thorough reforms.”

Mr Cheung relinquished his executive role at ATV following the appointment of Ms Hu as chief executive. However, he retained his post as chairman. In December 2009, ATV's board of directors announced that it had accepted Mr Cheung's resignation as chairman and director. The board cited “personal reasons” for Mr Cheung's departure. Media reports suggested that Mr Cheung found himself in a difficult position in the intensifying shareholder struggle between Payson Cha and Mr Tsai.

## **SO WHO OWNS ASIA TELEVISION?**

In March 2010, Payson Cha confirmed that he wanted to sell his stake to Wang Zheng. Shortly afterwards, Mr Wang unveiled new plans for ATV. The Shenzhen developer is a Hong Kong permanent resident and therefore qualified to become a leading player at a Hong Kong broadcaster. He is also a member of the Chinese People's Political Consultative Conference.

Mr Wang said he wanted to turn ATV into Asia's CNN and “the conscience of Hong Kong”. He also said that the broadcaster should have a putonghua channel for broadcast throughout China. He also announced that four relatives had been added to the ATV board.

The announcement raised concerns about Mr Wang's role at the station, given that he was not at that time a shareholder. Indeed, an increasingly bitter war of words between Mr Tsai and Payson Cha blocked any share sale. Mr Tsai claimed that Mr Cha and the ATV board issued convertible bonds to dilute his shareholding.

However, Mr Cha stated that he never had the intention of diluting Mr Tsai's stake.

The dispute went to court, with Mr Tsai attempting to block any share transfers. He was initially granted an interim injunction. But in April 2010, a court allowed share sales to go ahead, while at the same time restraining ATV from issuing convertible bonds or bond certificates with a conversion below the minimum rate. There was a further delay in the sale—as Mr Tsai filed for a fresh injunction—this time against both Mr Cha and Mr Wang—seeking to prevent the pair from breaching any agreements with him.

During the court hearing on the first injunction, a lawyer for ATV, Daniel Fung, revealed that the station was in financial trouble. He told the court—in arguing against a further ban on share transfers—that an ATV vice-president of finance said the station was running out of cash. He also quoted the vice-president as saying that the station had cash in hand totalling only HK\$28.9 million.

On the following day, ATV's chief executive Nancy Hu painted a very different picture. She told a hastily convened media briefing that the station was financially sound. She said the broadcaster lost money in the first quarter—but the loss was half the figure for the same period in 2009. She added: "ATV is very stable right now... We have no lay-off plans and will hire more people... We can pay the salaries of staff." The station had sacked more than 300 staff in the previous two years.

The station has been facing financial difficulties for many years. Indeed, an unnamed ATV employee told the South China Morning Post that the station was facing problems. He said many projects, including productions and promotions, had to be delayed or carried out at the lowest possible cost.

There was one respite for the station—former ATV chief executive Louis Page had filed a court writ seeking the station's liquidation. He claimed that the station owed his company HK\$2.39 million. It later emerged that the writ had been withdrawn. There was no comment on the case, including whether the parties had reached an out-of-court settlement.

## **GOVERNMENT INVESTIGATES WANG'S ROLE**

In May 2010, the government announced that it was investigating ATV's shareholder structure. The secretary for commerce and economic development, Rita Lau, who is responsible for broadcasting policy, said she was reacting to a letter sent to the government questioning the way that ATV was being run. She did not elaborate or name the author of the letter. She said the Broadcasting Authority had written to ATV seeking clarification about its operations.

This came after ATV's chief executive, Nancy Hu, had questioned whether it was legitimate for Wang Zheng to interfere in the station's operations when he was not yet a shareholder. She also said that Mr Wang had insisted that staff should report directly to him, and not to her.

Legislative councillor Frederick Fung questioned Ms Lau about the issue during Legco question time. Ms Lau said that ATV had to apply to the Broadcasting Authority for approval for any changes to shareholding structure and notify the body of any change of directors or principal officers. She noted that no application had been received about changes in shareholding structure. She added that a broadcaster's licence could be suspended or revoked in case of serious contravention of broadcasting regulations.

Legislators made it clear that they were not happy with ATV's performance. They focussed in particular on the war of words between Mr Tsai and Mr Cha and the

poor ratings of its programmes. One legislator, Chim Pui-chung, asked why the station had lost so much money even though it had received substantial investments from Hong Kong, mainland China and Taiwan. Several legislators asked if the government would demand that ATV surrender its television licence. The situation might not become clear until the results of the government's mid-term broadcasting review are announced.

### **OWNERSHIP PROBLEMS AT SING PAO**

A not dissimilar shareholder battle has been underway over the ownership of the Chinese-language newspaper, Sing Pao Daily News—which like ATV has been facing financial problems. In January 2010, an announcement was made that the major shareholder of SMI Publishing Group—which owns Sing Pao—would transfer his shares to a local businessman, Carson Yeung. Mr Yeung shot to prominence when he took over English Premier League football club Birmingham City.

Prior to the deal, the major shareholder was a mainland businessman, Qin Hui, who once owned one of the biggest nightclubs in Beijing. It was also reported that Mr Qin testified in a mainland court to offering 18.68 million yuan in bribes to the former chairman of Beijing Capital International Airport. The accused was later convicted and executed.

Mr Qin took over Sing Pao in 2004. It faced severe financial problems—prompting staff claims for unpaid wages, provident fund payments and other benefits. Indeed, at one stage a move was made to wind up the newspaper. In April 2008, Mr Yeung lent SMI Publishing HK\$60 million, for which Mr Qin pledged a 26.37 percent stake in the firm. This could be forfeited if the company failed to meet performance targets. The announcement followed that there would be a share transfer to Mr Yeung.

However, the story did not end quite so simply. Mr Yeung had to go to court to enforce the transfer of shares. The court of first instance obliged, but shortly afterwards Mr Qin won a temporary reprieve. The ownership of SMI Publishing therefore remains in doubt—as does the fate of the newspaper and its beleaguered staff.

There have not been any recent staff actions against Sing Pao. But it is worth remembering the words of one of the magistrates who dealt with some of the cases, Chan Yan-tong, who said the newspaper had “the worst company record”. The newspaper always argued that it could not pay because it was short of money.