

**For discussion on
2 November 2000**

**The Legislative Council
Panel on Information Technology and Broadcasting**

**Draft Generic Codes of Practice for Television and
Draft Radio Codes of Practice**

Purpose

This paper sets out the main provisions of the *Draft Generic Codes of Practice for Television* and *Draft Radio Codes of Practice* issued by the Broadcasting Authority (BA) for public consultation.

Background

2. Following the 1998 Review of Television Policy, a policy decision was made to invite the BA to issue a set of generic codes of practice for television programme services with a view to bringing them in line with the new regulatory regime under the Broadcasting Ordinance (Cap. 562). On 22 September 2000, the BA published the draft Generic Codes of Practice for Television (Generic Codes) and the draft Radio Codes of Practice (Radio Codes) for public consultation. (Copies of these two sets of draft Codes have been sent to Members through the Legislative Council Secretariat.) The draft Generic Codes reflect the regulatory approach of the Broadcasting Ordinance under which broadcasting services should be regulated in accordance with the characteristics, pervasiveness and influence of the four categories of television programme services, namely, domestic free, domestic pay, non-domestic and other licensable television programme services. They will replace the codes of practice which were applicable to services based on the delivery mode.

Draft Generic Codes

3. The objectives of the draft Generic Codes are to provide a clear and transparent regulatory framework to facilitate the business operations of licensees, replace provisions which are obsolete or outdated and bring them in line with international best practices. The draft Generic Codes set out the standards for different categories of services in one document, specifying which parts of the codes are applicable to all or parts of a certain category of licence. The new format will simplify the administration of the codes and render the codes more user-friendly.

4. The regulatory regime is founded on the principle that programmes or advertising materials are not subject to preview by the regulator in advance of broadcast. Decisions over what and when to broadcast are entirely editorial matters taken by the licensees themselves within the framework of the Generic Codes. As a general principle, the degree of regulation applied will be related to the target audience of the service and their expectations as well as the degree of viewer control over the service received. For example, domestic free services, which primarily target the Hong Kong audience and arrive unsolicited at home, will continue to be subject to more stringent standards than services which are less pervasive and come with mandatory locking devices.

5. To provide certainty to the licensees, the draft Generic Codes are largely built on the existing codes of practice. References have also been drawn from overseas practices such as those adopted in the United Kingdom, Canada and Australia in order to bring the codes in line with international standards. Like its predecessor, the draft Generic Codes give guidance on such matters as taste and decency, sex and violence, impartiality and fairness, language and programme information, etc. Special attention is given to the protection of children and young people.

6. In recognition to the Government's policy decision to open up the television market, the BA has proposed to relax or remove those regulatory restrictions which are obsolete or no longer applicable under

the new regime. For example, suitable amendments have been made to the existing advertising provisions to reflect the relaxation of the advertising time restrictions under the Broadcasting Ordinance.

Draft Radio Codes

7. The BA has also taken the opportunity to review and update the codes of practice for radio services. Draft Radio Codes have been prepared in the light of the standards adopted in the draft Generic Codes.

Public Consultation

8. The main provisions regarding streamlining of existing codes, relaxation of the requirements on advertising time and removal of regulatory restrictions which are outdated are generally accepted by the industry and the public. Public debate has centred on the following three areas :-

- (a) Impartiality: There is concern that the proposed revision to the impartiality provisions are too restrictive and may undermine freedom of expression and result in self-censorship by the broadcasters. Some commentators advocate that impartiality provisions should be as general as possible. There are also doubts as to whether it is always possible or appropriate to include opposing viewpoints in a programme or programme series.
- (b) Conflict of interest: While there is general support for the spirit behind the proposal, there are concerns about practical difficulties in the enforcement of the proposed provision as well as concerns about invasion of privacy and restriction on freedom of expression. Some commentators consider it unfair that licensees should be held responsible for the action of the programme presenters. Some quarters propose the establishment of a self-regulatory system by the licensees.

- (c) Personal view programmes: There are comments that the requirement to identify personal view programmes at least once during each half-hour is unnecessary and may be disruptive to programme flow. Some commentators think there is no need to identify personal view programmes at all as the audience should be able to distinguish programmes which seek to provide a fair account from those which mainly contain personal opinion.

9. The proposed provisions regarding impartiality, personal view programmes and conflict of interest are intended to clarify the existing requirements and / or to bring our standards in line with the international best practice. A comparison of the existing provisions, the proposed requirements and the corresponding overseas practice is summarised at Annex.

Impartiality

10. It should be noted that impartiality is not a new requirement as it is already stipulated in the existing programme code. The proposed provisions in the draft Generic Codes merely seek to clarify the existing requirements and reduce the scope of subjective interpretation in the enforcement of the code. In line with the standards established in UK, Canada, Australia and New Zealand, the current formulation provides the broad principles rather than specific requirements as to how impartiality should be achieved. Although the proposed revision to the impartiality provisions is more detailed than the existing code, the proposed formulation, in fact, is an improvement over the existing version. The existing code requires that every current affairs or documentary programme dealing with controversial issues of public importance must attempt to be impartial in itself. The draft Generic Code explicitly provides licensees with a large degree of flexibility in seeking to achieve impartiality. For example, the draft Generic Code states clearly that impartiality does not necessarily have to be achieved in one single programme, and that the requirement of impartiality would be

interpreted as meaning adequate or appropriate to the subject matter and type of programme. The BA has encouraged licensees to provide specific wording if they wish to improve on the proposed draft.

Conflict of interest

11. To safeguard impartiality and fairness, it is important that licensees should be required to deal with situations involving conflict of interest of current affairs and factual programme presenters appropriately. This would enable viewers and listeners to take into account such matters when forming an opinion on the subject. Similar requirements can be found in the UK Radio Authority's News and Current Affairs Code, the BBC Producer's Guidelines and the licence conditions adopted by the Australian Broadcasting Authority.

12. The BA has proposed that licensees should be required to set up a register of declaration of investment and financial interests by programme presenters. In practice, the BA will not request such information from licensees unless it considers it necessary for the investigation into a complaint. In the case of a wilful omission of declaration by the programme presenters, the BA will certainly take into account whether the licensee has exercised due diligence when dealing with the question of conflict of interest that may impact on the programme's impartiality.

Personal view programmes

13. Personal view programmes are programmes in which the programme hosts and, sometimes, individual contributors put forward their own views. To enable viewers and listeners to recognise that the opinions expressed are personal views, the BA has proposed that the nature of such programmes should be identified at the start of the programme and at each half-hour during the broadcast of the programme. Similar requirements can be found in the standards adopted overseas (e.g., the programme codes of the UK Independent Television Commission and the Codes of Practice of the UK Radio Authority).

14. It is noted that there are suggestions to relax the above proposed requirement in terms of frequency of announcements or exempt programmes whose titles already clearly reveal the nature of the programme. The means of identification of such programmes is a technical issue. The BA is open to suggestions as to how best the intention could be achieved.

The Next Step

15. The consultation period will close on 4 November 2000. The BA will examine all the submissions received carefully. (We will provide Members with a summary of the submissions received nearer the end of the consultation period.) The BA welcomes comments from this Panel and the public on the draft Codes before finalising them for promulgation.

Television and Entertainment Licensing Authority

27 October 2000

Comparison of Existing Provisions, Proposed Requirements and Overseas Practice

Subject	Existing Provisions	Proposed Requirements	Overseas Practice
Impartiality	<ul style="list-style-type: none"> Every current affairs or documentary programme dealing with controversial issues of public importance must attempt to be impartial in itself. 	<ul style="list-style-type: none"> The existing provision on impartiality is clarified. Proposed provisions explicitly provide licensees with more flexibility, e.g. impartiality does <u>not</u> necessarily have to be achieved in one single programme and the requirement of impartiality would be interpreted as meaning adequate or appropriate to the subject matter and type of programme (i.e. the concept of due impartiality). 	<ul style="list-style-type: none"> Programme Code of Independent Television Commission (ITC), UK (Due impartiality is interpreted as meaning adequate or appropriate to the nature of the subject and the type of programme. An impartial programme service does not necessarily have to ensure that in a single programme, all sides have an opportunity to speak.) Radio Authority Codes of Practice, UK (Current affairs or documentary programme or series of programmes dealing with matters of political/industrial controversy must be impartial.) BBC Producers' Guidelines (A factual programme dealing with controversial public policy or matters of political or industrial controversy must be fair, accurate and maintain a proper respect for truth.) Australia's Commercial TV Code (In broadcasting news and current affairs programmes, licensees must present factual material accurately and represent viewpoints fairly.) Broadcasting Standards Authority TV Programme Code of New Zealand (Broadcasters should aim to present all significant sides on controversial issues in as fair a way as possible.)

Subject	Existing Provisions	Proposed Requirements	Overseas Practice
			<ul style="list-style-type: none"> • Canadian Association of Broadcasters Code of Ethics (To treat fairly all subjects of a controversial nature.)
Personal view programmes	Nil	<ul style="list-style-type: none"> • Explicitly provide for “personal view programmes” in which programme hosts/contributors can put forward their own views, however partial, provided that the nature of such programmes, when dealing with matters of public policy or controversial issues of public importance, are clearly identified to viewers at the start of the programme and at each half-hour; and that views should not rest upon false evidence. 	<ul style="list-style-type: none"> • BBC Producer’s Guidelines (Also provide for personal view programmes where individuals offer a personal view. The nature of a personal view programme which deals with matters of public policy or political or industrial controversy should be signaled clearly to audiences in advance.) • ITC Programme Codes (Also provide for personal view programmes in which an individual contributor puts forward his views. Each programme must be clearly identified as giving a personal view both in advance announcements and at the start of the programme. Opinions, however partial, should not rest upon false evidence.) • Radio Authority Codes of Practice (Similar to ITC. The nature of a personal view programme must be made clear in billing and promotion, as well as within the programme or feature itself. Opinions should not rest upon false evidence.)

Subject	Existing Provisions	Proposed Requirements	Overseas Practice
Conflict of interest	Nil	<ul style="list-style-type: none"> • Provisions governing conflict of interest are introduced. • Programme presenters are required to declare their interests to licensees. Licensees are required to keep a register of such interests. Licensees should decide whether programme presenters should refrain from discussion of a topic or disclose the interests on air. 	<ul style="list-style-type: none"> • Radio licence conditions recently adopted by the Australian Broadcasting Authority (ABA); proposed programme standards of ABA (Licensees to keep a register of commercial agreements and make it available to ABA and the public. Require on-air disclosure during current affairs programmes of commercial agreements involving the presenters that have the potential to affect the content of those programmes.) • UK Radio Authority's News & Current Affairs Code (A chairman, interviewer or phone-in host should avoid discussion of issues where his connection or involvement away from the programme is such as to call into question his fairness or impartiality.) • BBC's Producers' Guidelines (People who work on news and current affairs programmes should have no outside interests or commitments which could damage the trust between BBC and its audience over issues of impartiality, fairness and integrity. Presenters should not engage in any promotional activities which might cast doubts on their objectivity or BBC's impartiality. No BBC presenter or editorial person should coach people in how to be interviewed.)