

# 立法會

## *Legislative Council*

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### **Report of the Panel on Information Technology and Broadcasting for submission to the Legislative Council**

#### **Purpose**

This report gives an account of the work of the Panel on Information Technology and Broadcasting during the 2005-06 session of the Legislative Council (LegCo). It will be tabled at the Council meeting on 12 July 2006 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

#### **The Panel**

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000 for the purpose of monitoring and examining Government policies and issues of public concern relating to information technology, telecommunications, broadcasting and film services. The terms of reference of the Panel are at **Appendix I**.

3. The Panel comprises nine members. Hon SIN Chung-kai and Hon Albert Jinghan CHENG were elected Chairman and Deputy Chairman of the Panel respectively. A membership list of the Panel is at **Appendix II**.

#### **Major work**

##### Legislative proposals to contain the problem of unsolicited electronic messages (UEMs)

4. The Panel exchanged views with the Administration and deputations on the major proposals in the UEM Bill. In general, members agreed with the guiding principles underlying the Bill, including the need to strike a balance between safeguarding the freedom of individuals in deciding whether to receive or refuse certain commercial information and ensuring that the freedom of speech and expression must not be impaired. The Panel noted the

Administration's plan to introduce the UEM Bill into LegCo within 2006.

5. The Panel noted that the Administration had proposed to implement an "opt-out" regime under which recipients of commercial electronic messages could make use of the functional unsubscribe facility provided by the sender to notify the latter that he did not wish to receive further commercial electronic messages. Members discussed the effectiveness of the Administration's proposal to set up "do-not-call registers" for telephone numbers for pre-recorded messages, short/multimedia messaging services and fax messages. Members also noted that spamming was also serious for emails but the Administration had not proposed to set up a "do-not-call register" for emails.

6. As the "do-not-call registers" contained bona-fide electronic addresses, they might be abused by spammers. As such, the Panel urged the Administration to consider technical solutions to circumvent the problem, such as the suggestion by the computer profession to publish a list of cryptographic hashes of the electronic addresses on various types of "do-not-call registers" for matching by senders of electronic messages applying a cryptographic hash function.

7. Given that small and medium enterprises (SMEs) relied heavily on e-marketing to promote their products and services, members were keen to ensure that requirements in the proposed UEM Bill would not impose an excessive compliance burden on SMEs and stifle their business. The Administration advised that the proposed opt-out regime would enable SMEs to disseminate information to potential clients. Moreover, different parts of the UEM Bill would commence operation on different dates so as to allow sufficient time for SMEs and other entities to prepare themselves for compliance.

#### Information security and privacy protection

8. Arising from the leakage on the Internet of personal information held by the Independent Police Complaints Council (IPCC) and some private organizations in March 2006, the Panel sought explanation from the Administration, IPCC and the Privacy Commissioner for Personal Data (the Privacy Commissioner) on the present play of information security in the public and private sectors, the causes and extent of the leakage, the adequacy or otherwise of the existing regulatory regime and the remedial action that needed to be taken.

9. Apart from the consequences of the leakages, members were particularly concerned about the effectiveness of the Government IT security policy, procedures and guidelines. They highlighted the need for government departments to carry out security risk assessment and auditing at regular intervals and discussed the role of the Office of the Government Chief Information Officer (OGCIO) in strengthening the Government's capacity to deal with information security issues. The Panel also urged various regulators and public bodies to ensure that the sectors under their respective purviews maintained IT security at a

satisfactory level. The Administration would revert to the Panel with a comprehensive report in about November 2006 on the current state of information security in bureaux/departments; as well as how various regulators exercised their monitoring role. The Administration would also request information from publicly-funded bodies as far as practicable on the measures taken by them to maintain and enhance information security.

10. The protection of personal information of email account subscribers received serious attention by the Panel. Following press reports that an email service provider in Hong Kong had allegedly disclosed one of its account subscribers' personal information to the Mainland authorities, the Panel had discussed with the Administration, the Privacy Commissioner and deputations on privacy protection for email users. The Panel had come to the view that it was time to conduct a thorough review on the Personal Data (Privacy) Ordinance (Cap. 486) in the face of advancement in information and communications technology, in particular the scope of "personal data" as currently defined and the statutory powers available to the Privacy Commissioner. The Panel had invited the Panel on Home Affairs to follow up the review.

#### Development of public service broadcasting

##### *Radio Television Hong Kong (RTHK)*

11. The Panel deliberated at length on the broadcasting services of RTHK and its role as a public service broadcaster. Concern was expressed that RTHK's status as a government department was not conducive to its role as a public service broadcaster. Some members requested the Administration to re-examine the option of corporatization and considered that RTHK should be provided with a more stable source of funding to meet its development needs. They also urged the Administration to expedite the re-provisioning of RTHK to the new Broadcasting House. The Panel noted representations from the RTHK Programme Staff Union expressing grave concern about the future of RTHK, its resources allocation and editorial independence.

12. On the cost-effectiveness of RTHK's operations, some members pointed out that instead of broadcasting a single programme on several of its radio channels simultaneously, RTHK should release its surplus channel capacity for other interested parties or community groups to host their programmes. The Panel had also exchanged views with the Administration and deputations on the provision of public access channels, and noted the Administration's reservation on the need to set up such channels in Hong Kong.

13. While agreeing in principle that RTHK had a public mission to "inform, educate and entertain", the Panel was aware of different views over the types of programmes which RTHK should produce, such as whether it should focus on programmes not being provided by commercial broadcasters, and the extent of competition between RTHK and its commercial counterparts. Some members were keen to ensure that being publicly-funded, RTHK should provide

programmes to cater for minority or special needs which might be considered as not commercially viable. The Panel would continue to follow up issues related to RTHK, which would likely arouse much public concern in the course of the review on public service broadcasting (PSB).

#### *Review on public service broadcasting*

14. Noting that currently, there was no clear policy on PSB in Hong Kong, the Panel in principle welcomed the Government's initiative to conduct a review on PSB. Some members nevertheless stressed that the review in question should not target RTHK with a view to undermining its editorial independence and tightening control over it. Given that none of the members of the Committee on Review of PSB (the Review Committee) possessed experience in PSB, some members were concerned that the Review Committee might not be able to fully address pertinent issues related to PSB in Hong Kong. They also considered that editorial independence and freedom of expression should be important principles underlying the review. Both the Administration and the Review Committee confirmed that the review would examine PSB in Hong Kong from a macro perspective rather than targeting any specific broadcaster. The Panel was advised that the review would be conducted in an open, impartial and professional manner with no pre-conceived views as to how PSB should be taken forward in Hong Kong.

15. In anticipation of important changes which PSB would undergo in the near future, the Panel considered it necessary to conduct a study into the subject. Apart from exchanging views with academics, local media and broadcasters and concern groups, the Panel conducted an overseas duty visit in April 2006 to Canada, United States and United Kingdom where there had been marked developments in their PSB systems. Based on the visit findings and further analysis, the Panel aimed to formulate certain initial views for public consultation. It would then prepare and publish a report by early October 2006 on its observations and recommendations on the way forward for PSB in Hong Kong. The study report would hopefully facilitate Members and the community in monitoring the formulation and implementation of a policy on PSB.

#### Regulatory framework for domestic free television programme service licensees

16. Given the pervasiveness of free-to-air television programme services targeting the whole population in Hong Kong, the Panel was concerned that adequate safeguards were in place to ensure that the services provided would be able to meet the needs and expectation of the local community. Members noted that there were provisions under the Broadcasting Ordinance (Cap. 562) which imposed certain restrictions on the "ordinarily resident in Hong Kong" requirement of the voting controllers and on cross-media ownership in relation to domestic free television programme service licensees (the licensees).

17. Arising from the proposed acquisition of the shares of Asia Television Limited (ATV) by the Citic Guoan Group, a subsidiary of a major

corporation in the Mainland, the Panel noted that the Broadcasting Authority (BA)'s approval would be required if the company seeking to acquire the voting shares of ATV did not meet the "ordinarily resident in Hong Kong" requirement. On the factors which BA would take into consideration when deciding whether such an approval should be given, members noted that BA had in the past taken into consideration factors like the financial ability of the applicant, the benefit to the licensee concerned and the broadcasting industry, whether the services to be provided would continue to cater to the needs of the Hong Kong community, as well as whether the applicant would maintain and uphold the licensee's freedom of expression and editorial independence. Some members held the view that apart from financial considerations, BA should not overlook the impact, if any, of the proposed acquisition on the future programming policy of ATV and whether it would give rise to any political influence. They also urged BA to conduct public hearings to gauge the community's views although this was not required by law. The Panel Chairman had subsequently written to BA conveying members' concerns and requesting it to consider members' request to be briefed on BA's consideration and analysis before it made a final decision on the proposed acquisition.

#### Development of digital audio broadcasting (DAB)

18. To better understand the advancement of broadcasting technology, in particular the development of DAB, the Panel had met with the World DAB Forum, local commercial radio broadcasters and RTHK. Noting the benefit of DAB in improving sound quality and better spectrum utilization, most members called on the Administration to take proactive steps to promote the development of DAB among existing licensees instead of adhering to its "market-led" approach.

19. Some members envisaged the opening up of more radio channels if DAB was implemented and saw merits in enhancing competition and providing more platforms on the airwave for the expression of views. On commercial broadcasters' concern that this might result in audience fragmentation thereby affecting their advertising revenue, some members referred to increases in listenership as revealed in overseas experience and considered that if the radio programmes were of a high quality, they could attract advertising revenue.

20. On the technical standard for DAB in Hong Kong, the Panel noted the Administration's advice that if Hong Kong could finalize the Band III frequency plan with the Mainland authorities so that digital signals of radio broadcasters could be received by listeners on both sides of the border, then, a larger market would provide economies of scale to manufacturers and enable local consumers to obtain digital receivers at more competitive prices.

21. Members agreed that the Administration should consider the suggestion of setting up a working group with representatives from radio broadcasters to further examine the development of DAB in Hong Kong.

## Establishment of the proposed Communications Authority

22. The Panel discussed with the Administration and deputations from the telecommunications and broadcasting industries on the proposed merger of the Broadcasting Authority (BA) and the Telecommunications Authority (TA) into a unified regulator, known as the Communications Authority (CA), in the face of convergence at the technological and market levels. Under the proposal, the Administration aimed to set up the CA as soon as possible to continue to administer and enforce the existing Telecommunications Ordinance (TO) (Cap. 106) and Broadcasting Ordinance (BO) (Cap. 562). From there on, the CA would be tasked to review and rationalize the TO and BO together with the Administration.

23. The Panel noted that the industry operators were generally supportive of the Administration's intention to adopt a proactive, but light, regulatory approach, taking into account an international paradigm shift from active regulation based on detailed rules to a more relaxed approach with emphasis on fair competition. While members accepted that the regulatory approach should be on par with international best practice, they reminded that the Administration should not lose sight of the need for the CA to uphold its public mission, namely to promote competition, innovation and investment in the communications market as well as protection of freedom of speech and consumers' interests.

24. On manpower implications, the Panel noted the Administration's intention to avoid laying off staff as a result of the proposed merger of the BA and the TA. Some members, however, urged that the Administration should still pursue efficiency initiatives to streamline operation and achieve savings.

25. The Panel was also concerned about the proposed governance structure of the CA, which would comprise seven members including a non-official Chairman. Some members urged that the eligibility criteria for appointment as unofficial members of the CA should be clearly spelt out and preferably stipulated in the future Bill to be introduced for the establishment of the CA. Noting that it was current trend to separate the role of the Chairman of a statutory body from that of its executive arm, some members considered that the roles and responsibilities of the Chairman and Director-General of the CA should be clearly delineated. They also considered that the CA Chairman should receive a reasonable remuneration commensurate with the requirements of the post. Some members also expressed the view that provisions requiring the CA Chairman and the Director-General to attend meetings of committees of LegCo should be included in the Bill.

26. The Administration advised members that it would take into consideration members' views in finalizing the proposed Bill, which was expected to be introduced into the Council by the end of 2006.

### E-government programme

27. On the next wave of e-government featuring a One-Stop Access Portal (OSP) and a "service clustering approach", the Panel was briefed on the revised implementation plan. Members noted that the capacity and capability of the existing E-government Infrastructure Service (EGIS) platform owned by the Government would be enhanced to support the development of OSP and the reprovisioning of existing services provided on the Electronic Service Delivery (ESD) portal.

28. Prior to consideration by the Finance Committee, the Panel had sought deputations' views on the Administration's funding proposal of \$170.8 million for enhancement of the EGIS and noted that apart from the incumbent ESD Scheme operator, other organizations expressed support for the Administration's approach. Members were concerned whether the development of a government-owned OSP instead of riding on the existing ESD portal secured through a public-private partnership would diminish private-sector participation and unduly enlarge the role of the Government. The Administration in response advised that the bulk of the funding would in fact be used to procure hardware and software from the private sector. It also indicated that the first release of the OSP would be soft launched in late July/early August 2006.

29. The Panel was particularly concerned about the benefits/savings resulting from various e-government initiatives, such as the effectiveness of e-channels rolled out in December 2004 and the enhanced governance mechanism for IT projects effective from April 2006.

### Cyberport

30. In reviewing the progress of the Cyberport project, members were keen to ensure that the Cyberport should serve its intended objective of creating a strategic cluster and a critical mass of leading IT companies in Hong Kong instead of becoming a property development project competing with other developers in offering office and residential premises. Noting that only 45% of the 47 local, Mainland and overseas companies which had taken up tenancy in the Cyberport were new to Hong Kong, members were concerned whether most of the companies had merely relocated to, instead of starting up new activities at, the Cyberport. In this connection, the Administration was requested to provide further information on the concessionary terms offered to tenants, including the duration of rent-free period.

31. The Panel kept in view the office occupancy rate of the Cyberport and considered the reported take-up rate of 54% on the low side. Some members queried the Administration for not setting a target occupancy rate when implementing the project back in 1999, and maintained their reservation on the Administration's decision to waive the take-up guarantee by Pacific Century Group, the private-sector partner for the project. The Administration assured members that it would continue its effort to promote the Cyberport to overseas

and Mainland enterprises through channels such as Invest Hong Kong and the Hong Kong Economic and Trade Offices. It also highlighted that in considering applications for tenancy, the Committee on Admission of Cyberport Office Tenants would only admit applicants whose business was consistent with the missions of the Cyberport. The Panel would continue to monitor the office occupancy rate which, as anticipated by the Administration, would increase to 60%-70% in the next 12 months. The Panel also sought further information regarding the tenancy arrangements for the Cyberport Arcade, including the procedures for identifying the anchor tenant and details of the tenancy agreement.

32. Members also discussed the financial status of the Hong Kong Cyberport Development Holdings Limited, including its operating expenses and profit and would continue to monitor the return on the Government's investment in the Cyberport project. The Administration would update the Panel on key issues relating to the project on an annual basis.

#### Legislative proposals relating to fee adjustments

33. On the proposed revision of licence fees under the Broadcasting (Licence Fees) Regulation (Cap. 562A), members noted that under the existing government policy of cost-recovery, some fees would be reduced due to reduction in general administrative costs. However, intensified competition in the television market and technological convergence in the communications industry had led to an increase in administrative costs required for various regulatory tasks. Hence, there were some proposed increases in certain fee components. In principle, members had no objection to the existing cost-recovery policy, but agreed that due regard should be given to the objection from the incumbent television programme service licensees. The Broadcasting (Revision of Licence Fees) Regulation 2006, which was introduced into the Council on 17 May 2006 and scrutinized by a Subcommittee, came into effect on 7 July 2006.

34. The Panel was briefed on and expressed support for the Administration's proposal to reduce the film censorship fee prescribed in Schedule 3 to the Film Censorship Regulations. The relevant Amendment Regulation was enacted and came into effect on 10 February 2006.

35. From October 2005 to mid June 2006, the Panel held a total of 14 meetings. It also convened a series of closed meetings to discuss the preparation of the study report on PSB. The Panel conducted an overseas duty visit to study PSB in Canada, United States and United Kingdom. It paid visits to the Television Broadcasts Limited and Radio Television Hong Kong and would arrange a visit to the Cyberport in mid July 2006.

**Panel on Information Technology and Broadcasting**

**Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to information technology, telecommunications, broadcasting and film services.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Panel on Information Technology and Broadcasting**

**Membership list for 2005-2006 session**

|                        |  |
|------------------------|--|
| <b>Chairman</b>        | Hon SIN Chung-kai, JP  |
| <b>Deputy Chairman</b> | Hon Albert Jinghan CHENG   |
| <b>Members</b>         | Hon Fred LI Wah-ming, JP<br>Dr Hon LUI Ming-wah, SBS, JP<br>Hon Jasper TSANG Yok-sing, GBS, JP<br>Hon Howard YOUNG, SBS, JP<br>Hon Emily LAU Wai-hing, JP<br>Hon Timothy FOK Tsun-ting, GBS, JP<br>Hon Ronny TONG Ka-wah, SC<br><br>(Total: 9 Members) |
| <b>Clerk</b>           | Miss Polly YEUNG   |
| <b>Legal Adviser</b>   | Ms Connie FUNG   |
| <b>Date</b>            | 13 October 2005  |