



MACAU TAKES THE LEAD

Dangers for freedom of expression in Hong Kong

2009 ANNUAL REPORT

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Introduction and recommendations

The Hong Kong Journalists Association's (HKJA) annual report on freedom of expression normally focusses on events in Hong Kong. This report, for the period from July 2008 to June 2009, focusses instead on an event in neighbouring Macau—the passage of national security legislation.

This is important for Hong Kong for a number of reasons. Hong Kong tried to introduce legislation banning treason, sedition, subversion, secession and the theft of state secrets in 2003. But strong opposition, culminating in a march by half a million people, forced the government to shelve the plan. They feared the erosion of their freedoms, including freedom of expression, if the draft became law. The protests in turn led to the resignation—in 2005—of then chief executive, Tung Chee-hwa. His successor, Donald Tsang, ruled out the immediate re-introduction of draft legislation. But at the same time, he did not completely rule out any move before he steps down in June 2012.

The Macau move is also significant because it sets a precedent for Hong Kong. The offences in Macau's legislation are in some cases extremely broad in nature—although that in part is a reflection of the fact that Macau uses a continental legal system—which is more akin to that in mainland China. By contrast, Hong Kong uses a common law system, which means that offences have to be worded in far more precise language.

Chinese officials—who now wield greater influence in Hong Kong affairs than they did while Tung Chee-hwa was chief executive—are also thought to be unhappy that national security legislation has not yet been implemented in Hong Kong. They—or those close to them—argue that Hong Kong has yet to fully implement the Basic Law, which provides in article 23 for the enactment of national security legislation.

So, in the not too distant future, the reasoning goes, the Hong Kong government is bound to bring forward national security legislation. Macau took four months to enact the law—from the day it published a consultation document on the issue. But Macau is very different from Hong Kong. It does not have a tradition of opposition to government policy. In Hong Kong, half a million people protested against national security legislation; in Macau about 100 people protested in favour as the legislature voted—overwhelmingly—to endorse the law.

Observers commented after the passage of the Macau law that the Hong Kong government would be under tremendous pressure to enact national security legislation—possibly shortly before Mr Tsang steps down and when he has the least political capital to lose.

The observers also point to Beijing's growing clout in Hong Kong. They ask whether mainland leaders have tasked Mr Tsang with enacting such legislation in return for support for him becoming chief executive for two years in 2005 and then in 2007 for a full five-year term. We do not know—and we shall doubtless not be told.

Mr Tsang himself has made it clear that he wishes now to focus on tackling the economic and financial crisis. He told legislators in January 2009 that consultation on political reform would be put off from the first half of this year to late 2009. He has also indicated that other controversial issues will be put off, for the sake of tackling the crisis.

Some of these issues are urgent. They include reform of the Telecommunications Ordinance, to allow a greater diversity of radio outlets; a review of public service broadcasting, and in particular the future of Radio Television Hong Kong (RTHK);

and the introduction of freedom of information legislation, to allow the public greater access to government information and documents.

One of the few freedom of expression areas in which the government is moving forward is on changes to the way it regulates indecency and obscenity. However, the fear among free expression advocates is that the government might adopt a more stringent approach in an area that now causes little concern in many democratic societies.

The irony is that although media freedoms remain largely intact in Hong Kong, the scope for expressing dissenting views—in particular on subjects that are sensitive to Beijing—is narrowing. It is significant that the US-based group, Freedom House, has shifted Hong Kong in its global press freedom rankings from “free” to “partly free”, as a result of threats to media independence and diversity. At the same time, Hong Kong has slipped from 67th position in 2008 to 75th one year later.

In response to this announcement, Hong Kong’s Democratic Party carried out a survey of 529 people to find out their views on media freedoms. The party reported that almost 56 percent of respondents believed media freedoms had deteriorated in the previous two years—and 54 percent thought media organisations had exercised self-censorship. These findings are broadly in line with the results of surveys conducted by the HKJA among Hong Kong journalists.

However, not all was bad news on the freedom of expression front. On the night of June 4th 2009, a record 150,000 people turned up to mark the 20th anniversary of the suppression of the pro-democracy movement in Beijing. This was far higher than the organisers expected—and reflected the strength of feeling among Hong Kong about this most sensitive event in recent Chinese history. The turnout was probably boosted in part by insensitive comments by the chief executive, Donald Tsang, who equated his own pro-Beijing views on the events in 1989 with those of the public at large.

The chief executive noted in response to the huge turnout that it respected people’s views. But otherwise, he had no comment. This is not a ringing endorsement of freedom of expression. The HKJA would therefore call on the government to approach media issues with extreme caution, to ensure that Hong Kong’s existing freedoms—which at times are fragile—are maintained. In particular, we would urge the following:

- 1) Resist pressure to enact national security legislation, following the passage of a similar law in Macau. Hong Kong should enact such legislation only if there are compelling and immediate national security reasons for doing so. If enacted, the law must contain safeguards which are robust enough to protect freedom of expression and press freedom, which are lacking in the Macau legislation. It must in particular incorporate the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as well as proper public interest and prior publication provisions in official secrets legislation.
- 2) Review its policy of barring activists and dissidents from entering Hong Kong. This is crucial for freedom of expression as targeted denial of entry limits the debate in Hong Kong on sensitive issues, such as whether the Chinese government’s verdict on the 1989 pro-democracy movement should be reversed.
- 3) 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.
- 4) Carry out a comprehensive review of broadcasting legislation to ensure that

the airwaves are open to those who wish to set up broadcasting operations, irrespective of political orientation. In particular, the government must set out application procedures to be completed within a reasonable timeframe and objective factors to determine whether or not to grant a licence. It must also provide for an independent appeal mechanism.

5) Create a platform for public access television and radio services, to ensure greater programming diversity. This is crucial in an environment where commercial broadcasters dominate.

6) Proceed as soon as possible with its review of public service broadcasting, including the future of RTHK. In particular, it should take concrete steps to hive off RTHK from the government, so that the station can become an independent public broadcaster free from government or political influence. RTHK should be re-constituted by legislation guaranteeing the broadcaster's independence in clear and unambiguous terms.

7) Ensure that any changes to obscenity laws give adequate protection to media freedoms. In particular, the government should scrap controls on indecency and widen the classification mechanism by using the jury system for the appointment of adjudicators. It should also refrain from introducing legislation to control internet content.

8) Urge the central 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. Further, the Beijing authorities should ease visa requirements for foreign journalists wishing to travel to mainland China for reporting purposes.

SECTION 1

Macau sets the tone

On February 25th, 2009, Macau's legislative assembly passed a national security law—just four months after a consultation document on the issue was first unveiled. This move was significant because Hong Kong had tried to do the same in 2003. But vehement protests, culminating in a half-million strong protest march, forced the government to drop the plan. Officials in Hong Kong have since said that they are under a constitutional obligation to enact such laws, but they have no timetable for doing so.

Under article 23 of their Basic Laws, both Hong Kong and Macau must enact laws banning treason, sedition, secession, subversion against the central government in Beijing, and the theft of state secrets. It also prohibits foreign political organisations or bodies from conducting political activities in Hong Kong or Macau, and local political organisations or bodies from establishing ties with foreign political bodies.

The Hong Kong Journalists Association (HKJA) and other organisations in Hong Kong have expressed the view that such legislation would pose a severe threat to freedom of expression. They highlight in particular the offences of sedition and theft of state secrets. As such, they worry that any legislation enacted in Macau will become a template for Hong Kong.

However, they are also aware that the legal system in Macau is very different from that in Hong Kong. Macau uses a continental law system, which favours broad declaratory legislation, whereby Hong Kong's common law system requires precise legislation setting out defences and other safeguards against government excesses.

MACAU TAKES FIRST STEPS

In late October 2008, Macau's chief executive, Edmond Ho, announced the release of a consultation document on national security legislation. The paper included a 15-article bill, plus commentary on its contents. Mr Ho insisted that the proposed law would not infringe freedom of expression. His secretary for administration and justice, Florinda da Rosa Silva Chan, went further, saying it was in line with the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, which were adopted by international legal experts in 1995. (Analysts say this is not the case.)

Ms Chan also said her government had not referred to Hong Kong's draft law, which was dropped in September 2003. She said that since 2004, Macau officials had been studying national security laws enacted in other countries using a continental law system. She named in particular Portugal and Italy. Indeed, the consultation document makes no reference at all to the controversy generated by Hong Kong's move to enact a similar law.

The Macau government conducted a consultation exercise lasting just 40 days, which was far shorter than the three months given to Hong Kong people to comment on their own draft law. Some critics urged the Macau government to extend the consultation period, but these calls were ignored.

Indeed, critical comment was largely absent during debate on the bill, mainly because—unlike Hong Kong—Macau does not have a significant opposition movement. For example, only two out of 29 Macau legislators are from the opposition pro-democracy camp, compared with 23 out of 60 in Hong Kong.

Further, many of Macau's civil society groups are controlled by organisations which are friendly to Beijing, while those in Hong Kong are split among supporters and critics of the Chinese central government. One Macau group, the General Union of Neighbourhood Associations, conducted a poll which

found that 92 percent of respondents backed the bill. However, in a telling finding, fully 65 percent did not know the details of the bill.

There was, nevertheless, some criticism in Macau. The Macau Journalists Association urged the government to conduct a comprehensive consultation on the bill. In particular, it called for a clear definition of what constitutes a state secret and for open trials to be the norm. It also called for a public interest defence for media publications. The association is the only media group in Macau which is not pro-government.

Some academics were also critical of the draft law. A law lecturer at the University of Macau, Jorge Godinho, wrote that the offences of sedition and theft of state secrets “if not clearly defined would likely result in self-censorship by the press.” He also pointed to the penalties of 10 to 25 years for the most serious offences—which he said would “rank among the harshest in the legal system, where the absolute maximum penalty for any single crime is 25 years of imprisonment.”

The draft law was introduced into the Legislative Assembly in December 2008. The most significant change was the scrapping of plans to punish “preparatory behaviour” for the offences of sedition and theft of state secrets. However, it will remain an offence to commit preparatory acts leading to the crimes of treason, secession and subversion. The maximum prison term for committing preparatory acts is three years.

CRITICISM MOUNTS IN HONG KONG

There was naturally considerable interest in Hong Kong about the draft law, given Hong Kong’s own experience in late 2002 and 2003. Critics feared that the Macau law could be adapted for use in Hong Kong—although legal experts pointed to the different legal systems in use in the two special administrative regions. The director of Hong Kong Human Rights Monitor, Law Yuk-kai, pointed to the vague definition of some offences and the general lack of protection for civil liberties.

One of the most in-depth critiques of Macau’s law came from Amnesty International, which translated it into English. (It was published officially only in Macau’s two official languages of Chinese and Portuguese.)

The director of the group’s Asia-Pacific programme, Sam Zarifi, wrote that the issues surrounding the implementation of Article 23 of the Basic Law “are very important in defining the future direction of human rights and the concept of ‘One Country Two Systems’” and “not only affect Macao, but also neighbouring Hong Kong.” He went on to write that the bill would “subject Macao to the same vague and broad definitions of ‘endangering state security’ crimes” set out in China’s criminal code.

Amnesty points to the vague language used in the offence of subversion. The law points to the use of violence or “other grave illegal acts” to overthrow the Central People’s Government or to prevent or restrict its functions. It notes that non-violent demonstrations or strikes could be covered—and calls for “peaceful expression” to be protected.

Another area of concern is the offence of sedition. The law defines sedition merely as the “public and direct incitement” of people to commit treason, secession or subversion. Amnesty notes that the offence could be used to criminalise writings and public speech, and could therefore have a chilling effect on press freedom and limit open discussion on politically-sensitive topics.

Another area of grave concern is the offence of theft of state secrets. The relevant provision makes it an offence for any person to steal, gather or procure state secrets, endangering or harming national independence, the unity and

integrity of the state or its internal or external security.

The provision further defines state secrets as those pertaining to national defence, foreign relations and other issues concerning the relationship between the central authorities and Macau, as set out in the territory's Basic Law. In seeking a prosecution, the judiciary may obtain a document from the central government certifying that the documents, information or objects are classified as state secrets. The law also allows parts of state secret trials to be closed, if national security is under threat.

Amnesty says the text introduces "the extensive, vague, and retroactive state secrets system used in the Mainland to Macao." It notes that the law allows Beijing to determine arbitrarily whether or not documents or information are state secrets. It also expresses concern about the possibility that trials could be held behind closed doors. It notes that such provisions "could put many Macao residents including journalists, researchers, academics and scientists in danger of prosecution beyond the view of public scrutiny."

The group called on the Macau government to withdraw the bill from the Legislative Assembly, allow more time for public consultation and reform the bill so it complies fully with international human rights law and standards.

The HKJA also expressed concern about the draft law. It stated: "The offences are excessively broad in nature—more akin to the kind of wording seen in mainland laws. This makes the offences on sedition and theft of state secrets in particular damaging to free expression. Without the offences being worded in a clear and narrow way, there is a real threat that they will inhibit the activities of journalists and other free expression advocates."

The HKJA continues: "This legislation threatens the rights and freedoms of Hong Kong journalists covering Macau affairs. If this legislation, as widely expected, is the forerunner of a similar law for Hong Kong, then the fundamental rights and freedoms enshrined in the Basic Law will be nullified. Clearly this threat is not only directed at the media but also at Hong Kong people as a whole."

MACAU PRESSES ON WITH ENACTMENT OF LAW

Such expressions of concern went unanswered. A slightly amended law was put to a final vote in the Legislative Assembly on February 25th. The only dissenters were pro-democracy legislators Antonio Ng Kuok-cheong and Au Kam-san from the New Democratic Macau Association. They voted against some, but not all the provisions.

Legislator Au Kam-san summed up the new law in the following terms: "The law is made to set an example for Hong Kong. Macau authorities don't actually need such a law to control society. An internal security law targeting organised crime and terrorism can be used to deal with anyone... The Article 23 law is only a symbol—a sword hanging over people's head that will almost never fall."

The Macau government had a different response. It said it was "deeply encouraged" by the passage of the law and praised the patriotism of those who supported it. Indeed, the only protest outside the Legislative Assembly during the bill's final reading was by more than 100 people carrying banners in support of measures to defend national security.

A spokesman for the Hong Kong government said Hong Kong "has a constitutional duty to enact laws in accordance with the Basic Law to protect national security." But he said the government had no plan "at the present stage" to embark on legislative work, and that tackling economic and people's livelihood issues was more pressing. The spokesman added that the government

would “certainly communicate with all sectors of the community, with a view to securing its understanding and consensus on the future legislative proposals.”

However, critics of the Hong Kong government expressed concern that the enactment of Macau’s national security law would increase pressure for the Hong Kong government to do the same. While the chief executive, Donald Tsang, has ruled out any immediate action, he has at the same time not totally ruled out the possibility of enacting such legislation before his term ends on June 30th, 2012. Civic Party legislator Margaret Ng noted: “Inevitably, there will be greater pressure to revive Article 23 in Hong Kong.”

HONG KONG CRITICS KEPT AT BAY

Debate over Macau’s national security legislation prompted some pro-democracy legislators to make the short ferry trip to Macau, either to demonstrate or attend discussions on the bill. Some made it, but others were stopped on arrival in Macau and sent back to Hong Kong.

One of the most outspoken Hong Kong legislators, Leung Kwok-hung, was granted entry in November 2008. He later joined a march against the national security legislation. A day earlier, Civic Party legislator Ronny Tong was detained by immigration officers for 10 minutes, before being granted entry. He later met Macau legislators to discuss the draft law. He reported that he was followed for some time during his visit to Macau.

However, one month later, Macau immigration officers took a different approach. They refused entry to 24 Hong Kong activists, including nine pro-democracy legislators. They had planned to join a march against the security law timed to coincide with the ninth anniversary of Macau’s return to China. The lawmakers said they were given no reason for being refused entry. They were also asked to sign a notice, saying they had been denied entry under Macau’s internal security law. They refused to sign the document.

In the following months, Macau immigration officers barred more legislators and politicians, plus University of Hong Kong law professor Johannes Chan, who had been involved in the 2003 campaign in Hong Kong against national security legislation, and *South China Morning Post* photographer Felix Wong, who was denied entry on two separate occasions, even though he possessed accreditation to cover media events in Macau.

These developments prompted legislators from Hong Kong’s pro-democracy camp to hold an urgent adjournment debate on the issue—despite opposition from the pro-Beijing DAB party. They urged the secretary for security, Ambrose Lee, to get tough with the Macau authorities. Another speaker in the debate— independent Regina Ip—called Macau’s practice ridiculous. She said: “This is a question of human rights. The Macau authorities are tightening our freedom.”

A few days later, in March 2009, the chief executive, Donald Tsang, discussed the issue with his Macau counterpart, Edmond Ho, on the sidelines of a meeting of China’s National People’s Congress in Beijing. Mr Tsang said he had channelled the concerns of Hong Kong people to Mr Ho, and believed Macau’s chief executive would understand Hong Kong concerns. Mr Ho, for his part, said he would not do anything unfavourable to normal and beneficial exchanges. But he also maintained that Macau had legitimate reasons for enforcing its laws. Mr Ho had earlier said that the decision to bar certain people from Macau was not connected to the passage of its national security law.

A day after the meeting in Beijing, the director of the country’s liaison office in Hong Kong, Gao Siren, said the central government had taken up the case. He said they were examining what had happened, and would raise the issue with relevant government departments.

European diplomats also expressed concern about the actions of the Macau authorities. The head of the European Commission office in Hong Kong, Maria Castillo-Fernandez, confirmed that they had raised their worries with the Macau government. These concerns are understood to include whether outspoken European politicians could be barred. The British consulate also confirmed that it had raised the issue with Macau officials.

Pro-democracy legislators decided to test whether the Macau authorities would ease their policy. They organised a visit for mid-March 2009—ostensibly for a cultural exchange. A total of 33 legislators and activists made the trip—but five were turned away. They included legislators Leung Kwok-hung and Lee Cheuk-yan. Macau legislator Au Kam-san said the five might have been turned away because the government was worried that they might become involved in moves to develop a labour movement in Macau.

One of those who was allowed to enter Macau, Democratic Party legislator Cheung Man-kwong, said they were not happy that five people were barred. He said: “What we see now is political censorship and an intrusion into the rights of Hong Kong citizens. We have to fight back, otherwise we are encouraging them to continue.”

The law lecturer at the University of Macau, Jorge Godinho, expressed similar sentiments. He wrote that the refusal of entry to Hong Kong residents, including Leung Kwok-hung, had “painted a dark picture over Macau, for it amounts to a form of censorship of political debate, by blocking people who may bring fresh perspectives.”

The whole controversy raised questions about whether Macau had a blacklist of Hong Kong activists. Hong Kong’s secretary for security, Ambrose Lee, said he had been assured that there was no blacklist. However, analysts maintain that there must be some sort of list, otherwise Hong Kong residents could not have been turned away.

HONG KONG’S OWN BLACKLIST?

Macau is not the only territory to turn away activists. Hong Kong also has a reputation for doing this at sensitive times. For example, at least two activists were refused entry to Hong Kong in the week leading up to the 20th anniversary of the June 4th suppression of the 1989 Chinese pro-democracy movement. They were exiled former student leader Xiang Xiaoji and Danish sculptor Jens Galschiot.

Mr Xiang had intended to attend a series of events to mark the Beijing massacre. The US passport holder was put on a flight back to New York after being refused entry for “immigration reasons”. He had previously visited Hong Kong in May 1999. Ironically, another former student leader, Xiong Yan, was allowed into Hong Kong, without any questions being asked. Mr Xiong is also a US citizen. He became the first 1989 activist from the mainland to address a Hong Kong June 4th vigil in person. He noted that “Hong Kong is the pride of all Chinese—because you have people who dare to defend freedom.”

Mr Galschiot was turned away at Hong Kong airport after being questioned for five hours. His sons, Kaspar and Lasse, plus a documentary filmmaker, were allowed to enter Hong Kong—and they participated in June 4th activities. On his arrival, Mr Galschiot was asked what he intended to do in Hong Kong, and why he travelled so extensively. He released a statement after he was denied entry: “I think the action has damaged the reputation of Hong Kong. It is not good for Hong Kong.”

Several other mainland dissidents were refused visas to enter Hong Kong. They included former student leaders Wang Dan and Yang Jianli, as well as

dissidents Wang Juntao and Chen Ziming. They all live in the United States, except for Chen Ziming, who lives in Beijing.

Another exiled 1989 student leader, Wu'erkaixi, tried to enter Macau from Taiwan. He planned to give himself up to the mainland authorities, so he could face trial for his prominent role in the 1989 movement and to see his family. But the Macau authorities detained him at the airport, before sending him back to Taiwan.

The secretary for security, Ambrose Lee, was asked in the Legislative Council whether the government had a blacklist of people who would be barred from entry into Hong Kong. Mr Lee denied there was any blacklist. But he admitted the existence of what he called a "watch-list". He said individual immigration officers took into account "all relevant factors and the individual circumstances of each visitor in deciding whether to allow or refuse entry." Mr Lee also noted that Hong Kong gathers information and intelligence from other immigration authorities and law enforcement agencies to determine whether someone should be allowed to enter Hong Kong.

Another Hong Kong security official, Grace Lui, had also admitted—in the run-up to the Beijing Olympics in August 2008—that there was a "watch-list". At least 10 activists were denied entry to Hong Kong or barred from leaving mainland China in the week leading up to the Olympic torch relay in Hong Kong on May 2nd, 2008. Other activists were denied entry to Hong Kong just before Hong Kong hosted the Olympic equestrian events. They included dissidents Yang Jianli, Zhou Jian and Wang Min, and at least one member of the Falun Gong spiritual movement, which is banned in mainland China, but not in Hong Kong.

RECORD NUMBERS AT VIGIL

The June 4th candlelight vigil attracted a record turnout of 150,000—although the police put the figure at only 62,800. Officers had to close the park because so many people were inside. An estimated 50,000 people waited outside.

The organisers of the vigil attributed the record turnout to the fact that it was the 20th anniversary, the release of the memoirs of the late party general secretary Zhao Ziyang, who was supportive of the students, and provocative comments by Hong Kong's chief executive, Donald Tsang. The chief executive told legislators that China had made "tremendous" economic strides since 1989. He said: "I believe Hong Kong people will make an objective assessment of the nation's development", adding that his view represented the opinion of Hong Kong people. The comment prompted pro-democracy legislators to walk out of the Council chamber.

The government response to the vigil was curt. The chief secretary, Henry Tang, called the event "an isolated case" and that the government respects freedom of speech and assembly. The chief executive, Donald Tsang, said: "All I can say is that I fully understand Hong Kong people's feelings and views about June 4."

Another angle to the June 4th events was criticism of certain media outlets. The terrestrial broadcaster, TVB, came in for particular criticism, with protesters calling it CCTVB—a play on the Chinese propaganda station, CCTV, and the Hong Kong broadcaster's own name. One protester also raised a critical banner as a TVB presenter was making a live report at the venue of the candlelight vigil.

The Hong Kong Human Rights Monitor also commented on media coverage of the 20th anniversary of the Beijing massacre. It said TVB's coverage was poor, the other terrestrial broadcaster, ATV, was walking a thin line and Radio Television Hong Kong's coverage was excellent, although it questioned whether the station's director had intervened in the editorial process. (It is

understood that he did in his capacity as RTHK editor-in-chief, but no changes were made to the broadcaster's June 4th specials.)

MAINLAND AUTHORITIES REMOVE PAGES FROM HONG KONG NEWSPAPERS

Several Hong Kong publications fell foul of the mainland authorities because they contained reports on June 4th. Media reports in Hong Kong revealed that some pages were removed from three newspapers—*Ming Pao Daily News*, *Hong Kong Economic Times* and the *South China Morning Post*—after they were sent to the mainland from mid-May—two weeks before June 4th. In some cases, copies were not delivered at all. *Ming Pao* confirmed that it had received complaints from mainland subscribers. The other newspapers said they had not received any complaints, although they did not rule out the possibility that complaints may have been sent to their mainland offices.

Ming Pao confirmed that it did have reports on June 4th in editions from which pages were removed. The stories involved reports on Zhao Ziyang's memoirs and a Legislative Council debate calling for the vindication of the 1989 protest movement.

The China National Publications Import and Export Corporation, which is responsible for the import of newspapers published outside China, admitted that it did take some pages out of Hong Kong newspapers, but declined to say why. The HKJA condemned the removal of the pages.

In another case, the HKJA expressed regret that the Hong Kong magazine, *Esquire*, had removed 16 pages from a feature story on the 1989 massacre in issue 247 published in June. The issue came to light when one of the journalists involved mentioned the case in his blog. The missing pages reported on how some celebrities remembered June 4th. According to the blog, top management removed the pages while they were being taken to the printer. The blog also alleged that managers found the phrase "Justice Should Be Done Over June 4th" to be "problematic" and "seditious".

The magazine's holding company, South China Media, did not respond to media enquiries. But analysts noted that two top managers in the group, Jessica Ng and Christina Cheung, are members of the Chinese People's Political Consultative Conference—the first at the Tianjin municipal level and the second at the central level.

SECTION 2

A change of focus

In January 2009, the chief executive, Donald Tsang, announced a delay in consulting the public about electoral reform. The chief executive cited the need to focus on fighting the credit crisis and the economic downturn. The government had pledged to consult the public in the first half of 2009, but this was put back to the end of the year.

The decision to focus on the economy has had knock-on effects on other issues, including the status of the law governing radio licensing and the future of the public broadcaster, Radio Television Hong Kong (RTHK). This is particularly the case with the RTHK issue, as the government has continued to prevaricate on a promised consultation on the role of public service broadcasting.

COURT OVERTURNS TELECOMMUNICATIONS RULING

In December 2008, the court of appeal overturned a ruling by a magistrate that charges brought against several activists accused of broadcasting without a licence should be dropped, because relevant provisions in the Telecommunications Ordinance on the licensing of radio stations were unconstitutional.

The case centred around broadcasts made by the pro-democracy community radio station, Citizens' Radio, from October 2005. The group, 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, saying the applicants did not have the technical capability and financial backing to maintain a sound broadcasting service.

The government started raiding the radio station in August 2006. Several activists were arrested, including Mr Leung and Mr Tsang. They were charged with maintaining a system of telecommunications without a valid licence under the Telecommunications Ordinance.

The activists took the case to court, arguing that the law breached Hong Kong's Bill of Rights. In January 2008, magistrate Douglas Yau declared that relevant sections were unconstitutional because they curbed freedom of expression provisions in the Basic Law and the Bill of Rights. The magistrate argued that the existing radio licensing system failed to provide legal certainty to applicants for radio licences. He pointed in particular to "the unfettered discretionary power" given to the Executive Council under the ordinance.

The government appealed against the hearing. It brought in a high-powered UK Queen's Counsel, David Pannick, who argued that the offence did not touch on the constitutionality of the licensing regime, but rather on the law, which required a person to broadcast with a valid licence. But the lawyer for Citizens' Radio, Philip Dykes, argued that constitutionality was crucial to the case and that the acquittals must be upheld.

The court of appeal ruled in favour of the government, arguing that a constitutional challenge to the licensing regime could not be a defence to a crime. It therefore set aside the acquittal of the Citizens' Radio activists and sent the case back to the magistrate for the trial to continue. But curiously, it did not rule on whether the Telecommunications Ordinance was unconstitutional.

The accused are now mounting a constitutional challenge to another provision

in the ordinance which the government is using to prosecute nine people for “delivering messages for transmission by unlicensed means of telecommunications.” The nine were participants in a programme broadcast in April 2008. They include legislators Emily Lau, Lee Cheuk-yan and Lee Wing-tat, as well as veteran activist Szeto Wah.

The chairman of the Democratic Party, Albert Ho, who did not take part in the broadcast, said the criminalisation of merely expressing opinions on a broadcast was a disproportionate restraint on free speech.

The Citizens Radio activists have vowed to continue broadcasting in what they called an act of civil disobedience. One week after the court of appeal ruling, government officers raided the station’s premises, taking away one radio transmitter. However, they acquired alternative equipment and remain on the air, broadcasting for two hours every evening.

In February 2009, more than 100 demonstrators took to the streets to call—among other things—for reform of the Telecommunications Ordinance. One of the marchers was journalist Ching Cheong, who was jailed in mainland China for two and a half years on charges of spying for Taiwan. He noted: “The public airwaves should not be politically controlled... The truth is, the scope for freedom of expression has been narrowing... If this carries on, we will lose our most fundamental values.”

There is no indication that the government is willing to review the ordinance. The HKJA continues to call on it to carry out a comprehensive review of broadcasting legislation, to ensure that the airwaves are open to those who wish to set up broadcasting operations. In particular, it urges the administration to set out application procedures to be completed within a reasonable timeframe and objective factors to determine whether or not to grant a licence. The HKJA also calls for the setting up of an independent appeal mechanism.

RTHK REVIEW DIES A SLOW DEATH

Controversy over the constitutionality of the Telecommunications Ordinance was cited as a complicating factor in deciding how to review the role of public service broadcasting in Hong Kong—and the equally important question of the future of RTHK, which is a government department that has come under fire from Beijing loyalists, who say that the broadcaster is too critical of the government.

The government was scheduled to release a consultation document on the issue in January 2008. Eighteen months later, nothing has happened.

The broadcaster’s future has been in doubt since a review committee proposed in March 2007 that a new independent statutory public service broadcaster should be set up, but that RTHK was not fit to take on this role. The review panel had been tasked with considering the future of public service broadcasting, yet its terms of reference did not include the future of RTHK, which is Hong Kong’s sole public broadcaster.

In its final report, the committee envisaged that RTHK would have a diminished role in the broadcasting industry. It said the reduced role of RTHK “could hardly justify the allocation of seven radio channels and TV airtime on the domestic free TV channels.” It also said that RTHK staff could apply to join the new public service broadcaster.

The report prompted a strong response from RTHK, which felt it should be transformed into the independent broadcaster. The government conceded that RTHK’s future would be included in the consultation document.

However, the government has indicated that the issue is far more complicated than initially thought. The policy secretary who oversees RTHK, commerce secretary Rita Lau, told legislators in December 2008 that “there have been rather diverse views” on the review committee’s report. She said new factors included the management of broadcast spectrum and public access broadcasting. She said officials needed “more time than expected to thoroughly study the subject”. At the same time, she promised that a consultation document would be released covering the future of RTHK, community radio and public access broadcasting.

However, some analysts are now questioning whether the consultation document will ever be released, given that the issue is highly controversial. RTHK staff are also concerned that the broadcaster now appears to be in a state of limbo. Some are asking whether the government should announce that the review has been dropped, to allow the station to move forward in its current format as a government department—albeit with editorial independence.

A NEW MAN AT THE HELM

On the auspicious date of August 8th 2008, Franklin Wong became the new head of RTHK. The post of director of broadcasting had been vacant since July 2007. The then incumbent, Chu Pui-hing, was forced to resign after he was photographed with a hostess outside a karaoke bar. Two recruitment exercises were staged. The first failed to find a suitable candidate. Franklin Wong was named following the second exercise.

The appointment was unusual in several ways. Mr Wong is not well known in the broadcasting industry—although he did work for RTHK from 1966 to 1975—mainly as a TV producer. He later worked in Singapore and Beijing. The other unusual aspect of the appointment is Mr Wong’s age—65 at the time of his appointment. This is five years older than the normal retirement age for civil servants.

Mr Wong has been cautious on the question of whether RTHK should be hived off from the government to become an independent public broadcaster. He noted that a framework agreement with the government gives RTHK editorial independence and that the broadcaster has maintained impartiality and fairness. But he said improving corporate governance would be the priority of his two and a half year tenure as director of broadcasting.

The governance issue is important because RTHK has faced a number of court cases involving expenses fraud. Former radio producer Chan King-chong was ordered to perform 160 hours of community service for using documents with intent to deceive the government and conspiracy to defraud. The court of appeal later upheld most of the charges against Mr Chan, although the conspiracy conviction was quashed.

Another senior officer, David Ho, faced a charge alleging that he recruited his mother for freelance work without revealing their relationship and declaring a conflict of interest. However, Mr Ho walked free after the district court ruled that there was insufficient evidence to convict him.

RTHK had earlier come under fire in several audit reports, which alleged that the broadcaster was failing to comply with government regulations and procedures over issues such as staff management and entertainment expenses. The station tightened up its procedures in 2002. The latest cases involved alleged fraud that took place before the rules were tightened.

In February 2009, the government announced that RTHK would have a new deputy director—Gordon Leung. He replaced Gracie Foo. Both are administrative officers, which prompted concerns among staff that the

government was yet again bringing in its own people, instead of promoting RTHK staff into top positions.

NEW RADIO STATION FACES OBSTACLES

In November 2008, the government announced that the Executive Council had granted a company called Wave Media a 12-year licence to set up a new radio station. It will offer just one AM radio service, unlike the existing broadcasters—RTHK, Commercial Radio and Metro—which offer several AM and FM services. Wave Media is led by former legislator Albert Cheng, who previously worked as a prominent talkshow host for Commercial Radio.

The company's programming—in Cantonese—will feature news, public affairs, music and segments aimed at promoting a "harmonious society". Wave Media is backed by several pro-government figures, including legislator David Li and Chinese People's Political Consultative Conference delegate Wong Cho-bau.

However, the station is facing difficulties. It wants to erect a transmission tower on an outlying island, Peng Chau. Residents there are opposing the move because it will be situated along a walking trail. However, Mr Cheng insisted that his plan would not harm the environment or health of residents. But he was clearly frustrated, saying that he may return his radio licence if the dispute cannot be resolved. He also did not rule out a switch to digital radio broadcasting—a concept from which the government has shied away.

A government spokesman said the new service—if it goes ahead—will "introduce more competition in the radio market, increase programming choices for the audience, promote research and development of new broadcasting technology, create job opportunities and train new talent."

However, critics question whether the station will be pro-government, given its backers and focus on promoting a harmonious society. This is a buzzword which in China implies the suppression of dissenting voices. But Mr Cheng insists he will be as critical of the government as he was when he hosted a Commercial Radio talkshow. He said the aim of setting up a new broadcaster is to "monitor the government... and speak for the underprivileged."

GOVERNMENT RELAXES CROSS-MEDIA RULES FOR MOBILE TV

In December 2008, the government announced that it would issue three 15-year licences for mobile television services. The auction for the licences will take place in the second half of 2009, with services expected to start in 2010 at the earliest. Licence holders will be able to offer up to 26 channels for broadcast on mobile phones or MP4 players with a TV receiver. At least half of the transmission capacity will be for mobile TV content. The rest will be set aside for new services, including digital audio broadcasts and data transmission.

The government said it would not impose cross-media ownership rules on the new service providers. However, obscenity rules will apply. The convenor of the Hong Kong Digital Content Alliance, Ringo Lam, said the decision to lift cross-media restrictions would pave the way for broadcasters to offer content. He also said newspapers may also bid for their own mobile news channel. Some major newspapers already provide video feeds on their websites, thereby blurring the distinction between print and electronic media.

The announcement on the relaxation of cross-media ownership rules comes at a time when pressure is growing for legal changes to better reflect convergence between electronic and print formats. Former legislator Allen Lee has called for changes to the existing law, which bars newspaper owners from taking stakes in electronic media and vice versa, without Executive Council approval.

Mr Lee cited the case of media tycoon Rupert Murdoch owning both newspapers and television stations. But media unions use the example as a major reason for the necessity of legislation to prevent media concentration in one person's hands. The HKJA has taken the position that the government should be extremely careful in making any changes to legal provisions on cross-media ownership in broadcasting legislation.

SECTION 3

Government undertakes obscenity review

The government was active in one area—the law governing the publication of obscene and indecent articles. In October 2008, it published a consultation paper setting out options for reforming the Control of Obscene and Indecent Articles Ordinance, which has been in force since it replaced a more draconian predecessor in 1987.

The review arose from several controversies over the publication of pictures which were ruled to be either obscene or indecent. These included the publication of a semi-nude photograph of an actress, Carina Lau, in 2002, and photos of a singer, Gillian Chung, taken in a concert dressing room in Malaysia. These were published in August 2006.

The system also came under fire for making some strange rulings. One involved a decision in 1995 to ban an advertisement depicting Michelangelo's David, because it showed the statue's genitalia. More recently, a publisher wrapped a Chinese-language edition of the magazine *National Geographic* in a plastic wrapper, because it contained illustrations of naked Neanderthal-era people. The publisher did the same several months later, for an edition featuring a picture of semi-naked bathers.

The most recent controversy involved something more substantial—the publication on the internet in early 2008 of nude photographs of pop star Edison Chen and several female artistes in sex poses. Mr Chen admitted later he took most of the photographs. The chief executive, Donald Tsang, expressed concern about the publication of the pictures, saying it was “a serious issue, which demanded further follow-up”. Government officials noted they were already reviewing obscenity laws following earlier incidents.

GOVERNMENT LISTS OBSCENITY OPTIONS

The government's consultation document did not put forward specific recommendations for action. Rather, it listed out possible ways forward, including options for policing the internet.

In particular, it suggested that the definition of obscenity and indecency could be made clearer. It also questioned whether the existing classification system—through an Obscene Articles Tribunal—should be reformed, whether the existing three-category system should be expanded to four, and whether fines should be doubled. The report also floated the idea of enacting legislation to control what is published on the internet.

The government official responsible for the consultation document, Commerce Under-secretary Greg So, said the proposals would not curb freedom of speech, but would rather try to strike a balance between maintaining the free flow of information and protecting youngsters from indecent material.

However, the HKJA submitted a paper calling for “a liberal approach towards this complex subject, rather than imposing further restrictions on obscene and indecent articles”. It noted that a number of developed countries do not have classification systems—and suggested that the law relating to indecent material should be scrapped. This, it said, would allow the government to focus on the control of obscene material.

In particular, the HKJA called for an expansion of the system for appointing members to the Obscene Articles Tribunal, which classifies articles into obscene, indecent or neither. The current system relies on a pool of 300 adjudicators. Those wishing to become adjudicators can apply, which means

that anti-obscenity activists with an agenda to pursue can become members.

The HKJA suggested that a better and fairer alternative would be to use the list of jurors to select adjudicators. This, it argued, would lead to a panel that could better represent community views.

The HKJA also opposed the enactment of legislation to control internet publication. It advocated the maintenance of the existing system, whereby internet service providers exercise self-regulation. It argued that any move to impose legislative controls on the internet could open the door to other forms of internet censorship, including on issues which are highly sensitive to the Chinese leadership.

The consultation came to an end in January 2009. The government noted that it had received more than 18,800 submissions from individuals and organisations. It pledged to prepare another consultation document, which would set out more concrete proposals. Officials said it would be published by the end of March 2010.

As a sidebar to this story, a computer technician, Sze Ho-chun, was jailed for eight and a half months for obtaining access to the Edison Chen photographs with a view to making a dishonest gain. The singer had taken his computer to the shop where the technician worked, so it could be repaired. The court heard that Mr Sze had copied the images from the computer's external hard drive. But there was no evidence that he was the person who actually uploaded the pictures onto the internet.

COURT SLAMS OBSCENITY TRIBUNAL

In October 2008, a court of first instance judge ruled that the Obscene Articles Tribunal had failed to do its job over a series of sex articles in a Chinese University student newspaper, *CU Student Press*. Mr Justice Lam quashed the tribunal's ruling that several articles were indecent, saying that it had taken a "lax approach" on the issue.

The articles were published in February and March 2007. They touched on controversial issues including sex with siblings and animals. The tribunal issued its "indecent" ruling in May 2007, following complaints from the Department of Justice and the Television and Entertainment Licensing Authority, which oversees the classification system.

The then editor, Tong Sai-ho, mounted a court challenge against the ruling. *Ming Pao Daily News* joined the case, because it reprinted the articles in question. Their lawyers argued that the tribunal's failure to give reasons for its decision was an affront to free speech and breached its own regulations.

The judge agreed that the regulator fell short of its mandate and should have specified why it had classified the articles as indecent. He said: "The tribunal is asked to make decisions which have a bearing on the freedom of expression, a fundamental right cherished by our society... There is no room for arbitrariness or slackness."

The new editor of *CU Student Press*, Thomas Tsang, welcomed the ruling. But he said that the tribunal should be revamped. He said the tribunal lacks transparency and credibility. The publication has in the meantime continued to publish articles on sexual matters.

The Chinese University initially threatened disciplinary action against those involved with the publication. But it later dropped its action against Mr Tong because he had already left the university, and against Mr Tsang because the tribunal ruled that the April 2007 issue—which Mr Tsang edited—was neither obscene nor indecent.

In the same month that the sex articles judgement was announced, a magistrate fined the former publisher of *Eastweek* magazine HK\$100,000 for publishing the photograph of actress Carina Lau. The fine was raised from HK\$20,000 in a review hearing at the request of the government. It was widely believed that the photograph was taken while Ms Lau was being held hostage by a triad gang for refusing to take part in a film.

The government also succeeded in persuading the courts to impose a custodial sentence on the magazine's former chief editor, Mong Hon-ming. He had previously been handed a six-month jail sentence suspended for two years. However, the court of appeal ordered that Mr Mong should be sent to jail for five months. It noted that the decision to publish the picture showed "scant regard for the dignity and feelings" of the actress.

PROBE PROMPTS FREEDOM OF INFORMATION DEBATE

In February 2009, the Ombudsman launched an investigation into the way that the government's access to information system works. The British colonial government launched an administrative code on access to information in 1995—following a campaign by the HKJA and other groups for freedom of information legislation. 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. The office wrote: "In some cases (referring to complaints to the office), the departments have refused requests for information without giving any reason, with reasons not specified in the code, or misusing reasons specified in the code. At times, even the access to information officer seems not to have the faintest idea about the provisions of the code."

The then Ombudsman, Alice Tai, added: "The code is the principal safeguard against improper withholding of government-held information... the apparent lack of understanding among some departments calls for an examination of the system for administering the code."

On the surface, the government has a good record in using the code, reporting that just two percent of all requests have been denied in full since 1995. What this hides is the growing number of complaints to the Ombudsman. There were just five in 2006. This figure rose to 25 in 2008.

The HKJA tested the system in late 1997 by seeking 81 official documents. Only 28 were given in full and seven in part. A total of 46 were either withheld or not available. These figures may be more accurate of the failure rate, given that many requests from the public are thought to be trivial in nature.

Government figures also showed that 48 requests for information were refused in 2008. A University of Hong Kong researcher, Fu King-wa, reported that officials sometimes turned down requests for information which were clearly in the public interest, including data on food samples containing melamine, enrolment numbers at international schools and a traffic impact assessment report that was refused for an odd reason—because of "improper gain". This is not a reason in the code for turning down a request.

The HKJA responded to the investigation by calling on the chief executive, Donald Tsang, to order the preparation of a consultation paper outlining different approaches to freedom of information legislation, to allow a proper debate on the issue. It noted that the original decision to publish an

administrative code was made at a time when the colonial power, Britain, took the same approach. Britain has since enacted freedom of information legislation. Indeed, even mainland China enacted what it calls Open Government Information Regulations in 2007.

Lobbyists and academics agreed that legislation would be a better way to handle the issue. The director of the University of Hong Kong's media law project, Doreen Weisenhaus, noted: "Hong Kong journalists have long been denied access to information of public importance—a fact that leads to a media culture that needs to rely too heavily on confidential sources for information that should be in the public domain."

The government countered in a paper to legislators that the code "provides an effective framework to provide access for members of the public to a wide range of information held by the Government." It pledged to step up staff training, publicity on the code and compliance monitoring. It said therefore that "there is no plan to enact freedom of information legislation in Hong Kong." The government also said there was no need to introduce legislation to protect whistleblowers who reveal government improprieties.

Nevertheless, the HKJA believes that freedom of information legislation is essential to ensure stronger democracy and to promote open and accountable government—which itself is a stated goal of the government. The legislation should set out clear principles on maximum disclosure of documents and information, minimal exemptions and an effective appeal mechanism, with final recourse to the courts.

GOVERNMENT CLAIMS VICTORY IN ACADEMIC FREEDOM CASE

In March 2009, a court ruled that a former senior government official, Fanny Law, did not breach academic freedom when she criticised lecturers who were critical of education policy. On the surface, the ruling appeared to be a victory for the government. But academics at the centre of the controversy questioned whether this was indeed the case.

The case arose from the findings of a commission of inquiry, which ruled in June 2007 that Mrs Law—in her then capacity as permanent secretary for education—had improperly interfered with the academic freedom of two academics at the Hong Kong Institute of Education. Amid controversy over government moves to pressure the Institute to merge with the Chinese University, Mrs Law was accused of asking the institute's then president, Paul Morris, to "curb" two academics. But it rejected a claim that she tried to have four lecturers sacked.

In its ruling, the Court of First Instance argued that Mrs Law had not threatened the lecturers' jobs or sought to punish them for criticising government policy on education. The two judges wrote: "We do not see that it would be improper for a senior official to privately engage an academic in order to state the government's views, even to the extent of arguing that the academic should... change his or her views. That is part of the ebb and flow of free debate."

The judges also noted that criticism by a senior civil servant might have a "chilling effect" on opponents of government policy, but "that alone is insufficient" to breach their rights.

The case was brought by the government, which feared the effect the commission of inquiry might have on the willingness of senior officials to engage academics on government policy. Indeed, the commission had argued that the pursuit of educational, scholarly and research excellence must be respected, otherwise "neither scholars nor students would be able to flourish or

achieve the ends that academic freedom is intended to serve.”

The secretary for education, Michael Suen, welcomed the ruling, saying that it clarified the principles concerning dealings between government officials and academic institutions.

The man at the centre of the row, Professor Paul Morris, said it did no such thing. He said the review had neither “quashed nor queried” the commission’s finding that Mrs Law had interfered in academic freedom, because the case centred only on phone calls between Mrs Law and one lecturer, Ip Kin-yuen. Mr Morris said the real issue was that Mrs Law had acted improperly by approaching him.

For his part, Mr Ip said the Court of First Instance failed to give firm direction on the need to protect academic freedom and freedom of expression. He said: “The judgement is expected to have a deep and lasting impact but it didn’t provide a clear enough clarification on these two important issues.” He expressed concern that a similar controversy over academic freedom could break out again.

GOVERNMENT TAKES NO ACTION OVER ASSAULT CASES

Journalists in Hong Kong expressed deep concern over two cases of assault against photographers who were involved in investigations by British newspapers into the Hong Kong affairs of Zimbabwe’s president, Robert Mugabe. In the first case, a photographer was assaulted by Mr Mugabe’s wife while she was shopping in a tourist area. Hong Kong’s Justice Department later decided that Grace Mugabe was entitled to diplomatic immunity as she was the wife of President Mugabe.

The second case happened one month later, in February 2009. Two photographers were assaulted by bodyguards for Mr Mugabe’s daughter, who is studying in Hong Kong. The incident happened outside Ms Mugabe’s home. The photographers alleged that the bodyguards grabbed one of them by the neck and bruised the other.

Hong Kong’s Justice Department later decided not to pursue the case. The director of public prosecutions, Grenville Cross, wrote that “a very experienced senior counsel from the Bar considered the case and advised that it was ‘borderline’ and that the public interest did not require a prosecution.” He also argued that the bodyguards were “genuinely apprehensive for the safety of Miss Mugabe”—a point rejected by the photographers.

Journalists were outraged over the decision not to prosecute what appeared to be a clear case of assault. The HKJA described the decision as “harmful to press freedom”. Democratic Party legislator Emily Lau called the decision not to prosecute regrettable. And one of the photographers, Tim O’Rourke, said: “I am not surprised by the decision but what does it say about Hong Kong and freedom of the press? It looks pretty bad.”

Legislators have decided to follow up the case, in particular after the *South China Morning Post*—which broke the story—reported that the two bodyguards were working in Hong Kong without permission. The newspaper reported that the police did not investigate whether the pair had the right to work in Hong Kong. The bodyguards have since returned to Zimbabwe.

SECTION 4

Beijing's heavy hand

The Chinese government invariably takes a tough line on freedom of expression issues, even if at times it allows periods of relative liberalism. In March 2008, it expelled all journalists in Tibet as anti-China protests erupted. It once again barred foreigners from the sensitive Himalayan region in March 2009—for fear of what may happen. In the end, the security presence was so strong that nothing of substance happened.

However, in May 2008, the government allowed thousands of journalists to enter Sichuan province to cover the devastating earthquake, before clamping down as reporters focussed on allegations that the collapse of substandard schools had led to the unnecessary deaths of thousands of schoolchildren. This issue remained highly sensitive one year later.

The staging of the Olympic Games in August 2008 was another example of relative liberalism, punctuated by bouts of repression that reflected a desire by the authorities that nothing should go wrong with the games. It also prompted Beijing to issue new rules governing news reporting in mainland China.

NEW REPORTING RULES CHANGE LITTLE

In February 2009, Beijing announced new reporting rules for Hong Kong and Macau journalists. They replaced the previous rules, the so-called seven regulations, which were announced in the wake of the June 4th 1989 crackdown against pro-democracy protesters in China. Those rules required journalists to apply in advance to the State Council's Hong Kong and Macau Affairs Office—through Beijing's main representative office in Hong Kong—for permission to report on the mainland. Prior to this, journalists could travel freely to the mainland on reporting assignments.

Journalists say the new rules are not substantially different from the seven regulations. They still require journalists to apply in advance for particular reporting assignments. But unlike under the previous rules, journalists are issued with temporary press cards to cover a particular assignment. These permits last one month and can be used several times, but only for a specified destination. Reporters are also allowed to interview people in mainland China, as long as those people give prior permission.

Xinhua news agency described the new rules as an extension of temporary regulations for the 2008 Beijing Olympics “that had allowed greater freedom for journalists from outside the mainland.” Those rules also allowed reporters to interview individuals as long as interviewees gave prior consent, and to visit “places open to foreigners designated by the Chinese government.” The Olympic rules covered foreign, Hong Kong, Macau and Taiwan journalists. They were extended for foreign reporters in October 2008.

However, implementation of the Olympic rules was patchy. The Foreign Correspondents Club of China reported more than 335 cases of interference with journalists since January 2007, when the rules were implemented. These cases included violence, destruction of journalistic material, detention, harassment of sources and staff, interception of communications, denial of access to public areas, questioning in an intimidating manner, official reprimands and being followed.

Hong Kong journalists also expressed concern that the February 2009 rules would not be implemented properly. The HKJA's chairman, Camoes Tam, said the rules would obstruct journalists from covering breaking news.

An official with the Hong Kong and Macau Affairs Office, who did not want to

be named, said there would be no censorship in the processing of press cards. He said cards would be granted as long as news organisations could provide information on the dates, destination and purpose of visit. He said the purpose of the permits was to serve as official identification for reporters and to “weed out fake journalists”.

The HKJA spoke to several Hong Kong-based journalists who regularly visit the mainland. They report that the application system for the press card is working well, noting that journalists can receive the document on the day of application. Indeed, one Hong Kong broadcaster received a permit for Tibet shortly before a sensitive anniversary. Journalists also say they do not have to provide information such as who they plan to interview.

However, they report problems once they arrive at their destination. They say some provincial officials do not know much about the press card – and insist that journalists must apply for accreditation from the province. They say officials sometimes warn Hong Kong journalists that they should not report negative news. The officials also sometimes monitor the activities of journalists.

However, the greatest concern of reporters interviewed by the HKJA is about what will happen if a journalist is sent to a nearby province to report on an entirely new incident, for example an earthquake. They worry that the authorities could take action against them because they do not have permission to report in another location. They feel that the new rules—like the old ones—allow the authorities to penalise journalists if they do not want sensitive stories to be reported.

OLYMPICS HIGHLIGHT RIGHTS VIOLATIONS

China’s attitude towards dissent hardened in the run-up to and during the Olympic Games in August 2008, despite promises that journalists would be given a freer rein in the country. Analysts noted that the tough line arose from a desire to ensure that the games should proceed without problems. It also followed anti-Chinese riots in Tibet and protests during overseas legs of the Olympic torch relay.

The Olympic Games were successful as a sporting event. But at the same time, security forces cracked down hard on anyone trying to stage demonstrations. Three protest zones were set up in parks far from Olympic venues, but no protests were allowed. Chinese officials admitted they received 77 applications for protests. They said 74 applications were withdrawn, two were “suspended” and one was “vetoed”. Indeed, two elderly people were sentenced to one year of re-education through labour after they made an application. The sentence was later dropped.

The protests that did take place were unauthorised and involved small groups of foreigners, including those backing Tibetan independence. Security officers detained protesters as quickly as they could and deported them from the country.

Another bone of contention for free expression advocates was access to the internet. China regularly blocks sensitive sites, in particular those set up by dissidents or advocates of independence for Tibet, Xinjiang or Taiwan. In early August 2008, it was reported that the government had unblocked several sensitive websites—following criticism that it had not done enough to ensure free access to the internet for those covering the games.

Unblocked sites included Amnesty International, Reporters Without Borders, the Chinese-language services of the BBC and Voice of America, Radio Free Asia and the Hong Kong newspaper, *Apple Daily*. However, sites linked to the 1989 Beijing massacre, Tibet, Xinjiang and the Falun Gong remained inaccessible.

Access to some of the unblocked sites was denied after the Olympic Games ended in late August.

Journalists were also affected by government sensitivities. Beijing has traditionally refused to give permission for reporters from *Apple Daily* to report mainland news, given its criticism of the mainland. One of the newspaper's reporters, Norman Choy, tried to enter the mainland in early July 2008—to cover games preparations. But immigration officers denied him entry and confiscated his travel document—even though he had proper accreditation from the International Olympic Committee (IOC). The HKJA and the International Federation of Journalists protested against the action.

Three weeks later, the mainland authorities allowed Mr Choy to enter the country to cover the games.

There were also a number of incidents in which journalists were impeded as they covered incidents in the run-up to or during the Olympics. For example, officers seized a digital camera card from a reporter for Hong Kong's *Ming Pao* newspaper as he was covering the rush to buy Olympic tickets in Beijing. Some foreign journalists were also manhandled as they covered protests in the capital.

The verdict on the Olympic Games was mixed. The International Olympic Committee and Beijing—naturally—heralded its success. However, others disagreed. The United States expressed disappointment that the games did not bring more “openness and tolerance” in China.

Amnesty International was also concerned. Its deputy programme director in Hong Kong, Roseann Rife, noted: “The Beijing Olympics have been a spectacular sporting event but they took place against a backdrop of human rights violations, with activists prevented from expressing their views peacefully, and many in detention when they have committed no crime.”

Ms Rife added: “The Chinese authorities and the IOC had an opportunity to demonstrate human rights improvements but in most respects they failed to deliver. Forced evictions, detention of activists and restrictions on journalists should not blight another Olympics.”

CHINESE FOREIGN MINISTRY TRIES TO GAG TIBET SPEAKER

In March 2009, the communications director of the Washington-based International Campaign for Tibet, Kate Saunders, was scheduled to speak to Hong Kong's Foreign Correspondents' Club (FCC) on the topic, “A Great Mountain Burned by Fire: Reflections on New Expressions of Dissent and the Crisis in Tibet.”

However, in the previous week, the Chinese Foreign Ministry office in Hong Kong summoned the club's then first vice-president, Tom Mitchell. Officials told Mr Mitchell—a correspondent for the *Financial Times* newspaper—that they were unhappy that Ms Saunders would be speaking at the club. They also warned of unspecified consequences if the speech—scheduled for shortly after the first anniversary of riots in Lhasa—went ahead.

The FCC decided to postpone the event at short notice. It said in a statement that “the Ministry of Foreign Affairs contacted the FCC, voiced concern that it had not been offered a chance to argue its case and asked that the speech either be cancelled or postponed until the Chinese Government could find a speaker to present its view.”

In the end, no speaker was put forward. In early April—three weeks after the scheduled date—Ms Saunders delivered her speech to the FCC, without controversy.

There were suggestions that the FCC had caved in to pressure from the Foreign Ministry. But the FCC president, Ernst Herb, denied this was the case. Indeed, he suggested that the speech was initially postponed because there was little interest in the event.

The Foreign Ministry's office in Hong Kong did not reply directly to questions about the incident. It said only: "We firmly oppose Tibetan separatists to come to Hong Kong for any separatist activities." The Hong Kong government did not comment on the incident. However, observers noted that it had barred three members of a pro-Tibet group from entering Hong Kong, ahead of the Olympic torch relay in the territory in May 2008.

In her speech to the FCC, Ms Saunders noted that "Beijing has sought to dominate the debate on Tibet and to silence all discussion that does not conform to the state's point of view." She also noted that she wanted to visit China, but her visa application had been denied. At the same time, she reported that she was able to enter Hong Kong without incident.

The sensitivity of the Tibet issue was highlighted in the HKJA's 2008 Annual Report, which noted that the Law Society's journal, *Hong Kong Lawyer*, had banned an article written by a human rights lawyer, Paul Harris. The writer examined the Tibet question from a legal perspective, arguing that Tibet's links with China were not as strong as Beijing made out—and that in some cases the relationship was colonial in nature.

SECTION 5

Media workers face difficult times

The sweeping financial crisis which broke out in the autumn of 2008 triggered repercussions for corporations and organisations throughout the world. Such corporations suddenly had to cut their operating costs to maintain market competitiveness.

Media organisations have not been spared. While no major media outlet has closed down in Hong Kong—despite the competitive nature of the business—many have chosen to sack staff and/or cut salaries. In the past year, many journalists have lost their jobs. For those who have escaped the axe, many have had to suffer pay cuts in different forms, including taking no pay leave. And there is no sign yet that the media industry is recovering.

BROADCASTERS CUT STAFF AGGRESSIVELY

Broadcasters have been at the forefront of staff lay-offs. The two terrestrial broadcasters, Asia Television (ATV) and Television Broadcasts (TVB), laid off hundreds of staff between November 2008 and the end of May 2009, and they have not ruled out further staff cuts.

ATV has been operating in the red for many years. It cut more than 300 jobs in four batches. The axe fell the hardest in mid-February 2009, when about 20 percent of the company's workforce—207 people—lost their jobs, despite the announcement about two weeks earlier that Taiwanese tycoon Tsai Eng-meng would invest HK\$500 million in the ailing station.

The station's executive chairman Linus Cheung defended the sackings, saying that only abrupt measures could save the company. However, some ATV staff complained that newsroom manpower had become so tight that reporters had to do film-editing and technicians became drivers.

In April 2009, the station made changes to its channel format. The major victim was its 24-hour news channel. Media analysts had questioned whether Hong Kong could support four all-news channels—hosted by TVB, ATV, Cable Television and NOW Broadband. Three now remain in existence.

In mid-May, ATV announced its fourth round of layoffs. The firm sacked 36 staff, including long-serving news anchors. The news department was the worst hit, with 26 people going—including reporters, editors and directors.

Although TVB made a handsome profit of HK\$1.055 billion in 2008, it still announced redundancies. From December 2008 until May 2009, nearly 400 staff were made jobless in three rounds of sackings. The biggest—involving 212 people—took place in December 2008, which is less than three months after the financial crisis started in the United States. The reasons given by TVB were a drop in advertising revenue and an expected deterioration in the business environment.

In May, the firm sacked another 110 workers, mainly from its engineering and production resources departments. To alleviate the impact of the move, the station said some laid-off staff would be able to apply for 200 new jobs being created as part of its development plan. Trade unionists condemned these job losses, describing TVB's behaviour as disgraceful.

The chief secretary, Henry Tang, voiced disappointment when ATV and TVB cut a combined 257 jobs on the same day in February 2009. Mr Tang said that human resources were an important asset. The secretary for commerce and economic development, Rita Lau, said both stations were licensees serving the public, and should therefore maintain existing services to fulfil their licensing

conditions.

Other television stations cut staff—but not to the same extent as the two terrestrial broadcasters. Star TV axed 20 people at the end of March, leaving it without a newsroom, and Cable TV laid off seven people in April 2009.

PRINT MEDIA RESORTS TO PAY CUTS

The print media was also not spared the effects of the financial downturn, given that advertisers refrained from spending as consumer sentiment dipped.

The market leader in the English-language newspaper market, the *South China Morning Post*, announced both sackings and pay cuts. It laid off 30 staff in December 2008, followed by another 17 in April 2009. In the same month, it cut staff salaries by five to 12 percent for those earning more than HK\$20,000 per month, with higher paid employees taking a larger hit. The Chinese-language financial newspaper, the *Hong Kong Economic Times*, also imposed pay cuts. They averaged five percent, again with higher earners bearing the brunt.

Other newspapers have taken similar action. The Next Media group, which publishes *Apply Daily* and *Next Magazine*, announced an average 3.5 percent pay cut, while *Sing Pao* staff had their wages reduced by between five and 20 percent. In January 2009, the Sing Tao group announced cuts ranging between three and 10 percent.

In these difficult times, the government is calling on media management to think twice before dismissing staff. But trade unionists say some employers, who continue to profit from their media businesses, are reluctant to shoulder greater responsibility in mitigating the effects of the financial crisis.

The trend for media organisations to maintain tight control over staff numbers is expected to continue for some time—at least until a full economic recovery and a marked increase in advertising revenue. How far news production is affected remains to be seen. When 36 people were sacked in mid-May, ATV senior vice-president Kwong Hoi-ying maintained that the retrenchments would not affect the quality of news coverage at the station.

That view is highly debatable. In the current economic environment, employers are imposing greater pressure on their editorial departments to improve productivity. Journalists suffering from shrinking salaries are therefore facing greater work pressure—and more expensive forms of journalism, including investigative and in-depth news reporting, are likely to be cut. Higher-paid journalists may also face the sack, to be replaced by less experienced journalists. All this means that news quality is likely to be compromised.

ATV UNDERGOES ANOTHER OWNERSHIP CHANGE

The HKJA has reported several major ownership changes at terrestrial broadcaster, Asia Television (ATV), over the past 10 years. The most recent took place in February 2009, when prominent Taiwan businessman, Tsai Eng-men, was given the go-ahead to take a minority stake in the struggling company. This capped a three-month drama, when new managers were brought in—and one resigned just 12 days after taking up office, amid reports that he wanted to change the way the station presented news.

The station hit the headlines in early December 2008, when ATV announced the appointment of two telecoms veterans to the top posts in the broadcaster.

The former chief executive officer with Cable and Wireless HKT, Linus Cheung, became the new executive chairman, while the chairman of City Telecom, Ricky Wong, was named chief executive officer. Neither has direct broadcasting

experience, although City Telecom runs an online service called Hong Kong Broadband.

The move prompted four ATV executives to tender their resignations, including two handling news—senior vice-president Peter Kwan and his deputy Leung Ka-wing, who withdrew his resignation after Ricky Wong stepped aside.

Mr Wong promised big changes at the station, in particular in the news department. He told journalists that the station—which has close links with Chinese organisations and has been accused of taking a pro-Beijing line—should not act as a channel of the Chinese propaganda station, China Central Television (CCTV), and should instead be a Hong Kong-oriented broadcaster.

Mr Wong was also quoted as saying: “We need to change, we need to be the voice of Hong Kong people. We should have credibility, otherwise we will just follow the road of pro-Beijing media like *Wen Wei Po* and *Ta Kung Pao*. They have strong support from the mainland, but they don’t have the support of the Hong Kong people.”

Mr Wong’s comments reportedly angered ATV shareholders who are close to Beijing, including former chief executive, Chan Wing-kee, who is a former deputy to the National People’s Congress and current member of the Chinese People’s Political Consultative Conference.

Mr Wong’s brief but turbulent term formally came to an end when ATV’s board accepted his resignation and appointed him a consultant. Mr Wong alluded to some of the problems. He wrote in a farewell statement that ATV “should not depend excessively” on China and that the broadcaster needed “thorough reforms”. He also made it clear that he had different views from Linus Cheung on “the (station’s) daily operation”.

Chan Wing-kee tried to play down political differences. He said the decision to accept Mr Wong’s resignation was “based on administrative considerations, not political ones”.

The resignation was not the end of the story. Legislators demanded a full explanation at a special panel meeting on December 19th. The new executive chairman, Linus Cheung, denied that Ricky Wong’s departure was due to pressure from Beijing. However, Civic Party legislator Audrey Eu said she was not convinced there was no political pressure.

Legislators also cast doubt on the broadcaster’s editorial independence. ATV news head Leung Ka-wing insisted that the station’s editorial independence had not been compromised, despite a management structure widely perceived as being loyal to Beijing. Linus Cheung told legislators he respected press freedom and promised not to interfere with Mr Leung’s work.

At the same meeting, Mr Cheung disclosed that ATV needed about HK\$1 billion to maintain operations over the following three years, and the directors had therefore been working to secure new and longer-term capital.

Taiwanese businessman comes to the rescue

A few weeks later, in January 2009, Taiwanese billionaire Tsai Eng-meng confirmed that he would invest in the loss-making ATV, and made known his ambition to explore co-operation between the Hong Kong-based station and his China Times Group in Taiwan. However, his personal assistant, Will Tsai, denied that there was any political motive behind the deal, and the money would come from the tycoon’s own pocket.

Tsai Eng-meng is listed by Forbes magazine as the ninth richest person in Taiwan. He runs a company called Want Want Group, which makes rice crackers and flavoured drinks. He has a strong business presence in mainland China.

In November 2008, Mr Tsai bought Taiwan's financially troubled media company, the China Times Group, which publishes the *China Times* and *Commercial Times*, and runs several TV channels. He beat out a bid by Hong Kong's Jimmy Lai, who runs different versions of *Apple Daily* and *Next Magazine* in Hong Kong and Taiwan. Mr Lai, who is highly critical of mainland China, wanted to buy the China Times Group to get a foothold in television in Taiwan.

In late February 2009, the Broadcasting Authority gave the go-ahead for Mr Tsai's purchase of a 23.3 percent stake in ATV through a company called San Want Media Holdings. It bought the stake from ABN Amro and Louis Page, who used to be the station's chief executive. ATV remains controlled by the Cha family, which is known to be close to Beijing. Mr Tsai now becomes the second largest shareholder in the broadcaster.

The Broadcasting Authority noted that Mr Tsai had undertaken to safeguard freedom of expression and editorial independence. It also noted that the purchase would strengthen ATV's financial position. Linus Cheung has implied that Mr Tsai is investing about HK\$500 million in the broadcaster.

About two weeks later, ATV confirmed the appointment of former Taiwanese actress Nancy Hu as the station's new chief executive. It also emerged later that Linus Cheung had relinquished his executive role at ATV, to give Ms Hu a freer hand in running the station. In June 2009, Ms Hu said there would be "no more massive layoffs or downsizing." She also noted that the station was hiring anchors and reporters.

PUBLISHER QUILTS OVER CROSS-MEDIA CONCERNS

In January 2009, the newly appointed publisher of the respected *Hong Kong Economic Journal* quit after less than a week in the job. The deputy chairman of Pacific Century Regional Developments, Francis Yuen, was named publisher eight months after the Broadcasting Authority ruled that there was no conflict of interest in a company called PCCW Media taking a 50 percent stake in the newspaper. PCCW Media owns a pay TV company—NOW Broadband.

The purchase of the *Hong Kong Economic Journal* was made in August 2006 by a trust company owned by Richard Li—the majority owner of the telecoms giant, PCCW. The authority ruled that neither PCCW nor PCCW Media had a relationship with Mr Li because he had transferred his PCCW interest to the trust company. The authority noted that the trust was totally separate and independent.

The Journal's chairman, Robert Chan, said in a letter to staff: "PCCW holds a television broadcasting licence. Although Mr Yuen is not involved in daily operations, management and decision-making in PCCW and NOW TV, the appointment may arouse concerns about cross-media ownership. To avoid that, Mr Yuen has ceased to be the publisher of the Journal."

Mr Yuen's appointment was announced six days after the retirement of former Journal publisher and co-founder Lok Yau-mui.

The Broadcasting Authority put in place several requirements to ensure that cross-media conflicts of interest did not happen. These include the need for Mr Li and his trustees to report any changes in trust arrangements and the disposition of trust assets. PCCW and PCCW Media are also required to monitor all dealings with the newspaper "to ensure there is no influence by the Journal over the content of PCCW Media, and vice versa."

HONG KONG JOURNALISTS ASSOCIATION

The Hong Kong Journalists Association (HKJA) is the only industry-wide union of journalists in Hong Kong.

The HKJA promotes the right to freedom of expression and actively focuses on a range of press freedom and ethics concerns. As a trade union, the HKJA focuses on labour rights, pay issues, health and safety, and training.

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