

立法會
Legislative Council

LC Paper No. CB(1)2033/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/PL/ITB/1

Panel on Information Technology and Broadcasting

Minutes of meeting
held on Monday, 12 March 2007, at 1:00 pm
in the Chamber of the Legislative Council Building

- Members present** : Hon Albert Jinghan CHENG (Chairman)
Hon SIN Chung-kai, JP (Deputy Chairman)
Hon Fred LI Wah-ming, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Albert CHAN Wai-yip
Hon Ronny TONG Ka-wah, SC
- Members attending** : Hon Audrey EU Yuet-mee, SC, JP
Hon LEUNG Kwok-hung
Dr Hon Fernando CHEUNG Chiu-hung
- Members absent** : Dr Hon LUI Ming-wah, SBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
- Public officers attending** : Agenda Item IV

Mr Joseph W P WONG, GBS, JP
Secretary for Commerce, Industry and Technology

Mrs Marion LAI, JP
Deputy Secretary for Commerce, Industry and Technology
(Communications and Technology)

Ms Lorna WONG
Principal Executive Officer
Broadcasting Authority

Mr P L PO
Secretary
Broadcasting Authority

Mr CHU Pui-hing, JP
Director of Broadcasting
Radio Television Hong Kong

Ms LI Siu-mei
Deputy Head, Corporate Communications Unit
Radio Television Hong Kong

Agenda Item V

Mrs Marion LAI, JP
Deputy Secretary for Commerce, Industry and Technology
(Communications and Technology)

Mr T Y CHAN
Assistant Director of Telecommunications (Regulatory)

Agenda Item VI

Mr Stephen MAK, JP
Deputy Government Chief Information Officer
(Operation)

Mr Dennis PANG
Assistant Government Chief Information Officer (Industry
Development)

**Attendance by
invitation**

: Agenda Item IV

Broadcasting Authority

Mr Adrian WONG Koon-man
Member

Equal Opportunities Commission

Mr Ferrick CHU
Head, Policy & Research

Amnesty International Hong Kong Section Limited

Ms Medeleine MOK
Coordinator
LGBT Group

Ms Liz WHITELAM
Member
LGBT Group

Spiritual Seekers Society Hong Kong

Mr Alexander SZETO Lok-tin
President

Ms LEE Hoi-yiu
Secretary

Hong Kong Journalists Association

Ms WOO Lai-wan
Chairperson

Women Coalition of HKSAR

Ms Connie CHAN Man-wai
Chairperson

Ms WEI Siu-lik
Secretary

Hong Kong Ten Percent Club

Mr Anthony YEUNG
Chairperson

Mr Oscar CHEUNG
Member

Over the Rainbow

Mr Anthony MAN Ho-fung
Chairman

Rainbow Action

Ms YEO Wai-wai
Executive Committee

Mr Tim LEE
Volunteer

Nu Tong Xue She

Ms Wai-sum
Volunteer

The Society for Truth and Light

Mr CHOI Chi-sum
General Secretary

Ms Helen FU Dan-mui
Acting Assistant General Secretary

Caring Friends

Mr Gordon TRUSCOTT
Chairman

Hong Kong Alliance for Family

Ms Beatrice VAN
Project Manager

Hong Kong Sex Culture Society

Mr Matthew MAK
Project Director

Mr Jacky WONG
Assistant Executive Secretary

Hong Kong Women's Coalition of Equal Opportunity

Ms CHUNG Yuen-yi
Co-ordinator

The Association for the Advancement of Feminism

Ms LAU Ka-yee
Chairperson

Ms AU Mei-po
Organizer

Rainbow of Hong Kong

Mr Ken CHEUNG Kam-hung
Founder

Mr Swing CHOW
Volunteer

Hong Kong Women Christian Council

Miss Christina WONG Wai-yin
Executive Secretary

Miss Sharon LOH Yuen-ching
Executive Secretary

Blessed Minority Christian Fellowship

Rev. Selina SUN
Pastor

Student Christian Movement of Hong Kong

Ms POON Wan-yu
President

Miss LAU Kim-ling
Executive Secretary

Hong Kong Christian Institute

Mr FAN Lap-hin
Project Secretary

Alliance of Civic Education

Miss CHAN Sze-wan
Program Secretary

Justice & Peace Commission of the Hong Kong Catholic Diocese

Ms Lina CHAN Lai-na
Executive Secretary

Ms Jackie HUNG Ling-yu
Project Officer

Civil Human Rights Front

Mr LEUNG Wai-yee
Member of Human Rights Commission Task Force

Hong Kong Association for the Survivors of Women Abuse (Kwan Fook)

Ms LIU Ngan-fung
Chairperson

Hong Kong Film Directors' Guild

Mr CHEUNG Tung-joe
Permanent Honorary President

Mr CHA Chuen-yee
Executive Committee Member

The Civic Party

Miss Claudia MO
Member of Executive Committee

Miss Dora WONG
Member of Cultural Policy Group

Individuals

Mr Joseph CHO Man-kit and Mr Michael John VIDLER

Mr Howard LAI
Independent Observer

Ms CHEUNG Yim-ling and Ms CHEUNG Kit-lai
Parent

Agenda Item VI

Mr Nicholas YANG
Chief Executive Officer / Hong Kong Cyberport
Management Company Limited

Mr Cavan CHEUNG
Senior Manager (Finance & Corporate Affairs) /
Hong Kong Cyberport Management Company Limited

Clerk in attendance : Miss Erin TSANG
Chief Council Secretary (1)3

Staff in attendance : Ms Pauline NG
Assistant Secretary General 1

Ms Connie FUNG
Assistant Legal Adviser 3

Ms Annette LAM
Senior Council Secretary (1)3

Ms Guy YIP
Council Secretary (1)1

Ms May LEUNG
Legislative Assistant (1)6

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)1063/06-07 -- Minutes of meeting held on
15 January 2007)

The minutes of the meeting held on 15 January 2007 were confirmed.

II. Information paper issued since last meeting

(LC Paper No. CB(1)1016/06-07(01) -- "Guide to Filming in Hong Kong 2007/08" provided by the Film Services Office, Television and Entertainment Licensing Authority)

2. Members noted the paper issued since the last meeting.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)1065/06-07(01) -- List of outstanding items for discussion

LC Paper No. CB(1)1065/06-07(02) -- List of follow-up actions)

3. Members noted that the following items were proposed by the Administration for discussion at the next Panel meeting to be held on 17 April 2007:

- (a) Review of the effectiveness of the Film Guarantee Fund and other support measures rendered to the film industry;
- (b) Provision of Wi-Fi facilities at government premises; and
- (c) Issues relating to Internet disruptions caused by earthquake damage.

4. On (a), members agreed that the film industry, stakeholders and other interested parties should be invited to attend the Panel meeting to provide their views. Members further agreed that the meeting be advanced to start at 10:00 am.

(Post-meeting note: As the Bills Committee on Unsolicited Electronic Messages Bill scheduled a meeting on the same day from 8:30 am to 10:30 am, and five members of which were Panel members, to facilitate those members attending both meetings and with the concurrence of the Panel Chairman, the Panel meeting was re-scheduled to be held from 10:45 am to 1:30 pm, instead of 10:00 am to 12:45 pm. Furthermore, at the Chairman's instruction, a general notice inviting submissions on the support measures considered necessary for the film industry, including the proposed establishment of the Film Development Council and the launching of the Film Guarantee Fund, was posted on the website of the Legislative Council (LegCo) on 21 March 2007. Interested parties were also invited to make submissions and to attend the meeting. Members were duly informed of the above arrangements vide LC Paper No. CB(1)1189/06-07 on 21 March 2007.)

5. Members noted the Administration's proposal to defer the discussion on the item of "Progress in the implementation of digital terrestrial television broadcasting in Hong Kong" from April to May/June 2007 tentatively, as the Administration needed to obtain supplementary information from the two domestic free television (TV) broadcasters to evaluate their technical proposals before a progress report could be made to the Panel.

IV. Issues relating to the editorial independence of Radio Television Hong Kong and the yardsticks of the Broadcasting Authority in imposing sanctions

LC Paper No. CB(1)1065/06-07(03) -- Paper provided by the Commerce, Industry and Technology Bureau

LC Paper No. CB(1)1065/06-07(04) -- Paper provided by the Broadcasting Authority

LC Paper No. CB(1)1065/06-07(05) -- Paper provided by Radio Television Hong Kong
(*Chinese version only*)

LC Paper No. CB(1)1094/06-07(01) -- Referral from Complaints Division of the Legislative Council Secretariat on allegation against a Radio Television Hong Kong programme for advocating homosexuality
(*Chinese version only*)

LC Paper No. CB(1)865/06-07(02) -- Press release made by the Broadcasting Authority on 20 January 2007

LC Paper No. CB(1)865/06-07(03) -- Statement made by Radio Television Hong Kong on 20 January 2007

LC Paper No. CB(1)865/06-07(04) -- Statement made by Commerce, Industry and Technology Bureau on 23 January 2007

LC Paper No. CB(1)1065/06-07(06) -- Transcript of the Secretary for Commerce, Industry and Technology speaking to the media on 23 January 2007

LC Paper No. CB(1)1065/06-07(07) -- Relevant newspaper cuttings
(*Chinese version only*)

LC Paper No. CB(1)1065/06-07(08) -- Relevant newspaper cuttings))
(*English version only*)

6. Members noted that written submissions had been received from nine individuals and two organizations not attending the meeting (LC Paper Nos. CB(1)1065/06-07(11), CB(1)1065/06-07(12), CB(1)1065/06-07(16) and CB(1)1065/06-07(17)).

(*Post-meeting note: Two more written submissions from an organization and three individuals respectively received after the meeting were circulated to members vide LC Paper Nos. CB(1)1252/06-07(01) and CB(1)1262/06-07(01) on 29 March 2007.*)

7. The Chairman welcomed representatives of the Administration and deputations to the meeting. He said that written submissions received before the meeting had been circulated to members and uploaded onto the LegCo's website for public perusal. He requested the deputations to provide their written submissions, if they had not done so, or supplementary submissions, if any, to the Panel after the meeting. He also reminded the deputations that when addressing the Panel at the meeting, they were not covered by the protection and immunity under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), and their written submissions were also not covered by the said Ordinance. In this connection, he remarked that instead of dealing with particular cases, the purpose of the meeting was to discuss the general principles relating to the yardsticks of the Broadcasting Authority (BA) in imposing sanctions and whether the composition of BA could adequately reflect the prevailing social values generally accepted by the community.

Presentation by deputations

Equal Opportunities Commission (EOC)

(LC Paper No. CB(1)1045/06-07(01) -- Submission)

8. Mr Ferrick CHU, Head, Policy and Research of EOC, pointed out that according to the findings of the Survey on Public Attitudes towards Homosexuals commissioned by the Home Affairs Bureau (HAB) in 2006, as high as about 30% of the respondents considered that homosexuals presently were being discriminated against. While the present anti-discrimination ordinances administered by EOC did not cover discrimination in this regard, the Government was taking a non-legislative approach to address the problem of social discrimination against homosexuals. He reflected the views of some sexual minority groups that the TV programme produced by Radio Television Hong Kong (RTHK), i.e. 《鏗鏘集》之〈同志·戀人〉"Hong Kong Connection - Homosexual Lovers" ("Homosexual Lovers"), highlighted the difficulties faced by homosexual couples in their daily life of which the general public might not be aware. EOC was of the view that the production of a documentary dealing with controversial issues of homosexuality and same-sex marriage was in line with the educational approach adopted by the Government to raise public awareness. EOC had no strong view on BA's comment that the programme presented only the

merits of homosexual marriage and featured only the views of three homosexuals on legislating on homosexual marriage, and considered that the way to present programmes in an impartial manner should be discussed by stakeholders and the industry. In this connection, Mr CHU advised that subsequent to BA's strong advice issued to RTHK, EOC received 1 103 enquiries, e-mails and letters, etc from members of the public expressing views on BA's decision. While the majority of them raised opposition to the decision, there were five letters jointly signed by 273 citizens expressing support of it.

Amnesty International Hong Kong Section Limited (AIHK)

(LC Paper No. CB(1)865/06-07(01) -- Submission (English version only))

9. Ms Medeleine MOK, Co-ordinator, LGBT Group of AIHK, said that AIHK was one of the world's largest human rights organization and had been fighting for human rights since its foundation in 1961. AIHK had from time to time provided views on issues of concern to the United Nations (UN) and the Hong Kong Government. She then highlighted below AIHK's views on BA's decision as detailed in its submission to the Panel on Information Technology and Broadcasting (ITB Panel):

- (a) BA's decision would undermine the Government's fight against discrimination on the ground of sexual orientation and was contrary to the Government's commitment made to the UN Committee on Economic, Social and Cultural Rights and the Commission on Human Rights, which was to use education as the most appropriate means to eliminate discrimination as well as to engender a culture of greater objectivity, tolerance and mutual respect.
- (b) To eliminate discrimination against sexual orientation, it was important to reach children at the earliest possible stage of their moral and intellectual development to preclude the formation of negative attitudes. However, BA's decision and the press statement issued by the Secretary for Commerce, Industry and Technology (SCIT) would undermine the Government's efforts made in this regard.
- (c) BA's decision would give rise to self-censorship among the media, including RTHK which was the territory's public service broadcaster.

Summing up, Ms MOK emphasized the negative impact of BA's decision, and urged the ITB Panel to issue a statement with a view to safeguarding the freedom of press particularly in dealing with controversial issues, and to promoting positive attitude, tolerance and respect in the community, as well as to eliminating discrimination.

Spiritual Seekers Society Hong Kong (SSSHK)
(LC Paper No. CB(1)892/06-07(01) -- Submission)

10. Mr Alexander SZETO, President of SSSHK, said that SSSHK was a liberal religious group comprising members from various religions such as Buddhism, Christianity, Humanism, Atheism, etc. The common beliefs of SSSHK were liberty, generosity and rationality. He stated SSSHK's opinion that homosexual orientation was an inherent sexual orientation that caused no harm to others. Homosexuals were a minority and vulnerable group in the society. SSSHK did not agree that the programme "Homosexual Lovers" had failed to achieve impartiality as conceived by BA. Instead, SSSHK considered that it helped promote virtuous moral standards such as generosity, understanding, acceptance and care towards the vulnerables, which should be passed onto the next generation. SSSHK held that the programme should not only be broadcast during family viewing hours (FVH) but also be used as an educational material for teaching the next generation. While respecting all sorts of religious beliefs, SSSHK considered it inappropriate to apply rigidly doctrines of a particular religion to the entire society which would suppress human rights and the freedom of press. To effectively eliminate all forms of discrimination and cultivate a more generous and inclusive society, SSSHK urged that a legislative approach should be adopted by the Government in this regard.

Hong Kong Journalists Association (HKJA)
(LC Paper No. CB(1)892/06-07(02) -- Submission (English version only))

11. On BA's view that the programme "Homosexual Lovers" was unfair, partial and biased, Ms WOO Lai-wan, Chairperson of HKJA, pointed out that according to paragraphs 4 and 6 of Chapter 9 of the Generic Code of Practice on TV Programme Standards (the Code), it was not necessary for broadcasters to achieve absolute neutrality in programmes. Furthermore, the programme "Homosexual Lovers" was a featured story meant to highlight the concerns of vulnerable homosexuals. As such, rigid adherence to impartiality would defeat its intended purpose. HKJA also expressed serious concern on SCIT's intervention by inviting the Director of Broadcasting (D of B) to explain the statement issued by RTHK following the issue of the strong advice by BA, since the issue of the statement by RTHK was essentially a broadcaster's prerogative. She cautioned that such kind of media control would be tantamount to orders made by the State Administration of Radio, Film and Television which prescribed from time to time standards for compliance by and imposed restrictions on all media organizations. She said that such regulatory control, if applied, would be detrimental to Hong Kong's reputation as a place enjoying a high degree of freedom of expression.

Women Coalition of HKSAR (Women Coalition)

(LC Paper No. CB(1)1065/06-07(09) -- Joint submission from 12 organizations
(Chinese version only))

12. As one of the interviewees of the programme "Homosexual Lovers", Ms Connie CHAN, Chairperson of Women Coalition, said that she had intended to come forward to voice the views of the minority homosexuals, but ended up being deeply humiliated by BA's criticism of the programme. She considered that BA's criticism was also an insult to all homosexuals in Hong Kong. Moreover, she remarked that while BA considered the presentation of the programme unfair, partial and biased, she queried if programmes featuring other public policies, such as those about sex workers and recipients of the Comprehensive Social Security Assistance (CSSA), should also present views of those who were against these groups of people just for the sake of even-handedness. On BA's remark that the programme should be classified as Parental Guidance Recommended, she doubted if there was any audio or visual presentation in the programme which was not suitable for viewing by children. She said that BA's decision had resulted in self-censorship in various sectors of the society, such as tertiary education institutes, public organizations, youth centres, sound and TV broadcasters, and the print media, etc, in the form of changing programme participants, involvement of anti-homosexuality participants, etc. She opined that it was apparent that BA's decision had adverse impact on the community, and also went against the Government's intention to eliminate discrimination against sexual orientation.

Hong Kong Ten Percent Club (HKTPC)

(LC Paper No. CB(1)1065/06-07(09) -- Joint submission from 12 organizations
(Chinese version only))

LC Paper No. CB(1)1129/06-07(01) -- Submission (Chinese version only)
(tabled at the meeting and subsequently issued on 13 March 2007)

13. Mr Anthony YEUNG, Chairperson of HKTPC, cited a research conducted in 2004 by Professor Catherine TANG So-kum of the Department of Psychology, Faculty of Social Science, the Chinese University of Hong Kong, entitled "Coming Out Experiences and Psychological Distress of Chinese Homosexual Men in Hong Kong" that young male homosexuals' first awareness of their sexual orientation began at the age of 13. By and large, they would realize their homosexual identity at the age of 21. According to Professor TANG, to help build a healthy growing environment for young homosexuals, positive role models and proper support network were required. Mr YEUNG remarked that the research re-affirmed the Government's sex education policy as promulgated in the Guidelines on Sex Education in Schools which was to educate junior secondary students an awareness of different sexual orientation. HKTPC therefore considered that BA's strong advice issued to RTHK on the grounds that the programme was unsuitable for broadcast within FVH had failed to show respect to scientific verification and also failed to address the need of growing youngsters. HKTPC doubted if BA's standards were too conservative and had lagged behind the Government's sex education policy

promulgated more than a decade ago and had also deviated from contemporary social realities. HKTFC urged BA to withdraw its decision, and to apologize to the interviewees of the programme "Homosexual Lovers", the homosexual community as well as the society. Moreover, BA should also strive to keep abreast its knowledge in homosexuality.

Over the Rainbow

(LC Paper No. CB(1)1065/06-07(09) -- Joint submission from 12 organizations
(Chinese version only))

14. Mr Anthony MAN, Chairman of Over the Rainbow, said that his organization provided hotline services to family members of homosexuals and had provided telephone counselling to more than 700 parents of homosexuals in the past nine years. He advised that parents did not necessarily oppose to their children's homosexual orientation but were more concerned about their children's future and also about the availability of relevant information from the media and the society to help their children. He opined that it was the media's duty to educate the public and to produce programmes dealing with the subject of homosexuality. RTHK had done exactly so in producing the programme "Homosexual Lovers" and had truly presented the relationship between homosexual couples. Although some parents might be perturbed by the programme and worried about its impact on their children, he pointed out that homosexuality did exist in the society. As such, there was a genuine need to address the needs of homosexuals and their parents. However, BA's decision on the programme gave a hard blow to the parents of homosexuals by sending a message that no matter how supportive those parents were, their children were destined to be discriminated. Over the Rainbow regretted BA's decision and wished that the Government would set out concrete legislative timetable to outlaw discrimination on the ground of sexual orientation.

Rainbow Action

(LC Paper No. CB(1)1065/06-07(09) -- Joint submission from 12 organizations
(Chinese version only))

15. Mr Tim LEE, Volunteer of Rainbow Action, said that he was one of the interviewees of RTHK's programme "Gayness in School" which was broadcast on 18 June 2000. The programme reflected the problems faced by homosexual secondary students and the implementation of sex education in schools to promote an acceptance of different sexual orientation. However, he was disappointed that sex education still remained a non-core curriculum in schools. Highlighting that RTHK had all along been producing featured stories to reflect the real world, in particular the disadvantaged groups, which entailed change of public policies and legal reforms, he cited another example that as early as 2 November 1986, another episode of "Hong Kong Connection" entitled "He or She" was broadcast which reflected the pressures suffered by and feelings of the interviewees who changed their congenital sex. In that episode, there was discussion about issues relating to public policies and legal issues such as those concerning Hong Kong Identity Card, immigration control, birth certificate and marriage, etc; yet, opposing views were not covered. However,

RTHK had not been issued with any strong advice at that time. As such, he was not convinced by BA's present decision that the programme "Homosexual Lovers" should be subject to the impartiality rule under the relevant code as the programme dealt with matters relating to public policies.

Nu Tong Xue She

(LC Paper No. CB(1)1065/06-07(09) -- Joint submission from 12 organizations
(Chinese version only)

LC Paper No. CB(1)1129/06-07(02) -- Submission (Chinese version only))
(*tabled at the meeting and subsequently issued on 13 March 2007*)

16. Ms Wai-sum, Volunteer of Nu Tong Xue She, said that in response to an e-appeal for "one-person-one-letter" jointly initiated by Nu Tong Xue She and a number of concern groups to express their views on BA's decision, by 11 March 2007, 1 242 letters opposing BA's decision were received and forwarded to the Office of the Chief Executive (CE), HAB, The Ombudsman, BA and the Television and Entertainment Licensing Authority (TELA), etc. However, response from these authorities was poor, and the CE's Office and HAB had not even replied. Nu Tong Xue She was gravely concerned about the excessive power of BA, and considered that an independent adjudicating body should be set up to put in place checks and balances on BA's power. Nu Tong Xue She was also concerned that the principle of impartiality could be interpreted differently by different people and could adversely affect media productions. For example, when one organization or religion was invited to present views, other organizations or religions might protest against the programme as being biased or partial on the ground that they were not invited to present their views. On BA's recommendation that controversial subjects should be dealt with in an impartial manner, she opined that such recommendation seemed to imply that any production dealing with non-heterosexuality would be regarded as controversial. She cautioned that this would prejudice the freedom of creativity, and might result in the banning of the broadcast of renowned pieces of creative work on TV, such as the movie "Brokeback Mountain".

The Society for Truth and Light (STL)

(LC Paper No. CB(1)1098/06-07(01) -- Submission (Chinese version only))

17. Having previously worked in RTHK for 10 years, Mr CHOI Chi-sum, General Secretary of STL stressed that like many people who treasured the freedom of press, he was also highly supportive of the editorial independence of RTHK. Nevertheless, he was of the view that BA's decision on the "Homosexual Lovers" was but a minor issue. Yet, it was escalated to being suppressive on vulnerables and the press. In his view, BA's decision was not to dissuade discussion on homosexuality. It simply pointed out that homosexual marriage was a controversial issue which should be handled in a more balanced manner. However, rather than sharing personal feelings, most of the contents of the programme "Homosexual Lovers" were about personal views on homosexuality. He pointed out that since the Government had already initiated discussions on discrimination against sexual orientation last year,

RTHK should balance dissenting views in the programme. He remarked further that in view of BA's decision and public opinions, RTHK should strive to make improvement in future. On the broadcast hour, he opined that since children were normally not accompanied by their parents to watch TV during FVH and children who watched the programme "Homosexual Lovers" might not have knowledge about homosexuality which was a controversial subject, parental guidance should be provided to help children understand the programme better. He remarked further that if the programme had not been broadcast during FVH, it might not arouse as much controversy as in the present situation. He concluded that the advice issued by BA was only a reminder for RTHK to handle controversial subjects in an impartial manner in future.

Caring Friends

(LC Paper No. CB(1)1065/06-07(10) -- Submission (English version only))

18. Mr Gordan Truscott, Chairman of Caring Friends, said that the submission made by Caring Friends referred to the vast and growing body of information worldwide revealing and quantifying the many detrimental aspects of homosexual practice. These included concerns for higher rate of violence in homosexuality, more depression and mental illness, far greater rate of infection through sexually-transmitted diseases such as Human Immunodeficiency Virus (HIV), blood diseases, loss of function, a lessened longevity and promiscuity even among those proclaiming themselves to be in a committed relationship. These several detriments were poorly reported in Hong Kong. He remarked that according to the Department of Health, the latest HIV positive figures indicated that a homosexual person was 35 times more likely to be HIV positive than a heterosexual person. A survey entitled "A third of same-sex partners suffer abuse" produced by five local organizations and reported by the South China Morning Post on 15 February 2007 found that there were elevated level of abuse by a sexual partner among the homosexual and bisexual communities, with a rate almost double that of heterosexuals. He was of the view that Hong Kong addressed inadequately the concerns about homosexuality. While homosexuals strived to normalize homosexuality through the legalization of same-sex marriage, they had glossed over the many damaging problems of homosexual practice. He considered that the programme "Homosexual Lovers" brought a minority perspective on same-sex marriage based on feelings, but ignored issues on public health and the many damaging effects of homosexual sex, which was not in the interests of the public. He also noted with concern that there was no clear indication that this oversight would be corrected by RTHK.

Hong Kong Alliance for Family (HKAF)

(LC Paper No. CB(1)1094/06-07(02) -- Submission (Chinese version only))

LC Paper No. CB(1)1205/06-07(01) -- Report on a survey about homosexuality and discrimination on the ground of sexual orientation in the Hong Kong community (Chinese version only))

(provided after the meeting and circulated to members on 23 March 2007)

19. Ms Beatrice VAN, Project Manager of HKAF, said that since issues relating to social moral standards such as homosexuality should be fully discussed by all groups in the society with a view to arriving at consensus, HKAF considered that the strong advice issued by BA to RTHK in response to a complaint made by a member of the public was in compliance with public expectation. She then referred to the findings of a survey commissioned by HKAF and conducted by the University of Hong Kong about homosexuality and discrimination on the ground of sexual orientation in the Hong Kong community, which found that about 90% of the respondents did not support the provision of public moneys to subsidize homosexual groups or to promote homosexual life. The survey also found that 62.9% of the respondents considered homosexual behaviour abnormal; 58.6% considered it detrimental to the contemporary structure of family; 75.8% considered the growing prevalence of homosexual behaviour in public places would adversely affect youngsters. She added, however, that while most respondents had reservation on homosexual behaviour, 83.2% of them would accept homosexuals as friends. As regards the programme "Homosexual Lovers", she held the view that the presentation of which had failed to comply with the media principles of fairness and impartiality, and was also contrary to the public opinion that the public coffers should not be used to subsidize activities which promoted homosexuality.

Hong Kong Sex Culture Society (HKSCS)

(LC Paper No. CB(1)1129/06-07(03) -- Submission (Chinese version only))

(tabled at the meeting and subsequently issued on 13 March 2007)

20. Mr Mathew MAK, Project Director of HKSCS, said that homosexual marriage would change the contemporary definitions of marriage and family, and would entail significant social re-engineering. Citing a number of international agreements such as the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, etc which regarded marriage as a legal relationship between a male and a female, he said that marriage was a natural and fundamental group unit of society protected by the state and the society which should be supported, preserved and maintained by means of appropriate measures. He then referred to the verbatim transcript compiled by HKSCS on the programme "Homosexual Lovers", and remarked that apart from the narration, half of the content of the programme was about the sharing of personal experience/expectation, while the other half was related to the expression of views on public policies. The programme did not touch on any views from those who had reservation on homosexual marriage or opposed the proposal to legislate on discrimination against sexual orientation. The word count statistics of the verbatim transcript indicated that the programme had dealt with public policies in a biased manner. As such, HKSCS considered BA's decision on the programme appropriate. He added further that HKSCS had also received a lot of telephone calls from citizens expressing support for BA's decision. In view of this, HKSCS appealed to the public on 8 February 2007 for reflection of their views to BA and relevant government departments directly. According to BA's announcement made on 15 February 2007, about 2 000 citizens had expressed their support for BA's decision. As such, he was of the view that the subject of

homosexual marriage was really of wide public concern which should be fully debated by the community. In this connection, he reminded, however, that media organizations should not apply self-censorship in dealing with matters related to public policies, such as homosexual marriage, so as to facilitate the society's understanding of and hence deliberative discussion on those issues.

Hong Kong Women's Coalition of Equal Opportunity (HKWCEO)
(LC Paper No. CB(1)1129/06-07(04) -- Submission (Chinese version only))
(tabled at the meeting and subsequently issued on 13 March 2007)

21. Ms CHUNG Yuen-yi, Co-ordinator of HKWCEO, expressed concern about the impact of BA's decision on the programme "Homosexual Lovers" as such decision would adversely undermine the efforts made to eliminate discrimination against vulnerable groups. HKWCEO considered that one of the media's roles was to help eliminate discrimination, and RTHK had just fulfilled such role by interviewing three homosexuals in the programme which would help the community gain a better understanding of people with different sexual orientation. She stressed that there were many vulnerable groups in the society who were being discriminated by the mainstream society, such as sex workers, minor ethnic groups, new immigrants, etc. A harmonious society could only be built if dialogues were promoted between these vulnerable groups and the mainstream society. However, in a commercialized society of Hong Kong, very few such dialogues were promoted by the media. Nevertheless, RTHK had been striving to fulfill its public mission by reflecting the lives of those who were being discriminated, such as homosexuals. As such, HKWCEO considered BA's strong advice detrimental to the efforts made to eliminate discrimination. Since the Government was committed to taking an educational approach to eliminate all forms of discrimination and to protect human rights, HKWCEO considered that a joint Panel meeting should be held by the ITB Panel and the Panel on Home Affairs (HA Panel) to follow up further on this subject.

The Association for the Advancement of Feminism (AAF)
(LC Paper No. CB(1)1129/06-07(05) -- Submission (Chinese version only))
(tabled at the meeting and subsequently issued on 13 March 2007)

22. Ms LAU Ka-ye, Chairperson of AAF, commented that in exercising its power, BA lacked professional judgement such that it had taken the true reflection of the life of homosexuals as promoting homosexuality and that of grassroot people as using downright offensive expressions. She objected to BA's view on the programme "Homosexual Lovers", and considered that the programme simply reflected the aspiration of the three interviewees to get married and was a genuine depiction of the homosexuals' life. Echoing to the views expressed by HKJA, Ms LAU said that AAF was worried that the incident would undermine the freedom of press. On BA's announcement that about 2 000 members of the public had written to support its decision, she remarked that it merely reflected that the mainstream society outnumbered the vulnerable group, and it might also be the reason why at present, discrimination on the ground of sexual orientation could not be successfully eliminated by way of law. As a women's group, AAF was keen to help

the vulnerable group of women and to eliminate discrimination by reflecting the difficulties encountered by women through the media. Moreover, as the Government should observe international agreements it had entered into, such as the UN human rights treaties, etc, to eliminate all forms of discrimination in respect of age, ethnic groups and sexual orientation, BA and RTHK, as public bodies, should also comply with the international agreements. AAF also supported HKWCEO's suggestion that a joint Panel meeting be held by the ITB Panel and the HA Panel to discuss issues relating to discrimination on grounds of sexual orientation. In this connection, she said that to facilitate the public to air their views, a dedicated channel should be made available for broadcasting by non-governmental organizations (NGOs). While Hong Kong Cable Television Limited (Cable TV) had once been requested to make available a channel for NGOs to air their views, AAF considered that the Government should actively pursue the matter with Cable TV.

Rainbow of Hong Kong

(LC Paper No. CB(1)1065/06-07(12) -- Joint submission with Rainbow Fellowship (Chinese version only))

23. While expressing grave concern that BA's decision on the programme of "Homosexual Lovers" had caused much harm to homosexuals, Mr Ken CHEUNG, Founder of Rainbow of Hong Kong, was pleased to note that more and more homosexuals had the courage to come out to voice their views at this meeting. He said that in the wake of public concern triggered by the "Homosexual Lovers" case, he had recently been invited by three local universities to convene sharing sessions with students with a view to eliminating discrimination on the ground of sexual orientation through education. In this connection, Mr Swing CHOW, Volunteer of Rainbow of Hong Kong, shared with the meeting that more than 10 years ago, he was interviewed by RTHK in a midnight programme to talk about homosexual activities in the 60's and 70's. Although that programme was broadcast more than a decade ago, it did not result in any complaint from the public. As such, he doubted if BA had now applied moral standards too conservatively by regarding the programme "Homosexual Lovers" as promoting homosexuality.

Hong Kong Women Christian Council (HKWCC)

(LC Paper No. CB(1)1129/06-07(06) -- Submission (Chinese version only))
(tabled at the meeting and subsequently issued on 13 March 2007)

24. Miss Sharon LOH, Executive Secretary of HKWCC, said that HKWCC was a Christian organization which believed that the freedom of thought and expression would help promote the interests of different social groups, particularly the vulnerables, and would be beneficial to cultivating a socially inclusive and harmonious society. She commented that in forming its views on the programmes of "An Autumn's Tale" and "Homosexual Lovers", BA had applied the moral standards too rigidly and the Code inappropriately which would damage the media ecology. In the absence of clear justifications to support its views and decisions, it seemed that BA had not applied sound professional judgement, but had just formed its decisions on the two programmes for the sake of responding to public complaints. As such,

HKWCC had grave concern on the standards adopted by BA in forming its views and imposing sanctions, as well as its integrity as an industry regulator. HKWCC considered that in future, BA should handle individual complaints in a sensible manner such that it would not interfere with the editorial independence or professional judgement of the media. While considering that the programme "Homosexual Lovers" had presented the subject of homosexuality in an impartial way, HKWCC was of the view that BA's decision was discriminatory against homosexuals, and that the ITB Panel and the HA Panel should jointly set up a working group to follow up the issue. HKWCC also requested the Government to legislate on sexual orientation without further delay.

Blessed Minority Christian Fellowship (BMCF)

(LC Paper No. CB(1)1065/06-07(09) -- Joint submission from 12 organizations
(Chinese version only)

LC Paper No. CB(1)1065/06-07(13) -- Submission)

25. Rev. Selina SUN, Pastor of BMCF, said that those who were perturbed by the programme "Homosexual Lovers" should, in fact, listen to the views expressed by the interviewees which, as she understood, were true reflection of the feelings of the homosexuals. She remarked that the suppression exerted on homosexuals by BA's strong advice issued to RTHK would also result in social discrimination against parents and family members of homosexuals. Without support from their families, homosexuals would become more helpless and isolated. She also urged the Government to set out a concrete timetable to legislate on discrimination against different sexual orientation so as to establish a fair, open and just society.

Student Christian Movement of Hong Kong

(LC Paper No. CB(1)1098/06-07(02) -- Submission (Chinese version only))

26. Miss LAU Kim-ling, Executive Secretary of Student Christian Movement of Hong Kong, commented that the programme "Homosexual Lovers" was presented as a featured story, and hence it was not necessary to present opposing views in order to achieve impartiality. Moreover, according to paragraphs 4 and 6 of Chapter 9 of the Code, impartiality might be achieved over time within a series of programmes. She remarked further that there were many vulnerables, such as old ladies making a living by collecting cartoon boxes and CSSA recipients, whose voices were not heard by the mainstream society, and this was exactly where the media should come into play by fulfilling its mission to reflect the life of the vulnerables to the general public. In this regard, RTHK had all along been fulfilling this role and brought new horizons to the public in its "Hong Kong Connection" episodes, which was in fact a popular TV series among students of Hong Kong. While appreciating the Government's policy to eliminate discrimination on the ground of sexual orientation through public education and the efforts made by educational institutes as to promote liberal studies among students with a view to widening their perspectives, she considered that programmes like "Homosexual Lovers" should be encouraged to help students gain a better understanding of the vulnerables in the society.

Hong Kong Christian Institute (HKCI)

(LC Paper No. CB(1)1129/06-07(07) -- Submission (Chinese version only))
(tabled at the meeting and subsequently issued on 13 March 2007)

27. Mr FAN Lap-hin, Project Secretary of HKCI, said that HKCI had all along been providing support to vulnerables and at-risk groups who were discriminated by the society. To strengthen communication and to foster a harmonious society, diversified and free expression of views should be encouraged. HKCI was highly appreciative of the programme "Homosexual Lovers" and considered that BA's decision was discriminatory against homosexuals. As such, HKCI urged for an early introduction of legislation to outlaw discrimination on the ground of sexual orientation as the present case had revealed that BA had the power to interfere the autonomy and editorial independence of the media. HKCI also called on BA to re-consider its decision made on the programme "Homosexual Lovers" and SCIT to refrain from interfering with the independent operation and editorial independence of RTHK.

Alliance of Civic Education (ACE)

(LC Paper No. CB(1)1129/06-07(08) -- Submission (Chinese version only))
(tabled at the meeting and subsequently issued on 13 March 2007)

28. Miss CHAN Sze-wan, Program Secretary of ACE, said that ACE comprised organizations, teachers and individuals which/who were concerned about the development of civic education in Hong Kong. As she understood, many homosexuals were afraid of making known their sexual orientation for fear of discrimination. ACE opined that the programme "Homosexual Lovers" had truly reflected the struggle of, pressure suffered and discrimination faced by homosexuals. While considering that the programme was in compliance with the Government's policy to educate the public, including children and youngsters, to eliminate discrimination against sexual orientation, ACE did not see the reason for BA's decision that the programme was not suitable for broadcast during FVH. Moreover, she remarked that if BA held fast to its present interpretation of impartiality, programmes about heterosexuality should then also cover content about homosexuality.

Justice & Peace Commission of the Hong Kong Catholic Diocese (JPCHKCD)

(LC Paper No. CB(1)1129/06-07(09) -- Submission (Chinese version only))
(tabled at the meeting and subsequently issued on 13 March 2007)

29. As a Christianity group which cared about the society and human rights, Ms Lina CHAN, Executive Secretary of JPCHKCD, said that JPCHKCD was disappointed by BA's strong advice issued to RTHK on its programme "Homosexual Lovers". The case revealed that BA had failed to uphold the principle of justice, as some programmes produced by mainstream media organizations which were discriminatory in nature against various minor ethnic and vulnerable groups had not been issued with strong advice by BA. JPCHKCD considered that RTHK, as a public

service broadcaster, should educate the public by producing programmes to reflect the life of vulnerable groups and to balance programme contents made by commercial TV broadcasters. JPCHKCD did not agree with the complainant that the programme portrayed the life of homosexuals in a positive manner and promoted homosexuality. Instead, JPCHKCD considered the programme a genuine portrayal of the difficulties faced by homosexuals. She remarked that the complainant might lodge his complaint out of his personal and subjective feelings towards homosexuals. Unfortunately, BA's decision on the programme suggested that it agreed with the complainant's viewpoints. As such, it would only deepen the public's bias and misunderstanding of homosexuals. JPCHKCD was of the view that BA's decision had not only suppressed the voices of homosexuals but also deprived the public of the right to have more understanding about this vulnerable group. JPCHKCD therefore strongly requested that BA should withdraw its decision on the programme "Homosexual Lovers", and should respect the editorial independence of RTHK.

Civil Human Rights Front (CHRF)

(LC Paper No. CB(1)1098/06-07(03) -- Submission (Chinese version only))

30. Mr LEUNG Wai-ye, Member of Human Rights Commission Task Force of CHRF, said that CHRF was a platform comprising more than 50 community organizations which were concerned about democracy, people's livelihood and the rights and benefits of vulnerable groups. As such, CHRF was highly concerned about the "Homosexual Lovers" incident as it involved the freedom of press and exploitation of the vulnerable groups. Referring to CHRF's submission, he said that CHRF disagreed with BA's decision that the programme was biased. From the verbatim transcript made by HKSCS, he pointed out that the narration at the beginning of the programme had already served to remind viewers that the programme was about homosexuality which was a controversial subject. Moreover, the programme merely featured a story about three persons who put forward their own views as homosexuals. He also echoed to some deputations' views that the mainstream society was to a certain extent discriminatory towards homosexuals, and appreciated RTHK's commitment to fulfill its role as a public service broadcaster by producing programmes that might not be considered commercially viable by commercial broadcasters, such as programmes which reflected the voices of the social minorities. Nevertheless, CHRF was worried that the media, RTHK in particular, might be deterred from reflecting the voices of vulnerable groups in view of BA's present decision. He pointed out further that since the Government had reported to the UN that it would strive to eliminate such kind of discrimination through promoting public education and devising suitable policies with a view to cultivating an inclusive and accommodating society, the production of the programme "Homosexual Lovers" by RTHK which aired the voices of homosexuals and helped promote the public's understanding of the relevant issues had in fact helped the Government achieve the duty and responsibility, whereas BA's decision was contrary to the undertaking made by the Government to the international community.

Hong Kong Association for the Survivors of Women Abuse (Kwan Fook)
(LC Paper No. CB(1)1129/06-07(10) -- Submission (Chinese version only))
(tabled at the meeting and subsequently issued on 13 March 2007)

31. In connection with BA's recommendation that the programme "Homosexual Lovers" should be viewed under parental guidance, Ms LIU Ngan-fung, Chairperson of Kwan Fook, opined that parents should regard the programme as an educational material and should discuss the relevant issues with their children. She remarked further that to achieve balanced reporting, the media should in fact be encouraged to cover stories of vulnerable groups. In this regard, she appreciated RTHK's efforts in producing programmes which featured the livelihood of social vulnerables, such as victims of family violence, etc. Kwan Fook also considered that the ITB Panel and the HA Panel should hold a joint meeting to deliberate issues relating to social norms, and that the Government should comply with the international agreements to eliminate discrimination against minority groups, etc, through legislative means.

Hong Kong Film Directors' Guild (HKFDG)
(LC Paper No. CB(1)1098/06-07(04) -- Joint submission with Hong Kong Screenwriters' Guild (Chinese version only))

32. Mr CHEUNG Tung-joe, Permanent Honorary President of HKFDG, referred to the joint submission of HKFDG and Hong Kong Screenwriters' Guild (HKSG) that BA's decisions on the programmes "Homosexual Lovers" and "An Autumn's Tale" dealt a severe blow to Hong Kong's strength as a base of creative industry. He remarked that a forum in this regard was jointly organized by HKFDG and HKSG on 4 March 2007 to discuss the regulatory mechanism of Hong Kong and the way forward. A number of celebrities from the academic, broadcasting and media fields, as well as writers and representatives of BA and TELA had participated in the forum. The forum concluded that the programme "Homosexual Lovers" only reflected homosexuals' life in the form of a documentary but not news reporting, whereas the programme "An Autumn's Tale" only contained some slangs but not downright offensive expressions. He commented that BA had deviated from contemporary social norms and applied its own rules and standards rigidly. He called upon BA to review the Glossary of Undesirable Expressions (the Glossary) by soliciting views from the public and to improve its regulatory mechanism taking into account prevailing social standards.

33. In this connection, the Chairman said that he had been invited to take part in the said forum hosted by HKFDG and HKSG. Yet, he did not attend because the invitation was subsequently withdrawn by the host. Mr CHEUNG Tung-joe explained that as the Chairman would chair the present meeting, to ensure impartiality, HKFDG and HKSD subsequently decided to withdraw their invitation extended to the Chairman.

The Civic Party (CP)

(LC Paper No. CB(1)1098/06-07(05) -- Submission (Chinese version only))

34. Miss Dora WONG, Member of Cultural Policy Group of CP, said that CP found BA's decisions on the programmes "Homosexual Lovers" and "An Autumn's Tale" disappointing, and such decisions reflected BA's lack of respect to the freedom of expression and creativity. On the programme "An Autumn's Tale", BA's comment that the programme contained coarse expressions and downright offensive expressions demonstrated that BA had no knowledge about arts and culture, the freedom of creativity and social reality. CP considered that the language used in "An Autumn's Tale" was essential to portray the character. On the programme "Homosexual Lovers", CP considered that the programme was a featured story in which personal views were presented, and BA's decision that the programme had the effect of promoting homosexuality was unfair to RTHK. CP was of the view that programmes dealing with social issues should be differentiated from election propaganda, and impartiality should not be judged on the basis of whether and how much opposing views were presented in those programmes. In this regard, CP called upon:

- (a) BA to withdraw its decisions on the two programmes;
- (b) the Government to review the Broadcasting Ordinance (BO) (Cap. 562) and to publicize the Glossary and relevant documents after conducting thorough consultation with the industry and the public;
- (c) the Government to invite representatives from the creative and arts and culture industries as members of BA in order to strike an appropriate balance in its membership, strengthen BA's role as an industry regulator as well as protecting the freedom of creativity and speech; and
- (d) the Government to quickly set up a policy bureau to take charge of cultural policies and to centralize issues in respect of culture, media and creativity, and broadcasting; to draw up policies to promote cultural development, as well as the public's awareness, recognition and appreciation of various social phenomenon.

Mr Joseph CHO Man-kit

35. Mr Joseph CHO said that as one of the interviewees of the programme "Homosexual Lovers", he thanked the production team of "Hong Kong Connection" for revealing to the public the various encounters experienced by homosexuals due to their sexual orientation and to promote the public's understanding about the vulnerable homosexual group. He, however, considered that the moral criticism made by BA inappropriate, and he also felt hurt and insulted by BA's decision. He stressed that during the 30-minute programme, he only talked about the pressure he had experienced from family and the society as a homosexual, and his desire that his

relationship with his partner be legally recognized. He had never attempted to make others accept his values. Same as other interviewees, he accepted RTHK's invitation to appear on this programme in order to reflect the real life of homosexuals who comprised around one-tenth of the local population, the discrimination they faced everyday, their struggle and desire for marriage. He considered that BA's decision was discriminatory against him, and such decision even seemed to suggest that he and other homosexuals should be separated from the society, particularly children and youngsters. It had also prejudiced his fundamental human rights. As such, he urged BA to withdraw the decision on the programme "Homosexual Lovers".

Mr Howard LAI

(LC Paper No. CB(1)1065/06-07(14) -- Submission)

36. Mr Howard LAI said that he was an independent observer. As the appellant against the broadcast of the programme "Homosexual Lovers", he welcomed BA's decision on the programme. Moreover, he also remarked that he represented a group of people who cared about maintaining Hong Kong as a healthy society, as well as parents who were perturbed by knowing the homosexual orientation of their children. He stressed that they were against all forms of discrimination in the same degree as they were against one-sided presentation of views, and were of the view that controversial social issues should be discussed by the community in an impartial and sensible manner. They considered that a harmonious society should be built with mutual understanding. He pointed out that same sex marriage was a controversial subject in Hong Kong, Mainland China and other overseas jurisdictions, and considered that bias and partiality were not the rational way in dealing with homosexuality. He also expressed concern about the mutation of diseases, such as Acquired Immune Deficiency Syndrome and Bird Flu, and the problem of global warming, all of which were attributable to the irresponsibility of mankind. As a citizen, he hoped that improvement could be made in the society on the basis of care and trust. As a Christian, he hoped that the core values of Christianity, such as faith and love, could be embraced by the whole community.

Ms CHEUNG Yim-ling and Ms CHEUNG Kit-lai

(LC Paper No. CB(1)1065/06-07(15) -- Submission (Chinese version only))

37. Ms CHEUNG Yim-ling said that she represented the views of some 30 parents, primary and secondary teachers and professionals who were in strong opposition towards the broadcast of the programme "Homosexual Lovers" during FVH on the ground that the theme of the programme was highly controversial, and yet the programme only presented one-sided views and hence was misleading. They considered that to achieve impartiality, RTHK should have included contents such as cases about people leaving homosexual practice, analysis on homosexuality from a psychological or counselling perspective, or consequences of homosexual marriage. She pointed out that as homosexuals could not give birth to children, they might resort to adoption. However, this would lead to another social problem as their adopted children would lack proper role model during their growth, and would therefore have an even more imbalanced sexual orientation. She opined that when

deliberating on social issues, the community should be able to have access to various researches including clinical researches to facilitate the formation of informed opinions and decisions. Furthermore, she did not agree that the interests of all vulnerables should override social norms. By way of illustration, she remarked that the community should not legislate to eliminate discrimination against animal obsession.

Response by the Broadcasting Authority

38. Mr Adrian WONG, member of BA, as well as the Chairman of Broadcasting Authority Complaints Committee (BACC), said that BA was an independent statutory body established under the Broadcasting Authority Ordinance (BAO) (Cap. 391). One of the functions of BA was to secure proper standards of TV and sound broadcasting programme contents that were acceptable to the community without prejudicing the freedom of speech, creativity and the operation of broadcasters. It would uphold social norms and principles generally accepted by the community, such as to guard against discrimination and advocate impartiality when controversial issues of public importance were being dealt with in broadcast programmes. Pursuant to BO and BAO, BA promulgated the codes of practice on programme standards which were binding on TV and sound broadcasters. When forming a view about the acceptability of any programme material, BA would make reference to these codes of practice and impose sanctions as appropriate.

39. Regarding BA's decision on RTHK's TV programme "Homosexual Lovers", Mr Adrian WONG stressed that BA did not have any predisposition towards sexual orientation, neither had it attempted to judge the morality of homosexuality which was a subject matter beyond the remit of BA. When forming its view, BA had carefully examined, inter alia, if the principle of due impartiality had been adhered to. He advised that BA considered that the programme was about homosexuality and legalization of homosexual marriage. The programme was therefore a factual programme dealing with matters of public policy and controversial issues of public importance in Hong Kong, and should therefore be subject to the impartiality rule under the Code. He emphasized that BA welcomed and encouraged broadcasters to produce current affairs programmes covering various social issues, including controversial subjects. He added that to achieve impartiality, reference should be made to paragraph 6 of Chapter 9 of the Code which specified that where it was not possible for principal opposing viewpoints to be reflected in a single programme or programme segment, impartiality might still be achieved over time by the production of a series of programmes or programme segments to cover opposing viewpoints.

40. On the programme "An Autumn's Tale", Mr Adrian WONG said that the programme contained some coarse expressions and downright offensive expressions which were unacceptable for broadcast on TV at all times. He remarked that to put beyond doubt the use of undesirable language in broadcast programmes, TELA had compiled and updated from time to time the Glossary after extensive consultation with the broadcasting industry and relevant stakeholders such as the Police, etc. The last review was made in 2004 and another review on the Glossary would soon be

made. He added that BA would consider how best the public could be involved in the upcoming review. Moreover, in view of the concerns raised by some deputations, consideration might be given to publicizing the Glossary for public reference.

Response by the Administration

41. As BA was an independent statutory regulator of the broadcasting industry empowered to impose sanctions on licensees against any non-compliance with BA's rules and standards, such as the codes of practice on TV and radio programme standards, SCIT emphasized that the Administration respected the statutory powers vested with BA, and would not interfere with BA's independent operation or decisions. On the working relationship between the Commerce, Industry and Technology Bureau (CITB) and RTHK, he explained that as the Bureau Secretary, he had the responsibility to follow up issues relating to RTHK which was a government department under his purview. He stressed that the division of responsibilities between SCIT and D of B had already been spelt out clearly in the Framework Agreement signed between them. Furthermore, in 1995, the Chairman of BA, the then Secretary for Recreation and Culture and D of B signed a Memorandum of Understanding (MOU) which was revised in 1999, under which RTHK agreed to comply with the relevant codes of practice on programme standards issued by BA; BA could investigate complaints about any programme produced or broadcast by RTHK; and BA might impose on RTHK non-financial sanctions similar to those applicable to licensed broadcasters. Referring to his meeting with D of B, SCIT clarified that his main concern was that RTHK's statement did not mention that it would accept BA's recommendation and adhere to the relevant codes of practice. He therefore met with D of B to remind him that RTHK had the responsibility to fulfill its obligations as set out under the MOU. As he was satisfied with D of B's clarification that RTHK was committed to complying with BA's codes of practice, no further action had been taken since then. Moreover, to enhance transparency, he had also issued a statement after the said meeting to make clear his stance on the issue.

42. D of B conveyed the views of RTHK's production staff that the programme "Homosexual Lovers" featured a story focusing on several aspects of homosexuals' life. It aimed to reflect social phenomena within the minority group which the public might not be familiar with. The programme did not seek to present a debate on sexual orientation which would require that opposing viewpoints be balanced. He said that the guiding principle for RTHK producers was always that the programmes were accurate and impartial according to recognized standards of objective journalism. Due impartiality remained RTHK's core value. It required on the part of producers' open mindedness, fairness and a respect for the truth. This guiding principle had been consistently applied in RTHK's programmes, including the programme "Homosexual Lovers". On the mission of a public service broadcaster, D of B stressed that RTHK's primary obligation was to serve the community of Hong Kong, hence it had pledged to reflect the views of all sectors of the community, including both the mainstream views and those of the minority groups. He stressed that RTHK was respectful of BA's authority throughout the investigation process and

even after the BA had formed its view on the programme "Homosexual Lovers". RTHK would observe BA's interpretation of the Code which he considered would have an impact on the editorial deliberations of RTHK's producers and their comprehension of the Code in future. Nevertheless, RTHK would not deviate from its pledged mission which was, inter alia, that the views of all sectors of the community should be reflected.

Discussion

Application of the principle of impartiality in broadcast programmes

43. The Chairman asked Mr Adrian WONG of BA whether he had taken part in forming BA's view on the programme "Homosexual Lovers". He also sought clarification on whether the decision was based on paragraph 6 of Chapter 9 of the Code, as cited by Mr WONG in his response.

44. In reply, Mr Adrian WONG confirmed that he had participated in both the meetings of BACC and BA to handle the public complaint lodged against the programme "Homosexual Lovers". On the application of the relevant provisions of the Code, he advised that the strong advice issued by BA to RTHK was based on breaches of paragraph 2 of Chapter 2 (family viewing policy), paragraph 1 of Chapter 7 (likely effects of all material shown on TV on children), and paragraphs 2 and 3 of Chapter 9 (impartiality) of the Code and having regard to relevant precedent case.

45. While expressing his high regard for the programme quality of "Hong Kong Connection", Mr Ronny TONG cast doubt on BA's definition of impartiality. By way of illustration, he said that last year he had presented an award to one of the episodes of "Hong Kong Connection" featuring Asian warlords who deployed children as their soldiers. He remarked that if BA's rationale on the principle of impartiality were strictly applied, the Asian warlords programme should have also interviewed warlords so as to allow them to put forward their views favouring the deployment of children as soldiers. As such, he was of the view that the current definition of impartiality as interpreted by BA should be re-defined. He also held that in producing current affairs programmes, particularly documentaries, plain reporting could already achieve the principle of impartiality. Therefore, it was unnecessary to include opposing views in those programmes, as in the case of "Homosexual Lovers". In view of the strong public opposition as expressed by most of the deputations attending the meeting, he considered that a review should be made by BA with particular respect to its decision on the programme "Homosexual Lovers". Mr Joseph CHO also considered that if BA's interpretation of due impartiality was applied in such a manner as reflected in its decision made against RTHK, then programmes produced by broadcasters in recent years dealing with the subject of racial discrimination should also be considered as biased and partial, as views supporting racial discrimination were not covered. The Chairman added that as he understood from paragraphs 4 and 6 of Chapter 9 of the Code, there was no need to achieve impartiality by including equal weighting of opposing views or within a single programme. Therefore, he doubted if BA had made reference to all relevant

provisions contained in the Code before coming up with its views and forming a decision on the programme "Homosexual Lovers".

46. Mr Adrian WONG of BA affirmed that when forming its views on the programme "Homosexual Lovers", BA had duly considered all relevant provisions of the Code, including paragraphs 4 and 6 of Chapter 9. He emphasized that in its decision, BA had not made any judgement on homosexuality but only focused on the fact that the programme dealt with legalization of homosexual marriage, a subject which would entail possible change of public policies and was also a controversial issue. BA therefore strongly advised RTHK to observe more closely the principle of impartiality as stipulated in the Code. On the programme about Asian warlords as quoted by Mr Ronny TONG, he remarked that since it was obvious that children should not be deployed as soldiers, the subject matter was therefore not controversial. As such, the impartiality test would not apply.

47. Noting Mr WONG's reply, the Chairman said that it appeared to him that the rationale behind BA's decision was that the programme "Homosexual Lovers" entailed change of public policies, rather than RTHK's failure to comply with the principle of impartiality. As such, he sought further clarification on whether programmes dealing with public policies, such as those about the public's outcry for tax reduction, would also be deplored by BA. He doubted if impartiality should be applied rigidly for programmes dealing with public policies. Referring to paragraph 6 of Chapter 9 of the Code which stipulated, inter alia, that "in achieving impartiality over time, it is not always necessary to ensure that in a single programme or programme segment all sides have an opportunity to speak," he considered that the principle of impartiality over time should also be appropriately observed in the course of forming a decision on the programme "Homosexual Lovers" by BA.

48. Mr Adrian WONG of BA and the Principal Executive Officer of BA (PEO/BA) advised that in dealing with public policies and controversial subject matters, broadcasters should observe the principle of impartiality. For the programme in question, they pointed out that in their two representations to the BA, RTHK had not mentioned that they intended to pursue the principle of "impartiality over time" in the programmes concerned, and BA was not given to understand that RTHK had intention to produce other programmes on the subject matter. In this respect, the Chairman invited D of B to explain why RTHK did not intend to achieve impartiality over time. In reply, D of B reflected RTHK production staff's opinion that, to a large extent, impartiality would be achieved if the programme was produced with due respect to facts, and in an inclusive and just manner. As RTHK had pledged to comply with the codes of practice issued by BA in the same manner as other licensed broadcasters, he also reflected RTHK's views from the industry's perspective that when dealing with subject matter which the society had formed a mainstream view, such as nudity, violence and the use of foul language, the provisions prescribed in the Code should be followed. However, when dealing with the presentation of views, be they from majority or minority groups, the public should be encouraged to deliberate on the subject matter. Hence, an across-the-board monitoring standard might not be entirely applicable.

49. Mr Albert CHAN noted from paragraph 4 of Chapter 9 of the Code which stipulated that in achieving due impartiality, professional judgement would always be called for by the licensees. However, he could not see the justification of BA's decision as to how RTHK had failed to exercise professional judgement. He therefore sought clarification from BA's representative in this regard.

50. Mr Adrian WONG of the BA responded that in the representations made by RTHK, there was no evidence showing that adequate professional judgement had been applied in the programme "Homosexual Lovers" in order to comply with the relevant provisions promulgated by BA. He pointed out further that although BA held the view that the programme dealt with a controversial issue related to public policies, RTHK also had not addressed BA's query in that regard.

Guidelines regulating the use of language

51. Recalling that the Chairman of BA, Mr Daniel FUNG, had told the media that the pertinent factor leading to BA's decision on the programme "An Autumn's Tale" was that the programme was broadcast during FVH, the Chairman sought clarification on whether guidelines related to the use of language, in particular the coarse expressions promulgated in the Glossary, were only applicable to FVH.

52. Mr Adrian WONG of BA advised that the guidelines and the Glossary were in general applicable round-the-clock. He elaborated that expressions which were considered offensive by average viewers should not be used during FVH. At other times, they might be presented with discretion and in moderation. The relevant guidelines had been promulgated for many years and were well acquainted by local broadcasters. PEO/BA supplemented that the programme "An Autumn's Tale" contained altogether four coarse expressions and two downright offensive expressions and the latter were prohibited for broadcasting on TV at all times while the former might be presented with discretion and in moderation. She pointed out that when the programme was previously broadcast by Television Broadcasts Limited (TVB) and other broadcasters, the foul language was suitably edited so as to be in line with the guidelines applicable to the viewing hours. It was the first time that an unedited version of "An Autumn's Tale" was broadcast due to TVB's man-made errors. BA considered the coarse expressions and downright offensive expressions so broadcast by TVB unacceptable, particularly because of the broadcast hour, i.e. daytime on a public holiday, when there might be a lot of children watching TV and hence the programme.

53. The Chairman sought elaboration on the rationale behind BA's decision on "An Autumn's Tale", i.e. whether it was related to the broadcast hour rather than the foul language contained in the programme. He also enquired whether it would be acceptable to broadcast an unedited version of the programme outside FVH, say, in the small hours. In response, PEO/BA stressed that there were guidelines prohibiting the broadcast of repulsive language at all times which had to be observed strictly by broadcasters. Mr Adrian WONG of BA supplemented that pursuant to

paragraph 6 of Chapter 2 of the Code, the licensee should not show material unsuitable for children or young viewers at times when programmes targeting children or young viewers were normally included, or under circumstances such that large numbers of children and young viewers might be expected to be watching TV, particularly during school holidays. On enforcement against non-compliance, PEO/BA advised that while there would not be pre-censorship of TV or radio broadcast contents, under the complaint-driven approach, enforcement actions would be taken by TELA or BA, where appropriate, upon receipt of public complaints. In this connection, Ms LAU Ka-yee of AAF remarked that to encourage creativity, the Administration should take into consideration contemporary social standards and consider reviewing relevant guidelines on, say, the use of language in broadcast programmes.

Power and composition of BA

54. Mr Albert CHAN considered that the programme "Homosexual Lovers" was a true reflection of a social phenomenon about the life of homosexuals, while the programme "An Autumn's Tale" was a famous movie. He was disappointed at BA's decisions on these two programmes, and criticized that such decisions had given rise to speculation that the Government attempted to restrain people's behaviour through setting rigid values and moral standards. He held the view that BA's decision would bring about adverse impacts, viz. social instability, suppression and discrimination of minority groups, and suppression of the freedom of speech and creativity. In this connection, he noted with grave concern that broadcasters had exercised self-censorship, as mentioned by Rainbow of Hong Kong in its submission that an interview had been cancelled in view of the strong advice issued by BA to RTHK. He also cautioned that the Government was exercising political suppression via SCIT's manipulation of BA.

55. SCIT did not agree to Mr Albert CHAN's views. He stressed that BA was a statutory regulator operating independently from the Government. As such, the Administration did not and would not take part in any decision-making process of BA.

56. As members of BA were not nominated by the relevant industry, Ms Emily LAU was concerned if non-official members of BA would be influenced by those official members who also took part in BA's operation and hence undermining non-official members' independence. She remarked further that since the handover of sovereignty, there was an increasing trend of self-censorship exercised by various sectors of the community, such as professionals, academics, the business sector and the media, etc. She cautioned that the Administration should refrain from damaging the core values of Hong Kong, and should uphold the public's freedom and rights.

57. In reply, SCIT pointed out that while the Government would not comment on BA's decision, it noted that dissenting views had been expressed by the public in respect of BA's decision. To gauge whether the public was supportive or otherwise of BA's decision, he opined that consideration might be given to commissioning an

independent organization to conduct a professional and comprehensive poll on the issue. On members' concern as to whether BA would exercise its statutory powers on, say, imposing sanctions independently, he assured that the Government respected BA's independence and would not interfere with the operation of BA or request it to adopt the Government's line. On the appointment mechanism of BA, he advised that while members of the BA were appointed from various social sectors, they were professionals entrusted to help the community tackle sensitive and controversial issues.

58. Highlighting that government officials appointed to sit on statutory bodies would adopt the Government's line and that there were a number of government officials sitting on BA, Mr SIN Chung-kai doubted if BA could enjoy genuine independence under its existing institutional arrangement. To enhance the independence of BA, he enquired whether the Administration would consider not appointing official members to sit on BA in future.

59. SCIT pointed out that it was not uncommon for government officials to be appointed as official members of statutory bodies so that they could contribute their professional knowledge to facilitate the operation of the statutory bodies concerned, and BA was not an exception. While stressing that he himself had never interfered with the independent operation of BA, he explained that public officers from CITB and the Office of the Telecommunications Authority (OFTA) were appointed to the BA to advise on subject matters pertaining to their respective areas of work. As for BACC, there was no official member. On the role played by the executive arm of BA, i.e. TELA, which was staffed by civil servants, PEO/BA said that since members of BA took part in BA's operation on a part-time basis, it was necessary to have full-time staff to provide secretariat support to BA, and the support service so provided by TELA to BA would not prejudice decisions made by BA.

60. With respect to Mr SIN Chung-kai's concern on the composition of BA, the Chairman noted that the average age level of BA's members was about 50, and all of them had professional background but none represented minority groups such as homosexuals or grassroot level. He opined that such a composition would tend to be conservative. In view of the strong opposition expressed by the public on BA's decisions on the two programmes in question, he enquired whether the Administration would consider enhancing BA's representativeness in this regard.

61. In reply, SCIT pointed out that the existing composition of BA comprised one member representing the social service sector. He remarked further that as new appointment would be made by the CE on an annual basis upon the expiry of the term of office of existing members, consideration could be taken at that juncture on whether the composition of BA should be changed to better reflect the interests of the community including those of the minority groups, as well as enhancing BA's representativeness.

62. Mr Albert CHAN remained concern about the effectiveness of the appointment system in ensuring the independence of statutory bodies. He was of the

view that the work of statutory bodies was influenced by the Government as well as the appointed members who represented the interests of stakeholders. By way of illustration, he said that the Government had appointed members to the Town Planning Board (TPB) who had close ties with certain property developers. As such, it could not be ruled out that these members would protect the interests of the property developers concerned when they exercised TPB's statutory powers. In the case of BA, he considered that the current appointment system and hence the membership of BA had failed to reflect the standards of morality, decency and propriety that were generally accepted by the majority of the community.

63. Mr Adrian WONG of BA stressed that each and every member of BA was dedicated to fulfilling his/her public duty, and there was no question that they had not exercised BA's powers independently. He also pointed out that suitable checks and balances were in place to ensure the credibility of statutory bodies, such as, as he understood it, the Government would apply the "six-year rule" to appointments (i.e. non-official members appointed to any advisory or statutory bodies should not serve for more than six years in any one capacity), as well as public and media surveillance. BA also conducted periodic surveys to gauge public views about broadcasting services. He also pointed out that the Administration had proposed to merge BA and OFTA, which regulated the broadcasting sector and the telecommunications sector respectively, into a new unified regulator called the Communications Authority (CA). As such, he was of the view that members of the public could consider contributing their expertise to this new regulator.

64. In this connection, Mr CHEUNG Tung-joe of HKFDG pointed out that while members of BA were appointed by the CE and any appeals against the BA's decision would be handled by the CE in Council, the existing appointment mechanism of BA seemed to be defeating the purpose of its function as an independent regulator. As such, he called on the Government to enhance the transparency and representativeness of BA by making public its appointment mechanism, as well as appointing talents from diversified sectors particularly those from the film and broadcasting industries as members of BA. He considered that such an arrangement would greatly enhance communication between the Government and the concerned industries. Mr LEUNG Wai-ye of CHRF also considered that the current composition of BA was not adequately represented by the media industry as well as human rights and minority groups. As such, he considered that BA might not possess adequate expertise to make sound professional when imposing sanctions on broadcast programmes.

65. Mr Joseph CHO considered that the harm done by BA in making decisions on those two programmes could not be offset by re-organizing BA. The present cases revealed that BA was vested with powers tantamount to those conferred to a court of law such that BA could handle complaints, make judgement and impose sanctions. Yet, in making its decision on the programme "Homosexual Lovers", BA failed to justify as to how RTHK had failed to apply professional judgement.

66. Miss Claudia MO of CP also challenged the decision made by members of BA that RTHK had failed to comply with the Code on the ground that homosexual marriage was a controversial issue. Citing that the broadcasting of TV programmes about homosexuality was allowed in Singapore, she doubted if BA's yardstick was too rigid to the extent that programmes about homosexuality should also reflect the negative aspects of homosexual marriage in order to achieve due impartiality.

Working relationship between CITB and RTHK

67. Ms Emily LAU said that as she understood, RTHK was of the view that due impartiality had already been achieved in the programme "Homosexual Lovers". Although RTHK had the responsibility to fulfill its obligations under the MOU signed with the policy bureau and BA by being subject to the regulatory control of BA, she opined that it was vital for RTHK to have the right to challenge the decisions of BA in order not to jeopardize the freedom of creativity and expression. She also considered that SCIT should not exert control over RTHK and jeopardize the latter's editorial independence.

68. In response, SCIT assured that the Administration had not exercised control over any broadcasters, including RTHK, or influenced their programming principles, or jeopardized their editorial independence. He stressed that according to the MOU, RTHK was obliged to comply with the relevant codes of practice on programme standards issued and the sanctions imposed by BA. Nevertheless, safeguards had been put in place to allow RTHK to seek clarification from BA on any sanctions imposed or on how best it could rectify the situation in view of BA's decision. He further clarified that his concern about RTHK's statement was that it did not mention that RTHK would accept BA's recommendation and would comply strictly with the relevant codes of practice issued by BA. He therefore met with D of B on 22 January 2007 with a view to ensuring that RTHK would fulfill the responsibilities that it had undertaken with regard to the relevant codes of practice issued by BA. During the meeting, they had not discussed matters concerning the contents of the programme "Homosexual Lovers" or RTHK's programming principles. He emphasized that as long as RTHK remained as a government department and was under his purview, he had the responsibility to handle, where deemed necessary, issues relating to RTHK in a fair and transparent manner. In this connection, Ms Emily LAU considered that the existing arrangement under the MOU should be reviewed in due course, in particular that RTHK, despite its obligations under the MOU, might not consider the sanctions imposed by BA appropriate and acceptable, and hence the reasonableness to comply with them.

Admin

69. In this respect, D of B assured that RTHK was committed to complying with the relevant codes of practice issued by BA under the MOU it had signed, as well as maintaining the established working relationship with CITB as prescribed under the Framework Agreement. He stressed that RTHK had fulfilled its obligations throughout BA's investigation. Nevertheless, he drew the meeting's attention to paragraph 8 of the MOU which provided that "BA and RTHK may individually release to the public, after a complaint has been classified, the details of the complaint

received by BA, the decision of BA and RTHK's response". He remarked that the statement issued by RTHK after receiving BA's strong advice was in compliance with the provisions as stipulated in the MOU. In this connection, the Chairman remarked that if RTHK held that it was and would be committed to fulfilling its obligations under the MOU, it should state so clearly in its statement to dispel any misunderstanding.

70. Noting D of B's response, Mr Matthew MAK of HKSCS was concerned whether RTHK would exercise self-censorship due to the "Homosexual Lovers" incident and therefore would not produce programmes relating to controversial subjects, such as those relating to views against homosexual marriage. In response to Mr MAK's worry about RTHK's editorial policy, D of B assured that as a publicly funded broadcaster, RTHK would continue to strive for achieving its public mission of reflecting social norms and standards.

Procedural matters of the Panel meeting

71. As there had been clapping of hands during the meeting, SCIT questioned if such conduct was permissible. The Chairman advised that under Rule 87 of the Rules of Procedure and Rule 24 of the House Rules, the Chairman might order the removal from a meeting of any member of the press or of the public who behaved, or who appeared likely to behave, in a disorderly manner. However, he did not consider the clapping of hands a disorderly manner which would affect the proceedings of the meeting. SCIT noted the Chairman's decision.

Motion passed at the meeting

72. Ms Emily LAU disagreed with Mr Adrian WONG's explanation that BA's strong advice sent to RTHK was based on the grounds of controversy and public policy implications. She referred to EOC's submission that the Government was taking a non-legislative approach to address the problem of social discrimination faced by homosexuals, and said that the production of a documentary programme about the controversial issues of homosexuality and same-sex marriage was in line with the educational approach adopted by the Government to raise public awareness. She opined that despite dissenting views towards homosexuality, the Government had a duty to eliminate discrimination. Regrettably, BA had done the contrary. She expressed support to the freedom of creativity and expression, as well as the opinion given by EOC that an educational approach should be adopted to raise public awareness. As such, she moved the following motion:

"本事務委員會認為廣播事務管理局("廣管局")有關香港電台《鏗鏘集》〈同志·戀人〉的裁決實為性傾向歧視，本事務委員會同意平等機會委員會的觀察，認為〈同志·戀人〉切合政府希望透過教育來提高市民對同性戀意識的做法，因此促請當局將這節目列為中、小學教材，在各學校播放。"

73. In this connection and in view of deputations' opinions as regards BA's decision made on the programme "An Autumn's Tale", Ms Emily LAU amended her original motion by adding after "性傾向歧視"，本事務委員會亦認為廣管局對《秋天的童話》的裁決，缺乏對言論和創作自由的尊重和保護，並促請廣管局撤回該兩項裁決".

74. The original and amended motion was seconded by Mr Albert CHAN. The Chairman said that according to Rule 22(p) of the House Rules, the motion would be proceeded with if agreed by a majority of the members voting. He then put to vote the question on whether the motion should be proceeded with. As a majority of the members voted in favour of the question, the Chairman said that he would proceed to deal with the motion.

75. The Chairman considered that the issue of whether the programme "Homosexual Lovers" should be made an educational material for primary and secondary schools in Hong Kong did not fall within the terms of reference of the ITB Panel. As such, he proposed to delete the phrase "，因此促請當局將這節目列為中、小學教材，在各學校播放". Members agreed. The terms of the motion, as amended by the Chairman, were as follows:

"本事務委員會認為廣播事務管理局（"廣管局"）有關香港電台《鏗鏘集》〈同志·戀人〉的裁決實為性傾向歧視，本事務委員會亦認為廣管局對《秋天的童話》的裁決，缺乏對言論和創作自由的尊重和保護，並促請廣管局撤回該兩項裁決。本事務委員會同意平等機會委員會的觀察，認為〈同志·戀人〉切合政府希望透過教育來提高市民對同性戀意識的做法。"

(Translation)

"That this Panel considers that the decision of the Broadcasting Authority (BA) concerning the episode entitled 〈同志·戀人〉("Homosexual Lovers") in "Hong Kong Connection" (鏗鏘集) of Radio Television Hong Kong (RTHK) is in fact discrimination on the ground of sexual orientation; that this Panel also considers BA's decision concerning "An Autumn's Tale" (秋天的童話) lacks respect and safeguard for freedom of speech and creativity; that this Panel urges BA to withdraw the two decisions; and that this Panel agrees with the observation of the Equal Opportunities Commission that the episode 〈同志·戀人〉 is in line with the educational approach adopted by the Government to raise public awareness of homosexuality."

76. The Chairman put the amended motion moved by Ms Emily LAU and further amended by himself to vote. Of the members present, three voted in favour of the motion and no one voted against it. The Chairman declared the motion passed.

77. In this connection, Mr Howard LAI expressed dissatisfaction towards the overwhelming pro-homosexual attitude of most attending parties and considered himself being marginalized. Casting doubts on the impartiality of the meeting, he enquired if there was any channel he could pursue his views. The Chairman said that for the purpose of receiving views from the public on the subject, a general notice had been posted onto the LegCo's website inviting interested parties to attend the meeting and to provide views to the Panel. Any decision made by the Panel was not binding on the Administration, or any Member, whether in Council, in a committee of the whole Council or in the House Committee. He also pointed out that in Hong Kong, members of the public enjoyed high freedom of speech, and one of the channels to express one's views was by exercising his voting right.

The way forward

78. With reference to some of the deputations' suggestion that a joint Panel meeting be held by the ITB Panel and the HA Panel to take the matter forward, Ms Emily LAU requested the Clerk to relay the suggestion to the HA Panel for consideration. Ms LAU also requested the Administration to review the mechanism for appointing members to BA (or the new unified regulator, i.e. the CA), including the criteria for appointment and composition of membership, with a view to bringing in more talents with different backgrounds to enhance the representativeness, the complaints handling mechanism of BA (or the future CA) with a view to enhancing transparency and credibility, as well as the yardsticks of BA in imposing sanctions.

(Post-meeting note: The suggestion to hold a joint Panel meeting by the ITB Panel and the HA Panel had been duly conveyed to the Clerk to the HA Panel on 15 March 2007 for onward consultation with the Chairman of the HA Panel.)

V. Outcome of public consultation and subsidiary legislation to be made under the auction arrangements for the spectrum for CDMA2000 services

(LC Paper No. CB(1)1065/06-07(18) -- Paper provided by the Administration)

79. At the Chairman's invitation, Assistant Director of Telecommunications (Regulatory), Regulatory Affairs Branch of the Office of the Telecommunications Authority (AD(R)/OFTA), briefed members on the results of the two-month public consultation launched by the Office of the Telecommunications Authority (OFTA) on 27 October 2006. He also briefed members on the Administration's preliminary views and intended way forward for licensing the spectrum in the 850 MHz Band to enable the continued provision of Code Division Multiple Access (CDMA2000) services in Hong Kong after 20 November 2008 upon the expiry of the three-year migration period granted to the existing licensee providing IS-95 CDMA mobile services. He said that while views were diverse, the proposals as set out in the consultation paper to issue a single new licence in the 850 MHz band to allow for the

continued provision of CDMA2000 services in Hong Kong through an open auction had received general support such as from the international community. As such, to enable the release of spectrum for CDMA2000 services by auction and to impose a spectrum utilization fee (SUF) on the relevant spectrum, two pieces of subsidiary legislation under section 32I of the Telecommunications Ordinance (TO) (Cap.106) would be gazetted in the first half of 2007 for negative vetting by the Legislative Council (LegCo). The subsidiary legislation comprised firstly an order to be made by the Telecommunications Authority (TA) to designate the spectrum in the 850 MHz band to be subject to SUF payment, and secondly, a new regulation to be made by the Secretary for Commerce, Industry and Technology (SCIT) to prescribe the method for determining the SUF by auction. The subsidiary legislation would empower SCIT to specify the auction reserve price by way of a notice in the Gazette and to empower TA to specify in the Gazette the auction rules, as well as the terms and conditions of the auction. In this connection, he advised that OFTA had commissioned an independent consultant to provide advice and recommendations on, inter alia, the calculation methodologies and mathematical models for determining the amount of the auction reserve price. Hence, subject to the completion of the negative vetting of the relevant subsidiary legislation, TA intended to publish the terms and conditions of the auction around July/August 2007, with a view to conducting the proposed auction and issuing the licence by October 2007. In this respect, he assured members that sufficient time would be allowed for LegCo to scrutinize the subsidiary legislation if considered necessary.

Discussion

Regulation of service provision by network operators

80. Mr Albert CHAN Wai-yip remarked that he had received many complaints from the public on poor reception and voice quality, as well as disputes over payment of subscription fees. He was particularly concerned about the hiring of debt collection companies by network operators to recover outstanding payments. He said that some actions taken by debt collection companies were not only disturbing to the public and disruptive to social harmony, but could also lead to a waste of police resources. Many public housing tenants, such as the elderly, even requested transfer of flats out of fear of harassment by debt collecting companies. As such, he called on the Administration to consider stipulating in the licensing conditions or prescribing in the code of practice that network operators should not hire debt collection companies to recover any outstanding payments as those outstanding payments could be recovered through the Small Claims Tribunal.

81. AD(R)/OFTA said that while OFTA was empowered under the TO to issue a licence for the service, it was outside its remit to lay down licensing conditions as to regulate the means of settlement of commercial disputes over payment between the service provider and its subscribers. Nevertheless, he advised members that the Administration had, in conjunction with the Consumer Council, drawn up a code on provision of service for reference by network operators to improve the situation. He assured members that the Administration would continue to explore room for further

improvement.

82. Mr Albert CHAN Wai-yip maintained, however, that as the proper channel to recover any outstanding payments should be the Small Claims Tribunal, the Administration should seriously consider specifying in the licensing condition or in the relevant code to prohibit the hiring of debt collection companies by network operators, or else, he would object to the issue of new licences as it would possibly open up new chances of public harassment.

83. In this connection, the Chairman remarked that there would be opportunities for members to further discuss the related issue during scrutiny of the subsidiary legislation if considered necessary.

Auction arrangements

84. Mr SIN Chung-kai enquired whether the incumbent 2G and 3G licensees could take part in the auction. In reply, AD(R)/OFTA confirmed that the auction would be open to any interested parties, including incumbent mobile network operators. Any telecommunications companies which satisfied the pre-qualification requirements and with demonstrated financial strength would be allowed to participate in the auction and place bids on the amount of the upfront one-off lump sum SUF payment for the relevant frequency band. As regards Mr SIN's further concern on the setting of the reserve price and whether the spectrum would be withdrawn from auction if no bid above the reserve price was received, AD(R)/OFTA said that the Administration would be mindful of setting the reserve price at a reasonable level to attract prospective operators to invest in CDMA2000 services. In this regard, OFTA had already commissioned an independent consultant to provide advice and recommendations on the calculation methodologies and mathematical models for determining the amount of the auction reserve price which would reflect market value and investment climate prevailing at the time of the auction. He said that the auction would start from the reserve price specified by SCIT and progress in the form of multiple-round ascending auction. In the event that no bid above the reserve price was received, the Administration would explore other ways and means of continuing the provision of CDMA2000 services. He added that details of the legislative amendments required for the auction would be submitted to LegCo for consideration in due course.

VI. Report on the Cyberport Project

(LC Paper No. CB(1)1065/06-07(19) -- Paper provided by the Administration

LC Paper No. CB(1)1105/06-07 -- Background brief on Cyberport Project prepared by the Legislative Council Secretariat)

Presentation by the Administration

85. Members noted the background brief prepared by the Secretariat and the progress report of the Cyberport Project (the Project) prepared by the Administration. At the invitation of the Chairman, the Deputy Government Chief Information Officer (Operation) (DGCIO(O)) updated members on the financial performance of the Project as reported in the audited accounts for the financial year ended 31 March 2006, as well as the progress made in achieving the public missions of the Project since the reporting at the last Panel meeting held on 8 May 2006.

86. DGCIO(O) advised that the 2005-06 Accounts were the second full-year report on the financial performance of the Project since the completion of the Cyberport Portion of the Project in June 2004. He said that the Administration had, in response to the Panel's request, set out side-by-side the relevant figures for the past three years (i.e. 2004, 2005 and 2006) to facilitate comparison and for members' easy reference. On the financial status of the Project, DGCIO(O) remarked that there was a significant increase in turnover to \$188 million for the year ended March 2006, as compared with \$136 million for 2005 and \$65 million for 2004. The Cyberport Companies (comprising Hong Kong Cyberport Development Holdings Limited, Hong Kong Cyberport (Ancillary Development) Limited, and Hong Kong Cyberport Management Company Limited which were set up under the Financial Secretary Incorporated to oversee the implementation of the Project) reported a profit of \$817 million in 2005-06, as compared with a profit of \$1,134 million in 2004-05 and a loss of \$159 million in 2003-04. The profit in 2004-05 and 2005-06 was mainly attributable to Project income from ancillary residential development, and was expected to continue until around 2009-10. The operating loss before financial costs, tax and depreciation, and excluding Project Income from the ancillary development was \$17 million in 2005-06 compared with a loss of \$77 million in 2004-05 and a loss of \$54 million in 2003-04. The improvement was due to increases in both rental and management fee income. It was anticipated that in 2006-07, the Companies would report an operating profit excluding Project Income. He stressed that the Cyberport management, which was operating under prudent commercial principles, had achieved steady improvement in its financial position, and was heading towards a healthy fiscal balance which would result in sustainable positive cashflow.

87. On the leasing position, DGCIO(O) advised that there was also a steady increase from 47 tenants in January 2006 to 66 corporate tenants occupying 73.5% of the lettable office space as at end of January 2007. Occupancy was expected to increase to around 80% in 2007. As at end of January 2007, 84% of the lettable retail space in the Arcade had been let or occupied, including 33% of the lettable space used by or sub-let through the Anchor Tenant (A-T). In this respect, he remarked that in view of the relatively low visitor and consumer traffic, it was envisaged that favourable lease terms including rental incentives that had been given to the A-T and other tenants during the nascent stage of development would have to continue to be offered to attract retail merchant tenants.

88. On the public missions performance of the Cyberport, DGCIO(O) advised that to enable members' better assessment on the success or otherwise of the Project in meeting its public missions, detailed information on the extent of achievement for each of the public missions had been provided in the Administration's paper (LC Paper No. CB(1)1065/06-07(19)). He remarked that in general, Cyberport had successfully established its image as Hong Kong's information technology (IT) flagship. This was evident in the number of incoming visits by high-ranking delegations from Mainland China and overseas countries, including the Chairman of the Chinese People's Political Consultative Conference and the Minister of the Economic Development of British Columbia of Canada, etc. On average, Cyberport received more than 10 high-ranking delegations from the Mainland and overseas every month. There were a total of 113 delegations from the Mainland and 17 other countries between April 2006 and January 2007. Hong Kong's leadership in 3G technology application was also showcased at the International Telecommunication Union Telecom World 2006, during which 41 ministerial officers from various overseas countries visited Cyberport. He stressed that all these were conducive to sustaining Hong Kong's position as a leading digital city. He also assured that the Government and Cyberport management would continue to make the best endeavour towards achieving the public missions set for the Cyberport.

Discussion

Selection of Anchor Tenant and other tenants

89. Noting that the A-T which took up almost one-third of the total lettable area in the Arcade was not selected through open tendering, the Chairman reiterated his concern, which had been raised at the last Panel meeting held in May 2006, as to whether the procedures for identifying the A-T were open and fair. He considered the selection of the A-T by a retail-leasing agent without going through open tendering as far from being fair, open and impartial.

90. Chief Executive Officer of Hong Kong Cyberport Management Company Limited (CEO/HKCMCL) said that Cyberport commenced operation in 2002 with the admission of the first office tenant. The first retail tenant in the Arcade started operation in 2004. He highlighted that during its nascent stage of development when consumer and visitor traffic was low and the local population (workers and residents) at Cyberport had yet to build up to a critical mass, the retail operation in the Arcade had gone through a period of low business volume and thin margin. Practical difficulties in attracting retail merchants to set up business in the new Cyberport Arcade included the relatively inconvenient location and inadequate public transport. In view of the constraints of the Cyberport at its initial stage of operation and after thorough deliberation, it was considered appropriate to appoint an internationally renowned professional retail-leasing agent (the Agent) to provide retail-leasing services for the 166,000 square feet of retail space at the Cyberport. The agent was engaged in mid-2001 as a result of a request-for-proposal exercise to advise the Hong Kong Cyberport Management Company Ltd (HKCMCL) on the formulation of policy, strategy and theme for the letting of Arcade space as well as for the

international marketing and sourcing of anchor tenants. To facilitate the recruitment and management of retail outlets at the Arcade, the A-T strategy was adopted to secure a core group of retail outlets. He stressed that such strategy closely followed normal commercial practice in the sector, and was developed after extensive research of the global market. The Agent then approached no fewer than 13 potential A-Ts, and four substantive proposals were considered. One viable proposal was shortlisted after a 12-month negotiation by the Agent before an agreement on the A-T lease was finally concluded. CEO/HKCMCL stressed that the A-T, which was appointed as a result of an extensive search in Japan, USA and Europe between late 2001 and early 2002, was expected to help attract quality tenants to the Cyberport by mobilizing its extensive network of partners and suppliers in the IT field, and also to help promote the Cyberport and bring in new applicants. Moreover, Cyberport management had also made every effort in letting out all other premises within the Arcade not covered by the A-T lease. All lettings were done under prudent commercial principles and in line with the theme of the Arcade and Cyberport's missions, as well as normal market practice.

91. Referring to paragraph 13 of the Administration's paper which stated that the A-T was admitted in mid-2004 as a result of an extensive search in Japan, USA and Europe undertaken by the Agent which had considered four substantive proposals prior to the appointment of the A-T, the Chairman sought confirmation on whether the A-T was from any of the countries in which the extensive search and sourcing of anchor tenants were conducted. He said that it was a serious offence in giving misleading information to or withholding information from LegCo Members.

92. In reply, DGCIO(O) confirmed that the search for the A-T had really been made in overseas countries such as Japan, USA and etc, though proposals from local companies were also considered.

93. Noting DGCIO(O)'s response, the Chairman pointed out that the statement which stipulated "the A-T was admitted in mid-2004 as a result of an extensive search in Japan, USA and Europe undertaken by a professional retail-leasing agent, and no less than 13 potential anchor tenants had been approached and four substantive proposals had been considered" was misleading. He remarked that as far as he understood, the A-T was not from any of the countries (i.e. Japan, USA or Europe) in which the extensive search and sourcing of A-T were conducted. The A-T finally appointed was in fact a local corporation though with foreign investment, and favourable leasing terms and incentives in the form of rent-free period had been offered to the A-T.

94. In this respect, the Chairman said that the Cyberport Portion was a Government asset, the ownership of which was retained by the Cyberport Companies. As such, he enquired whether the Administration/Cyberport management had made reference to the guidelines issued or established procedures promulgated by the Government Property Agency (GPA) in selecting the A-T, in drawing up Cyberport Arcade tenancy agreements, as well as in making the leasing arrangements.

95. In reply, CEO/HKCMCL explained that Cyberport was operated under commercial principles, and the leasing of its office space was overseen by HKCMCL which was managed by a Board of Directors comprising two Government officials and 10 persons from the private sector. DGCIO(O) supplemented that pursuant to the Project Agreement, the management of the HKCMCL, rather than GPA, controlled directly the letting of all premises within the Arcade, except those covered by the A-T lease. As such, letting was done in line with prudent commercial principles, and letting decisions were made by the HKCMCL Executive Committee or by CEO/HKCMCL under delegated authority given by the Executive Committee.

96. The Chairman was dissatisfied with the replies. He stressed that the Cyberport was not purely a commercial operation. Instead, it was a Government asset. Hence, its operation should not be based solely on commercial principles.

Matters relating to rental

97. Pointing out that in 2003-04, the income from management fee (\$28.7 million) amounted to over 70% of the rental income (\$40.2 million), the Chairman was gravely concerned that that this might be attributable to either a very low level of rental charges or a very long rent-free period during which tenant companies were required to pay management fees only. He said that although the ratio of rental income to management fee income for the subsequent two financial years (i.e. 2004-05 and 2005-06) were reduced to about 30%, the proportion was still undesirably high. In this connection, he recalled that in response to his enquiry as to whether the Cyberport had offered a five-year rent-free period for leases of 10 years, HKCMCL's representative attending the Panel meeting in May 2006 had denied such an arrangement. However, according to the Administration's paper provided for this Panel meeting, favourable lease terms including rental incentives had been granted to the A-T as well as other tenants. As such, the Chairman was dissatisfied that the HKCMCL's representative had misled Panel members at the last meeting in saying that there was no rent-free period offered to the A-T. He then requested the Administration and the HKCMCL to clarify whether favourable leasing terms and incentives in the form of rent-free periods had been offered to tenants of the Cyberport portion (i.e. the Arcade and the office buildings), including the A-T and if so, details about the rent-free periods so granted.

98. CEO/HKCMCL confirmed that as stated by HKCMCL's representative at the May 2006 meeting, no rent-free period of 5 years was ever granted for a lease of 10 years. He explained that the income from management fee amounted to around 70% of the rental income in 2003-04 was mainly due to a time lag in rental payment. He advised further that management fee was payable as soon as tenant companies moved in, while rental was payable only after completion of the fitting out. Moreover, the rental income recorded in the 2003-04 and 2004-05 consolidated accounts did not reflect a full year's rental income as all phases of the Cyberport Portion were not completed until December 2004. In this respect, he pointed out that rental income in 2005-06 had increased by 30% as compared with that in 2004-05, and management fee income had also increased by 31%. For the two following years (i.e. 2005-06

and 2006-07), management fee income on average was about 30% of rental income, which was normal. CEO/HKCMCL also pointed out that as a standard market practice, rent in the Arcade was linked to the gross revenue of the retail outlets. As such, during the initial stage of the Cyberport development when both consumer and visitor traffic was low, and the retail business volume in the Arcade was low as well as the margin thin, the level of rental payment of those tenants was also low. However, he envisaged that rental income would grow in tandem with the increase in their business volume, and the two sets of figures would be more in line with the market norm as the operation of the Cyberport became up and running. In this regard, the Chairman requested for the breakdown of rental income for the retail space at the Arcade, as well as the breakdown and relevant information on the gross revenue of the retail outlets at the Arcade.

Admin/
HKCMCL

99. On rent-free periods granted to tenants, CEO/HKCMCL stressed that the terms of the leases were in line with prudent commercial principles, normal commercial practice and prevailing market conditions. As part of the Arcade leasing strategy and in keeping with normal market practice, the A-T and retailers were given incentives including favourable leasing conditions and rent-free periods to set up and stay in the Arcade when the Arcade was still going through the nascent stage of development. The level of incentives and the duration of rent-free periods would vary according to a number of factors, such as the length of the lease period, the rent, the size of the leased office space, and prevailing market conditions at the time of the letting, etc. Citing a 12-month rent-free period granted for a 15-year cinema lease, he pointed out that normally a longer rent-free period would be considered for businesses which required a larger initial capital outlay and took a long time to achieve a return on investment. He reiterated that there was no question of Cyberport granting a five-year rent-free period for leases of 10 years. He said that low rent or other favourable leasing terms were not equivalent to rent-free. As regards the details of each particular lease, he said that any commercially sensitive information could only be disclosed with the consent of the tenant companies concerned.

100. The Chairman disagreed, and stressed that Cyberport was a Government asset. As the landlord, the HKCMCL should have the right to access details of the leasing terms. He added that if need be, a closed meeting could be held by the Panel during which any such information could be disclosed for scrutiny by Panel members only. He remarked that while the Panel had the responsibility to monitor the operation of the Project on behalf of the public, he, in the capacity as the Chairman of the Panel, would closely follow up the matter.

101. Summing up, the Chairman said that information provided by the Administration/HKCMCL was insufficient and misleading. He urged the Administration/HKCMCL to provide immediately after the Easter holidays accurate and comprehensive information as requested to enable the Panel to better assess the cost effectiveness or otherwise of the Cyberport operation. He reminded the Administration/HKCMCL again that it would be a serious offence to mislead LegCo Members and/or to withhold information from them. As such, the

Administration/HKCMCL should be prudent when providing information to or responding questions from Members. The Chairman added that if the information to be provided by the Administration/HKCMCL was not to the Panel's satisfaction, he would consider inviting the Audit Commission to conduct value-for-money audit of the Cyberport Project.

Admin/
HKCMCL

102. DGCIO(O) stressed that the Administration/HKCMCL had no intention of withholding information from members or providing information which might mislead the Panel. He undertook to liaise with the Secretariat after the meeting as regards the information to be provided to the Panel. He assured members that the Administration/HKCMCL would make their best efforts to provide the requisite information.

(Post-meeting note: The information provided by the Administration/HKCMCL was circulated to members vide LC Paper No. CB(1)1360/06-07(01) on 16 April 2007.)

Wi-Fi coverage in the Cyberport

103. Noting that open wireless network (Wi-Fi) facilities were provided in the Cyberport, Mr Howard YOUNG enquired about the actual coverage of Wi-Fi services in the Cyberport. CEO/HKCMCL advised that the facilities would mainly cover outdoor public areas, as well as exhibition halls and conference halls. He explained that Wi-Fi coverage was not extended to office premises of tenant companies because those companies usually had their own wireless facilities.

VII. Any other business

104. There being no other business, the meeting ended at 4:26 pm.

Council Business Division 1
Legislative Council Secretariat
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