



TWO SYSTEMS UNDER SIEGE

Beijing turns the screws on Hong Kong media

2017 ANNUAL REPORT

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Contributors: Cliff Bale, Mak Yin-ting, Shirley Yam, Kevin Lau, Gillian Yau,
Luther Ng, Grace Leung, Fong Tak-ho, Mau Chi-wang

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Introduction and recommendations

In 1997, when Britain handed Hong Kong to the People's Republic of China, the Hong Kong Journalists Association (HKJA)'s Annual Report of that year posed a question: "Will the transfer of sovereignty result in a turning back of the clock and the introduction of a more rigid and repressive system in which rights will be transgressed and the quality of life diminished?"

This report, which is published as Hong Kong marks the 20th anniversary of its handover, finds that this scenario has to a certain extent come to pass.

The past 20 years have seen a regression of freedom of expression in general and press freedom in particular despite the struggle by media workers against the trend.

The regression can be charted in rankings reported by international press watchdogs. One of them, Reporters Without Borders, highlighted a continued decline in Hong Kong's press freedom ranking. It was 73rd in 2017—down four places on the previous year. The territory placed a relatively more respectable 18th in 2002.

The Washington-based watchdog, Freedom House, placed Hong Kong in the "free" category in 1997. It is now "partly free". The group noted that Hong Kong's downward trend "reflects Beijing's encroachment on freedoms in the territory and the central government's unilateral reinterpretation of the Basic Law".

There is no doubt that pressure from Beijing is the main reason for the erosion of press freedom. The increased pressure is a reflection of a change in Beijing's Hong Kong policy over the years as tension between two systems ballooned. The first watershed was 2003—the year in which half a million people took to the streets to protest against the introduction of national security legislation in Hong Kong.

If Beijing took a back-seat role before then, it moved up to the front to monitor the driver after the mass demonstration. After President Xi Jinping came to power and the 2014 pro-democracy Occupy movement in Hong Kong, Beijing moved into the driver's seat.

The most recent example of Beijing's hardline stance came in a speech by the country's No 3 official, Zhang Dejiang. He emphasised "one country" over "two systems", denounced any discussion of self-determination or independence for Hong Kong and called on the special administrative region to move forward with national security legislation.

Chief Executive Leung Chun-ying, who has just stepped down after deciding not to seek a second five-year term, also adopted a hardline approach, condemning the rise of localist and so-called independence movements in Hong Kong and seeking to disqualify several opposition lawmakers.

The hardline stance has translated into more blatant intervention in the Hong Kong media. Mainland Chinese interests have been boosting their stakes in Hong Kong media outlets in what has been dubbed "The Great Overseas Propaganda Plan".

Eight out of 26 mainstream media outlets are now under Chinese control or have Chinese stakes. One is Hong Kong's dominant free-to-air TV broadcaster, Television Broadcasts, which was found by the territory's regulator to be controlled by a Communist Party cadre through undisclosed agreements. By late 2017, i-Cable will be added to the list, bringing the percentage of outlets with mainland Chinese investment to 35 percent.

Self-censorship is getting worse. While media outlets controlled by mainland Chinese interests began to report "forced confessions" made by human right activists, others are muzzling dissenting voices. Popular political commentator Joseph Lian lost his column in the *Hong Kong Economic Journal*. In fact, the most recent survey by the HKJA and the University of Hong Kong indicated that around 30 percent of journalist respondents practised self-censorship. A similar level was shown in a 2006 survey conducted by the HKJA—indeed a worrying trend.

Shrinking freedom in the traditional media has prompted online news platforms to mushroom. They have two battles to fight—financial pressure and government policy. The administration bars digital-only media from its news feeds and press events even

after Hong Kong's Ombudsman ruled against the policy. The HKJA therefore challenged the policy in court—the first time it has done so in its 50-year history.

Not surprisingly given this pressure, the 2017 Press Freedom Index compiled by the HKJA and the University of Hong Kong's public opinion programme remained below the pass mark of 50. It stood at 48 for the general public and 39.4 for journalists. In fact, the index has never been above the pass mark since the HKJA started the index in 2013.

Seventy-two percent of journalists who responded to the HKJA survey thought overall press freedom had deteriorated in the past year, with many pointing to the disappearance of five booksellers in late 2015 as of major concern.

The Hong Kong government has also been a significant source of pressure on press freedom. As many as 58.5 percent of journalist respondents agreed and 32 percent gave a rating of half-half. Moreover, respondents thought existing laws were inadequate to enable them to obtain the information they needed. The percentage stood at 45.8 percent—which is almost double the figure for those who thought otherwise.

This view is understandable because the Hong Kong government has failed to liberalise draconian laws which may suppress freedom of expression and press freedom or legislate to improve the legal environment. Even on persistent HKJA calls for the enactment of a freedom of information law, the most the government has done is refer the matter to the Law Reform Commission for examination.

The swearing in of a new chief executive—Carrie Lam—on July 1 should in theory raise hopes that the Hong Kong government can adopt a more media-friendly approach than her predecessors. In this respect, the HKJA notes that the new leader, Carrie Lam, signed its press freedom charter during her election campaign.

The charter is a pledge to protect press freedom, seek to enact freedom of information and archives laws, allow professional internet media journalists to attend government press conferences and not enact national security legislation until consensus is reached in society.

With this in mind, the HKJA urges the new administration to take the following action to protect freedom of expression and press freedom as set out in the Basic Law, the Hong Kong Bill of Rights Ordinance and the International Covenant on Civil and Political Rights:

- 1) Take immediate action to defend Hong Kong's high degree of autonomy as promised in the Basic Law given worrying encroachments by Beijing on this vital principle. In particular, the government must be seen to be safeguarding freedom of expression and press freedom in its dealings with Beijing. Failure to do so will lead to the erosion of Hong Kong's rights, loss of confidence in the government and a further polarisation within society.
- 2) Refrain from enacting national security legislation under Article 23 of the Basic Law until society reaches a consensus on the issue. If such a law is enacted, a white paper must be issued first to allow full and extensive consultation. The Johannesburg Principles on National Security, Freedom of Expression and Access to Information must be fully incorporated in the legislation along with robust public interest and prior publication defences.
- 3) Enact freedom of information and archives laws to ensure that Hong Kong residents, including journalists, have proper access to government information and documents. The access legislation should be based on the principles of maximum disclosure, limited and narrowly drawn exemptions and an effective and independent appeal mechanism. The government should not wait for the results of the study currently underway by the Law Reform Commission. It must act now.
- 4) Grant online media reporters carrying out legitimate journalistic work equal access to government facilities and news feeds. It is reprehensible that the government should deny access to online media outlets, which are playing a significant and growing role in providing alternative voices to Hong Kong residents. The administration is also standing in the way of worldwide trends whereby other jurisdictions, including Taiwan and mainland China, recognise online journalists. It is time for the Hong Kong government to follow this course.

5) Adopt a more open way of dealing with the media. In recent years, the government has been holding fewer press conferences to make major policy announcements. Instead, ministers have been resorting increasingly to explaining their policies through internet blogs, which is a one-way form of communication. They should revert to the more open method of hosting press conferences, which allow journalists to press officials about policy decisions and the rationale behind them.

SECTION 1

Infiltration and freedom of expression taboos

Previous annual reports have examined how China—the main source of self-censorship in the Hong Kong media—shifted its strategy of exerting indirect influence to one of direct interference by securing stakes in Hong Kong media outlets. However, such a move may face a setback after it emerged that the controlling stakeholder in Hong Kong’s dominant television broadcaster is a Chinese Communist Party member as well as a former deputy party general secretary in Shanghai.

The revelation prompted controversy over whether Hong Kong legal requirements had been met in full, including the full disclosure of shareholding information, during the procedure to renew the broadcaster’s licence. The issue may in the end be decided in the courts, which may be a lengthy process.

This comes as China’s “Great Overseas Propaganda Plan” is stepped up, with the likely addition of another mainstream media outlet—i-Cable—having mainland Chinese stakes, bringing the total to nine organisations out of 26, meaning 35 percent of all mainstream outlets.

Such infiltration is relatively “mild” compared with the blow delivered by Zhang Dejiang, China’s No 3 state leader, a month before the 20th anniversary of Hong Kong’s return to the country. His hardline remarks foresee a significant tightening of Beijing’s power over Hong Kong. The move would jeopardise the high autonomy promised to Hong Kong as well as the viability of the “one country, two systems” principle, and may well have a knock-on effect on freedom of expression through the enactment of national security legislation and greater self-censorship.

CHINA’S PLAN TO TIGHTEN ITS GRIP ON HONG KONG

National People’s Congress chairman Zhang Dejiang, who is China’s point man on Hong Kong, announced an unprecedented plan to increase control over the territory at a seminar in Beijing on May 27, 2017 to commemorate the 20th anniversary of the implementation of the Basic Law.

Mr Zhang stated that the central government had “comprehensive governing power” over Hong Kong even though the latter enjoyed a high degree of autonomy. What Hong Kong enjoyed was delegation of power by Beijing, not power-sharing, Mr Zhang said. He further stated that under no circumstances could Hong Kong confront the central government’s power in the name of a high degree of autonomy.

He warned that calls for self-determination or Hong Kong independence were attempts to separate Hong Kong from China. He said this was intolerable to Beijing and he called openly for the first time for Hong Kong to enact national security legislation under Article 23 of the Basic Law (see section 3).

Mr Zhang also called for a mechanism to exert control over Hong Kong affairs. While some powers sought by Mr Zhang are stated in the Basic Law, others appear to go beyond its remit. They include powers to assess legislation passed by Hong Kong’s Legislative Council, a final say over political development in the territory and supervisory power over public officers’ allegiance to the country.

He said Beijing would “go into further details” about these powers in future.

Such an unprecedented move to secure these powers prompted pan-democrats to accuse Beijing of “unauthorised building on the Basic Law”. Supervisory power over public officers, including civil servants, is particularly worrying. Veteran China commentator Johnny Lau said the move would destroy the long-established tradition of civil servants maintaining political neutrality because Beijing would decide whether they were “patriotic”.

Leung Chau-ting, chairman of the Federation of Civil Service Unions, expressed concern that understanding the Basic Law could carry weight when civil servants’ performance was assessed. He maintained that civil servants should be assessed on their professionalism and competence.

TABOOS SET ON FREEDOM OF EXPRESSION

The central government is not just seeking powers that go beyond the Basic Law. It is also setting limits on freedom of expression. Mr Zhang regarded the Basic Law as a document merely to promote exchange and cooperation between mainland China and Hong Kong and the realisation of common development. Referring to the “one country, two systems” principle, he said those who understood “two systems” from a one-sided perspective or created contradictions in the principle, thereby separating the people of the two places, were violating the spirit of the Basic Law. Mr Zhang called for opposition to such thinking and action.

He then pointed out that difficulties and challenges had emerged with the implementation of the principle. He noted that comments based on a vague understanding of “one country, two systems” and the Basic Law had emerged in Hong Kong. He went on to say that “forces in and out of Hong Kong” had used this chance to smear the central and Hong Kong governments as well as the “one country, two systems” principle and the Basic Law.

Veteran China commentator Ching Cheong said he thought Mr Zhang was targeting expression against the Communist Party, socialism, patriotism and mainland affairs. He said these areas may become taboos and freedom of expression in Hong Kong would thereby be infringed. The leader’s comments could clearly prompt further self-censorship in Hong Kong.

Commentator Johnny Lau said he thought Mr Zhang was setting a bottom line under which the Basic Law and “one country, two systems” could not be smeared, and Chinese officials could interpret it as they thought fit. However, he did not think the speech would automatically prompt further self-censorship, which he thought would depend on resistance by Hong Kong people and the media.

JUST WHO CONTROLS TELEVISION BROADCASTS?

Before Mr Zhang unveiled his plan to strengthen control over Hong Kong, Beijing was already increasing its influence over the Hong Kong media. The 2016 Annual Report highlighted how China was using its “Great Overseas Propaganda Plan” to take either a controlling or minority stake in media organisations. The plan was first revealed by the *South China Morning Post* in 2008 as a strategy to expand its state media presence around the world.

As of 2016, Chinese government or mainland corporations had secured either direct control or stakes in eight out of 26 mainstream Hong Kong media outlets, which represented 31 percent of the total. They were *Ta Kung Pao*, *Wen Wei Po*, *Hong Kong Commercial Daily*, *China Daily’s* Hong Kong edition, *Sing Pao Daily News*, the *South China Morning Post*, Phoenix Satellite Television and Television Broadcasts (TVB).

TVB became the centre of controversy in the year under review when it was revealed that mainland Chinese tycoon Li Ruigang was the major stakeholder in Hong Kong’s dominant free-to-air TV broadcaster.

As we pointed out in the 2016 report, a major stake in TVB was transferred in 2011 from the founder, Shaw Brothers, to a consortium of non-mainland businessmen who are regarded as pro-Beijing or pro-establishment. Li Ruigang, chairman of China Media Capital (CMC) as well as a former deputy party general secretary in Shanghai, then became involved in the purchase of an undisclosed stake in the consortium in April 2015.

Up until then, Hong Kong resident Charles Chan was on public record as being TVB’s voting controller. His position was approved by the Communications Authority, which is responsible for licensing and regulating the broadcasting and telecommunications sectors in Hong Kong. The Broadcasting Ordinance says only a permanent Hong Kong resident can control a free-to-air TV licensee.

More details on the shareholders’ structure of Young Lion, the consortium which bought TVB’s shares in 2015, were disclosed in TVB’s 2016 annual report. It said Charles Chan, CMC and Cher Wang, a Taiwan entrepreneur with significant investments in mainland China, held 56.5 percent, 32 percent and 11.49 percent of

Young Lion respectively. Li was appointed vice-chairman of TVB in October 2016 after the Executive Council granted an exemption.

An inquiry by the Securities and Futures Commission and its Takeovers and Mergers Panel, however, revealed a very different picture in May 2017. They uncovered a shareholders' agreement and a relationship agreement among Young Lion's stakeholders that showed Li was in fact in control of Young Lion and therefore TVB.

According to the agreements, Young Lion has two kinds of shares—voting and non-voting. It is “structured to constitute qualified voting controllers under the Broadcasting Ordinance, including that a majority of the Voting Shares shall be held by Hong Kong residents,” the agreement said. All official announcements made by TVB and Young Lion referred to voting shares, including Chan's 56.5 percent “controlling” stake in Young Lion.

What matters, however, are the non-voting shares, which account for 90 percent of Young Lion's total share capital. CMC owns 85 percent of these shares. “Under the Relationship Agreement (among Young Lion shareholders), there are many situations in which the non-voting Young Lion shares, of which CMC holds the majority, carry power of nomination, approval or disapproval amounting to de facto voting rights,” the panel said.

“This is very far from a normal situation in which a company's non-voting shares have no real say except in situations which affect their class rights, it added. The panel concluded that both types of shares should be counted in judging Young Lion's control.

UNEXPECTED REVELATION SHINES LIGHT ON OWNERSHIP

The voting and non-voting shares owned by CMC account for 79 percent of the overall stake in Young Lion. It therefore holds a 20.5 percent stake in TVB, making it the single largest shareholder. Chan has no non-voting shares, meaning his total stake in Young Lion is just 6 percent, making his interest in TVB just 1.6 percent, which is less than Cher Wang's total of 3.9 percent.

CMC enjoys many of the privileges of a controlling shareholder. It can order Chan to sell his shares in Young Lion at any time. It is also the sole party with first right of refusal to any stock sale by Young Lion's shareholders. Only CMC can nominate non-Hong Kong residents to Young Lion's board while Chan can nominate only one TVB director. CMC in fact has the biggest say in appointing directors.

The shareholding agreement also makes it clear that as soon as Hong Kong relaxes restrictions on non-residents, the shareholders will “take all necessary steps to convert the non-voting shares into voting shares, or vice versa,” in the process making CMC the official controller. Before this happens, every shareholder will make sure the non-resident is not seen to be in control, at least on the books, according to the agreement.

It says when a Hong Kong resident sells voting shares to a non-resident, the transfer will be made to a Hong Kong resident designated by the buyer “following good faith discussions among the shareholders as to the identity” of such a nominee. Alternatively, the voting rights will be converted into non-voting shares to satisfy the Broadcasting Ordinance even though the law forbids any holding or acquisition structured with a purpose to avoid restrictions against non-residents.

None of the above would have been exposed had TVB not proposed to increase Young Lion's holding from 26 percent to over 33 percent through a share buyback worth HK\$4.21 billion. Since Young Lion refused to make a general offer to TVB shareholders and asked for a waiver, the Securities and Futures Commission and its takeover panel became involved. The latter asked for Young Lion's documents and subsequently demanded full disclosure of them to inform TVB shareholders of the broadcaster's real control.

The panel also said certain provisions of the two agreements may not have been given to the Communications Authority in the course of its review of Young Lion's ownership of TVB and the related share sale. On the panel's recommendation, the commission has given the agreements to the authority.

TVB chief executive Mark Lee said the authority was fully aware of the company's shareholding structure before granting approval to Young Lion to take control of the

broadcaster. However, two days after the interview, the authority said it had engaged a Queen's Counsel to examine the relevant licence conditions and the statutory declarations and deeds of undertaking submitted by TVB and relevant parties.

The watchdog said it was "seriously concerned about the possible regulatory implications" of the documents provided by the commission. The authority's legal adviser will examine whether any relevant information may have been held back and not fully disclosed during the process of considering TVB's applications for shareholding changes.

More than a month after the revelation, TVB sought a judicial review against the panel's decision over the broadcaster's application for a waiver from making a general offer, citing practice that only voting shares should be counted.

Commenting on the controversy, To Yiu-ming, assistant professor in the Department of Journalism at Baptist University, said the use of mergers and acquisitions by China to control Hong Kong outlets was part of the country's plan to control the media. He said it was particularly problematic in relation to the electronic media.

To said the use of exemptions to allow unqualified people to become licensees was unreasonable. He said the government never asked for details of share structure and only cared about who was at the front—even if that person was an agent of the controller at the back. He questioned whether this was a form of collusion between Beijing and the Hong Kong government.

He further said the media with mainland Chinese stakes did not operate on profit principles, but rather as vehicles to help the Chinese and Hong Kong governments to channel their stance and shape public opinion.

Although one cannot say for sure that mainland Chinese capital is problematic, then HKJA chairwoman Sham Yee-lan commented that the public was sceptical and had reservations about Chinese entrepreneurs. She said Beijing understood the importance of united front work and would try very hard to win territory in different sectors to influence ideology and public opinion.

Sham cited the case of ATV's closure to tell Chinese concerns that they risked failure if they tried to instil mainland media values in Hong Kong.

TVB'S CONTROVERSIAL HANDLING OF TAIWAN

There have been cases of self-censorship after China capital bought into TVB. Matters related to the Republic of China (ROC)—Taiwan's official name—became the subject of concern. This is a particularly sensitive issue for Beijing, which regards Taiwan as a renegade province of the People's Republic.

The most recent case took place in March 2017. One episode of a lifestyle programme called *Hong Kong Round The Clock* focused on a local restaurant operated by a Taiwanese person. Red, blue and white ROC flags are placed inside the restaurant. The broadcast used special effects to make the flags all red, which meant they could no longer be recognised. The flag pin on waiters' uniforms was also distorted.

The action was criticised by many internet users. Democratic Party legislator Helena Wong described it as "political cleansing" with the intention of highlighting Beijing's "One China" stance. She expressed concern about the implications of the move for Hong Kong.

However, nationalistic mainland Chinese newspaper *Global Times* quoted Shanghai Institute of Taiwan Studies deputy director Ni Yongjie as saying he backed TVB's action. According to him, the People's Republic government is the only legitimate one and Hong Kong should follow Chinese law because it is part of China.

In 2014, TVB even changed the subtitles and Cantonese dubbing for a Taiwan programme. For example, it changed the term "national flag of Taiwan" to "regional flag".

Such twisting of facts did not just happen in lifestyle programmes but also documentaries produced by the news and current affairs department. A documentary aired in 2015 focusing on the 70th anniversary of the war against Japan featured the

flag of the People's Republic even though the state did not exist in 1945 when the war ended. TVB later apologised for the mistake.

MING PAO WEEKLY BOUGHT BY STATE-CONTROLLED FIRM

The “Great Overseas Propaganda Plan” continues to operate in Hong Kong. In August 2016, it was announced that Media Chinese International (MCI) had sold its subsidiary, One Media Group, which publishes several magazines including *Ming Pao Weekly*, to state-controlled Qingdao West Coast Holdings (International).

According to the agreement, MCI's subsidiary will sell a 73.01 percent stake in One Media Group to Qingdao West Coast Holdings, a subsidiary of the state-owned enterprise, Qingdao West Coast Development (Group), for HK\$498 million.

After completion, One Media Group will operate *Ming Pao Weekly* and related digital businesses. However, MCI will pay HK\$49.16 million to buy back some business under One Media, including the online satirical broadcaster TVMost and weekly magazine *100 Most*, which are popular among youngsters.

One Media Group does not own mainstream newspaper *Ming Pao Daily News*.

Worries were expressed about the future of TVMost and *100 Most*. But their sale did not come about. However, the purchase of ever more media outlets by Chinese enterprises is prompting growing concern about the manipulation of Hong Kong media by Chinese capital.

i-CABLE SURVIVES WITH RED CAPITAL

The possible closure of i-Cable prompted concern in early 2017. In April 2017 it was announced that a consortium including two mainland Chinese enterprises would inject HK\$709 million into the broadcaster. (See section 5 for further details.) Once legal procedures are completed by mid-September, the number of mainstream media outlets with some form of Chinese government or corporate involvement—either through outright control or a minority stake—will rise to nine out of 26, or 35 percent of the total.

The biggest shareholder in the consortium is New World Development chairman Henry Cheng, who is a standing committee member of the Chinese People's Political Consultative Conference (CPPCC). He will control 45.5 percent of shares. The original head of the consortium, CPPCC member David Chiu, who is the son of ATV founder Deacon Chiu, holds 24.5 percent.

The other shares are held by two mainland Chinese entrepreneurs—Guangzhou R&F Properties chairman Li Sze-lim (16 percent) and Hony Capital president Zhao Huan (14 percent). That means “red capital” will control 16.2 percent of i-Cable.

A rosy picture was drawn by the consortium, but some employees were not so optimistic. Newspapers quoted anonymous staff who expressed worries about interference by the new China investors. They specifically pointed to the 500-strong news department. They thought the China desk, whose critical reports revealing malpractice in the country have won frequent awards, could be hit hardest. They also worried about the future quality of news reports on property developer New World.

However, David Chiu pledged “absolute independence” for the news department saying it is i-Cable's “hit product”.

EXILED MOUTHPIECE EDITOR REVEALS MANIPULATION

Details of how the Chinese government manipulates the media in Hong Kong were revealed by an exiled top manager of a pro-Beijing newspaper. The assistant editor-in-chief of *Hong Kong Commercial Daily*, Long Zhenyang, caused a storm when his resignation letter dated February 5, 2017 was circulated on the Chinese Weibo microblogging site. The letter was released after he fled to the United States in August 2016 to seek political asylum.

In an interview with Washington-based Radio Free Asia, which receives US State Department funding, Mr Long revealed that all media outlets with Chinese capital were under the “direct management” of Beijing's Liaison Office in Hong Kong.

Mr Long told the broadcaster that he was not trusted by the newspaper after he made several comments during the 2014 pro-democracy Occupy movement in Hong Kong and during the demolition of churches and the removal of crosses in the Chinese province of Zhejiang starting in 2014. He was then placed under “political handling”, meaning he was not trusted and was given no work over a period of a year, even though he was still paid.

As an assistant editor-in-chief, Mr Long was a party cadre at the level of deputy division chief, but he said he could no longer serve the newspaper, which he said was “controlled by the Chinese Communist Party regime”. According to the handwritten resignation letter to his boss, Mr Long said the sociopolitical climate in China had grown more and more like that in the Cultural Revolution and all hope for reform had been extinguished. He said he therefore had to resign due to his religion, beliefs and “politics”. He did not elaborate.

Hong Kong Commercial Daily’s website says Beijing considers the newspaper to be “China’s international media window” and is used by mainland Chinese government departments to advertise to the outside world and attract investment.

Mr Long told Radio Free Asia that all media outlets in Hong Kong with Chinese capital were “directly managed” by Beijing’s Liaison Office in Hong Kong, which sometimes gave the newspaper direct orders. He even showed a video in which Guangdong governor Ma Xingrui instructed in June 2016 that money should be given to *Hong Kong Commercial Daily* to cover its deficit. Mr Long said newspaper owners had been “bought politically” and this had worsened self-censorship.

SECTION 2

Confessions and self-censorship

Concerns have been expressed that self-censorship may be on the rise with the infiltration of Chinese capital into Hong Kong. The proliferation of cases of self-censorship and the axing of critical commentators are symptomatic of serious problems facing press freedom.

Although the Hong Kong Press Freedom Index conducted by the University of Hong Kong's public opinion programme and the HKJA showed that the rating for self-censorship improved slightly in 2016, it remains the biggest problem faced by the media in the city.

Among the 10 indicators, journalists gave self-censorship the lowest score. With 10 being not at all common and 0 being very common, the average rating given by journalists was 3.1, while the general public rated it at 4.5, which is lower than the pass mark of 5. Both groups' ratings also show that the media has greater hesitation in criticising the Chinese government than the Hong Kong government and big business.

Respondents also pointed to the problem of supervisors or management editing or dropping stories related to the central government or rejecting such story ideas.

However, more significant was how common the practice of self-censorship had become. The results for 2016 indicated that 22.2 percent of respondents rated the practice above 6 while 12.4 percent rated it at 5, meaning half and half. This tended to imply that about 30 percent of respondents may be practising self-censorship.

These figures coincide with the findings of an HKJA survey conducted in late 2006. It found that 30 percent of respondents admitted practising self-censorship over the previous 12 months and 40 percent knew of colleagues or supervisors who did so. The survey also found that 58.4 percent of respondents thought press freedom had deteriorated since the 1997 handover, mainly because of self-censorship. About 60 percent of interviewees thought self-censorship was more serious than 10 years before as seen in the tendency to downplay negative news about the Chinese government or second-guess Beijing on sensitive issues.

The self-censorship rate revealed in such surveys is shockingly high, especially given that the practice is not "socially desirable". This may well imply that the real rate is even higher.

HONG KONG MEDIA DRAWN INTO FORCED CONFESSIONS

As mainland Chinese concerns buy into more Hong Kong media outlets, a disturbing phenomenon from across the border has been emerging in the territory.

While a confession by Lee Bo, one of five Causeway Bay Books booksellers reportedly abducted to the mainland, aired in February 2016, few would have thought that Hong Kong media outlets would be used to conduct and publicise "forced confessions".

"Forced confessions" are commonly used by the mainland Chinese authorities. A confession by a suspect or others is often obtained by torture or other forms of duress. More often than not, the interview itself and the airing of the "confession" are conducted by Beijing-controlled media, mainly state broadcaster CCTV. As one of the abducted Causeway Book booksellers, Lam Wing Kee, revealed, the questions and answers are preset and everything is conducted according to the script. Such forced confession have been criticised by the International Federation of Journalists and human rights groups as being unethical and unacceptable.

However, with China's leverage over Hong Kong through its co-opting of media owners and top management and the purchase of media outlets, a trend has emerged whereby local media are used to conduct and disseminate "forced confessions".

Eyebrows were raised among media watchers when the English-language *South China Morning Post*, a 114-year-old newspaper bought by Chinese e-commerce giant Alibaba in early 2016, published an interview with Zhao Wei, a legal assistant arrested during a purge of human rights legal workers that started in July 2015. The telephone interview was conducted in July 2016—three days after Ms Zhao was reportedly released on bail

after being charged with subversion and at a time when even her husband and lawyer were unable to contact her.

The report was headlined “Young Chinese legal activist ‘regrets’ civil rights activism”, a message the Chinese authorities doubtless wished to get across. The report quoted Ms Zhao as saying: “I have come to realise that I have taken the wrong path” She went on to be quoted as saying: “I repent for what I did. I’m now a brand new person.”

Concerned media described the report as “reminiscent of the public confessions” popular in mainland China. When the British newspaper *The Guardian* asked the *South China Morning Post* for its comments on its reporting, the Hong Kong newspaper accused it of “selective bias”.

According to information obtained by HKJA authors of this report, frontline staff tried to handle the story in a more professional way, although the final result was not entirely to the public’s satisfaction. According to sources in the newspaper who declined to be named, Ms Zhao’s contact number came from “the top”. To balance the story, another reporter interviewed Ms Zhao’s husband and lawyer, who raised questions about her freedom and the veracity of the confession. The report itself also stated that the *Post* could not verify Ms Zhao’s location or whether she was under surveillance.

The 449-word article was published at the bottom of the China page, possibly to indicate that its significance was not great. However, this consideration was not apparent on the *Post*’s website, where most readers read the story. There was also no reference as to whether Ms Zhao freely agreed to the interview.

ANOTHER CONFESSION—ORGANISED TWICE

Several Hong Kong media outlets were “chosen” to conduct another “forced confession” less than a month after Ms Zhao’s interview was published. They were *Sing Tao Daily*, which is owned by Chinese People’s Political Consultative Conference (CPPCC) Standing Committee member Charles Ho, *Oriental Daily News*, which is under the leadership of long-time CPPCC member Ma Ching-kwan, and Beijing-controlled Phoenix TV.

Reporters from the three outlets went to Tianjin in northern China to interview detained human rights lawyer Wang Yu one day before her trial was to take place. Again, the interview took place before Ms Wang’s relatives and lawyers could contact her.

According to the video-taped interview and reports, which are said to have been vetted by mainland security officers, Wang admitted committing an offence. She further complained about her colleagues in a prominent human rights law firm and said it had participated in training sessions organised by foreign groups to “smear the Chinese government” and “instil Western universal values”.

Ms Wang expressed regret for being used by foreign forces to defame Beijing and pledged to reject such advances. “I am Chinese and I only accept the Chinese government’s leadership,” she said. Her comments were in stark contrast with her earlier remarks and actions, but were in line with Chinese government positions.

The “confession” prompted severe criticism from human rights groups and queries from media outlets. The Hong Kong organisation, China Human Rights Lawyers Concern Group, said the confession was aimed at smearing lawyers. It urged the international community to be cautious about the reports released by the Chinese Communist Party through the media.

The reaction from the international community may have prompted the Chinese government to stage a second “selective interview” three days after the trial. Apart from the original Hong Kong media outlets, the *South China Morning Post* was also chosen. The *Oriental Daily News* had the widest coverage and included a video of the interview, although little new information was given. The possible “new message” was Ms Wang’s comment that “I think my feeling now....and the attitude I have is my own choice”.

The *South China Morning Post* did not report on the interview. According to sources, the *Post* reporter did not think what Ms Wang said was truthful and the journalist was therefore told not to write anything.

The *Post* instead published an article based on a Xinhua news agency report released on the same day. The article, under the headline “Lack of rule of law at trials big step backwards”, reviewed the situation with comments by the China Human Rights Lawyers Concern Group.

It is clear that getting the Hong Kong media to adopt dubious practices prevalent in mainland China will not legitimise the Chinese propaganda line. On the contrary, it hurts the professionalism of the Hong Kong media as well as its credibility. It also shows that the media—as in the case of the *South China Morning Post*—can work against such set-ups. In short, media outlets may regard a set-up interview as just one source and thereby handle it in a professional manner.

ECONOMIC JOURNAL AXES CRITICAL COMMENTATOR

In a move which shocked media observers, the Chinese-language *Hong Kong Economic Journal* dropped the column of veteran political commentator Joseph Lian in August 2016. Lian had written for the newspaper irregularly for 25 years. The newspaper’s former editor-in-chief suggested that the trigger point was an article in which he advocated “Hong Kong’s independence on legal grounds”.

The newspaper’s chief editor, Alice Kwok, rejected the claim that the column was dropped for political reasons. She said there were plans to drop Mr Lian’s column because “the newspaper will be undergoing a new round of restructuring, including its opinion page”.

In a rare move, newspaper staff formed “a group of current and former employees who treasure *Hong Kong Economic Journal*”. They signed a letter asking for Mr Lian to be allowed to continue writing his column. They pointed out that Mr Lian’s commentary was insightful, independent and outspoken and that it had “great influence on society and the local political arena”.

The HKJA and the Independent Commentators Association said the decision to drop the column would reduce the voices of current affairs commentators, especially ahead of the Legislative Council elections one month later.

Kwok became the newspaper’s editor-in-chief in August 2013. In the early days of her tenure, columnist Yau Ching-yuen resigned along with three reporters.

ANOTHER INDEPENDENT VOICE DISAPPEARS

Joseph Lian was not the only independent voice to disappear ahead of the legislative elections. Former secretary for the civil service Joseph Wong was told that his programme on Commercial Radio would be cut in July 2016.

Wong had hosted a current affairs programme focusing on government and legislative matters every Saturday morning for six years. Three months before the Legislative Council elections, he was told his contract would not be renewed. Mr Wong declined to guess the reason behind the move, saying only that his listeners might regret it.

Commercial Radio said it was a “normal programme change” and Mr Wong’s programme would be replaced by a lifestyle show. However, senior journalism lecturer Bruce Lui from Baptist University said the change was aimed at depoliticising programmes ahead of the election.

In another move, TVB stopped telecasting *City Forum*—a weekly political debate programme produced by government-owned Radio Television Hong Kong (RTHK) that had been broadcast live on the dominant broadcaster’s Chinese-language channel for 36 years. TVB said the time slot would be filled by a lifestyle programme.

TVB gave no reason for the change. But it will continue to broadcast other RTHK programmes on its channels as it is required to do by law. RTHK broadcasts *City Forum* on its own TV channels, but viewership is thought to be lower.

Former *City Forum* host Lee Kam-hung said the programme was a barometer of freedom of expression in Hong Kong and TVB’s action was regrettable. Another former host, Joseph Tse, expressed concern the programme’s influence would be weakened because it would be seen by fewer viewers on RTHK’s TV channels. He said the show could even be scrapped if there were not enough viewers.

LIFESTYLE PROGRAMME INVOLVED IN SELF-CENSORSHIP

A few days after Asia Television stopped broadcasting in April 2016, new television broadcaster ViuTV went on air. One of its first programmes was *Travel with Rivals*, which twinned politicians and celebrities with different views for trips to other countries.

However, the popular programme became embroiled in controversy in October 2016 when 1989 Tiananmen student leader Wang Dan and Hong Kong localist and former student leader Billy Fung made comments about Hong Kong independence at the Foreign Correspondent' Club of Japan in Tokyo.

ViuTV issued a strong statement accusing the pair of arranging the briefing themselves and making "improper speeches" without its authorisation. The statement said the speeches "not only insulted national dignity, but were also deceiving." ViuTV said it would not broadcast the show and reserved the legal right to pursue anyone trying to use its platform to promote Hong Kong independence.

The pair rejected the accusation. They said the itinerary was arranged by ViuTV's production crew, including the event at the Foreign Correspondents' Club. Mr Fung said it was ViuTV which asked if he was willing to give a talk there before he left for Hong Kong. He said the station should have known about his stance on localism and Hong Kong independence.

Mr Wang said it was sad to see Hong Kong's freedom of speech eroded to such a level.

ViuTV later issued another statement in which its general manager, Lo Ting-fai, apologised to both Mr Wang and Mr Fung. The station admitted that it was its staff who organised the event and attributed the mistake to a lack of internal communication.

However, the controversy may jeopardise media workers' creativity and freedom of expression and in particular affect how newsroom staff operate.

SECTION 3

Renewed threats to press freedom

It would not be cynical if we said this chapter was a copy of the relevant sections in last year's report. There was no progress on calls by the HKJA for access rights for online media practitioners and the enactment of freedom of information and archives laws. It remains to be seen whether the new chief executive, Carrie Lam, will live up to her commitment on this front after she signed the HKJA's pledge to uphold press freedom at an election forum held in March 2017. She promised to introduce within her term access to information and archives laws and lift the government ban on access by online media to government press events and news feeds.

Former chief executive Leung Chun-ying signed a similar press freedom charter during his 2012 election campaign. He pledged to uphold press freedom, actively promote the drafting of a freedom of information law to nurture a more open social environment and not to push for the drafting of Article 23 national security legislation in the absence of consensus in society. Mr Leung failed to deliver on all but the last promise. His term as chief executive ended days before this report was published.

ARTICLE 23 THREAT HANGS OVER HONG KONG

Plans to enact national security legislation under Article 23 of the Basic Law were shelved in 2003 after half a million people marched on July 1 that year against the draft law. Article 23 stipulates that Hong Kong must enact legislation on its own to outlaw treason, sedition, subversion, secession and the theft of state secrets.

Chief executives since then have stated that the time was not right to resurrect the controversial issue as more pressing issues had to be tackled. But pressure now appears to be growing in the wake of the emergence of a localist and so-called independence movement in Hong Kong.

This became apparent in May 2017 when Zhang Dejiang—chairman of the National People's Congress Standing Committee and Beijing's point man on Hong Kong affairs—said the Chinese government would not tolerate the promotion of a high degree of autonomy for Hong Kong as an excuse to undermine the central government's authority. He was speaking at a forum in Beijing to mark the 20th anniversary of the implementation of the Basic Law on Hong Kong's return to China.

Mr Zhang said China enjoyed “comprehensive governing power” over Hong Kong and that calls for self-determination or Hong Kong independence were attempts to shun China's sovereignty. He went on to say: “One cannot turn a blind eye to such acts, and (Hong Kong) should steadfastly implement the constitutional obligation of national security under the Basic Law.”

In the past, Chinese leaders and officials urged Hong Kong to take up this “constitutional obligation” in an indirect way, mostly by praising the Macau special administrative region's implementation of national security legislation in March 2009. Such a direct call on Hong Kong to follow suit is unprecedented.

Opinion in society commonly holds that the call will put great pressure on the new administration to enact national security legislation, but is divided about whether the new chief executive will carry out the task in her five-year term. Anonymous sources quoted by newspapers interpreted Mr Zhang's comment as a request for Carrie Lam to enact the law in her term, while others thought Beijing would take Hong Kong public opinion into consideration to avoid creating problems for her government.

Mrs Lam's office cited her election platform—recognising the constitutional obligation to enact national security legislation but adding that it would easily prompt controversy and unrest and must therefore be handled cautiously.

Her stance was less forthcoming than Leung Chun-ying. In November 2016, before Mr Zhang's call, Mr Leung said there was “practical significance” in enacting Article 23 legislation in the wake of the oath-taking saga in the Legislative Council, in which two newly elected localist legislators made reference to a Hong Kong nation and used what was considered a derogatory term to refer to China. They were later disbarred from the legislature.

Leung said: “I believe the central government would no longer regard the legislation of Article 23 as an unfinished constitutional responsibility in the wake of the pro-independence and separatist drive, but instead a (matter of) practical significance.”

The then chief executive made his comment shortly after the Standing Committee of China’s National People’s Congress issued an interpretation of the Basic Law stating that Hong Kong lawmakers-elect who failed to take their oaths properly should not be allowed to take up their seats.

The head of Beijing’s liaison office in Hong Kong, Zhang Xiaoming, earlier told pro-establishment figures that the government had considered applying the Chinese national security law to Hong Kong, but this was considered impractical.

One week after Mrs Lam was chosen as the next chief executive, Hong Kong Vision, a think tank led by former Legislative Council president Tsang Yok-sing, proposed that legislative work should start on national security legislation. Tsang cautioned that pressure to apply the Chinese national security law in Hong Kong as proposed by some mainland legal experts would grow if Hong Kong further delayed legislative work. The group also proposed that the work should take place in two phases, starting with modifications to existing criminal laws followed by the difficult areas.

Hong Kong’s former justice secretary, Elsie Leung, who is vice-chairwoman of the Basic Law Committee under the National People’s Congress, made a similar proposal for a step-by-step approach in November 2016.

National security legislation, if not crafted properly, could have a serious impact on freedom of expression. As such, the HKJA’s position has been that there is no basis for rushing into action.

However, if the government does move on this front, then it must enact a law that complies fully with the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, which lay down guidelines for the creation of national security legislation that fully respects freedom of expression and the right to information. In particular, robust public interest and prior publication defences must be included.

LITTLE TO SHOW IN CALLS FOR INFORMATION LAW

The HKJA has for several years called on the government to enact freedom of information and archives laws. While a freedom of information law would give the general public including journalists the right to access documents held by the government and public bodies, an archives law would ensure that official records were kept properly and not destroyed or lost.

The Law Reform Commission formed sub-committees in 2013 to examine whether access to information and archives laws should be enacted in Hong Kong. It has been reviewing the current situation in Hong Kong and overseas experience in these areas. That process continues with no end yet in sight.

According to a reply from the Law Reform Commission to the HKJA dated May 2, the sub-committees have been meeting regularly. The sub-committee on an archives law chaired by barrister Andrew Liao has held 39 meetings, while the group on access to information under the chairmanship of barrister Russell Coleman has met 38 times.

Their work continues and it is uncertain when a report will be published. Even if they proposed the enactment of the relevant legislation, there is no guarantee that the government would adopt their recommendations, prompting the fear that the Leung Chun-ying administration asked the commission to examine the issues only as a delaying tactic in the face of calls by groups like the HKJA.

In the meantime, the government clings to a toothless, non-statutory code on access to information, which has proven far from effective since it was put in place in March 1995.

In November 2016, then chief secretary Carrie Lam said the government had an “open attitude” towards an archives law. While legislators questioned the slow progress of the two subcommittees, Lam said the Government Records Service had been “properly” managing government documents and making them accessible to the public. She

further revealed that a HK\$100 million electronic record-keeping system would be implemented in six departments by 2018.

However, a paper sent to the Legislative Council by the chief secretary's office in April 2017 showed that records were not being managed properly. According to the paper, the handling of 30 cases involving various government departments deviated from the government's current record management requirements in the 2016-17 fiscal year. Thirteen cases involved the police — the largest number among government departments. The same paper also disclosed that 1,245 police files had been destroyed without authorisation.

Information technology lawmaker Charles Mok suspected that the Leung Chun-ying administration destroyed about 300 million pages of documents on average each year, double that of previous administrations. In 2011, the government of Donald Tsang admitted it had destroyed documents that, if stacked up, would be almost three times higher than Two IFC—one of Hong Kong's tallest buildings—before it moved into its current Tamar headquarters.

Journalists have faced practical difficulties in accessing government documents from the Public Records Office. They reported problems in obtaining historical material relating to the leftist riots in 1967, when Hong Kong was under British colonial rule. They were researching stories for the 50th anniversary of the events. Ironically, it has at times proved easier to obtain Hong Kong-related material from the National Archives in London.

There may be light at the end of the tunnel on the archives front. Lawmaker Charles Mok told the press in May 2017 that Mrs Lam would support an archives law after she met pan-democrats. Later that month, Mr Mok joined fellow lawmakers Dennis Kwok and Tanya Chan in unveiling a private members' bill seeking to protect and manage archives. Under it, those destroying public records could face a maximum fine of HK\$200,000 and three years in jail.

Mr Mok said: "We have waited too long ... so we must have action to exert pressure on the government and demonstrate how to draft the bill."

However, there are doubts whether the government will approve the bill for tabling in the Legislative Council as it may have a substantial effect on public expenditure and the operation of the government. These are limitations imposed by the Basic Law on the ability of legislators to introduce their own bills.

Ironically, this was exactly what happened to a freedom of information bill that was presented by three legislators in 1994. The British colonial government did not allow it to go ahead because of its implications for government expenditure. Instead, the administration introduced the administrative code on access to information, which remains in force today.

LEGAL LETTERS FROM LEUNG CHUN-YING

Legal action against the media may become a source of self-censorship as has happened in Singapore. In the year under review, Chief Executive Leung Chun-ying issued two letters to the Chinese-language *Apple Daily* newspaper over reports relating to his receipt of HK\$50 million from Australian engineering firm UGL.

The payment was not declared to his policy-making Executive Council. The first letter was sent by Leung through his lawyers in September 2016 over an *Apple Daily* editorial on the case. The HKJA called on the legal letter to be withdrawn.

Mr Leung sent a second letter in February 2017 saying two *Apple Daily* reports and the editorial had seriously tarnished his reputation. He called on the newspaper not to repeat its accusations and to issue a retraction approved by him.

The reports in *Apple Daily* came after the conviction of former chief executive Donald Tsang for failing to disclose a conflict of interest to the Executive Council. They said Mr Leung failed to declare that he received part of the HK\$50 million payment after he became chief executive.

Both reports cited comments from barrister and former Independent Commission Against Corruption chief investigator Stephen Char Shik-ngor. Mr Char questioned if

the directors of DTZ—Mr Leung’s former company which UGL took over—knew of the payment.

Mr Leung’s letter said he was never a director of UGL. It said there was no requirement for him to declare the agreement, which was signed after he resigned from the Executive Council and before he was elected chief executive.

Apple Daily chief editor Chan Pui-man said the reports were made in response to the Donald Tsang verdict and that the public was interested in how it would affect the UGL case. The newspaper therefore asked for comments from people familiar with related laws.

Chan said she welcomed any comment if wrong information was involved or if there were different views, but press freedom and Hong Kong’s core values would be harmed if officials frequently sent legal letters and threatened legal action against the media.

This was not the first time that Mr Leung had resorted to legal letters. In 2013, he sent a letter to veteran commentator Joseph Lian, claiming that a commentary piece he had written accused him of having links with triads and asking for the article to be retracted. No further action was taken in this case.

Mr Leung once again resorted to legal letters when he pledged to take pan-democrat lawmaker Kenneth Leung to court for defamation over his comments on the UGL affair. The chief executive also urged the legislator to resign from a Legislative Council committee investigating the payment. The legislator refused to step down.

SECTION 4

Government blocks new media development

Online news has been developing for nearly two decades and has blossomed in the last 10 years or so in Hong Kong to supplement the mainstream media. New digital-only media organisations have been set up to give the public a greater choice of news sources. They include—among others—FactWire, Initium Media, Stand News, Hong Kong Free Press and HK01.

Apart from HK01, which has a print edition, all these outlets faced obstacles in obtaining access to government events and news feeds. The government ban on access is both unreasonable and unacceptable not just in the eyes of the HKJA, which has been campaigning against the government's discriminatory measures, but also the Ombudsman, who found in favour of the association in a complaint over the issue. Further, all chief executive candidates, including the new leader, Carrie Lam, signed an HKJA charter which included a pledge to lift the government ban as soon as possible.

Although the HKJA failed to secure an interim injunction from the High Court to force the government to admit digital-only media journalists who are HKJA members to the press area of the vote-counting centre for the 2017 chief executive election, the court criticised the government's policy and granted leave for a judicial review of the ban, which is tentatively set for June 2018.

The government undoubtedly lags far behind other places in handling digital media. Governments in many other jurisdictions, including Taiwan and mainland China, recognise online journalists. It is now imperative for Mrs Lam's new administration to honour its promise to lift the ban as soon as possible. Otherwise, it will hurt the public's right to know and Hong Kong's reputation as a regional media hub.

OMBUDSMAN RULES AGAINST GOVERNMENT

In the year under review, the most significant event concerning the development of new media was the Ombudsman's decision in December 2016 that the HKJA's complaint about the government's ban on digital-only journalists' access to its press events and news feeds was substantiated.

The HKJA filed the complaint to the Ombudsman in June 2016 after the government repeatedly denied access by online media to election-related press events.

In its six-page judgement, Ombudsman Connie Lau pointed out that nearly three years had elapsed since the government made an undertaking in the Legislative Council to ensure its press policy would be in line with changes in the media industry. Yet the government had not made any progress on the issue, she noted.

The Ombudsman was not convinced by the government argument that opening its door to online-only media would result in overcrowding and a security risk.

The report noted that the Information Services Department (ISD), which handles press relations, had not provided data to show that there had been cases in which the number of journalists seeking access had exceeded a venue's capacity. Although the department pointed out that representatives of a few organisations had disturbed order at certain events, the Ombudsman considered that the department should make decisions based on the track record of each media organisation. "It should not, just because of a few isolated incidents, turn down all requests from digital-only media across the board."

It also acknowledged the growing importance of online media. "The new media in Hong Kong and other parts of the world have shown rapid development. These new media are on a par with the traditional media in terms of functionality, and some have even outpaced the latter," the report stated, adding that the government needs to "think out of the box."

The Ombudsman made three specific recommendations to the government:

- 1) Review soonest its practice of denying all online media not affiliated to "mass media organisations" access for on-the-spot reporting, and adopt a more open policy to keep pace with the times;

2) Review and relax as far as practicable the eligibility criteria for registration as government information distribution system users and draw up related guidelines for its staff and media organisations; and

3) Pending completion of its reviews, be more flexible in dealing with requests from individual media organisations and allow them to carry out news reporting wherever possible.

The HKJA welcomed the ruling, demanding that an accreditation system for online-only media be introduced as soon as possible following consultation with the industry.

In a reply to legislator Ma Fung-kuok in January 2017, Secretary for Home Affairs Lau Kong-wah said the ISD fully recognised the rapid development and growing popularity of online media in recent years and was studying the feasibility of allowing the admission of online media for reporting. But he gave no timetable or details about when and how changes could be implemented.

HKJA WINS PARTIAL VICTORY IN HIGH COURT ACTION

While the government paid lip service to the need for change, there were many cases in which online media journalists were denied access to government events. For example, Stand News was refused entry to the opening ceremony for a cultural exhibition at the Hong Kong Heritage Museum on February 28, 2017 and Hong Kong Free Press was denied access to a prison facility organised for the media by the Correctional Services Department on March 2, 2017.

The biggest case involved refusal to grant access to the vote-counting centre for the chief executive election held in March 2017. This prompted the HKJA to seek a judicial review of the government's policy towards online media. The association took up the case on behalf of 26 of its full members who were full-time employees of 10 digital media outlets.

In applying for the judicial review just days before the chief executive election, the group said an order issued by the ISD denying access for online journalists violated press freedom and the Basic Law. It argued that online news media staff with a valid HKJA membership should be allowed to enter the press area at the election venue.

The court refused to grant an interim injunction for three reasons. First, the court would prefer to take such action, if justified, after a full hearing instead of interim proceedings. Second, it found it harder to impose a decision on the government to take specific administrative measures than to quash a government decision which appeared to be unreasonable. Third, the court was not sure whether admitting all full-time HKJA members would do full justice to all online media journalists, who may or may not be HKJA members. It also considered practical considerations such as venue capacity and registration credentials.

Nevertheless, High Court judge Godfrey Lam criticised the government's attitude. "The lack of real progress since 2012, and at the latest since 2014, in reviewing and, if appropriate, adjusting and developing the relevant arrangements in tandem with changing circumstances seems to me prima facie unsatisfactory (though I have not of course at this stage considered the full evidence the intended respondents may file in response). The government's apparent stance of not making any changes on a case by case basis is also prima facie contrary to the Ombudsman's recommendation that the ISD, pending completion of its review, should be more flexible in dealing with requests and give access wherever possible," he said.

The judge granted leave for the HKJA to pursue a judicial review with the following comment: "It seems to me there is a reasonably arguable case for judicial review, at any rate for some of the relief sought. Important issues are raised concerning access of persons working for online media."

Moreover, the judge refused to allow the government to recover legal costs from the HKJA even though the association had failed in its bid for interim action. The reason for this unusual cost decision was that the HKJA had exhausted all avenues of redress and the government's inaction despite the Ombudsman's recommendations was the reason for the application.

The HKJA welcomed the court's decision to grant it leave to challenge the government's blanket ban on digital-only news outlets accessing its press events and facilities. It called on the new government under Carrie Lam to honour her pledge to lift the ban. Whether real and meaningful changes are implemented remains to be seen.

In a related development, two student editors launched a judicial review challenging the government ban on student journalists covering official events. They initiated the action after they were prevented from covering a Legislative Council by-election in February 2016. The judge in the case, Mr Justice Thomas Au, reserved judgment.

NEW ONLINE NEWS SERVICE LAUNCHED

Despite the government's unfavorable attitude and measures against digital-only media, new outlets continued to emerge. Citizen News was launched in January 2017 by 10 veteran journalists including many former chief editors and former news controllers. Some have been involved with the HKJA.

The company providing the service is Civic Journalists Limited, a company limited by guarantee with no majority or controlling shareholder. The founders of the company adopted this "democratic" structure to ensure the company will be run in accordance with public interest and professional journalistic principles and not be subject to infiltration or domination by any external force. This was apparently the first Hong Kong media organisation without a boss.

Citizen News announced that it would rely on public subscriptions as its main source of revenue. It estimates that if it secures 4,000 subscribers producing annual revenue of roughly HK\$5 million, the company will become self-sustaining. To help it along, the group launched a three-month crowdfunding exercise in late March to raise HK\$3 million.

Like other independent online news outlets that do not have a single funder, Citizen News operates on a small scale. It has about 10 full-time staff and dozens of volunteers and contributors.

INITIUM MEDIA FORCED TO DOWNSIZE

It is not all rosy for the new breed of online outlets. Initium Media announced in April 2017 that it would lay off a substantial number of staff after failing to find an investor to sustain its online news service. Initial reports citing internal sources suggested that staff numbers would be cut from 90 to around 20. A few days later, Initium Media confirmed that fewer than 50 people had been laid off, leaving more than 40 to maintain the service.

However, a further cut was made months later, leaving just 30 staff to provide the service.

Apart from trimming its workforce, Initium Media also changed its business model. It used to produce all content for online viewing free of charge and tried to use online traffic to generate advertising revenue. After the staff lay-off exercise, it shifted its strategy to rely more on public subscriptions by offering exclusive events to subscribers and using e-commerce to sell books and lifestyle products on its website, leveraging on its brand and goodwill.

CROWDFUNDING CONTINUES TO BE MAJOR STRATEGY

Apart from subscriptions, crowdfunding seems to be a major source of revenue for new media organisations. FactWire, an online news agency focusing on investigative journalism and delivering a number of exclusive reports, relied on crowdfunding. In the first round, it raised HK\$4.7 million from 3,300 people, which was enough to finance its first year of operations.

With the second year approaching, it announced a second crowdfunding campaign in September 2016, hoping to raise HK\$12.77 million, which is equivalent to 5,000 people each donating a newspaper subscription for one year. Whether such an ambitious target can be reached will be a litmus test for the usefulness of crowdfunding for new media start-ups.

Stand News, a relatively more established new media company with 16 staff, also sought public donations to sustain its operations, which cost about HK\$500,000 a month. Instead of using a crowdfunding platform such as Fringebackers, which was used by both FactWire and Citizen News, Stand News chose to ride on its own substantial readership base to raise funds.

When readers accessed the website through a smartphone, a full screen in-house advertisement urging viewers to make a monthly donation of HK\$300, HK\$500 or HK\$1,000 would appear on the screen for a few seconds. Donors would be invited to attend certain functions organised by Stand News and receive corporate information.

FREE PRESS NOT AT ALL FREE

When online media organisations appeal to the public for one-off donations or longer-term subscriptions, they have to showcase their strengths. Usually they highlight the most important news story or most influential commentary from the past year to convince the public of their uniqueness and value.

When one scans through these stories, it becomes apparent that online media organisations have produced a substantial number of high-quality commentaries and scoops, some of which have been picked up by traditional media. However, it is also apparent that most online media organisations are still struggling to find a sustainable business model to ensure their survival.

The fact that multiple online media organisations have chosen to appeal to the public for funding support in the year under review sends an important message to all who are concerned with the future of press freedom. The message, put simply, is that free press is not free.

Quality news, both reports and analysis, cannot be produced without cost. Someone has to pay for the product. In the past, the news media was mainly subsidised by income from advertisements. It is no longer viable for digital-only media in Hong Kong to rely on advertisements because the market is small and most of the online advertising revenue goes into the pockets of giants like Facebook and Google.

Some online media in the Western world can still rely on advertisements as the main source of revenue if they have a very large audience or effective audience analytics. Start-ups with a very high growth rate in the number of viewers may attract investment from venture capitalists. Others can rely only on subscriptions or appeals to the public.

Even *The New York Times* and *The Washington Post* are shifting towards a paid subscription model for their online news services. Hong Kong readers are gradually learning this hard reality—that they cannot take it for granted that they will receive reliable news content without paying. Like buying a newspaper or subscribing to a cable TV service, they may in the near future have to pay for high-quality online news from trusted sources.

SECTION 5

Winter time of media persists

The media environment has not improved in the year under review. In some respects it may in fact have deteriorated.

There have been at least two cases of media organisations facing harassment and two instances of journalists facing physical attacks—one case in Hong Kong and another in mainland China. Even though these figures are down on recent years, the nature of the cases is worrying. The harassment appears to have been well planned instead of being reactive in nature. This is the case with threats directed at the FactWire news agency and *Sing Pao Daily News*.

The Press Freedom Index commissioned by the HKJA and released in April 2017 showed little change in the perception of threats against journalists. When asked about the personal threat level against the press, with 0 being least common and 10 most common, journalists rated the severity at 4.7, which is 0.2 points lower than that in the previous year, while the public's perception remained unchanged at 4.6. The situation is slightly better than in 2013, when the scores for journalists and the public stood at 5.2 and 5 respectively.

Any attack on journalists is a threat to press freedom. This is compounded by the fact that very few perpetrators are brought to justice. The inability of the authorities to hold attackers to account can be taken as another kind of assault on media freedoms.

To add salt to the wound, economic adversity led to electronic media organisations dropping services and the closure of digital radio operations, prompting the government to bring a halt to Radio Television Hong Kong's digital services. This further chills the media landscape as well as employment opportunities for local media workers.

MEDIA ORGANISATIONS FACE INTIMIDATION

Threats against FactWire, an online news agency focusing on investigative reporting, were particularly troubling. On July 21, 2016, the news agency received a note warning about “trouble” over an exclusive report. The anonymous warning was linked to an investigative report published on July 5 which exposed the recall of faulty mainland Chinese-made train carriages from Singapore.

The case had a definite impact on the manufacturer, which is a listed company in Hong Kong. It was also linked to Hong Kong's rail operator, which was buying carriages from the same company.

Danger to the news agency became real when a man was seen loitering outside its office, counting the number of closed-circuit television cameras it had installed five days after the first threat was received. A suspicious mark was also found outside the office.

The crowdfunding agency said its operation was harmed by the intimidation. Its management therefore decided to strengthen security measures. However, the public did not become aware of the harassment until August 17 when FactWire announced another round of crowdfunding. It said the reason was that the additional security measures were straining its limited financial resources.

The HKJA called for a halt to the intimidation against FactWire and for the police to investigate the case thoroughly. The police did not report any progress in the case.

The Chinese-language newspaper *Sing Pao Daily News* was another outlet that faced harassment after it published a series of reports attacking Chief Executive Leung Chun-ying and Beijing's top decision maker on Hong Kong policy, Zhang Dejiang. Mainland Chinese media also accused the newspaper's owner, Gu Zhuoheng, of involvement in illegal financial activities with a Shenzhen-based finance platform.

Between February 19 and 26, 2017, the newspaper sought police assistance four times. On February 19, the newspaper's editorial staff spotted suspicious people following managers including chief editor Lau Mei-ye. They were seen loitering near the newspaper office in Kwun Tong and their homes. A picture of one staff member was posted near the employee's home.

The newspaper said that on February 24 it received a large number of nuisance phone calls and emails containing computer viruses directed at certain employees. On February 26, the home of a senior staff member was splashed with red paint.

The HKJA and the News Executives' Association (NEA) expressed concern over the personal safety of news workers and called for a proper police investigation. Past HKJA chairperson Sham Yee-lan described the intimidation as "white terror" which had to be stopped. NEA head May Chan said the obstruction of true and fair reporting should not be tolerated and it was the duty of society to uphold press freedom and the rule of law in Hong Kong.

REPORTERS BEATEN IN WUKAN AND HONG KONG

There were two documented cases of attacks on journalists in the period under review. This is down on the figure of at least seven for the period from July 2015 to June 2016 and more than 30 in the previous 12-month period, when journalists faced attacks during the pro-democracy Occupy protests.

In mid-September 2016, the Guangdong village of Wukan came under the spotlight as protests erupted over the detention of village leader Lin Zuluan, who had led a massive rally in 2011 and became the village head one year later.

On September 14, five Hong Kong journalists, including reporters from the *South China Morning Post*, *Ming Pao Daily News* and HK01, were beaten by dozens of unidentified men when they were conducting interviews with villagers. Even though the journalists revealed their identity and did not put up a struggle, they were slapped, punched and pushed to the ground and taken to a police station in a nearby town.

Guangdong police later claimed the attackers were from a "village security team" and that they had acted in a "civilised" manner—a claim denied by the journalists. All five reporters were eventually sent back to Hong Kong and others were forced to leave the village without completing their reporting assignments.

Four media organisations including the HKJA and two of the news outlets issued statements condemning the authorities' obstruction of Hong Kong journalists. The four organisations called on the Hong Kong government to follow up on the incident, safeguard the personal safety of Hong Kong journalists and take effective measures to protect journalists' reporting rights. Nothing further was heard from the government.

There was also at least one physical attack on a reporter in Hong Kong. One month after the Wukan incident, a group of pro-Beijing protesters attacked a reporter for the online Hong Kong Free Press while he was covering a demonstration outside the Legislative Council.

Even though the reporter, Stanley Leung, was wearing his press pass, some 20 to 30 protesters in the rally against Hong Kong independence grabbed his arms and took his camera away to delete the photos. The protesters, some speaking with Putonghua accents, returned the camera to Mr Leung as a police officer pulled him away from the crowd. But the reporter found the memory card had been taken. Mr Leung sustained minor injuries in the assault.

Hong Kong Free Press condemned the assault and called on the police to deal with the case properly.

Sadly, these incidents had a common and disturbing theme—that none of the perpetrators were apprehended. The response of police, either in Hong Kong or in mainland China, was tepid at best and apathetic at worst.

The repercussions of these attacks are far-reaching. What is at risk is not just journalists' personal safety but the well-being of the community at large. It is vital for the government and society at large to allow an environment in which journalists can objectively and independently carry out their duties without facing intimidation or threats.

SHRINKING MEDIA SPACE

While news organisations and journalists faced physical attacks and intimidation, the media was hit by closures and the death of digital radio broadcasting.

The biggest change, recorded in the HKJA's 2016 Annual Report, was the closure after 59 years of free-to-air broadcaster Asia Television (ATV) in April 2016.

There was more bad news to come. In January 2017, a subsidiary of dominant broadcaster Television Broadcasts (TVB), TVB Network Vision (TVBNV), notified the government and the Communications Authority of its decision to surrender its domestic pay TV licence. The service was first launched in 2004 but continued to bleed money despite numerous efforts to promote the service.

TVB attributed the decision to halt the service to rampant online piracy, the proliferation of internet-based "over-the-top" services and a downturn in Hong Kong's economy. It accused the government of doing little to address market issues, particularly online piracy and regulatory provisions which it said did not keep up with the times.

A bigger blow could have been the demise of another pay TV provider, i-Cable. In March 2017, i-Cable's parent company, Wharf (Holdings), announced that it would no longer inject fresh money into the operation after May, threatening the future of its 2,200 staff. The broadcaster, which started operations in 1993, has posted losses for the past nine years, including HK\$313 million in 2016.

Wharf (Holdings) had been trying to find a buyer for i-Cable for several years. In April 2017, i-Cable announced that a consortium called Forever Top would make an equity injection of HK\$709 million into the company. One of those involved is property tycoon David Chiu, who is the son of ATV founder Deacon Chiu. Forever Top had previously sought a free-to-air TV licence.

Others in the consortium are New World Development chairman Henry Cheng, who holds the largest stake, conglomerate Chow Tai Fook Enterprises, Guangzhou R&F Properties chairman Li Sze-lim and Hony Capital president Zhao Huan. The latter two firms are mainland Chinese enterprises.

Forever Top is expected to hold 54.2 percent of i-Cable's issued share capital upon completion of the deal in September 2017. Chiu said: "Forever Top will use i-Cable as the platform to drive its media business." It is expected to place greater emphasis on financial news.

In May 2017, minority shareholders voted to approve the rescue plan, which allowed i-Cable to continue broadcasting after its renewed licence came into effect on June 1. Despite the fact that i-Cable could successfully find a white knight to save the company, media analysts say it still needs to rebrand itself and become more competitive through an internet platform.

At the same time, i-Cable launched a free-to-air service called Fantastic TV, although some consumers complained that they could not receive the service. The station uses a fixed network operated by i-Cable to transmit its service. The broadcaster claims it covers more than two million households.

However, some analysts commented that Fantastic TV looked like the defunct ATV in its programming format, which raises questions about whether it can attract viewers.

DEATH OF DIGITAL BROADCASTING

Like digital television, digital audio broadcasting was another upcoming technology with the capacity to facilitate a convergence of media services, improve sound quality and increase the number of available radio channels. However, the private service providers all surrendered their licences. The remaining provider, public broadcaster Radio Television Hong Kong, will stop its service later this year.

In 2011, the government granted 12-year licences to Digital Broadcasting Corporation (DBC), Phoenix U Radio and Metro Broadcast. Phoenix U was the first to terminate its service in February 2015. DBC decided to shut down in August 2016. Two months later, Metro Broadcast also announced that it was dropping its digital channels.

Given that there was no longer any private sector involvement in digital radio broadcasting, the Executive Council decided in March 2017 to put a stop to the technology. The government found it would not be realistic to rely on RTHK to nurture it. The public broadcaster's digital services will therefore come to an end in late 2017.

The failure to properly implement digital audio broadcasting was largely due to the indecisive broadcasting policy initiated by the government. Unlike in some other countries, the government refused to make it mandatory for all analogue radio channels to migrate to a digital platform within a certain time frame. Instead, it allowed two different transmission systems to compete with each other without giving any policy support to the new technology. In the end, the relatively high cost of digital receivers dampened the incentive of people to change their listening habits, despite operators investing millions in the technology.

Generally speaking, the mass media environment has become increasingly challenging in the digital age. The traditional advertising-based business model is facing a crisis because of the availability of free internet content.

The government announced in June 2017 that it would review the regulatory environment for the broadcasting and telecommunications industries in the 2017-18 financial year. It said this would include cross-media ownership restrictions in the Broadcasting Ordinance. The government said the review was aimed at streamlining regulation to meet modern-day needs.

COURT RULING DEALS BLOW TO PRESS FREEDOM

The media environment suffered another blow in July 2016 when the High Court granted a permanent injunction to the University of Hong Kong to ban the disclosure of the content of council meetings held between June and October 2015 to discuss whether to appoint liberal scholar Johannes Chan to a senior managerial post.

The ruling by Mr Justice Godfrey Lam set a precedent for a public institution to use legal tactics to ban media reporting. The judge noted: “A right of confidence is inherently a fetter on free speech. Given ... the nature and quality of the information involved, I consider that a final injunction is proportionate and necessary in this case for the protection of the university’s right to confidentiality.”

But the court order does not cover content that is already in the public domain, including audio clips of council deliberations broadcast by Commercial Radio and information revealed by former University of Hong Kong student union leader Billy Fung.

The court earlier granted permission for the HKJA to join the litigation to defend both the right of the public to access information and press freedom. The lawyer representing the HKJA, Erik Shum, argued that any restriction on press freedom could be imposed only if there was an absolute necessity and the restriction had to be proportional to the purpose sought to be achieved.

In a statement, the HKJA expressed disappointment about the ruling. It maintained that it remained the duty of every journalist and media institution to publish confidential information in the public interest to expose injustice and corruption and expressed concern that other statutory bodies would follow the precedent, thereby further weakening the public’s right to know.

The university had originally sought an all-encompassing injunction to bar the media and anyone else from revealing details of meetings of its governing council past, present and future. It later agreed to limit the scope of the injunction.

The controversy arose after the university council rejected the appointment of Mr Chan as a pro-vice-chancellor in September 2015 in the wake of a series of attacks by pro-Beijing newspaper *Wen Wei Po* against the scholar.

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 (2017-18)

Chris Yeung, chairperson; Sham Yee-lan, vice-chairperson; Chan Kin-kai, Gary Chau, Cheng King-hung, Cathy Chu, Ben Kwok, Lam Yin-pong, Ng Ka-yee, Hilda Poon, Eva Tsang, Shirley Yam

Hong Kong Journalists Association

Flat A, 15/FI

Henfa Commercial Building

348-350 Lockhart Road

Wanchai

Hong Kong

tel

+852 2591 0692

e-mail hkja@hkja.org.hk

fax

+852 2572 7329

www.hkja.org.hk