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ASSOCIATION**

RTHK UNDER SIEGE

Hong Kong Government Takes on the Public Broadcaster

2006 ANNUAL REPORT

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Introduction and recommendations

The HKJA's 2005 Annual Report documented how former colonial official Donald Tsang had become the new chief executive—following the resignation of his discredited predecessor, Tung Chee-hwa. We asked whether Mr Tsang would be a friend or foe of the media and freedom of expression—in an environment where the Chinese government appears more willing to meddle in Hong Kong's affairs. One year after assuming office, the answer remains unclear.

Mr Tsang has not—yet—moved to re-introduce national security legislation, which would pose the greatest threat to media freedoms. He has only said that he would not take action until after the election for a new chief executive in March 2007—a poll which Mr Tsang is widely tipped to win.

On another vital press freedom issue, Mr Tsang has failed to secure the release of detained Hong Kong journalist Ching Cheong, who faces spying charges in Beijing. Indeed, Mr Ching appears to have fallen into the black hole of the mainland legal system. There is still no definite news on his case—14 months after his initial detention.

However, on one front Mr Tsang did take decisive action. He ordered a review of public service broadcasting (PSB) in general and the future role of government-owned Radio Television Hong Kong (RTHK) in particular. However, on this front too, there is uncertainty about the eventual outcome, or indeed Mr Tsang's stance on PSB and RTHK—even though he has expressed dissatisfaction in the past about certain RTHK programmes.

Mr Tsang entrusted the review to a seven-member committee, which includes five members with private-sector media experience, but none with in-depth knowledge of public service broadcasting. They are due to report by the end of 2006 or in early 2007.

This 2006 Annual Report devotes its first two chapters to the PSB review. The first outlines what has happened and the background to the controversy. The second chapter—written by academic Dr Joyce Nip—is an analytical article examining RTHK's future role.

At press time, the PSB review committee was leaning towards setting up an independent public broadcaster. However, it had yet to decide whether RTHK should be hived off from the government to play this role. It also had yet to decide on funding for the public service broadcaster and how its board of governors should be chosen—vital elements in ensuring real independence.

The HKJA believes the question of RTHK's future is of vital importance. The broadcaster has over the past 20 years become a symbol of the state of media freedoms in Hong Kong—as Beijing has tried to impose its way of thinking on the local media. Many previously independent newspapers have toned down their coverage of matters which are sensitive to China—including Taiwan, Tibet and Xinjiang; dissident activities; inner Communist Party disputes; and the Falun Gong. Some publications have become openly pro-government and pro-Beijing since the 1997 handover.

There is an awareness among media analysts that the space for free reporting is getting smaller and that the need for independent voices is becoming ever more important. *Apple Daily* remains a voice of dissent. The *Hong Kong Economic Journal* has a similar reputation, although media analysts have noted a shift towards the government on some issues. In the electronic media, Commercial Radio has dropped its most outspoken talk-show hosts—as reported in the HKJA's 2004 and 2005 annual reports.

These developments highlight the vital importance of Hong Kong having a truly independent public broadcaster. It should be structurally independent of the government and free of government financial interference or pressure. The HKJA believes that the existing public service broadcaster is in the best position to take on this role. With this in mind, the HKJA calls on the government to take the following action:

- 1) RTHK should be hived off from the government in its entirety to become a strong independent public service broadcaster providing a wide range of programmes of interest to the general Hong Kong public and to minorities within the community.
- 2) RTHK should be re-constituted by legislation which guarantees the broadcaster's independence in clear and unambiguous terms. The law should also stipulate sustainable funding methods and a democratic mechanism for selecting the board of governors.
- 3) The public broadcaster's board of governors should be constituted through a transparent recruitment and selection process. This should involve the election of members by community groups representing different sectors within Hong Kong and legislative approval for the board. RTHK's legislation should bar board members from vetting programmes prior to broadcast or interfering in day-to-day programming decisions.
- 4) RTHK's funding should be stable and predictable. It should come from a variety of sources, to ensure that one funding source cannot be used to compromise the broadcaster's independence. At the same time, funding should be sufficient to enable the broadcaster to develop its services and adopt new technologies. The government should provide funding to RTHK in the form of a block grant based on a five- to ten-year cycle. In addition, the station should be allowed to receive funding from commercial and other forms of sponsorship, donations and programme sales.
- 5) RTHK staff should be fully consulted on the details of corporatisation, to ensure that the change of status can be achieved smoothly.
- 6) Serious consideration should be given to creating a platform for public access television and radio services, to allow a greater diversity of programming.

The HKJA examines in chapter 3 of the 2006 Annual Report other issues which have had a significant bearing on freedom of expression in the year under review. These include government moves to enact a law on interception of communications and covert surveillance, consideration by the Legislative Council of a search and seizure law that provides better protection for journalistic material, the continued detention of Hong Kong journalist Ching Cheong, and violence and intimidation against Hong Kong and overseas journalists on the mainland.

We would urge the Hong Kong government to take the following action in respect of the above issues:

- 1) Give full protection to confidential journalistic material in the Interception of Communications and Surveillance Bill—either by excluding it from the scope of the bill or by raising the threshold for operations involving such material. In particular, the government should set out proper safeguards to ensure that the law cannot be used—directly or indirectly—to obtain information that may enable the authorities to determine a journalist's source of information.
- 2) Amend Part XII of the Interpretation and General Clauses Ordinance to better protect journalistic material during search and seizure operations. In

particular, the government should exclude confidential journalistic material from the scope of the law and allow searches to take place only in exceptional circumstances.

3) Renew efforts to seek the immediate release of Hong Kong journalist Ching Cheong if there are no legitimate grounds under internationally accepted standards to detain him. Further, if the case goes to trial, the Beijing authorities should ensure that it is conducted openly, fairly and in full accord with the rule of law.

4) Urge the Beijing authorities to ensure that Hong Kong and overseas journalists are able to carry out legitimate journalistic work in mainland China without having to face intimidation or threats. The mainland authorities should drop all administrative barriers to reporting in China, in particular by scrapping the regulation that requires journalists to seek prior approval for reporting assignments.

SECTION 1

Government targets public broadcasting

In January 2006, the government announced that it had set up a committee to review public broadcasting in Hong Kong. Officials had originally planned to make the announcement in November 2005, but it was twice delayed, prompting media reports and speculation about the review and why it was being carried out.

The government held a news conference on the day of the announcement, confirming that there would be a seven-member committee—comprising five members with private sector media experience, plus a creative director and the dean of the business faculty at Hong Kong Polytechnic University. The man in charge of the committee, Raymond Wong, was for many years in charge of the newsroom at leading terrestrial broadcaster TVB. However, the committee did not include an expert in public service broadcasting, or someone with experience of working in such an organisation.

The committee was tasked with examining the role of and justifications for public service broadcasting (PSB) in the development of Hong Kong's broadcasting market, public accountability for PSB, how the government and the public can evaluate the effectiveness of such broadcasting, and short, medium and long-term plans for public broadcasting. The committee was given nine months to complete its work—although that deadline may be pushed back to the end of 2006 or early 2007.

Intriguingly, the committee's terms of reference did not include mention of Radio Television Hong Kong (RTHK)—Hong Kong's sole public broadcaster. Equally surprisingly, RTHK had been kept out of the loop over plans to carry out a review. The broadcaster only learned about the review a few days before the original announcement was to have been made.

There was considerable suspicion about the motives for the review, given the intense criticism of RTHK by Hong Kong-based pro-Beijing politicians over the past 10 years and more. They argue that the broadcaster should better reflect the views of the government, or simply become a propaganda mouthpiece for the administration.

The chief executive, Donald Tsang, weighed into the controversy in mid-2005, shortly before he was sworn in to the top Hong Kong post. He told senior newspaper editors: "We need the assistance of RTHK in explaining our policies effectively to the public." He also expressed displeasure about some of RTHK's programming, including horse-racing programmes and a Chinese-language song contest, arguing that this type of broadcasting was best left to the commercial sector.

The horse-racing programmes were dropped—although RTHK's director of broadcasting, Chu Pui-hing, explained that the station was planning to make the change well before Mr Tsang joined the debate. The song contest continues to be aired.

Indeed, there were some media reports that Mr Tsang—in becoming chief executive in June 2005—had been given the task of cleaning up RTHK. These reports were never confirmed.

The government minister responsible for RTHK, John Tsang, denied that the review was targeted at the public broadcaster. Speaking at the press conference announcing the review, he said: "Everybody knows that public service broadcasting has been one of the essential components of our broadcast industry, but RTHK is just one of the industry members... We will, at a macro

and high-level perspective, explore the way forward for public service broadcasting development.”

Others were not sure. The chairperson of the Hong Kong Journalists Association (HKJA), Cheung Ping-ling, expressed fears that RTHK would become the prime target of the review. The chairman of the Legislative Council’s information technology and broadcasting panel, Democratic Party member Sin Chung-kai, also had his suspicions: “I am worried that this is indeed part of the so-called strong governance by the chief executive. Over the years many people, especially the (pro-Beijing) patriots, have challenged RTHK and want to turn it into a mouthpiece.”

A CHEQUERED HISTORY

RTHK is in many ways an unusual organisation. It is a government department responsible to the administration’s Commerce, Industry and Technology Bureau. Its staff are mainly civil servants. The broadcaster operates under a framework agreement which sets out the responsibilities between it and the bureau. This document first came into force in 1993, and is renewed every two years—most recently in August 2005.

The document states that RTHK is “editorially independent” and the director of broadcasting, as chief editor, is “responsible for ensuring that a system of editorial control ... exists to provide fair, balanced and objective news, public affairs and general programming that inform, educate and entertain the public.”

The framework agreement also states that the Secretary for Commerce, Industry and Technology will provide the Director of Broadcasting with policy guidance and support on defining and agreeing on the station’s broad programmes of activity as well as securing funding for them. However, day-to-day implementation rests with the Director.

This arrangement has worked reasonably well since the first framework agreement was signed, allowing RTHK considerable independence in setting its own news agenda—even if that has been resented by China’s allies in Hong Kong and certain senior government officials.

However, it was not always like that. RTHK was first set up in 1928, and was part of various government agencies until it became a separate department in 1954. However, the Government Information Services (GIS) Department continued to provide news until 1973, when RTHK set up an independent newsroom. However, it was only in the 1980s that the station achieved real editorial independence—while remaining part of the administration. This was achieved not by legislation or by government fiat, but rather through the efforts of staff conscious of the need to practise editorial independence.

BEIJING THWARTS FORMAL INDEPENDENCE

In 1984, the government set up a broadcasting review panel, to consider—among other things—whether RTHK should cease to be a government department. It came out in favour of formal corporatisation—turning the broadcaster into a BBC-style corporation, under the control of a board of governors. The station’s powers and responsibilities, including editorial independence, would be set out in legislation.

RTHK staff were strongly in favour of the move. A 1986 survey found that 58.8 percent wanted the station to be hived off from the government. Two surveys carried out in 1989 found support had grown to 65 percent of those polled. Between 16 and 21 percent disagreed with the proposal.

Initially, the government proposed that RTHK should remain within the government, while having its powers and responsibilities set out in law. There would also be a nine-member board of governors, including one government representative. But some within the administration, including at least one leading executive councillor, felt this approach could not provide the broadcaster with sufficient independence.

In July 1989—one month after the suppression of the pro-democracy movement in Beijing and amid worsening Sino-British relations—Hong Kong's Executive Council approved a plan to bring about a total separation of RTHK from the government. The station brought in consultants to work out a new corporate structure and pay scale. However, there were delays, and the matter in the end went to the Sino-British Joint Liaison Group, which dealt with major issues between the two sides in the run-up to the 1997 handover.

In March 1992, Chinese representatives refused to give approval for RTHK's corporatisation, fearing that it would deprive them of a propaganda organ after the handover. The government maintained for a while that the proposal was still on the books, but eventually shelved the plan, leaving RTHK to bridge the 1997 handover as a government department.

PRO-BEIJING VOICES OF DISAPPROVAL

The chairman of the PSB review committee, Raymond Wong, has expressed exasperation over charges that the latest exercise may be aimed at reining in RTHK. Mr Wong told the Legislative Council in January 2006 that: "As to the deluge of speculations and rumours relating to RTHK that has (sic) inundated some of the print media the past week, I want to assure Honourable Members and the community-at-large that I would not have accepted appointment had there been any hint of using the review as a pretext for 'whipping RTHK into line'." Mr Wong went on to make reference to "irresponsible chatter" and "unjustified attacks".

A glance at the record of criticism coming from pro-Beijing publications and friends of China highlights why many are concerned about the motives for a review, and where the process will end.

The station has come under fire on many occasions since the 1997 handover. In March 1998, local Chinese People's Political Consultative Conference delegate Xu Simin, launched a broadside against RTHK during a meeting of the advisory body in Beijing. He accused RTHK of being a "remnant of British rule"—a reference to earlier accusations that the broadcaster had become a mouthpiece of the last British colonial governor, Chris Patten. Mr Xu also revealed that he had discussed RTHK's future with the then chief executive, Tung Chee-hwa, who—he said—had promised to deal with the issue "slowly, slowly".

A far more serious attack happened in 1999. In July of that year, RTHK broadcast an opinion piece by Taiwan's representative in Hong Kong, Cheng An-kuo, who spoke about the so-called "two-states" theory of then Taiwan president Lee Teng-hui. An assistant director of China's Xinhua news agency in Hong Kong, Wang Rudeng, went on the attack, saying that RTHK should not have allowed the promotion of the two-China policy (the People's Republic and Taiwan). A Chinese vice-premier, Qian Qichen, also chimed in—saying that the "two-states" theory cannot be promoted in Hong Kong under the "one-China" principle.

In October 1999, the government announced that the head of RTHK, Cheung Man-ye, who was a vigorous defender of the broadcaster's editorial independence, would become the government's representative in Tokyo. While the government and RTHK denied that the move was linked to the "two-states"

controversy, some independent analysts said it was clearly punishment for what had happened three months earlier.

A third incident happened in October 2001, when a satirical RTHK programme called “Headliner” compared the inept government of chief executive Tung Chee-hwa with the then Taliban administration in Afghanistan. The pro-Beijing newspaper, *Ta Kung Pao*, launched an attack against the programme. The chief executive said it was “in bad taste”. But the government later said there were no plans to review the role of RTHK. And then chief secretary—now chief executive—Donald Tsang said emphatically that there was “no room for compromise” over press freedom.

AT LAST, THE REVIEW GOES FORWARD

Four years later, there clearly were plans to review RTHK’s role – hidden within a general review on public service broadcasting. So how did the government justify its change of stance. A briefing paper prepared for the Executive Council made a number of points—all of which were challenged by supporters of public service broadcasting.

First, the government accused RTHK of distorting the market. The paper says that the changing nature of the broadcasting market (increasing programme choice, multiple delivery platforms and rapid technological changes) will inevitably “have an impact on the justification for, and extent of, support from public finance, particularly given the economic nature of public service broadcasting as market intervention.”

Critics, including the HKJA, dismissed such arguments. In a submission to the PSB review committee, the School of Journalism and Communication at the Chinese University of Hong Kong wrote: “To say that the existence of the public broadcaster is a form of market intervention, or to say that it should not compete with commercial broadcasters at all is a misunderstanding of public service broadcasting.”

The major commercial TV and radio broadcasters tended to look at the review from their own narrow commercial interests. Commercial Radio refused to comment; Metro Broadcast said it was not opposed to an editorially independent public broadcaster, although it should facilitate building a harmonious society in Hong Kong; and the two terrestrial TV stations (TVB and ATV) called for RTHK’s television broadcasts to be removed from their services (a long-held position adopted by the two free-to-air broadcasters).

Second, the government put forward a patriotic argument—that a public broadcaster should serve the national interest. The paper states: “In a national context, public service broadcasting seeks to bring about social cohesion, develop national identity and cultural preservation, and to serve national interest while keeping its institutional independence and integrity.”

Again, critics challenged whether the government was correct in putting forward such an argument. The HKJA said in its submission: “PSB is for the public. It is neither for the government nor the national interest, although such interests may be reflected among all other views. Serving the national interest ... in the Chinese context may well be equivalent to acting as a mouthpiece of the government, given the undemocratic nature of the system.” Put simply, the danger is that pursuing the national interest could rapidly degenerate into pursuing the interest of the government in power in Beijing and of the ruling Chinese Communist Party.

SO FAR SO GOOD, BUT WHERE ARE THE CRITICS?

In March 2006, there was reassuring news for those advocating real

independence for RTHK. The PSB review committee released what it called a synopsis of consultation with broadcasters and academics. It noted that it had met RTHK and its staff union, five commercial broadcasters, a group called Citizens' Radio and journalism academics.

The committee reported consensus on several issues, including the value of public service broadcasting and its need to serve the public interest by upholding the principles of a free and responsible media. It also noted that a public broadcaster should be editorially independent, and not subject to political, government and/or commercial influences.

It also noted that commercial broadcasters in general accept competition with a public broadcaster in programme quality, but are concerned about what they perceive as programming overlap. Others, though, said a public broadcaster should maintain a full range of programmes to achieve social impact.

The committee also reports that there is a consensus that a public broadcaster should be outside the government structure and staffed by non-civil servants, and that many believe that its independence should be enshrined in law. As for funding, the majority believe that it should come exclusively or substantially from the public purse, with some saying that funding should be allocated on a three or five-year basis to allow forward planning.

These points appear to favour advocates of a stronger RTHK. However, what remains uncertain is the stance of groups and individuals close to Beijing, who may—as China did in 1992—see any move to hive off RTHK as a way to deprive the government of a propaganda organ. The attitude of the Hong Kong government towards the possible outcome of the review—and the attitude of the chief executive in particular—is also unknown, as is the view of the government in Beijing.

The position of legislators is also far from certain—although the pro-democracy camp is tending towards support for RTHK being hived off from the government to become an independent public broadcaster. This became evident after four members—all from the pro-democracy camp—visited the US, Canada and Britain to gather views on public broadcasting in those countries.

The pro-government parties in the Legislative Council gave indications of their stance in February 2006, when members voted on a resolution on public broadcasting. Members of the Liberal Party and the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) voted for an amendment calling on the PSB to “comprehensively introduce and promote to the public the various public policies of the government.” The amendment was voted down.

After the committee makes its report, the government will consider whether to adopt its findings. Theoretically, it could consider several options for RTHK: Maintaining the status quo, corporatisation, turning it into a government mouthpiece and either abolishing the broadcaster or selling it off to the private sector.

Some analysts have suggested a further option: Creating a totally new public service broadcaster, which could hire some RTHK staff, and at the same time moving other RTHK staff to the Government Information Services Department to become purveyors of the government line. Critics say this would be the worst possible scenario because it would divide and weaken the broadcaster, and potentially marginalise its programming.

Corporatisation would entail RTHK being hived off from the government. The broadcaster would be governed—through legislation—by a board of governors. Under existing arrangements, governors would be appointed by the chief executive. But some groups, including the HKJA, are arguing that a form of democratic election should be considered. Another method would involve

Legislative Council endorsement of board members.

RTHK management is moving towards the corporatisation option. However, one of the problems it faces is the drop in support among staff. A survey conducted by the RTHK Programme Staff Union showed that 45 percent of employees supported such a move, while 32 percent opposed it.

If the government decides that corporatisation is the best way forward, then it will have to draw up legislation, set new staff terms and appoint a board of governors to oversee RTHK. This could take two to three years, although if the proposals prepared in the aftermath of the July 1989 Executive Council decision are adapted to the new environment, then the government could speed up the process.

RTHK FACES PRESSURE ON OTHER FRONTS

RTHK has been facing intense pressure on several other fronts. In April 2006, the government's Audit Commission released a report on RTHK's compliance with government regulations. Seven auditors were brought into the broadcaster to examine its use of funding, following the conviction in March 2005 of an RTHK employee who was accused of fraud over the award of a service contract.

This was the third report on RTHK since 1999, prompting critics to ask why the auditor had focussed on a single government department so many times. What was surprising about the latest exercise was that it was ordered by the then secretary for commerce, industry and technology, John Tsang, who now heads the chief executive's office.

The Audit Commission accused RTHK of being non-compliant with government regulations covering staff management, entertainment expenses, overtime claims, outsourcing of services and acceptance of sponsorship. But none of the cases cited in the report involved large sums of money. Nevertheless, senior accounting and audit staff were sent in to ensure that the broadcaster implemented the auditor's recommendations, and the broadcaster was ordered to prepare a report on compliance within three months.

The chairperson of the RTHK Programme Staff Union, Janet Mak, warned that programme quality could be put at risk if government rules were followed 100 percent. However, the current secretary for commerce, industry and technology, Joseph Wong, rejected the assertion that press freedom would be at risk. He said: "It's a question of compliance with government rules. What we are doing is entirely professional."

The assistant director of broadcasting, Tai Keen-man, said he accepted the audit commission report, but noted the problems inherent in being a government department and a public service broadcaster. He said: "There is conflict (with the status as a government department). But that doesn't mean we cannot resolve the problems." The director of broadcasting, Chu Pui-hing, suggested that corporatisation was a "good option" for resolving the conflict.

In another development that prompted renewed criticism of the broadcaster, the Independent Commission Against Corruption (ICAC) announced in June 2006 that it had arrested four people—including two RTHK employees – over allegations that they had submitted bogus claims during the production of various programmes from 1995 to 2001. The four were released on bail pending further investigations.

This was not the first time that RTHK had been in trouble with the ICAC. Since 2002, a channel head has been convicted of misconduct in public office, a former producer has been jailed for cheating the station out of HK\$250,000 and a former project coordinator has been given a suspended prison term for unfair bidding practices. This last case led to the latest Audit Commission

investigation.

Analysts say the latest ICAC case comes at a very bad time, as the government considers a replacement for the broadcaster's deputy director, who retires in August 2006. One option is to bring in a senior government official to oversee the station. The director, Chu Pui-hing, will retire in 2008, giving the government another opportunity to bring in a person it can trust.

PUBLIC ACCESS BECOMES AN ISSUE

The terms of reference of the PSB review committee make no reference to the possibility of opening up the airwaves to the public. However, public access became an issue as the review progressed. A group called Citizens' Radio urged the review committee to propose opening up the airwaves to different public groups.

The group consists of pro-democracy supporters, including serving legislator Leung Kwok-hung and ex-Legco member Tsang Kin-shing. They shot to notoriety in October 2005 when they used amateur equipment to make a 90-minute broadcast to certain areas of Hong Kong Island. The group called the move a "first step in the fight to open up the airwaves". The campaign was prompted by the departure from Commercial Radio of two critical talk-show hosts, Albert Cheng and Wong Yuk-man. (See 2004 and 2005 HKJA annual reports.)

The broadcast was made without government authorisation within the bandwidth occupied by Metro Finance, which is part of Metro Broadcast's service. The commercial broadcaster complained to the Office of the Telecommunications Authority (OFTA), which regulates the use of the airwaves. An OFTA spokeswoman said they may launch a prosecution if there is sufficient evidence. However, at press time, the office said it was still investigating—eight months after the "pirate" broadcast was first made. In the meantime, the group continues to broadcast one-hour programmes on a regular basis.

This is not the first time that public access to the airwaves has become an issue. In the early 1990s, activists called on the government to allow a public access channel on the then sole cable broadcasting service. No such channels were ever allocated.

The PSB review prompted various groups, including Citizens' Radio, to launch another campaign for public access. The HKJA, in its submission to the review committee, called on the government to establish public access channels, for the sake of media diversity. The HKJA also countered the government argument that additional bandwidth was not available, saying that digitalisation would allow the opening up of the market.

Analysts say the government is unlikely to allow public access channels. However, they say that it may allow one or more broadcaster to enter the market under the existing licensing system.

SECTION 2

Projecting a future for RTHK*By Dr Joyce Nip**Assistant Professor, Department of Journalism, Hong Kong Baptist University*

Radio Television Hong Kong (RTHK) stands at the centre of the ongoing review on public service broadcasting (PSB), despite the government's denial that the review is targeting RTHK. The revelation by legislator Emily Lau in January 2006 that the government was considering replacing the Director of Broadcasting, who heads RTHK, with someone more obedient is the clearest signal that the relationship between RTHK and the government is not working. Reviewing the role of RTHK is a must.

The role of RTHK is defined by its relationship with the public, the commercial broadcasters and the government.

RTHK'S ROLE

In recent years, RTHK has been the de facto public service broadcaster (PSBR). What PSB for Hong Kong means in practice, however, is something that has never been defined.

RTHK and the public

The nature of PSB can be understood from the concept of "the public", which in this context is the collective formed through broadcasting communication. It is the collective that PSB ultimately serves. The mission of PSB could be said to be to build, maintain and develop the collective so it acts as a public. To achieve this mission, PSB develops the individuals, helps them become members of the public and encourages the conditions favourable to the existence of the public. A PSBR could approach this mission in the capacity of a programme producer, public connector, programme contractor, programme carrier and public service provider.

Programme producer

PSB programming should seek:

- * To inform and support fair debate of public matters
- * To educate and facilitate responsible participation in public matters
- * To entertain and enhance tolerant understanding of the cultures and values inside and outside Hong Kong

Universal access and quality programming are conditions needed to achieve these goals.

The above objectives require that PSB deliver a comprehensive range of programmes, which should not be merely another range of programmes in addition to those provided by the commercial broadcasters. PSB programming should provide an alternative to commercial programming.

News and public affairs programmes are often associated with the objective "to inform", but they do not necessarily fulfil the PSB objective of information. Some news programmes in Hong Kong emphasise news relating to personal financial investment or the lives and businesses in mainland China. There is considerable scope for RTHK as a PSBR to develop news and public affairs programming.

Some may query why a PSBR should provide entertainment programmes. In

fact, it is not difficult for people to see that the entertainment programmes provided by commercial broadcasters in Hong Kong rarely “enhance tolerant understanding of the cultures and values inside and outside Hong Kong.” PSB should seek to entertain from an alternative perspective.

Recently RTHK scrapped its horse racing programmes in response to criticism made by the Chief Executive, Donald Tsang. But the broadcaster continues its Chinese pop song awards programme, which was also criticised. To decide whether RTHK should continue any of these programmes, the yardstick is whether, and to what extent, the PSB objectives above are served.

Public connector

So far the PSBR is discussed as if it were an entity separate from the public. It is not. The PSBR is part of the public. This recognition could help us to think beyond the traditional role of the PSBR as a programme producer and carrier. In the traditional model, the PSBR serves the public. In the new model, the PSBR partners with the public. In fact, a healthy connection between the PSBR and the public necessarily enables it to do its job better.

In addition to connecting itself with the public, the PSBR could also act as a connector within the public. The Public Broadcasting Service (PBS) in the US conducted in 2004 and 2005 a major project “By the People”, in which the participating PBS stations partnered with various local organisations to host a series of discussion sessions with citizens on various topics relating to the United States. The discussion sessions were recorded and made into programmes broadcast on local and national PBS channels. In this production format, the PSBR is no longer merely a programme producer and carrier, but also an organiser of events that serve the same goals of PSB.

City Forum produced by RTHK takes the same format as “By the People” without the involvement of outside organisations. Radio public affairs phone-in programmes are a variation of the same format. Unfortunately, City Forum lost the capacity to connect members of the public when some elderly men with strong anti-democracy views turned up to usurp the forum and prevent rational discussion.

Rational discussion is the key element needed to make a public affairs phone-in programme serve any public service objective. The problem faced by City Forum highlights the reality in Hong Kong that great diversity of ideas and sharp divisions of views—not only on political matters—exist. The PSBR has ample scope in representing the diversity and providing the opportunity to connect the divisions in rational discussion.

However, RTHK itself is a victim of the climate of intolerance of ideas. It has come under multiple attacks on its editorial decisions and programme style. Without a restructuring, RTHK lacks sufficient credibility to play the role of public connector. Restructuring RTHK would give it an opportunity to play that role.

PSB programme contractor

Contracting out some of the PSB programmes for production by members of the public has at least three advantages: (1) The production process itself enhances the producers’ sense of involvement in the community. (2) It taps into the resources of the community, and (3) it connects the PSBR with the public.

RTHK has contracted out programme production to a limited extent. A formal and transparent mechanism that allows members of the public to propose programmes and have the proposals evaluated and scrutinised fairly is needed.

Public service programme carrier

RTHK broadcasts on seven channels, with some channels jointly broadcasting for certain hours of the day. This means some of its channel spectrum is not used. That could be used for carrying programmes produced by members of the public that fulfil the objectives of PSB. In this arrangement, the PSBR provides the technical support in the broadcasting process for programmes produced by the public. This would give public access broadcasting an easy start.

For RTHK to play this role, a mechanism is needed to decide which public programmes can use the air time. The decision-making concerning contracting programmes and giving public access would both benefit from involving members of the public, who could be drawn from a pool of volunteers and invited citizens. With these mechanism(s), PSB programming would fall into three-tiers: RTHK-produced programmes, contract programmes and public programmes.

To accommodate the comprehensive programming it produces and to act as a public service programme carrier, RTHK needs its own television broadcasting channel, in addition to the radio channels it uses. A substantial increase in funding is needed to make a PSB television channel a reality.

Public service provider

Since PSB serves the public, it is logical that the public should have an interest in seeing that it thrives. This justifies financial support from the government, which allocates funds collected from the people in their name. Once financed by public money, the PSBR has the responsibility to manage the funds to best achieve the PSB mission. A system of accountability to the public is indispensable.

As part of the accountability system, the restructured RTHK could include a governing board comprising members of the community. The representativeness of the board is vital for the credibility of the new RTHK. Some form of election for returning a substantial portion of the members is desirable. The other members could be appointed by the Chief Executive in Council and endorsed by the Legislative Council, to provide the expertise needed.

The mechanism used to collect public feedback needs strengthening. Consultation meetings now conducted in the RTHK studio could travel to the districts. Panels of ordinary citizens, not just of experts, could be organized. User-friendly channels that encourage easy public input on a routine level also need to be established.

NEW RELATIONSHIP WITH COMMERCIAL BROADCASTERS

Commercial radio and domestic free television programme service providers are required by their licences to provide certain types of programmes, including news and public affairs, documentary and arts and culture programmes, as well as productions for children and the elderly. These programmes have not been defined as PSB, but Television Broadcasts (TVB) has said that it considers that the PSBR has the responsibility to provide the “positive” programmes now required of commercial broadcasters.

By the time RTHK is restructured and a mechanism is in place to evaluate programmes according to the PSB objectives, the required programmes now provided by commercial broadcasters could be assessed. When and if RTHK’s role expands to become a comprehensive radio and television PSB programme producer and contractor plus being a PSB carrier, the PSB programmes provided by commercial broadcasters under existing licence conditions could be reduced.

It is necessary to point out the possible danger of entirely relieving commercial broadcasters of PSB requirements: Some demographic segments—such as children and the elderly, who do not have enough spending power to be considered commercially valuable—may find themselves totally dependent on the PSBR for programming. This would create too heavy a burden for RTHK to shoulder.

At present, domestic free television services are also required to carry school and government programmes, which are produced by RTHK. After the restructuring and after RTHK has established its own television channel, little justification would remain to require commercial channels to broadcast RTHK programmes free-of-charge.

If and when commercial broadcasters are partially relieved of “positive” programme requirements and carrier requirements, the relief could perhaps be reflected in a higher programme service licence fee and carrier fee, which could be a source of funding for the PSBR. If the commercial broadcasters wish to produce some of the PSB programmes that are no longer required by their licences, they could compete for the production contracts.

The requirement for broadcasting government announcements, however, should remain to ensure that important messages reach the widest audience. This requirement should also apply to the PSB channel(s).

INDEPENDENCE FROM THE GOVERNMENT

The controversies that have involved RTHK in the past few years touch on two levels—editorial decisions and programming direction. The existing framework agreement, between the Director of Broadcasting and the overseeing Secretary for Commerce, Industry and Technology, gives the government responsibility for overall activity direction, and RTHK for editorial independence. The agreement allows the government to decide what activity areas fulfil PSB objectives, and suspend resources for others that do not. RTHK says the government has not influenced its programming decisions. But the agreement does not seem to prevent the government from exercising such influence.

In 2002, a planned interview with Taiwan’s vice-president, Annette Lu, drew criticism from a China adviser, Xu Simin, that RTHK was pushing for “two Chinas”. RTHK’s programme *Headliner* came under fire from *Ta Kung Pao*, which is funded by the Chinese government, over the programme’s satire of the then Chief Executive, Tung Chee-hwa. To be fair, the criticism did not come from the government. So it cannot be said that RTHK’s editorial independence was being threatened by being a government department.

The recent comments made by the current Chief Executive, Donald Tsang, about RTHK’s horse racing and pop song awards programmes relate to specific programming direction, over which the government could be interpreted as having legitimate power. Under this arrangement, RTHK is subject to government decisions that may not accord with the PSB mission. To avoid such a problem, RTHK should be better separated from the government and funded through a stable source that is independent of the government. In Hong Kong, a defined percentage of some tax revenue is an option for the funding of PSB.

The restructured RTHK could be established as a statutory body. A licensing mechanism could be used for periodic reviews of the direction and remit of PSB. The period could take reference from the licence period of 12 years for commercial broadcasters. Within the licence period, interim performance reviews should be conducted. The broadcasting codes of practice now applicable to commercial broadcasters could also apply to the PSBR.

A POLITICAL REVIEW

Towards the end of 2006 or in early 2007, the review committee is expected to recommend to the government the future model of PSB for Hong Kong. Given the political sensitivity of the issue, the government's decision to appoint a committee to conduct the review helps to project an independent image for the review. At the same time, it gives the administration discretion over whether to adopt the recommendations made by the committee.

However, the review committee itself has drawn doubts. Some say its members are colonial-minded. Others have queried the lack of representation from RTHK, and the perceived conflict of interest on the part of the committee chairperson, Raymond Wong, who is a former executive of Television Broadcasts (TVB).

The committee has pledged to consult widely in an open and transparent manner. Yet, unlike other government consultations, the government website does not contain a call for submission of views to the committee. Nor does it link to the website of the review, which was set up only in March 2006. At the time of writing, it seems no access is provided to the submissions made to the committee. By contrast, the Information Technology and Broadcasting Panel of the Legislative Council, which has also openly called for public submissions on the PSB review, has posted the submissions it received on the Legco website.

On May 22nd, the Oriental Daily News (ODN) reported that the review committee saw the independence of RTHK as the only realistic future. The idea of an independent RTHK immediately drew harsh denunciation. A signed commentary article published in ODN's sister paper, The Sun, on May 24th, written in populist language, counters with three options for RTHK: (1) turning it into a government mouthpiece, (2) changing it to a commercial broadcaster, and (3) closing it down. This view probably reflects the thinking of at least some of the advisers to the Chinese government.

It is clear that the review committee itself cannot escape the political polarisation that has clouded RTHK. If the report is accurate, the fact that the committee chose to disclose its thinking secretly in the form of "sources close to the committee", rather than openly on the record, hints that the committee is reluctant to commit itself to any position yet. It seems to be cautiously using the news reports to test the response from China and the public.

Soon after the PSB review started, the government's Audit Commission issued a scathing report querying the management of funds by RTHK. It is an important question to ask, but the timing of the report certainly lends ammunition to those arguing against the expansion of RTHK's role.

LOOKING AHEAD

In the brief provided by the government to the Legislative Council, PSB is described as a form of market intervention. The review is set in the context of "the state of flux of the broadcasting market", where "multiple platforms/devices" are providing an "abundance of audiovisual contents meeting the diverse needs of the public and niche clientele".

A government information paper provided to Legco in November 2005 on PSB further suggests that "there are a lot of programmes on conventional broadcasting services that facilitate expression and exchange of opinions". Because of high internet penetration, "(i)t is doubtful if there are strong justifications for providing public access or community radio in a city like Hong Kong."

One cannot help suspecting that the government is looking for a reduced role

for RTHK in the review.

I would argue that the new media era has made comprehensive PSB programming more, not less, needed. The majority of the new media content is produced by international broadcasters, which have no concern for a healthy public in Hong Kong. This broadcast content cannot be a substitute for PSB. In addition, the new media content is designed to target particular audience profiles. It has the potential to create transnational communities of interest, but it segments the people in one geographical territory, and runs contrary to the idea of PSB in building a public in a particular territory. The fact that most of this content is in English also excludes a significant portion of the population in Hong Kong.

Further, the new media content, which the government claims is easily accessible, is in fact far from universally available. For example, Hong Kong i-Cable television, after years of operations, has secured subscriptions from less than one-third of households. The percentage of households with personal computers connected to the internet has not increased since 2004. More than one-third of households remain unconnected.

At the time of writing, the review committee is reported to be actively studying the option of a three-year licence fee for every household. If the idea gets support from a survey reportedly to be conducted, we may expect a recommendation for RTHK to become independent. Since the commercial broadcasters are happy to rid themselves of “positive” and government programmes, it is quite possible that the committee may recommend that RTHK be given an expanded role, at least as a programme producer and programme carrier.

The hurdle for the realization of the committee’s recommendations – whatever they are—lies in their adoption. The government may feel pressure from certain quarters closely associated with the Chinese government that oppose the independence of RTHK. Yet it knows the status quo is untenable. As the government seems to think that the need for PSB has diminished, it may feel comfortable severing its influence in the PSBR.

Establishing RTHK as an independent organisation would earn the government a good name while curing it of its headache. It may value the opportunity of restructuring the organisation and injecting members into a new governing structure. The crucial factors that determine the role of an independent RTHK, if it materialises, would be the funding mechanism and the governance system.

SECTION 3

New legislation threatens media

Hong Kong's new chief executive, Donald Tsang, has now been in office for just over one year. The HKJA called on Mr Tsang in its 2005 Annual Report to refrain from taking any action that may threaten freedom of expression in Hong Kong. While he has not pursued legislation implementing Article 23 of the Basic Law, neither has he taken any positive steps to strengthen the general environment for the media. This is to be regretted, because positive reinforcement is clearly needed, as media organisations and journalists face increasing pressures to conform—not least with issues that are sensitive to China.

Mr Tsang made it clear that he would not move forward with Article 23 legislation during his first two-year term in office, which ends in June 2007. This legislation will prohibit treason, sedition, secession, subversion and theft of state secrets. A first attempt to introduce relevant laws came to an abrupt halt in September 2003—amid anger over what many groups and individuals (including the HKJA) considered to be a clumsy attempt to impose restrictions on freedom of expression and other civil liberties.

However, calls to enact such legislation continued to be made, both in Beijing and Hong Kong. The most prominent came from mainland scholar Wang Zhenmin—the deputy dean of Tsinghua University's law school. He told a Basic Law seminar in Beijing in April 2006 that Hong Kong's failure to enact anti-subversion legislation was one of the reasons why the territory was not yet ready for full democracy.

This view was echoed one week later by the former chairman of the Democratic Alliance for the Betterment and Progress of Hong Kong, Tsang Yok-sing. Mr Tsang said: "Hong Kong people should be aware of their obligations as Chinese citizens during their fight for full democracy." And in May 2006, the former justice secretary Elsie Leung—who was involved in pushing the failed legislation—said it would be better to present it in stages.

Analysts say the issue is likely to come up again after the new chief executive (who may well be incumbent Donald Tsang) is chosen in March 2007.

The HKJA also called in its 2005 Annual Report for the chief executive to scrap restrictive media practises, including the use of press passes to enter the government headquarters complex and the designation by the police of reporting areas, which are often far from an event of public interest. The government failed to consider these demands. It also failed to change the policy of making some major announcements at off-the-record briefings—at which reporters are told that they cannot name senior officials.

THREATS FROM COVERT SURVEILLANCE BILL

In March 2006, the government tabled a bill setting out a legal basis for the interception of communications and covert surveillance by law enforcement agencies. This followed a series of extraordinary legal moves, which culminated in a landmark High Court ruling in February 2006 that the existing law governing interception of communications was unconstitutional and that covert surveillance operations had no valid legal basis.

The HKJA for many years has been arguing that section 33 of the Telecommunication Ordinance, which gives the chief executive sweeping powers to order wire-taps, should be abolished. In 1996, the Law Reform Commission called for the enactment of a new ordinance, with judges being given the role of allowing wire-taps. The then colonial government dithered on the issue, and in June 1997 legislators passed their own private member's bill.

However, the post-handover government refused to bring it into effect.

For eight full years—from July 1997 to mid-2005—the government said it was studying the issue of interception of communications. The situation changed dramatically in April 2005, however, when a district court judge ruled that evidence gathered by covert surveillance in a bribery case was inadmissible. A similar ruling was made by another district court judge in July 2005.

In August 2005, the chief executive, Donald Tsang, issued a rare executive order setting out procedures for covert surveillance operations. This was only the second time that such an order had been issued since the 1997 handover. The aim was to plug the gap created by the two district court rulings.

But critics were not convinced that the executive order could achieve this aim. Barrister and pro-democracy legislator Ronny Tong said he was shocked that the government had issued an executive order. He said: “Using an executive order to infringe on the legislative power (of the Legislative Council) has done grave damage to the foundation of the rule of law.” He also questioned whether the order was in line with Article 30 of the Basic Law, which states that the authorities may inspect communication only “in accordance with legal procedures”.

Legislator Leung Kwok-hung and an associate from the April 5th Action Group, Koo Sze-yiu, were quick to mount a legal challenge against the executive order. In February 2006, High Court judge Mr Justice Hartmann issued a landmark ruling. It was significant on several fronts. Mr Justice Hartmann ruled that covert surveillance operations conducted in Hong Kong had no legal basis, since the executive order had “no legislative effect”. He also ruled that section 33 of the Telecommunication Ordinance was inconsistent with articles 30 and 39 of the Basic Law. However, he also rejected the contention that the chief executive had failed in his duty to bring into effect the private member’s bill enacted just before the handover.

However, at the same time, Mr Justice Hartmann agreed to a request made by the government to delay the implementation of his ruling for six months, to give the administration sufficient time to plug the legal vacuum. He based his ruling on a Canadian precedent.

Mr Leung took the case to the Court of Appeal, which in May 2006 upheld Mr Justice Hartmann’s ruling. Shortly afterwards, Mr Leung was given permission to take the case to the Court of Final Appeal.

THE LEGISLATIVE CHALLENGE

The government was already preparing legislation on covert surveillance and interception of communications when Mr Justice Hartmann handed down his ruling. This prompted the government to speed up its efforts. The result was draft legislation called the Interception of Communications and Surveillance Bill.

The bill sets out a two-tier system for covert surveillance carried out by law enforcement agencies. It is based on the degree of intrusiveness involved in an individual operation. A Court of First Instance judge would be asked to approve all applications for interception of communications and for more intrusive forms of covert surveillance. Less intrusive forms would be submitted for approval to designated senior law enforcement officers.

The government is also proposing to appoint an independent oversight authority, called the Commissioner on Interception of Communications and Surveillance, to review compliance with the law, handle complaints, award compensation and submit annual reports to the chief executive.

The HKJA expressed concern about the proposals, saying that they could compromise confidential journalistic material. Indeed, police guidelines relating to the executive order state that extra care should be taken when such material is involved—which clearly implies that officers may seize such documents. The HKJA said the government should therefore either exclude confidential material from the scope of the bill, or impose higher thresholds before any such intercepts can be permitted—for example in cases where there is a grave threat to Hong Kong’s security, or where there is an imminent threat to lives.

The HKJA also argued that the law should set out proper safeguards for journalistic material, to ensure that it cannot be used in any way—directly or indirectly—to obtain information that may enable the authorities to determine a journalist’s source of information.

Legislators are still debating the contents of the bill. The government is hoping that they can pass the law before Mr Justice Hartmann’s six-month exemption expires on August 8th, 2006.

THE PRIVACY THREAT

In March 2006, shortly after the government tabled its surveillance bill, the Law Reform Commission released a report calling for the enactment of legislation barring private individuals—including journalists – from engaging in any form of covert surveillance. In particular, it called for the government to make it a crime for someone to trespass on private premises with intent to observe, overhear or obtain personal information. Another offence would bar someone from using a device to obtain personal information in circumstances where targets would be expected to have a reasonable expectation of privacy.

There would be a number of defences. For example, a defendant would be able to argue that he or she had reasonable grounds for believing that a serious offence was being committed or if the purpose of the surveillance was to prevent or detect a serious crime. The commission also recommended that judicial authorisation would be needed if surveillance was likely to reveal confidential journalistic material.

However, the HKJA warned that the proposals could have a chilling effect on investigative journalism. It issued a statement saying that the proposed defences were too narrow in scope and that proper public interest defences should be put in place in any new law.

This is not the first time that the Law Reform Commission—as part of its study of privacy issues—has made proposals that could seriously impair journalistic activities. Potentially the most damaging proposals were made in December 2004, when the commission proposed that a statutory press council should be set up to handle complaints about media intrusion. It also proposed the creation of new civil torts dealing with intrusion on the “solitude or seclusion” of another, and the making of “seriously offensive or objectionable” publicity about another person. Earlier, the commission proposed tough new anti-stalking laws. Taken together, these laws – if enacted—could pose a serious challenge to media freedoms.

LEGISLATIVE SCRUTINY OF SEIZURE LAWS

Throughout the year under review, a Legislative Council sub-committee continued to consider ways to strengthen protection for journalistic material during search and seizure operations. The study was prompted by an operation in July 2004 in which Independent Commission Against Corruption (ICAC) officers raided seven newspapers and the homes and offices of several

journalists. The raids were related to an ICAC investigation into alleged share manipulation involving a listed company, Semtech International Holdings.

Part XII of the Interpretation and General Clauses Ordinance covers search and seizure of journalistic material. It sets out special procedures for such operations, including applications for production orders and search warrants. The HKJA considers that the provisions should give greater protection to journalistic material, in particular if it involves material given in confidence or which might lead to the naming of a journalistic source. In particular, the HKJA called for searches to take place only in exceptional circumstances.

However, the government rejected calls for changes to the law. Officials say proposed new guidelines covering applications for search warrants will be sufficient, and there is no need for a new law setting out strict criteria, as demanded by some legislators. The government also rejected calls for an additional review and appeal mechanism—raising questions about whether the administration really wants to bring about meaningful change.

The July 2004 search and seizure operation—only the third since the provisions in the Interpretation and General Clauses Ordinance came into force in 1995—was related to the naming of a witness who was allegedly under ICAC protection. Naming such a person is prohibited under the Witness Protection Ordinance.

In June 2006, two lawyers and two businesspeople were jailed in connection with the case. Barrister Kevin Egan was sent to prison for attempting to disclose the name of a participant in the ICAC's witness protection programme to a reporter with the South China Morning Post. The journalist testified in return for the ICAC not bringing any charges against any employee of the newspaper, which published the name of the witness. (This agreement caused considerable unease in the journalistic community.) The others were jailed for conspiring to pervert the course of justice. The lawyers said they would appeal against the judgement.

HONG KONG JOURNALIST REMAINS IN DETENTION

In August 2005, Xinhua news agency released a statement saying that detained Hong Kong journalist Ching Cheong had been formally arrested. The official agency also said Mr Ching was facing charges of espionage and had confessed to allegedly obtaining and passing on secret political, economic and military information to Taiwan in return for large sums of money.

The chief China correspondent for Singapore's Straits Times had been detained in Guangzhou in April 2005, and then moved to Beijing, where he was put under house arrest. Mr Ching's wife, Mary, said she thought the arrest was linked to attempts to obtain a manuscript of secret interviews with deposed Chinese Communist Party secretary-general Zhao Ziyang, who died in January 2005.

Hong Kong's chief executive, Donald Tsang, brought up the issue with a senior mainland official, Liao Hui, in June 2005. Mr Tsang later told legislators that the "truth will come out very soon." It did not.

One year later, Mr Ching remains under arrest. His detention has been extended twice. In February 2006, the case was sent back to the State Security Bureau for review. In late April, it was sent to the courts. Since then, there have been no further public developments.

The HKJA and other support organisations have been lobbying for Mr Ching's early release and a fair and open trial if his case goes to court. Six months after Mr Ching's detention, 10 serving and former HKJA chairpersons put their names to a petition calling for the prompt settlement of the case. And on the

first anniversary of his detention—in April 2006 – 391 journalists signed a petition letter calling for his release. The petition was published in two local newspapers.

Mr Ching's continued detention is a matter of grave concern for journalists because of the chilling effect it has on media coverage of China affairs. Many Hong Kong journalists work on the mainland and they know that they can face harsh retribution if they stray over ill-defined lines imposed by the Chinese government.

The detention of Mr Ching also reminded journalists of the detention of former Ming Pao Daily News reporter Xi Yang, who was jailed for 12 years in March 1994 for disclosing state financial and economic secrets. He was released three years into his jail term, following strong pressure from media organisations, including the HKJA.

The detention also comes as the mainland authorities take a hard line against the Chinese media and journalists. Indeed, Zhao Yan—a researcher for the New York Times—remains in detention. He faces charges of revealing state secrets to foreigners and fraud. There were reports that he would be released ahead of Chinese president Hu Jintao's meeting with his US counterpart, George W. Bush, in Washington in April 2006.

Charges against Mr Zhao were dropped, and then reinstated soon afterwards. The researcher was tried in June 2006 without an immediate verdict being announced.

VIOLENCE AGAINST HONG KONG JOURNALISTS

During the year under review, there have been several cases of violence involving Hong Kong journalists working on the mainland. The most serious took place in May 2006 in Shenzhen, which is just across the border from Hong Kong. Journalists went to a hospital to follow up a law suit lodged by several patients against the facility over the use of a toxic gel in plastic surgery. On the first day, staff manhandled five journalists and photographers.

The incident on the second day was filmed by TV cameras. The footage – shown repeatedly on Hong Kong television stations—showed hospital staff kicking and pushing reporters. One man was seen carrying several iron bars.

The two television stations involved in the incident—Cable TV and ATV—reported the case to the Shenzhen authorities. The HKJA called for a thorough investigation, while the News Executives Association called the attacks barbaric.

The following day, the police arrested five hospital employees—including a deputy head—and sealed off the facility for one week to “preserve evidence”, as city officials put it. The five were later released on bail, without charges being laid.

This happened after the Hong Kong government urged Shenzhen authorities to take action over the incident. The mayor of Shenzhen, Xu Zongheng – clearly embarrassed—expressed concern and ordered the police to carry out an investigation. However, analysts expressed concern that the probe would not result in any concrete results.

There were other reports of violence against journalists. In October 2005, the HKJA wrote to the governor of Guangdong province, Huang Huahua, about an incident in which two journalists—working for the South China Morning Post and Radio France Internationale—were punched and slapped by guards and unidentified individuals, while they were trying to cover unrest in Taishi township. There was no reply to the HKJA's call for the incident to be investigated.

Intimidation took other forms as well, including bans on reporting in mainland China. In September 2005, the HKJA wrote to the Chinese president, Hu Jintao, complaining about the decision to reject applications from the Apple Daily newspaper and Radio Free Asia to cover an unprecedented visit by Hong Kong legislators to Guangdong province. Journalists from Apple Daily, which is critical of both the Hong Kong and Chinese governments, are routinely barred from reporting on the mainland—despite calls from the HKJA for the abolition of all reporting restrictions, including the need to seek prior approval for reporting assignments.

YAHOO INFORMS ON MAINLAND DISSIDENTS

In April 2006, Hong Kong's Privacy Commission launched an investigation into allegations that Yahoo Holdings (Hong Kong) had provided information to the mainland authorities that led to the jailing for ten years of journalist Shi Tao. He had been accused of revealing state secrets relating to a circular that itemised restrictions on the media. The decision to launch an investigation was made after a formal complaint was lodged in Hong Kong by the Stockholm-based secretary-general of the International Chinese Pen Centre, Zhang Yu.

The commission had earlier—in November 2005—decided against launching an investigation. The privacy commissioner, Roderick Woo, told legislators that Yahoo Hong Kong had only disclosed information relating to an office of a Chinese newspaper, and this did not constitute personal data. Mr Zhang's complaint included additional information—prompting the commission to take on the case.

Yahoo Hong Kong denies that it was involved. Its marketing manager, Pauline Wong, said that the Hong Kong branch was involved “only because Yahoo China was under Yahoo Holdings (Hong Kong) when the incident took place in 2004.” The mainland company Alibaba.com now runs Yahoo's China operations.

Activists say that Yahoo gave information which led to the jailing of three other mainland critics. They include former civil servant Li Zhi (eight years for writing critical essays), Jiang Lijun (four years for writing pro-democracy articles) and Wang Xiaoning (10 years for calling China an authoritarian dictatorship and urging free elections).

Other US internet companies have been accused of censoring their mainland content. Microsoft pulled the weblog of a critic after receiving a government order to do so; Google's mainland search engine blocks terms associated with democracy and independence for Taiwan and Tibet; and Skype Technologies filters out sensitive words from text messages. In addition, Cisco Systems has been accused of instructing mainland officials on how to censor the internet.

Such accusations put US companies in a difficult position, given that they want to benefit from the mainland market. They say they have to abide by mainland laws. This prompted the US Congress to hold hearings on the issue, and for Yahoo itself to make—somewhat ironically—an appeal for online freedom.

The HKJA expressed concern when reports about Yahoo's involvement in the case first emerged in September 2005. It urged Yahoo to comply with the United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights, which encourage multinational corporations to refrain from any activity that supports or encourages states to abuse human rights.

GOVERNMENT COMES UNDER FIRE FROM UN RIGHTS BODY

In March 2006, the United Nations Human Rights Committee held a two-day

meeting on Hong Kong's implementation of the International Covenant on Civil and Political Rights (ICCPR). The discussion was based on a Hong Kong government report published in February 2005—its second since the handover—and submissions prepared by non-government organisations, including the HKJA.

The HKJA's submission—finalised in February 2006—focussed on a range of issues, including fears over RTHK's future, the controversy over covert surveillance legislation, the attempt to enact national security legislation and the detention of Hong Kong journalist Ching Cheong.

The HKJA joined a large delegation of NGO representatives. The Hong Kong government sent a 10-member team, headed for the first time by a permanent secretary. It also included the solicitor-general. The NGO delegation reported several cases of intimidation by the government team, including interruptions of lobbying work.

The Human Rights Committee released its report in April 2006. It focussed on 12 areas of concern, including the need for the Hong Kong government to set up an independent human rights commission, enact a covert surveillance law that fully protects privacy rights, and take all necessary measures to ensure that the Legislative Council is elected by universal and equal suffrage.

On media issues, the committee made reference to the departure in May 2004 of three prominent talk-show hosts (Albert Cheng, Wong Yuk-man and Allen Lee), who complained that they had been forced out by intimidation. The UN body urged the Hong Kong government to “take vigorous measures to prevent and prosecute harassment of media personnel, and ensure that the media can operate independently and free from government intervention.”

The committee also called on Hong Kong to amend provisions in the Crimes Ordinance relating to treason and sedition, to ensure they are in full compliance with the ICCPR. The body has for some time taken a similar stance on the outdated Crimes Ordinance—which the government attempted to amend when it introduced equally contentious national security legislation in February 2003.

In an unusual move, the UN committee asked the Hong Kong government to provide follow-up information within one year on four areas, including intimidation of journalists.

CONCERNS OVER FUTURE OF HONG KONG ECONOMIC JOURNAL

In January 2006, reports emerged that negotiations were underway to sell the Hong Kong Economic Journal newspaper to Richard Li—who holds a dominant 26.52 percent stake in the fixed-line and broadband pay television operator, PCCW. The Economic Journal is one of the few remaining independent newspapers that is not owned by a major businessman with strong China links—although media analysts have noted changes in the publication's editorial stance since its assistant chief editor, Sy Li-yee, resigned in July 2005.

The financial newspaper was founded in 1973 by columnist Lam Shan-muk, who owns 95 percent of the publication. The other owner, Cho Chi-ming, confirmed that talks were underway on a takeover reportedly worth between HK\$200 million and HK\$250 million. Mr Cho said he expected the buyer to be a syndicate with Mr Li as the major shareholder. Mr Li is the son of property tycoon Li Ka-shing, who has a controlling interest in Metro Broadcast through Cheung Kong Holdings and Hutchison Whampoa.

A sale would raise several issues. The first concerns the reputation of the newspaper. According to some reports, the newspaper's owners were trying to ensure that the publication retained its editorial independence. Democratic

Party legislator Sin Chung-kai expressed concern about the impact of a sale on press freedom. He said: "It means big entrepreneurs will control all the media in Hong Kong.... Hong Kong people will be deprived of choice. It is vital to have abundant choices of media. It is the essence of freedom of speech."

The second issue concerns media concentration. A cross-media ownership provision in the Broadcasting Ordinance declares that the owner of a domestic free television service license is a disqualified person if he or she at the same time is the licensee of another broadcasting service, a newspaper or advertising agency. The Executive Council has the power to grant an exemption.

This would on the surface bar Mr Li from taking a controlling stake in the Economic Journal, without obtaining consent from the Executive Council. The government said it would investigate such a sale. A spokesman said: "The company (PCCW) would be disqualified once it acquired stakes in other media such as newspapers, radio stations or an advertising agency... But if Richard Li... wants to buy other media in person, or through the licensee's parent company... the government will look into the relationship between the licensee and other associated entities."

The Hong Kong Economic Journal has not been faring well in an increasingly competitive media environment. At the end of 2005, it had an audited circulation of 30,000 copies a day—compared with more than 85,000 for its main rival, the Hong Kong Economic Times. Like other smaller newspapers, it has been hit by the entry of free newspapers to the market, which have threatened their advertising revenue.

The Economic Journal may also suffer from new stock exchange regulations expected to come into effect in late 2006. The regulations would no longer require listed companies to publish corporate notices in newspapers.

Another newspaper that has been facing financial difficulties has been Sing Pao. More than 20 journalists—including a senior editor—called in sick in late April 2006. They were angry that they had not been paid for almost two months. In the immediate aftermath of the action, one-third of the "strikers" resigned. Almost 30 staff asked for government help for the payment of late salaries. The administration has not acted on this issue, although it has taken the newspaper to court over its failure to pay mandatory provident fund contributions.

AN UNUSUAL WAIVER FOR ATV

In May 2006, one of Hong Kong's two free-to-air television companies, Asia Television (ATV), was granted an unusual waiver. The Executive Council approved the cross-ownership of the broadcaster by nine controlling officers of another TV company, Phoenix Satellite Television, as well as of a publication called Phoenix Weekly Magazine. The case was unusual because the nine officers had taken controlling positions at ATV over a period of time starting in May 2000. The nine controllers include the head of ATV, Chan Wing-kee, and the head of Phoenix TV, Liu Changle. Both are considered to be very close to Beijing.

However, the Executive Council rejected ATV's application for backdating of the waiver to July 2000. It gave approval only from June 2005, and warned that the Broadcasting Authority may punish ATV for what it called a "lack of due diligence". However, there was no explanation for why the Executive Council failed to take action earlier against a clear breach of the Broadcasting Ordinance.

Also in May 2006, ATV sold a 22 percent stake to the mainland company, Citic Guoan Group. This sale will also require Executive Council approval.

Legislators expressed concern that the sale might prompt the broadcaster to take on a pro-Beijing slant—something that media analysts say is already much in evidence. A government official said a public hearing might be held on the case.

There have been increasing concerns about the ease with which the Executive Council approves exemptions under the Broadcasting Ordinance. Indeed, in May 1998, the council gave the go-ahead to an ownership change at ATV – despite suggestions that ownership rules were being interpreted too loosely. Critics at the time pointed to the Executive Council’s stipulation that one of the then new owners, Liu Changle, could not involve himself in day-to-day management of the station. Concerns have also been raised about the ease with which the other free-to-air broadcaster, TVB, was granted several concessions relating to its pay-TV venture, Galaxy Satellite Broadcasting.

The government defended its decision to grant a waiver in the latest ATV case by citing four criteria—the effect on competition, the extent to which viewers will be offered greater choice, the impact on the development of the broadcasting industry, and overall benefits to the economy.

However, the HKJA believes that the government should exercise greater caution than it has done in the past in granting exemptions. In particular, it should ensure that media diversity is not harmed in any way and that different voices are able to air their opinions in the media.

VIOLENCE STRIKES MING PAO

In November 2005, a small bomb addressed to Ming Pao Daily News blew up in the face of the secretary of the newspaper’s chief editor, slightly injuring her. The bomb was inside a gift-wrapped package. A hand-written letter made reference to unspecified reporting by the newspaper in the previous month. The attacker warned that further action would be taken if the newspaper did not halt its action, and demanded that Ming Pao donate HK\$30 million to the charity organisation, the Community Chest.

The police traced the source of the package to a flower shop. They released a description of a man—wearing a motorcycle helmet—who was suspected to have ordered the gift package.

The newspaper’s chief editor, Cheung Kin-bor, said he did not know what report the attacker was referring to in his letter. He also said: “I think this illegal act poses a significant threat to our industry as the assailant is not joking.” Media organisations, including the HKJA, also condemned the attack. The HKJA’s chairperson, Cheung Ping-ling, called on the police to get to the bottom of the case. However, the police failed to make progress in follow-up investigations.

There have been several other attacks on journalists in mysterious circumstances. The most serious involved attacks in May 1996 against Leung Tin-wai (publisher at the time of the magazine *Surprise Weekly*), and popular radio talk-show host Albert Cheng in August 1998. Mr Cheng was stabbed in the arms and stomach in the car park of his employer, Commercial Radio. No arrests were made in either case—despite the offer of sizeable rewards.

There were other incidents in the year under review. In October 2005, a reporter with *Apple Daily* was sent to hospital after a vehicle he was using was damaged by three unidentified men. One week later, a photographer with the same group was attacked and injured by two unknown men.

While such attacks may be isolated incidents, they do constitute warnings to media organisations and journalists to stay away from sensitive subjects, including the activities of triad gangs. Such intimidation has a chilling effect

on journalists, who may think twice about reporting on sensitive issues or powerful individuals.

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.

Executive Committee (2006-07)

Woo Lai-wan, chairperson; Lo King-wah, vice-chairperson; Raymond Cheng, Cheung Ping-ling, Kenny Coyle, Don Gasper, Ho Fu-yee, Una So, Tang Kong-fai, Freda Wan, Yim Kim-ho, Mandela Yip

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