

7 May, 2010

Hon Dr Samson TAM Wai-ho, Chairman  
Hon Mr LEE Wing-tat, Vice Chairman  
And Other Members of the  
Information Technology and Broadcasting Panel  
Legislative Council  
Legislative Council Building  
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Dear Sirs and Madams,

I write to request your esteemed panel to discuss and review the issue of political advertising in electronic media regulated by law, in particular licensed free and paid television and radio licensees. As you know, Commercial Radio Hong Kong has recently accepted and aired a sponsored time check announcement by Hon Ms Emily Lau, and a sponsored program by the Democratic Alliance for the Betterment of Hong Kong – widely seen as a “political party” in Hong Kong – with their party members/District Councilors as co-hosts for those programs.

These incidents have raised the issues of whether Commercial Radio has violated the limitations on political advertising, and whether such limitations are timely or not. However, we are most concerned if such sponsorship or advertising have violated existing ordinances or codes of practice issued pursuant to existing ordinances, and whether any licensee involved was in violation, and whether any of the political parties or politicians involved would be responsible in any way, legally or morally.

It is obvious to us and we are sure also to the Chairman of the Panel that these attempts to undermine current legislations, operating guidelines and codes of practice did not originate with the two recent cases with Commercial Radio. Indeed, the Chairman himself initiated such attempts at political advertising in licensed electronic media with his series of eight (8) video programmes entitled “IT 達人 Talk” – each being 75 to 90 seconds in lengths – aired on purchased airtime from Hong Kong Cable Television Limited (Cable TV) between 30 May 2008 and 30 June 2008 in nine (9) different channels on Cable TV. The amount paid by the Chairman to Cable TV was HK\$220,000, after a very substantial discount by Cable TV. The advertisements ended airing within less than two weeks of the Chairman's announcement to run as a candidate for Legislative Council on 13 July, 2008.

In a reply to Mr SIN Chung-kai's complaint about the above-mentioned television advertisements, the Broadcasting Authority found that “the advertisements were intended to enhance the popularity of the host in question [the Chairman] and build up his strong connection with the IT field,” but “they were not 'advertisements of a political nature' as they did not contain materials which promoted the interests of any political grouping or person; and they were not election-related.” Hence, the Broadcasting Authority found the advertising materials were not in breach of section 12 of Schedule 4 to the Broadcasting Ordinance (Cap. 562).

We strongly disagree with the above findings by the Broadcasting Ordinance. We believe that the Chairman's case then has set a terrible precedence for the other political parties and politicians to follow, and to attempt to challenge the above section in the Broadcasting Ordinance, as well as the Radio Code of Practice on Advertising Standards – where in section 28 it was clearly stated that “no advertisement of a political nature shall be broadcast except with the prior approval of the BA [Broadcasting Authority] – issued by the Broadcasting Authority, pursuant to section 19 of the Broadcasting Authority Ordinance (Cap. 391), for all sound broadcasting services licensed under the Telecommunications Ordinance (Cap. 106).

We are concerned that if the Broadcasting Authority continues to define “political nature” in such ways, it is not executing the law as it should, and political parties, groups and individuals alike will continue to find way to circumvent any execution of the law stated above. It is obvious that the laws were established in order to regulate television and radio licensees in a stricter manner because of its allocated use of public resources (broadcasting frequencies) and its large influence on the public and public opinions, and to maintain fairness in the political process including as related to elections. If these laws continue to be virtually unenforced by the Broadcasting Authority, as in our opinion reflected by the case that involved the Chairman in 2008, we believe that the original legislative intention of the relevant ordinances and code of practice are certainly ill-served and public interest is seriously undermined.

It is for these reasons and in the public interest that we request that your esteemed Panel will discuss the overall executive performance of the Broadcasting Authority, which should involve all the relevant cases in the past, including the two recent cases involving Commercial Radio, and the previous cases such as the most obvious one involving the Chairman and Cable TV. As these cases involve materially and legally a number of the Members of the Panel, including the Chairman – especially where there may be implications toward election expenses – we would request that all the involved Members of the Panel should declare any relevant interests.

In particular, we request that the Chairman should NOT chair the part of the Panel's meeting when this matter related to political advertising in the electronic media would be discussed. This is in particular important because we understand that a pending appeal case relating to the election of the Chairman in the Information Technology functional constituency is still being considered by the Court of Appeals and possibly the Court of Final Appeals, and the issue and definition of “political advertisements” relating to the Chairman's advertisements in 2008 will be challenged. For this, we believe that there is material conflict of interests for the Chairman to chair the proceedings of this matter in the Panel.

We look forward to your kind considerations and action on our requests.

Sincerely Yours,  
Anthony, Cheuk Tung, LAI