



A CHANGE OF WIND

New challenges to freedom of expression in Hong Kong

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Contents

Introduction and recommendations

.....2

Section 1

| | |
|--|----|
| A CHANGE OF GUARD | 4 |
| Growing disillusionment with Tung Chee-Hwa | 4 |
| A dressing down in Macau | 5 |
| Controversy over another interpretation..... | 6 |
| A predictable election campaign | 7 |
| A challenge from China: Hong Kong journalist arrested..... | 8 |
| RTHK comes under government pressure | 10 |

Section 2

| | |
|--|----|
| FRESH THREATS TO THE MEDIA | 12 |
| Controversy over search and seizure powers | 12 |
| Police limit access to crime information..... | 13 |
| Renewed push for freedom of information legislation..... | 15 |
| Judiciary opens up court hearings..... | 15 |
| A win, too, for Falun Gong protesters | 16 |
| Mixed results on public order appeal..... | 17 |
| Government set to report on rights record..... | 17 |

Section 3

| | |
|---|----|
| OTHER MEDIA DEVELOPMENTS..... | 19 |
| Law reform commission backs press council | 19 |
| Self-censorship remains an issue | 21 |
| Commercial Radio talk-show host quits | 21 |
| More trouble at Galaxy..... | 23 |

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Introduction and recommendations

Since the handover of sovereignty to China in July 1997, freedom of expression in Hong Kong has come under pressures of various kinds. Among these have been: the abortive move to enact draconian national security legislation; warnings to the media by mainland officials and their supporters in Hong Kong to get in step with Beijing's policies on the special administrative region (SAR); attempts to rein in the government-owned public broadcaster, Radio Television Hong Kong (RTHK); and threats against demonstrators and the spiritual group, the Falun Gong.

This has been the legacy of Hong Kong's first chief executive, Tung Chee-hwa, who stepped down in March 2005 after almost eight years in the top job. Indeed, the Hong Kong Journalists Association (HKJA) and ARTICLE 19 have long been arguing that the bulwark for the protection of freedom of expression—the “one-country, two-systems” concept, itself inherently fragile—has been eroded gradually but inexorably since the handover, permitting China an ever more influential say over Hong Kong affairs, and not always to the SAR's benefit.

Evidence of this in the year under review includes the controversial interpretation of the Basic Law by the Standing Committee of China's National People's Congress, which allows Mr Tung's successor to serve as chief executive for only two years—despite the Basic Law stating clearly that this term should be five years.

Will Mr Tsang prove a better advocate?

The new chief executive is Donald Tsang Yam-kuen, the chief secretary for administration (head of the civil service) who was thought to stand little chance of reaching the pinnacle of power in Hong Kong given his many years of loyal service to the pre-handover colonial power. However, the Chinese leadership clearly decided it wanted a new chief executive who could restore the confidence in government so readily thrown away by Tung Chee-hwa.

So with Donald Tsang in charge, will freedom of expression be better protected, or will it face fresh threats? The answer remains uncertain. Mr Tsang has so far given mixed signals. He says he will not attempt to revive the enactment of national security legislation during his two-year term; at the same time, he says elements of the proposed 2003 legislation are too loose for his liking, suggesting his broader concurrence with the law. He has also pledged not to rein in RTHK, yet has called on the broadcaster to drop horse-racing and entertainment programmes, and implied that RTHK should do more to sell the government's policies.

Then there is the arrest and detention of Hong Kong journalist Ching Cheong, and Mr Tsang's initial hands-off approach to the issue. Mr Ching's detention is highly sensitive, and goes to the very heart of China's concerns—national security and state secrets. As such, the case will be a bellwether of how Mr Tsang will handle an increasingly assertive government in Beijing. The new chief executive may choose to follow Beijing's line, or he may opt to fight for Hong Kong's best interests.

However, we note that Mr Tsang does not come to the job without political baggage. He was an important member of Tung Chee-hwa's team, even though at times he was sidelined. Worryingly, he did not speak out about national security legislation. The signs are indeed that he may shy away from anything that might anger the central government.

Nevertheless, the HKJA and ARTICLE 19 share a sense that there could be a fresh start, and a hope that a change of chief executive will bring new opportunities. We hope that Mr Tsang can play a far more active role than his predecessor in upholding and protecting freedom of expression, including media rights. In this regard, we call on the new chief executive to take the following action:

1. Strongly encourage the central government to state unequivocally and publicly that it does not—and will not—tolerate actions or words by any mainland official or agency that impinge upon or threaten freedom of expression in Hong Kong.

2. Urge the central government to scrap all regulations that impose restrictions on Hong Kong-based journalists working on the mainland, including those that deny access for journalists working for publications which are considered to be unfriendly.
3. Urge the central government to release detained journalist Ching Cheong forthwith if there are no legitimate grounds under internationally accepted norms to detain him, and otherwise to deal with the case in an open and fair manner which is consistent with the rule of law. Ensure that Mr Ching's civil rights are upheld and allow him to meet with his family, lawyers and Hong Kong government representatives.
4. Refrain from taking any action that may threaten freedom of expression in Hong Kong. This is best achieved by promoting a society that is tolerant of differences of opinion—even if such opinions are not widely held or are anathema to the central government.
5. Refrain from further work on legislation implementing Article 23 of the Basic Law—or at the very least, include sufficient safeguards within the law to ensure that freedom of expression is not harmed in any way by national security legislation. The latter safeguards are best achieved by including in the legislation the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as well as proper public interest and prior publication provisions in the existing Official Secrets Ordinance. The exercise, if it goes ahead, should be aimed at liberalising existing draconian laws.
6. Ensure that Radio Television Hong Kong (RTHK) can continue to enjoy editorial independence through the enactment of legislation guaranteeing the station's autonomy and editorial independence in clear and unambiguous terms.
7. Implement a policy of maximum transparency, through the enactment of freedom of information legislation to guarantee access to government information and documents, and the opening up of statutory bodies to public scrutiny. Freedom of information legislation should be based on the principles of maximum disclosure, limited and narrowly drawn exemptions, and an effective appeal mechanism.
8. Implement a non-discriminatory policy towards the media by ensuring that every media organisation is treated on an equal basis—irrespective of what views the media organisation may hold. The government should hold regular news conferences, instead of relying on invitation-only media briefings handed out to selected 'friends' of the government.
9. Scrap restrictive media practices, including the use of press passes to enter the Central Government Offices and the designation of reporting areas which are often far from an event of public interest. As a symbolic gesture of openness, the government should tear down the railings set up around the Central Government Offices.
10. Review existing legislation to ensure that it is fully compatible with the right to freedom of expression. This should cover in particular the law dealing with the seizure of journalistic material, to ensure that adequate protection is given to journalistic material held in confidence and to tighten the circumstances in which the law enforcement authorities may seize journalistic material.

SECTION 1

A change of guard

On March 10th 2005, Hong Kong's chief executive, Tung Chee-hwa, announced that he was resigning from the SAR's top post. Two days later, Chief Secretary for Administration Donald Tsang announced he would become acting chief executive. He also noted that an election for the next chief executive would be held on July 10th—although the winner would serve only two years, instead of the five set down in the SAR's constitution, the Basic Law. Mr Tsang later put his name forward as a candidate, and was returned unopposed in mid-June. In the section we look in detail at this change of guard because of the bearing the wider political, legal and judicial environment will have on the health of freedom of expression and press freedom.

The news that Mr Tung was resigning had been anticipated—it had been telegraphed on March 1st, when most newspapers reported that Mr Tung would resign. This followed an earlier report that Mr Tung would become a member of China's top advisory body—the Chinese People's Political Consultative Conference (CPPCC). He became a CPPCC vice-chairman on March 12th, in what clearly was an honorific handshake following his resignation.

The newspaper reports that Mr Tung was stepping down—almost three years after he was elected unopposed to a second five-year term as chief executive—caught many politicians and observers by surprise. The Chinese government clearly wanted a change. Analysts say this may well have been a consequence of a change in leadership in Beijing. The new leaders had almost certainly—though this was never stated explicitly—tired of Mr Tung's lacklustre governance, and wanted someone who was more aggressive in political style. Donald Tsang clearly filled the bill, despite his long career in the colonial system (which was recognised with a knighting in the run-up to the 1997 handover).

Mr Tsang, the hard-liner...

It remains to be seen how Mr Tsang will handle his new duties. Some analysts expect Mr Tsang will take a hard line—reasserting government authority at the expense of the vital bulwarks of a free society in Hong Kong. These analysts suggest that Mr Tsang, in a bid to ensure executive supremacy, will ride roughshod over freedom of expression, possibly by putting forward tougher anti-subversion legislation and reasserting control over the government-owned broadcaster RTHK.

...or the soft?

Other analysts suggest the opposite—that Mr Tsang will do very little during his two-year term, so as to ensure a “harmonious society” (the latest buzzwords from Beijing). They suggest, too, that he will not want to ruin his reputation as a promoter of liberal values in Hong Kong. Indeed, shortly after he became acting chief executive, he trumpeted the importance of a free flow of information in a speech he gave at the University of Hong Kong. He cited this as one of the four pillars of Hong Kong's success, noting: “These are values that we simply will not compromise. To do so would signal the beginning of the end for Hong Kong.”

GROWING DISILLUSIONMENT WITH TUNG CHEE-HWA

The path to Mr Tung's downfall probably began on July 1st 2003, when half a million people took to the streets to protest against the government's proposed national security legislation. One year later, on the same day in 2004, another massive march took place, this time protesting against China's decision to block moves to introduce full democracy in 2007 and 2008. This followed a

controversial April 2004 interpretation by the Standing Committee of the National People's Congress of provisions in the Basic Law on political reform.

A common theme in both marches was public disillusionment with how Mr Tung was governing Hong Kong. He was considered to be clumsy politically—and simply not tough enough in handling relations with Beijing. His popularity ratings also suffered as a result of his perceived response to several adverse events during his tenure—including health scares and a debilitating double recession. It was ironic, though, that Mr Tung was forced to resign as the economy was rebounding strongly.

On free expression, which is guaranteed in the Basic Law, Mr Tung's commitment was always half-hearted. He reportedly confided to a pro-Beijing politician and magazine publisher, Xu Simin, that he would slowly bring RTHK under control. He also spoke more about journalistic responsibilities than freedoms and rights. And it was during his stewardship that the government brought forward new national security legislation, which posed severe threats to media freedoms through its provisions on treason, sedition, secession, subversion and theft of state secrets.

Public pressure forced the government in September 2003 to shelve the National Security (Legislative Provisions) Bill. A working group in the Security Bureau would instead continue to study national security issues, officials said, although there was no new timetable given for enacting the law. Media reports raised the possibility that the government might move again in late 2004. Major political parties said they would support such a move only if the government first published a white bill—which was absent from the first consultation exercise. The Legislative Council's legal representative, Margaret Ng, said she would publish her own white paper based on the consensus reached by the Article 45 Concern Group, a group of four liberal-minded legislators, including Ms Ng.

No national security law, "for the time being"

With battle lines drawn again, Mr Tung announced in September 2004 that a new national security bill would not be put forward "for the time being". He told journalists that he had to first ensure economic recovery and map out arrangements for the 2007 chief executive election and the 2008 Legislative Council poll. "We will consider the matter only after the community has reached a basic consensus on this question and after we have satisfactorily dealt with economic recovery, economic restructuring and constitutional arrangements," Mr Tung noted. "We will not consider the question now." Officials close to the issue said they did not expect any move during the remainder of Mr Tung's term—which would have lasted until the end of June 2007, if Mr Tung had not stepped down.

A DRESSING DOWN IN MACAU

On December 20th 2004, celebrating the fifth anniversary of its return to Chinese rule, something unusual happened in Macau. Tung Chee-hwa was in the former Portuguese enclave to join in the celebrations, presided over by China's president, Hu Jintao. Mr Tung met Mr Hu to report on his work in governing Hong Kong—a reporting process that normally takes place in Beijing.

In a closed-door meeting, Mr Hu spoke at length to Mr Tung and his ministers. Video footage of Mr Hu's speech was quickly released to the media. It showed the president telling his glum-faced guests from Hong Kong to reflect on their inadequacies and improve their governance. They were also urged to strengthen unity in Hong Kong, which had witnessed splits not only between the pro-government and the pro-democracy camps, but also within the pro-government camp, as some ministers and executive councillors positioned

themselves for a possible bid to become the next chief executive in the year 2007.

Heated debate ensued over whether Mr Hu was in fact giving encouragement to Mr Tung, or whether he was dissatisfied with the chief executive's performance, and giving Mr Tung a public scolding. Many analysts considered the latter to be the case, even though Mr Tung—on his return to Hong Kong—held an impromptu press conference to deny he was given a dressing down or that Hong Kong was facing a crisis of governance.

However, three new issues were buffeting Hong Kong and further weakening the credibility of the government. First, the government proposed that a single developer should build a new cultural district on reclaimed land in West Kowloon. This prompted resentment from some companies which felt it would be better to adopt a multi-developer approach. Second, the government initiated an initial public offer involving car parks and shops in public housing estates. This was later derailed after an elderly public housing tenant mounted a legal challenge. Third, a developer announced that it planned to demolish a never-occupied middle-class housing estate built in a prime location with government assistance. The developer dropped the demolition plan under intense public pressure.

One major theme ran through these issues. The chief executive—himself a former shipping magnate—was favouring big business. In his policy address to the Legislative Council in January 2005 he denied favouritism charges. At the same time, he admitted that there had been shortcomings in his governance, saying that his administration's ability to govern had been undermined by its failure to respond adequately to political and economic changes. He also pledged to improve governance by taking what he called a more people-based approach—something he had clearly failed to achieve since 1997.

CONTROVERSY OVER ANOTHER INTERPRETATION

Within two months of his policy address, Mr Tung was gone. The Chinese leadership had clearly decided that it was time for a new face. Indeed, it is probably not coincidental that new faces were now in charge of China. Former president Jiang Zemin had appointed Mr Tung in 1997 and, for his second term, in 2002. With Mr Jiang stepping down in 2003, Hu Jintao had taken over the reins of power, including in 2004 Mr Jiang's last and most important official post—chairman of the state's Central Military Commission.

Now was the time for the former colonial financial secretary, Donald Tsang, to move to centre stage. Many analysts had thought that Mr Tsang stood little chance of taking on the top job, given his colonial baggage. He was also not trusted by many in the pro-Beijing camp in Hong Kong, who considered him to be too arrogant. But these concerns were brushed aside, as the Chinese leadership signalled it was time for a significant change. Analysts suggested that Beijing had tired of having a business leader as Hong Kong's chief executive, and it was time to resort to an old colonial tradition—reliance on an administrative officer, who had risen through the ranks of the civil service.

Beijing does not yet fully trust Mr Tsang

However, the Chinese leadership did not trust Mr Tsang enough to give him a full five-year term as the next chief executive. Instead, they said he should serve only the remainder of Mr Tung's term—that is two years. This prompted a new firestorm in Hong Kong, as the government sought a new interpretation of the Basic Law on the length of the new leader's term—the third interpretation since the handover.

The decision was embarrassing for the Hong Kong government. Earlier, in May 2004, the secretary for constitutional affairs, Stephen Lam, had given an unambiguous statement about the length of the chief executive's term. He told

legislators: “The term of office of the chief executive, as prescribed in the Basic Law, is five years. This provision applies to any chief executive. There is no exception.”

However, on March 12th the justice secretary, Elsie Leung, said the government had been wrong. She said officials had consulted mainland legal experts and had subsequently “adjusted their understanding” of provisions in the Basic Law on the term of the next chief executive, which should be the remainder of the term of the outgoing leader.

Pro-democracy legislators and the two main bodies representing the legal profession—the Bar Association and the Law Society—expressed dismay over the decision. The Bar Association noted that the government, by seeking the views of mainland legal experts, had for the first time acknowledged a preference for the mainland interpretative approach to the Basic Law. It also questioned whether the administration would take the same approach on the meaning of fundamental rights enshrined in the constitution, an approach which could threaten the very existence of such rights, including freedom of expression. The government later denied that it would follow such a course of action.

An independent pro-democracy legislator, Albert Chan, announced that he would challenge the two-year ruling in the courts. The government then said it would seek an interpretation from the Standing Committee of the National People’s Congress on the term of the next chief executive. This was another abrupt change of stance on the part of the government. Officials had earlier said on several occasions that they had no plans to seek such an interpretation.

In late April 2004, the matter went to the standing committee, which ruled—predictably and in a statement short of legal argument—that the next chief executive should serve only until 2007. However, it did not consider the wider issue of whether the winner of the July 2005 election could serve one or two terms after 2007. It also made it clear that the ruling applied only to the period before 2007 and that what happened afterwards would depend on the outcome of the review of political arrangements for 2007 and 2008.

The reaction to the interpretation was muted—possibly because people had become complacent about such moves. Pro-government parties backed the announcement, while opposition politicians criticised it. The chairman of the Democratic Party, Lee Wing-tat, called the move deeply regrettable and expressed fears that there would be more interpretations. However, the action had its effect—independent legislator Albert Chan withdrew his plan to challenge a two-year term. This paved the way for the passage of amendments to the ordinance governing the election of the chief executive and for the poll itself to take place.

However, the interpretation raises serious questions about the rule of law in Hong Kong and the power of the judiciary to challenge government decisions. The Article 45 Concern Group said: “We share the profound disappointment of those who had hoped that the Hong Kong judicial process would be left to follow its natural course without being effectively pre-empted by an interpretation.”

A PREDICTABLE ELECTION CAMPAIGN

A weak platform for rights and freedoms

Donald Tsang formally launched his election campaign in June 2005—after Beijing had accepted his resignation from the government. Mr Tsang hit the “campaign trail” with a pledge to strengthen the government. He promised to revamp the Executive Council, rejuvenate an advisory commission on strategic development, and bring in new blood to the political system. His political platform also focussed on cultivating a good relationship with Beijing and

increasing patriotism among young people. A short section towards the end of his platform highlighted the need to safeguard the rule of law and the independence of the judiciary and to protect human rights and other fundamental rights—but no specific mention of freedom of expression.

The candidate later commented on one of the most threatening issues to freedom of expression—national security legislation. Mr Tsang said: “I don’t think (the community) has recovered from the turbulence created in the last exercise... I have absolutely no intention of reviving the Article 23 legislation during the remaining two years (of the chief executive’s term, ending in 2007).” However, he also indicated that he thought the wording of the draft anti-subversion law that was shelved in 2003 was too loose. He said: “I also believe that there were imperfections, particularly with reference to enforcement, which could be improved.”

Mr Tsang’s approach towards national security legislation is likely to indicate the extent to which Beijing has become more involved in Hong Kong affairs. In Mr Tung’s first term, the central government took a relatively hands-off approach towards Hong Kong. Following the July 1st 2003 march, Beijing took a much closer interest in how Hong Kong was being run. This approach is likely to continue, which might mean that Beijing will impose its views on issues that are integral to its interests, including anti-subversion laws. Mr Tsang, in stating that there were imperfections in the earlier draft, appears to be reflecting this new reality.

Mr Tsang gathered a total of 674 nominations, ensuring his victory without a fight.

A CHALLENGE FROM CHINA: HONG KONG JOURNALIST ARRESTED

One serious issue that arose during Mr Tsang’s election campaign was the arrest in China of Hong Kong journalist Ching Cheong. The chief China correspondent for Singapore’s *Straits Times* was detained in Guangzhou in April 2005. He was later moved to Beijing, where he remains under house arrest.

Mr Ching, interestingly, is a long-time supporter of Beijing—going back to his student days in Hong Kong in the 1970s. He worked for the pro-Beijing newspaper *Wen Wei Po* for 15 years before resigning with many of his colleagues in the wake of the 1989 suppression of the pro-democracy movement in China. The newspaper mourned the deaths of students and other protesters, prompting the mainland authorities to regain control of the newspaper. Mr Ching later helped set up an independent China-watching magazine, *Contemporary*, which closed down in February 1995. He then joined the *Straits Times*.

The journalist’s detention was not publicised until late May as Mr Ching’s wife, Mary Lau, and his supporters unsuccessfully sought his release through mainland contacts. Ms Lau said she thought the arrest was related to Mr Ching’s attempt to obtain a manuscript of secret interviews with deposed Chinese leader Zhao Ziyang, who died in January 2005.

But one day later, a Chinese foreign ministry spokesman denied that the case was linked to Mr Zhao. The spokesman, Kong Quan, said: “Ching has confessed that he has been collecting intelligence in recent years following instructions of an overseas intelligence agency. He has received a large amount of spying fees.” Ms Lau denied this allegation.

**Mr Ching was not
the only arrest**

The case was further muddied following reports that two researchers from the Chinese Academy of Social Sciences, Lu Jianhua and Chen Hui, had been arrested—also in April—for allegedly leaking state secrets. Ms Lau expressed the view in an open letter to Chinese president Hu Jintao that the arrests could

be related to an exercise by Mr Lu to compile a report for the Chinese government on the situation in Hong Kong following the 2003 and 2004 July 1st mass rallies. She said Mr Ching was involved in setting up meetings for Mr Lu with Hong Kong politicians and academics to discuss Hong Kong affairs.

The HKJA and other prominent media organisations, including the International Federation of Journalists, called for Mr Ching's immediate release and for the case to be handled in a fair, open and legal manner. The HKJA also petitioned the Hong Kong government and Beijing's liaison office in Hong Kong, as well as organising a number of signature campaigns. One, for serving and former Hong Kong journalists, included 770 names. Another petition—organised with the international group, Reporters Without Borders—garnered 10,500 signatures both in Hong Kong and overseas. A third co-ordinated with the International Freedom of Expression Exchange (IFEX) received support from organisations representing half a million journalistic workers.

Legislative councillors also expressed concern over the case, passing a motion calling on the Hong Kong government to deal with the issue as soon as possible. The former chief secretary for administration in the SAR government, Anson Chan, took a similar line. She called on the administration to do more to help Mr Ching, by allowing him access to his wife, relatives and lawyers.

Donald Tsang, however, came under fire for not doing enough—after he turned down a request for a meeting with Mr Ching's wife when he was acting chief executive. He maintained that he had acted immediately, by passing on the case to the government's security bureau, which handles such cases. However, Mr Tsang also insisted that the government had to respect the “one-country, two-systems” principle and could not interfere in the mainland legal system.

The HKJA rejected this assertion, arguing that the government should ensure the proper implementation of the existing notification system—whereby the Chinese authorities notify the Hong Kong government when a Hong Kong resident has been detained or arrested on the mainland. This is vital to ensure proper protection for the rights of Hong Kong residents.

**Mr Tsang was slow
to respond**

Belatedly, and under pressure from organisations such as the HKJA, Mr Tsang did raise Mr Ching's case directly with a senior mainland official—the director of the State Council's Hong Kong and Macau Affairs Office, Liao Hui. The meeting took place shortly before Mr Tsang was sworn in as chief executive in Beijing in June 2005. He quoted Mr Liao as saying he would handle the case in accordance with the law as soon as possible. The chief executive later told legislators that the “truth will come out very soon”. At press time, in mid-July, no news had come out.

The case comes as China analysts note a hardening of the country's attitude towards dissent—dashing hopes for liberalisation under the new leadership of Hu Jintao and Wen Jiabao. Indeed, as news was emerging about the arrest of Mr Ching, China was confirming that a researcher who had worked for the Beijing bureau of the New York Times had been handed over to prosecutors on a fraud charge. Mr Zhao had been accused of providing state secrets to foreigners. It is unclear whether he will be charged on this latter count.

The case also reminded Hong Kong journalists of the arrest of former *Ming Pao Daily News* reporter, Xi Yang, who was accused of disclosing state financial and economic secrets. He was jailed for 12 years in March 1994—and was released three years later. At the time of his arrest, journalists took to the streets to express their anger. That has not happened in Mr Ching's case.

Mr Ching's arrest highlights a major problem—the vagueness of China's national security provisions (as contained in the country's criminal code). This is particularly true for provisions on state secrets. Their vagueness means that

journalists may easily—and unwittingly—enter a minefield if they research any issue which is in any way sensitive to the Chinese leadership.

The law has an inevitable chilling effect on journalists, be they from mainland China or from Hong Kong. Journalists know that they could face harsh retribution if they stray over the ill-defined line governing state secrets. Most are therefore likely to shy away from sensitive areas such as power struggles within the Communist Party, and dissident and secessionist activities. Mr Ching's arrest, reminding journalists of the perils of the law, in turn could affect Hong Kong's role as an information centre—and in particular as a centre for news relating to developments in China.

RTHK COMES UNDER GOVERNMENT PRESSURE

Another freedom of expression issue that arose during Donald Tsang's election campaign was the role of the government-owned public broadcaster, Radio Television Hong Kong (RTHK). The station has for many years come under pressure from pro-Beijing politicians, who want the station to better reflect the views of the government or rather simply become a propaganda mouthpiece. The station has resisted such calls, arguing that as a public broadcaster, it should serve the public as a whole, and not just the government.

Horse-racing for the RTHK masses...?

In July 2005, the government minister responsible for RTHK, Secretary for Commerce, Industry and Technology John Tsang, announced that the station would drop its live horse-racing programmes from the 2005-06 racing season. While the decision may on the surface appear non-controversial, critics linked the move with comments made by top government officials calling on RTHK to rethink its programme contents and to stop competing with commercial broadcasters.

First off the mark was Donald Tsang, who gave mixed signals in June 2005 about what he expected from the government broadcaster. He told senior newspaper editors: "We need the assistance of RTHK in explaining our policies effectively to the public." However, at the same time, he said he had no plans to rein in the broadcaster. Mr Tsang dismissed reports in some newspapers that he would do Beijing's dirty work in several areas, including bringing RTHK under control. He said: "These are weird ideas and conspiracy theories. (People) have gone overboard."

...Donald says whoa!

However, he also expressed a personal dislike for certain RTHK programmes. He echoed the views of others, including maverick pro-democracy legislator and close friend Albert Cheng, in saying: "My belief is clear. I don't like their live broadcast of horse-racing meetings. As a public broadcaster, it should not go into [the] entertainment business." Similar views were put forward by Chief Secretary for Administration Rafael Hui and the commerce secretary, John Tsang.

In response, RTHK's director of broadcasting, Chu Pui-hing, said there had been discussions about whether to continue horse-racing programmes, and a decision would be made after the 2004/05 season closed in June 2005. But he said entertainment programmes—principally the station's Top Ten Chinese Gold Songs Award—should not be dropped, as it had a 27-year history and raised money for charity.

However, it was not Mr Chu who made the announcement that horse-racing programmes would be scrapped. It was the policy secretary, John Tsang, who noted that his bureau and RTHK had reached a consensus on the scrapping of live horse-racing broadcasts in April or May 2005—well before Donald Tsang made any comments about the station.

The announcement prompted an angry reaction from RTHK staff. The chairman of the RTHK Programme Staff Union, Janet Mak, said the decision

had compromised the broadcaster's editorial independence. Analysts also expressed concern that it was John Tsang who made the announcement about a programme change, and not Chu Pui-hing, who is responsible for programming at the station.

The issue was discussed by legislative councillors, who expressed concern that this might be the first move in a government campaign to stifle RTHK's editorial independence. One pro-democracy legislator, Kwok Ka-ki, voiced fears that the government was slowly killing the station. He said: "It's like cooking frogs in warm water."

*Independence intact,
RTHK claims...*

However, the government denied that it was interfering in RTHK's editorial independence, or had any plans to scrap news and current affairs programmes. RTHK's director, Mr Chu, also denied that the move was linked to criticism by senior officials. He said the decision was made by RTHK in light of budget constraints and the proliferation of racing information through other channels.

However, a senior Chinese official based in Hong Kong, Li Gang, insisted that the government should have a say in programme content. He said: "The government absolutely holds the authority to adjust and negotiate the content of programmes at RTHK, a radio station under the SAR government."

*...but pressures are
growing*

This was the culmination of several months of pressure on RTHK. In April 2005, the station's operations were discussed by the Legislative Council's information technology and broadcasting panel. A paper given to legislators noted that some members were keen "to ensure that RTHK should uphold its editorial independence and continue to provide a platform for free and unfettered expression of views". However, others "expressed concern that some of RTHK's current affairs and personal view programmes are too critical of government policies and lack a balanced perspective."

One panel member, Albert Cheng, questioned whether the government was trying to "dry up" RTHK, by cutting its funding and refusing to give it new facilities. The station's annual budget has declined from HK\$506.2m in the 2001-02 financial year, to HK\$428.5m in 2005-06. However, a deputy secretary for commerce, industry and technology, Marion Lai, said every department under her bureau had to share the same cuts, as part of the government's effort to balance the budget. Analysts noted though that RTHK's cuts—totalling 20% over five years—were deeper than those imposed on many other government departments.

The government has also downgraded RTHK's request to move to a new site. It currently occupies three sites on Broadcast Drive, which is fast becoming a luxury residential area. One of Hong Kong's terrestrial broadcasters, ATV, is currently selling its Broadcast Drive site to the territory's largest property developer, Cheung Kong. RTHK is proposing to move to an industrial site in Tseung Kwan O, arguing that the cost—estimated to be at least HK\$1.1bn—would be easily recouped through the sale of the three sites—especially at a time when the property market is rebounding.

While some of these issues fall outside the ambit of freedom of expression, the HKJA nevertheless maintains that the government must do more to guarantee the station's editorial independence. Among other things, it should enact legislation guaranteeing RTHK's autonomy and editorial independence in clear and unambiguous terms. It should also refrain from taking any action that might be perceived as threatening to the station's existing status as an independent public broadcaster.

SECTION 2

Fresh threats to the media

All eyes in the first half of 2005 have been focussed on the change of leadership in Hong Kong and what that means for freedom of expression. However, there were a number of disturbing developments with freedom of expression implications in the second half of 2004. These included raids against seven newspapers by investigators from the Independent Commission Against Corruption (ICAC), and the introduction of a new digital communication system which limits media access to crime stories.

On the law reform front, the Legislative Council endorsed changes to the United Nations (Anti-Terrorism Measures) Ordinance—despite opposition from the HKJA. The new measures authorise officials to freeze the assets of terrorists. They also give the police sweeping powers of investigation—opening the door to the possible prosecution of journalists for refusing to reveal sources of information—contrary to broadly accepted ethical codes for journalists.

At the same time, there were some positive developments, including a Court of Final Appeal ruling that quashed the conviction of a group of adherents of the spiritual movement, the Falun Gong, and a decision by the judiciary to open up some closed hearings to the public and journalists. Fears that a Chinese anti-secession law might be applied to Hong Kong—as a substitute for the failed national security legislation—also turned out to be groundless. The new legislation did become law in March 2005—but it will not apply to Hong Kong or Macau.

CONTROVERSY OVER SEARCH AND SEIZURE POWERS**ICAC action causes
media fury**

In July 2004, ICAC officers executed 14 search warrants against seven newspapers and the offices or homes of several journalists. The newspapers included *Sing Tao Daily*, *Apple Daily*, *Oriental Daily News*, *The Sun*, *South China Morning Post*, *Hong Kong Economic Journal* and the pro-Beijing *Ta Kung Pao*. The move prompted a storm of fury from media organisations, including the HKJA and the International Federation of Journalists.

The case related to an earlier fraud case against a listed company, Semtech International Holdings. The ICAC mounted the raids against the seven newspapers following the publication of the name of a woman involved in the Semtech case who was being held under the ICAC's witness protection programme. The woman was allegedly helping the agency's case. It is an offence to disclose the name of a person who is under such a programme.

No journalists were detained following the raids—although six others, including two lawyers, were arrested. Four of them, including the lawyers, were subsequently charged with perjury, conspiracy to pervert the course of public justice, conspiracy to disclose and actually disclosing information about a participant in a witness protection programme. The case has yet to go to full trial.

The raids against the seven newspapers were made under provisions governing the search and seizure of journalistic material in the Interpretation and General Clauses Ordinance. This law was passed in 1995 to make it harder for the law enforcement authorities to make raids against newspapers. The HKJA felt that it did not give adequate protection to the media.

One of the affected newspapers, *Sing Tao Daily* decided to take the ICAC to court over the raids. In August 2004, Court of First Instance judge Mr Justice Hartmann ruled that the ICAC was wrong—in fact and in law—in seeking the search warrants. He ordered that the warrants issued against *Sing Tao Daily* and

one of its reporters be set aside. He said that the ICAC should not have automatically resorted to a “draconian” law when “it could equally have achieved its legitimate aim by less intrusive measures”.

Mr Justice Hartmann also set down several conditions for consideration by the law enforcement authorities before resorting to search warrants. He said that search and seizure of journalistic material was permissible only if, for example, other methods had been tried and failed; it was in the public interest; a production order had not been complied with; and the authorities were unlikely to succeed due to a “real risk” they might “seriously prejudice” the investigation.

The ICAC took the case to the Court of Appeal, which in October 2004 dismissed the appeal on technical grounds—it did not have the jurisdiction to set aside Mr Justice Hartmann’s ruling because the case was criminal rather than civil. However, the three judges said that if they did have the powers, they would have set aside the Court of First Instance ruling. The chief judge, Mr Justice Ma, said: “I am satisfied that the ICAC acted entirely lawfully in seeking the search warrants in this case. They did no more and no less than they were entitled by law to do.”

The Court of Appeal ruling left considerable confusion. The Legislative Council’s legal representative, Margaret Ng, said: “The only solution is for the ICAC to go to the Court of Final Appeal and get it cleared up.” The ICAC declined to take the matter any further—prompting concern among journalists that the real winner of the case was the anti-graft body.

More safeguards for journalistic material, HKJA argues

The matter was followed up in a Legislative Council sub-committee. The HKJA gave its views to Legco, arguing that the search and seizure provisions in the Interpretation and General Clauses Ordinance should give greater protection to journalistic material. In particular, it called for adequate protection for journalistic material held in confidence, and that search and seizure should be permissible only in the most exceptional of circumstances. The HKJA also called for open hearings for applications for search warrants and that such documents should be issued only where “the public interest in obtaining the journalistic material clearly overrides the public interest in protecting press freedom and that the circumstances are of a sufficiently vital and serious nature.”

However, the government is sticking to its position that there is no need to change the law. A principal assistant secretary for security, Winnie Ng, told a Legislative Council sub-committee meeting in May 2005 that existing laws had “struck a prudent, careful and reasonable balance between protecting public interest and protecting press freedoms.” The HKJA disagrees, and will continue pressing for changes to the relevant provisions.

POLICE LIMIT ACCESS TO CRIME INFORMATION

In December 2004, the police introduced a new digital communications system to replace an analogue equivalent. It was first introduced in the New Territories, then expanded to Hong Kong Island in May 2005. It will be fully implemented—including in the Kowloon region—in 2006.

Media organisations have for many years listened in—without permission—to the analogue system. This has allowed the media to get advance warnings of incidents, and to arrive at the scene quickly—sometimes even before the police. However, media organisations are not able to listen in to the digital communications system. The commissioner of police, Dick Lee, has noted that the change to a digital system is not aimed at curbing media freedoms.

With the introduction of the new system, the police started issuing news alerts through the government Information Services Department. These are short

announcements giving only the nature of an incident, such as “theft” or “criminal damage”. The location and time of the incident is also given. However, no indication is mentioned of the seriousness of the incident. Reporters would either contact the Police Public Relations Bureau or check the police website for further details, which at certain times of the day can be difficult.

The HKJA fears that the police are selectively choosing which stories they want to highlight. Indeed, police representatives rejected calls for guidelines to be drawn up on how information should be released to the media, or to give a pledge on how long they would take to release details of cases. Media representatives saw the move as an attempt to block the free flow of information.

The HKJA has carried out studies of how the system has been implemented. In the first two months after the new system was put into effect in the New Territories in December 2004, the police released less than 12 items per day—far below the pledge given by Mr Lee that 30 to 40 items would be sent out every day.

After the release of these findings, the police reiterated that they would cooperate with the media. However, a further study between March 11th and April 10th 2005 found that only 6.8 cases were released per day on average. Indeed, on March 21st, no items were released to the media. The head of the Police Public Relations Bureau, Alfred Ma, explained that the New Territories district was comparatively calm that day.

Media organisations were in particular angry about the timing of the release of information. According to the data collected in the first two months of the system’s operation, the police released information to the media on average one hour after officers first heard of the incident. Such a time lag is long enough for officers to clear the scene before the arrival of the media.

The police gave technical reasons for the delay. They pointed to the need to check information and carry out preliminary investigations. Indeed, in March and April, the time lag narrowed—to an average of 44 minutes. However, the media felt this was still far from satisfactory.

Time lag not in the public interest

However, for more serious cases—those which are of particular interest to the media—the delay is far more serious. In March and April, the time lag for “murder” cases was the worst. It took almost five hours for the police to release information. “Criminal damage” cases took three hours 19 minutes, while details of “burglary”, “theft in car” and “attempted robbery” cases took in excess of two and a half hours.

The marine police have had a digital communications system for the past four years—and during that time there have been very few reports of crime at sea. However, that does not mean that such activities have stopped. According to recently released police data, there were three to four robbery cases per year over the period from 2001 to 2004, and one to five cases of incursion by mainland law enforcement vessels per year over the past four years. Arrests at sea have also been rising.

Given the serious problems that have arisen for journalists from the new communications system, the HKJA calls on the police to improve the way its information is released, to ensure that the media and the public’s right to know is respected. This would also allow the media to monitor effectively the work of law enforcement agencies—a vital role in a free society.

RENEWED PUSH FOR FREEDOM OF INFORMATION LEGISLATION

The government is not for turning

In January 2005, the Legislative Council endorsed a non-binding motion calling for the enactment of freedom of information legislation. This brought the issue back into the public eye following a failed attempt by several groups, including the HKJA, to force the colonial government to enact such legislation in the run-up to the 1997 handover. Instead, the government put into effect an administrative code on access to information, which fails to give people an enforceable legal right to information.

The most recent attempt to force the government's hand came from a Democratic Party legislator, James To. The campaign received backing from a shareholder rights activist, David Webb, who used the code to seek the financial accounts of three companies based in Hong Kong's Cyberport. He was denied the full accounts because they contained commercial secrets. The activist complained to the ombudsman, who found that the accounts given to a Legislative Council panel had been sanitised.

However, the government rejected the call for freedom of information legislation, saying that the existing code was adequate. A spokesman noted in April 2005 that there had been almost 17,500 requests since the code came into effect in March 1995. He said 90% of requests had been met either in full or in part.

But this ignores the fact that a code does not give anyone a legal right to seek information from the government or a public body. Indeed, there is a growing trend in the international community to enact such legislation. A British law is one of the latest to come into force—in January 2005, prompting about 900 requests in the first week of operation.

The HKJA has long been calling on the government to introduce freedom of information legislation. However, to be effective it must be based on the principles of maximum disclosure, limited and narrowly drawn exemptions, and an effective appeal mechanism.

JUDICIARY OPENS UP COURT HEARINGS

There was progress on the transparency front in one area. In June 2005, the judiciary announced that it was opening up most chambers hearings for civil proceedings in the High Court, District Court, Lands Tribunal and Family Court. The move was long overdue—a judiciary working group proposed the move way back in May 1997. In a statement, the judiciary said it regretted the time that it had taken to deal with the matter.

The move means that members of the public and journalists will be allowed to attend formerly closed-door hearings—unless they deal with sensitive issues including adoption, children, financial matters relating to matrimonial proceedings and ex-parte applications for injunctions and similar orders. However, a judge will have the right in certain circumstances to open even these cases.

The chairman of the Bar Association, Philip Dykes, welcomed the move, saying it would enhance transparency in the judicial system.

There was one other piece of good news on the transparency front. In June 2005, meetings of the Town Planning Board were thrown open to the public—except where confidential information was being discussed and during formal deliberations by members on town planning applications.

A victory, of sorts, for openness

While these restrictions will impose limits on public scrutiny, the decision to open much of what the board discusses is a significant victory. In February 1998, the HKJA called for five bodies to open their meetings to the public. They included the Town Planning Board, the Advisory Council on the

Environment, the Education Commission, the Broadcasting Authority and the Transport Advisory Committee. The latter four bodies still hold their meetings behind firmly closed doors.

A WIN, TOO, FOR FALUN GONG PROTESTERS

In a major victory for the freedoms of assembly, demonstration and expression in the year under review, convictions against adherents of the spiritual group, the Falun Gong, were quashed. The 16 were arrested in March 2002 as they demonstrated peacefully outside Beijing's local liaison office. They were protesting against Beijing's persecution of the Falun Gong, which was banned and branded an "evil cult" on the mainland in 1999. It remains legal in Hong Kong. Critics suggested that the prosecutions in Hong Kong might have been politically motivated—as Hong Kong came under pressure itself to ban the group. The prosecuting authorities, however, denied the charge.

The Court of First Instance found the group guilty of a variety of offences in August 2002. More than two years later, in November 2004, the Court of Appeal cleared all of them of obstructing the entrance to the liaison office. But the appellate court dismissed appeals brought by eight of them against convictions for obstructing and assaulting police officers after their arrest.

The three judges cited the Basic Law, the Hong Kong Bill of Rights and the International Covenant on Civil and Political Rights as protecting the "fundamental freedoms" of assembly, demonstration and expression in Hong Kong. Referring to the spiritual group's views—which are not widely supported in Hong Kong—the judges asserted: "If the views or practices are unpalatable to some ... their rights in law are not thereby diminished." They also questioned why the Court of First Instance judge, Mr Justice Wong, had raised issues such as the history and culture of Hong Kong and the one-country two-systems principle, noting that such considerations were irrelevant.

The remaining eight Falun Gong adherents took their case to the Court of Final Appeal, which in May 2005 dismissed the remaining convictions. The five judges were unanimous in their judgement that the arrests were unlawful and therefore the obstruction and assault convictions had to be quashed. One of the judges, Mr Justice Bokhary, wrote: "A court must always remember that preservation of the freedom in full measure defines reasonableness, and is not merely a factor in deciding what is reasonable."

A lawyer for the Falun Gong, John Clancey, said the ruling made it clear that the police may not "arbitrarily take away the right to demonstrate in a lawful assembly whenever there is a minor obstruction." The secretary for security, Ambrose Lee, pledged to draw up new police guidelines.

There are bigger forces abroad

However, there was a temporary setback in Hong Kong for the Falun Gong later that same month. The group reported that it would have to stop publishing its free newspaper, *The Epoch Times*, because its printer was pulling out of a one-year contract signed in January 2005. The newspaper, which is often critical of China, said the decision to stop printing came in "an environment of self-discipline and self-preservation now common in Hong Kong society". However, it was later reported that the group had found an alternative printer—albeit temporarily.

Chinese officials also made it clear that they were not taking a more moderate line towards the group. Commenting on the Court of Final Appeal judgement, a deputy director at Beijing's liaison office in Hong Kong, Li Gang, said the group had staged "long-term demonstrations at the entrance of the Liaison Office, attacking the central government and state leaders.... These protests are disgusting."

MIXED RESULTS ON PUBLIC ORDER APPEAL

The legality of the Public Order Ordinance, which controls demonstrations in Hong Kong, was the focus of attention in May 2005, when three political activists—legislator Leung Kwok-hung and former student activists Christopher Fung and Chris Lo—mounted an appeal against their conviction in November 2002 for staging an unauthorised rally. This was the first time that protesters had been convicted under the Public Order Ordinance, which was tightened considerably in July 1997.

*Notification
"constitutional",
says court*

In July 2005, the court of final appeal issued a ruling which upheld the convictions. It declared that a general requirement in the law to notify the police before holding a rally was constitutional. However, at the same time, it argued that the term "ordre public"—used in the ordinance—was too vague and therefore should be removed. The judgement also noted that freedom of peaceful assembly was "precious" and "of cardinal importance for the stability and progress of society".

However, one of the five judges—Mr Justice Bokhary—went further, arguing that the convictions should have been quashed. He said the police commissioner's power to ban public meetings and processions was unconstitutional. He wrote: "Whenever there is a power by which the exercise of a fundamental right or freedom is liable to be restricted, a constitution properly protective of human rights requires that such a power be clearly and carefully limited to avoid the danger of it being exercised arbitrarily or disproportionately."

The director of Hong Kong Human Rights Monitor, Law Yuk-kai, called on the government to revise the ordinance and remove those elements that had been declared unconstitutional. Legislators also pledged to pursue the case.

The case had earlier caused controversy, when it went to the Court of Appeal. In November 2004, it dismissed the trio's appeal, ruling that the powers given to the police under the Public Order Ordinance were constitutional and necessary in a democratic society. The chief judge, Mr Justice Ma, said a notification system was "not only desirable but vital".

However, there was also dissent in this case. Mr Justice Stock said the appeal should have been dismissed, because the law was unconstitutional, the scope of the discretion given to the commissioner of police to object to assemblies was too wide, and the grounds were too vague.

GOVERNMENT SET TO REPORT ON RIGHTS RECORD

In February 2005, the government released a report on its implementation of provisions under the International Covenant on Civil and Political Rights (ICCPR). This includes how the government has implemented Article 19, which deals with freedom of opinion and expression. This was the second report prepared since Hong Kong's return to Chinese rule in July 1997. It will pave the way for the United Nations Human Rights Committee to consider Hong Kong's record—tentatively in March 2006.

The committee's previous report—released in 1999—contained several criticisms of the way that the Hong Kong government had implemented its human rights obligations. In particular, it highlighted the fact that the existing treason and sedition offences in the Crimes Ordinance endanger freedom of expression, because they are defined in "overly broad terms". It also called on the government to review the Public Order Ordinance, noting that it could be applied "to restrict unduly the enjoyment of the right of peaceful assembly". The committee also expressed concern that the administration had failed to set up a human rights commission or to introduce a fairer electoral system.

One of the biggest issues raised in the Hong Kong government report was the attempt to enact national security legislation. The government maintains that its draft legislation was in line with its international human rights obligations—a stance rejected by the HKJA and critics of the legislation. The government also notes that the bill was withdrawn from the legislative programme in September 2003 and that there is no timetable for bringing it back to the Legislative Council.

The HKJA will prepare its own report on how the government has met its international human rights obligations—ahead of the 2006 hearing by the UN Human Rights Committee.

SECTION 3

Other media developments

The year under review has seen the question of media ethics come to the fore again. This is courtesy of the government's Law Reform Commission, which backed calls for a statutory press council to be set up to handle privacy issues and for the enactment of two civil torts which would have an adverse effect on the way that investigative journalists can operate.

Self-censorship also remains a concern to freedom of expression advocates—although just as some previously independent publications appeared to be adopting a pro-Beijing stance on current issues, critics started taking to new media to get their message across. Several internet radio stations were set up—including People's Radio Hong Kong. Others started web-logs (blogs), highlighting stories that did not receive prominent coverage in the traditional media.

At the same time, several English-language magazines closed down. They included the weekly *Far Eastern Economic Review*—a long-time publication operating out of Hong Kong that once had a reputation for fearless reporting on regional issues. Its owner—the Dow Jones group—turned it into a monthly featuring academic articles on the region. Another victim was the satirical magazine *Spike*, which closed in September 2004, just ten months after it was set up to give an alternative take on Hong Kong events.

There were also some job losses—despite a strongly rebounding economy. In October 2004, terrestrial broadcaster TVB announced that 28 jobs had been axed in its news division. The station said it had to cut costs and streamline resources. Earlier that month, TVB's controller of news, Loh Chan, and two top aides had resigned—following the dismissal of seven other members of the news team. The broadcaster has about 300 staff in its terrestrial and pay-TV news divisions.

LAW REFORM COMMISSION BACKS PRESS COUNCIL

In December 2004, the Law Reform Commission released two much-delayed reports—on civil liability, and privacy and media intrusion. Their publication came five years after the commission's privacy sub-committee released consultation documents on the two issues.

A statutory body is proposed

The commission's reports were controversial—because they targeted media freedoms. The most significant—on privacy and media intrusion—proposed the creation of a statutory press council (called in the report a "commission") through legislation. The body would consider complaints that the media had infringed on the privacy rights of individuals. It would consist of journalist and public representatives, including a retired judge. Press members would be nominated by representatives of the newspaper and magazine industries, the journalistic profession and the journalism teaching profession, while public members would be nominated by professional bodies and non-governmental organisations stipulated in related legislation.

The body would draw up a press privacy code, which would have to make allowances for investigative journalism and stories that can be justified in the public interest. It would accept complaints from the public and could initiate its own investigations—only if they could be justified on public interest grounds. The probes would be directed against the publisher and not individual journalists or editors.

The Law Reform Commission proposed that the body should have the power to advise, warn or reprimand a publisher, and require it to publish a correction or

its findings. However, it would not be able to award compensation to a victim, fine a publication or order a publisher to make an apology.

The Commission's privacy sub-committee had proposed—in 1999—that the chief executive would play a role in setting up the press council, and the body should have the power to fine a newspaper up to HK\$1m. So in some senses, the latest version is an improvement on the original proposal. The chairman of the privacy sub-committee, Dr John Bacon-Shone, noted in December 2004: “The commission and its privacy sub-committee are acutely aware of the importance of freedom of speech and of the press and recommended the creation of the new body only after they were satisfied that it would not compromise those freedoms.”

Media organisations took another view—arguing that the government should not be involved in any way in regulating the media. In rejecting the proposal for a statutory press council, the HKJA said that while the press was not blameless on privacy issues, it was fundamentally wrong to take a legislative approach—as this ran counter to the principle of voluntary self-regulation.

The HKJA also questioned why the Law Reform Commission wished to create a statutory press council—an approach rejected by many democratic countries—and expressed doubts about whether the Law Reform Commission had made a proper case that there was a pressing social need for taking the statutory route in dealing with the problem of media intrusion.

The Law Reform Commission documented individual cases of intrusion. However, its research dates back to the year 2002 at the latest. Since then, media analysts have pointed to a move away from sensationalist and intrusive reporting—possibly as readers became tired of this approach.

**A government move
to control the media?**

Interestingly, the chairman of the non-statutory Hong Kong Press Council, Edward Chen, said: “Enacting a new law would inevitably give the perception that the government may or can control the media.” The Hong Kong Press Council was set up in July 2000 in response to the privacy sub-committee's report. However, the main mass-market newspapers—the *Oriental Daily News*, *Apple Daily* and *The Sun*—have refused to join the body. The HKJA also decided to stay out—arguing that media organisations should police themselves.

The other report published by the Law Reform Commission—on civil liability for invasion of privacy—proposes the enactment of two civil torts, under which individuals would be able to seek civil remedies through the courts.

The first proposal would make a journalist liable, if he or she intruded upon the “solitude or seclusion” of another in circumstances where the latter had a reasonable expectation of privacy, as long as the intrusion was “seriously offensive or objectionable” to a reasonable person. There would be a number of defences—for example if the act was done to detect crime, prevent seriously improper conduct or to protect the security of China or Hong Kong.

The other recommendation would make a journalist liable if he or she knowingly gave “seriously offensive or objectionable” publicity about another person. The reporter would be allowed to argue that the publicity was made in the public interest.

The HKJA opposed the two civil torts—on the ground that they would affect the ability of journalists to carry out investigative work. It would also allow wealthy individuals to harass the media by resorting to the threat of court action unless the journalist dropped his or her investigations.

The Legislative Council has held hearings into the Law Reform Commission's proposals, but without drawing any conclusions. A final decision on whether to adopt the recommendations will come from the government's Home Affairs Bureau—although there is no indication that any decision is imminent.

SELF-CENSORSHIP REMAINS AN ISSUE

There is a continued perception that some sections of the media are engaging in self-censorship. Indeed, a University of Hong Kong poll reported in May 2005 that respondents were split on whether the media practised self-censorship. A total of 39% thought it did; an equal proportion thought that was not the case. Further, 27% felt the media had scruples when criticising the government, while 54% thought it was apprehensive when commenting on the central government in Beijing.

It is worth noting that from 1999, University of Hong Kong polls showed that in excess of 40% of respondents felt that media organisations were not practising self-censorship compared with 30%-plus who felt that they were. This changed in February 2004, with those accusing the media of self-censorship exceeding those who did not. The range was zero to eight percentage points.

As we have reported in the past, the nature of self-censorship is such that it is difficult to determine whether the slant of a story, or its omission, is the result of self-censorship or a justifiable editorial decision, a sense of fair play or a fear of libel action. However, one incident did come to the fore in July 2004 when the television station ATV chose to play down its report on the 500,000-strong July 1st march in Hong Kong.

The Chinese-language Home Channel led the main evening newscast on July 1st with a flag-raising ceremony to celebrate the anniversary of Hong Kong's return to Chinese rule. It followed this with a report on a speech by the then chief executive, Tung Chee-hwa, at a related event, and then focused on the march, which was the lead item for most of the other media outlets in Hong Kong, including ATV's English-language World Channel.

Poor judgement, or else...?

There were some media reports about dissent among ATV news executives about the decision not to lead with the march. The station's senior vice-president for news, Peter Kwan, denied that self-censorship was involved. But To Yiu-ming, an assistant professor at Baptist University's journalism department, said: "I think it was very poor judgement to present it [the July 1st celebration] as the first item in the main cast. I hope it is an honest mistake rather than somebody instructing the news desk."

There was further controversy on another front in October 2004, when ATV and its main rival, TVB, started broadcasting a video just before their main newscasts, featuring the national anthem played over a series of patriotic images. The broadcasts started on October 1st, which is China's national day. The video was initiated by the Committee on the Promotion of Civic Education, which advises the government on national education issues.

Reaction was mixed, with some calling it "disgusting". Others said it was just "boring". However, the chairman of the committee, Daniel Heung, defended the move, saying it was not aimed at brainwashing people. The video was repackaged in a different format in May 2005.

COMMERCIAL RADIO TALK-SHOW HOST QUILTS

The controversy over the departure of three outspoken talk-show hosts from Commercial Radio intensified in July 2005, when one of them—Wong Yuk-man—was abruptly sacked from his weekly late-night show with the station. Mr Wong had returned to Commercial Radio in August 2004—three months after declaring that he had to take a break in the face of intense pressure to tone down his criticism of the Hong Kong and Chinese governments. He said he had received threats, and was actually attacked in March 2004.

Commercial Radio said the dispute arose after Mr Wong asked to be allowed to

host a show five times a week—similar to what he did before May 2004. The station refused and terminated his contract with immediate effect. However, Mr Wong said he believed the station was under pressure to sack him, after he criticised Commercial Radio for being biased towards Donald Tsang during his campaign to become chief executive.

Mr Wong said: “I don’t know if there is any hidden agenda. I cannot say if there is political pressure or not. But what is clear is that they are very dissatisfied with my attack against the station.” He also expressed the view that freedom of speech in Hong Kong was diminishing.

Several protests were held outside Commercial Radio’s main office, with pro-democracy legislators expressing the view that Mr Wong’s sacking had “resulted in a spiral of silence, seriously eroding freedom of speech”.

**No storm in a
teacup**

Mr Wong had been one of three talk-show hosts to leave the station in May 2004. The other two—Albert Cheng and former legislator Allen Lee—never returned. Mr Cheng won a resounding victory in the September 2004 Legislative Council elections, contributing to the pro-democracy camp increasing its presence in the legislature from 22 seats to 25. Allen Lee continues to comment on political affairs, but he quietly withdrew his threat to quit China’s National People’s Congress.

Mr Cheng was also involved in a bitter dispute with Commercial Radio. Initially, he pledged to return to his hard-hitting show—*Teacup in a Storm*. He said he had held negotiations with station managers, who were reported to be unhappy that he had left his job “unilaterally”.

In late July, Mr Cheng had an on-air clash with Commercial Radio’s director Winnie Yu, over his decision to step down in May. This effectively sealed his fate—he appeared on his programme for the last time on July 29th—when former talk-show host Allen Lee called in to accuse Ms Yu of abandoning him and the other talk-show hosts. Ms Yu had earlier accused Mr Cheng, Mr Wong and Mr Lee of undermining freedom of speech by running away from their shows, citing political pressure.

There were further ramifications. The station’s chief operating officer, Tony Choi, was sacked—hours after another public clash between Mr Cheng and Ms Yu, who took control of day-to-day operations at Commercial Radio. The two new hosts of *Teacup in a Storm*, station consultant Leung Man-to and academic Ivan Choy, also left the station.

**Oh happy, clear
days...**

In October 2004, the station changed direction. It launched a new morning talk-show—called *On a Clear Day*—to replace *Teacup in a Storm*. Other public affairs programmes were also changed. Ms Yu said the changes marked a new beginning: “We all have clear thinking, cheerful hearts and an optimistic attitude ... Our programmes will have both rational and emotional appeal.”

However, analysts noted that the new shows lacked the sharpness of their predecessors, and that this had affected their ratings. Indeed, one newspaper, *Ming Pao Daily News*, cited a survey which indicated that the audience for the morning and late afternoon talk-shows previously hosted by Albert Cheng and Raymond Wong had slumped 50% in December 2004, compared to one year earlier.

The significance of these developments—including the July 2005 sacking of Wong Yuk-man—is that they undoubtedly will affect media diversity. The three talk-show hosts were outspoken—and Mr Cheng and Mr Wong were both critical of the Hong Kong government and the ruling Communist Party in China. Their absence from the airwaves means that the space for vibrant political debate gets smaller—which must be detrimental to freedom of expression.

MORE TROUBLE AT GALAXY

In September 2004, TVB's pay-TV unit, Galaxy Satellite Broadcasting, received a body blow in the form of a decision by the US satellite services provider Intelsat to pull out of the joint venture. It bought a 51% stake in February 2003, paving the way for the launch of the pay-TV service in February 2004. Analysts say the venture has been losing money because it has only a small share of the pay TV market.

Galaxy was granted a pay-TV licence on the basis that it should distance itself from its parent, TVB—largely by selling a 51% stake to an outsider. Intelsat's withdrawal meant that the Executive Council had to give approval for a temporary waiver of ownership restrictions. This was approved and set at 12 months.

Galaxy's main rival, the Wharf-controlled company I-Cable, hit out at the decision. It said the move "makes a mockery of the regulatory regime and invites questions on the resolve of the government in upholding a level playing field." It was the sixth concession granted to TVB since it was awarded a pay-TV licence in July 2000.

However, the government said the waiver took into consideration the public interest, the development of the broadcasting industry and the integrity of the licensing regime. A spokesman said the waiver was needed to contribute to "maintaining a more competitive market place if Galaxy is able to compete for subscribers by extending service coverage and adopting more aggressive pricing and programming strategies."

In May 2005, TVB announced that it was selling a 51% stake in Galaxy to multimedia electronics maker Ruili Holdings and businessman Charles Chan Kwok-keung for HK\$350m—earning the broadcaster about HK\$150m in profit. Mr Chan is likely to gain control of the operator through his investment holding company Hanny Holdings. Analysts note that Mr Chan does not have a proven track record in the media industry.

However, Galaxy still faces an uphill battle. Its net loss grew to HK\$340m in 2004—compared with HK\$32.6m in the previous year. It has just 40,000 subscribers—well below the numbers reported by its main rivals I-Cable and NOW Broadband, which is offered by the telecoms company PCCW. In a bid to widen its reach, Galaxy relaunched its service in June 2005 through another broadband network set up by Hutchison Global Communications, which is Hong Kong's second largest fixed-line operator after PCCW.

ARTICLE 19, the Global Campaign for Free Expression

ARTICLE 19 takes its name and mandate from Article 19 of the Universal Declaration of Human Rights which proclaims the fundamental right to freedom of expression. ARTICLE 19 works impartially and systematically with local partners, organisations and individuals to identify and oppose censorship in its many forms, to defend victims of censorship and to promote strengthened national and international standards for the protection of freedom of expression.

ARTICLE 19 monitors individual countries' compliance with international standards protecting freedom of expression, and regularly makes submissions to inter-governmental organizations such as the United Nations Human Rights Commission and Committee and the European Court of Human Rights.

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HONG KONG JOURNALISTS ASSOCIATION

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

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

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