

# 立法會 *Legislative Council*

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## **Panel on Information Technology and Broadcasting**

**Meeting on 10 February 2014**

### **Background brief on issues relating to the review of the regulation of editorial programmes and personal view programmes**

#### **Purpose**

This paper summarizes previous discussions by the Panel on Information Technology and Broadcasting ("the Panel") on issues relating to the review of the regulation of editorial programmes<sup>1</sup> and personal view programmes<sup>2</sup> ("PVPs").

#### **Background**

##### Codes of Practice under the Broadcasting Ordinance

2. Pursuant to section 3 of the Broadcasting Ordinance (Cap. 562) ("BO") and section 19 of the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391), the Communications Authority ("CA") may issue and revise Codes of Practice to provide practical guidance for licensees relating to standards of programmes. Extracts of the relevant provisions under the TV Programme Code, the Radio Code of Practice on Programme Standards and the Radio Code of Practice on Ancillary Visual Service Standards (collectively referred to as the "Programme Codes") governing accuracy,

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<sup>1</sup> Editorial programmes refer to programmes which contain a licensee's views on matters of public policy or controversial issues of public importance in Hong Kong.

<sup>2</sup> Personal view programmes are a type of factual programmes and are defined as programmes in which the programme hosts and, sometimes, individual contributors put forward their own views.

impartiality and fairness in PVPs as well as factual programmes<sup>3</sup> are in **Appendix I**.

### Complaints about PVPs

#### *"ATV Focus" and CA's decision*

3. In September 2012, the CA received over 42 000 public complaints about the various episodes of the television programme entitled "ATV Focus" characterized by Asia Television Limited ("ATV") as PVP, which were broadcast in the period from 3 to 7 September 2012. The major areas of complaint were that the programme contained inaccurate factual contents and one-sided views on the national education issue but did not provide an opportunity for those being criticized to respond.

4. On 5 December 2012, the CA announced that ATV had contravened Chapter 9 of the TV Programme Code governing PVPs by, inter alia, failing to provide a suitable opportunity for response (in breach of paragraph 17(c)), failing to allow a broad range of views to be expressed on the national education issue (in breach of paragraph 17(d)), and providing inaccurate factual content (in breach of paragraph 1A). The CA decided that ATV should be warned to observe more closely the relevant provisions of the TV Programme Code.

5. In February 2013, the CA announced its decision on two other complaint cases against episodes of ATV Focus broadcast respectively in September and October 2012, and in November and December 2012. The CA decided that the programme presented one-sided views against the issuance of free TV licences without a suitable opportunity for response in the programme and made remarks that the audience ratings between ATV and Television Broadcasts Limited ("TVB") was in the ratio of 4:6 ("4:6 TV audience ratio"). The CA found that the programme was in breach of paragraphs 1A, 16, 17(b), 17(c) and 17(d) of Chapter 9 of the TV Programme Code. Taking into account the repeated lapse and the continued broadcast of the same programme in a manner not complying with the relevant requirements governing PVPs, the CA decided that a financial penalty of \$50,000 should be imposed on ATV for breaching the aforesaid provisions of the TV Programme Code for each of the two cases relating to the broadcast of the programme by ATV in the said period.

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<sup>3</sup> Factual programmes are non-fiction programmes which are based on material facts. They can take the form of news, current affairs programmes, PVPs, documentaries and programmes adopting an investigative style of reporting on television, as well as phone-in programmes on radio.

*"Caring Hong Kong's Future" and CA's decision*

6. In November 2012, the CA received close to 2 200 public complaints about the programme entitled "Caring Hong Kong's Future" broadcast by ATV on 11 November 2012. The major areas of complaint were that the programme presented one-sided views against the issuance of free TV licences without a suitable opportunity for response in the programme, and made misleading remarks on the 4:6 TV audience ratio.

7. In February 2013, the CA announced that ATV had contravened Chapter 9 of the TV Programme Code governing PVPs by:

- (a) failing to provide an appropriate and timely opportunity for those being criticized to respond (in breach of paragraph 16);
- (b) making the remarks on the "4:6 TV audience ratio" in the programme hence giving viewers a wrong perception that the said ratio was part of the findings of the telephone survey conducted by the Public Opinion Programme of the University of Hong Kong and that the ratio of 4:6 measured the share of TV audience captured by the respective channels as in the case of a traditional TV audience survey (in breach of paragraph 17(b));
- (c) failing to provide a suitable opportunity for response to the programme (in breach of paragraph 17(c));
- (d) failing to allow a broad range of views to be expressed on the issue about the issuance of free TV licences (in breach of paragraph 17(d)); and
- (e) failing to fulfill the licence requirement for the broadcast of children's programmes (in breach of Condition 7.1(a) and (b) of the First Schedule of ATV's licence).

8. Taking into account the severity, nature and duration of the contraventions, the CA decided that a financial penalty of \$50,000 should be imposed on ATV.

**Previous discussions of the Panel**

9. At the Panel meeting on 10 December 2012, the Panel followed up the progress of the investigation by the CA into issues relating to the live broadcast of Caring Hong Kong's Future by ATV. Noting that the

programme had been characterized by ATV as a PVP, some Panel members opined that the CA should have its own judgement as to the nature of the programme. Some other members queried whether ATV had taken advantage of a loophole in the relevant provisions of the relevant TV Programme Code by claiming that it was only relaying a programme organized by the Asia Club of ATV rather than one which was produced by ATV.

10. Some Panel members noted that according to the provisions of the TV Programme Code regarding accuracy, impartiality and fairness, the licensees should make reasonable efforts to ensure that the factual contents of current affairs programmes were accurate. These members expressed concern about the CA's criteria in the handling of the over 42 000 complaints about various episodes of the television programme entitled ATV Focus that contained biased criticism of Scholarism, a group of pupils who protested against the national education curriculum. These members considered that the warning issued by the CA to ATV as penalty for contravention of Chapter 9 of the TV Programme Code in relation to ATV Focus was too lenient and out of proportion with the number of complaints received.

11. The Administration advised that while the CA was fully aware of the public concern about the programme contents of ATV Focus, the CA would handle all complaints in accordance with the BO, codes of practice issued by the CA and licence conditions, regardless of the number of complaints received about a particular subject. Paragraph 17(d) of Chapter 9 of the TV Programme Code provided that licensees should be mindful of the need for a sufficiently broad range of views to be expressed in any series of PVP. The CA would consider all relevant factors, including impact on the public, in making a decision on the sanctions to be imposed.

12. The Administration also advised that the existing TV Programme Code did not expressly prohibit a licensee from expressing its views in a PVP and was silent on the format and the presentation of a PVP. Accordingly, the CA accepted ATV's representations that the episodes of ATV Focus could be regarded as PVP, albeit a marginal case, and thus would not be subject to the rule of due impartiality applicable to news and current affairs programmes. The CA subsequently advised the Panel that it was aware of the public concern on ATV's presenting one-sided views in the form of PVP, and was reviewing the relevant parts of the codes of practice to address the concern.

## **Recent developments**

### Public consultation on the review of the regulation of editorial programmes and personal view programmes

13. On 17 December 2013, the CA issued a consultation paper to invite views from the public on the proposed amendments to the relevant provisions of its Codes of Practice governing editorial programmes and PVPs. The consultation will last for two months until 17 February 2014.

## **Latest position**

14. The Administration will brief the Panel on 10 February 2014 on the public consultation on the review of the regulation of editorial programmes and PVPs.

## **Relevant papers**

15. A list of the relevant papers with their hyperlinks is at:  
[http://www.legco.gov.hk/yr15-16/english/panels/itb/papers/itb\\_aa.htm](http://www.legco.gov.hk/yr15-16/english/panels/itb/papers/itb_aa.htm)

Council Business Division 4  
Legislative Council Secretariat  
4 February 2014

**Relevant Provisions on Factual Programmes and  
Personal View Programmes Extracted from the Codes of Practice**

**1. Generic Code of Practice on Television Programme Standards**

**Chapter 9 Accuracy, Impartiality and Fairness**

***DOMESTIC FREE AND DOMESTIC PAY TELEVISION PROGRAMME SERVICES***

**Accuracy**

1A. The licensees shall make reasonable efforts to ensure that the factual contents of news, current affairs programmes, financial programmes, personal view programmes, documentaries, programmes adopting an investigative style of reporting, children's programmes with educational purpose, programmes dealing with medical and health issues, and contests are accurate.

**Impartiality**

*General*

2. The licensees must ensure that due impartiality is preserved as respects news programmes and any factual programmes or segments thereof dealing with matters of public policy or controversial issues of public importance in Hong Kong (except personal view programmes which are dealt with separately under paragraph 17 below). Factual programmes are non-fiction programmes which are based on material facts. They can take the form of news, current affairs programmes, personal view programmes, documentaries and programmes adopting an investigative style of reporting.

3. Due impartiality requires the licensees to deal even-handedly when opposing points of view are presented in a programme or programme segment. Balance should be sought through the presentation, as far as possible, of principal relevant viewpoints on matters of public importance. Programmes or programme segments under concern should not be slanted by the concealment of facts or by misleading emphasis.

4. In achieving due impartiality, the term "due" is to be interpreted as meaning adequate or appropriate to the nature of the subject and the type of programme or programme segment. Due impartiality does not mean that "balance" is required in the sense of equal time or an equal number of lines in the script being devoted to each view, nor does it require absolute neutrality on every controversial issue. Judgement will always be called for by the licensees.

5. A programme host should encourage the widest possible airing of views. He/She should also be alert to the danger of unsubstantiated allegations being made by participants in live programmes. Where necessary, the programme host should correct the factual errors to the best of his/her knowledge.

### *Impartiality Over Time*

6. Although it is desirable, it is not always possible for principal opposing viewpoints to be reflected in a single programme or programme segment. Sometimes a series of programmes or programme segments may be considered as a whole. At other times, a narrower range of views may be appropriate within individual programmes or programme segments. This is an issue which calls for editorial judgement based on particular circumstances. 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.

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### **Fairness**

#### *General*

9. The licensees have a responsibility to avoid unfairness to individuals or organisations featured in factual programmes, in particular through the use of inaccurate information or distortion. They should also avoid misleading the audience in a way which would be unfair to those featured in the programme.

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#### *Right of Reply*

15. Licensees should take special care when their programmes are capable of adversely affecting the reputation of individuals, companies or other organizations. Licensees should take all reasonable care to satisfy themselves that all material facts are so far as possible fairly and accurately presented.

16. Where a factual programme reveals evidence of iniquity or incompetence, or contains a damaging critique of an individual or organization, those criticized should be given an appropriate and timely opportunity to respond.

### **Personal View Programmes**

17. "Personal view programmes" are programmes in which the programme hosts and, sometimes, individual contributors put forward their own views. The following rules apply to all personal view programmes on matters of public policy or controversial issues of public importance in Hong Kong:

- (a) The nature of a personal view programme must be identified clearly at the start of the programme, for example, by an announcement in the following terms, "This programme only reflects the personal views of the programme host(s) and/or the individual contributor(s)."
- (b) Facts must be respected and the opinion expressed, however partial, should not rest upon false evidence.
- (c) A suitable opportunity for response to the programme should be provided.
- (d) Licensees should be mindful of the need for a sufficiently broad range of views to be expressed in any series of personal view programmes.

## **2. Radio Code of Practice on Programme Standards**

### **Accuracy**

20A. The licensees shall make reasonable efforts to ensure that the factual contents of news, current affairs programmes, financial programmes, personal view programmes, documentaries, programmes adopting an investigative style of reporting, children's programmes with educational purpose, programmes dealing with medical and health issues, and contests are accurate.

### **Impartiality**

#### *General*

21. The licensees must ensure that due impartiality is preserved as respects news programmes and any factual programmes or segments thereof dealing with matters of public policy or controversial issues of public importance in Hong Kong (except personal view programmes which are dealt with separately under paragraph 36 below). Factual programmes are non-fiction programmes which are based on material facts. They can take the form of news, current affairs programmes, personal view programmes, phone-in programmes, documentaries and programmes adopting an investigative style of reporting.

22. Due impartiality requires the licensees to deal even-handedly when opposing points of view are presented in a programme or programme segment. Balance should be sought through the presentation, as far as possible, of principal relevant viewpoints on matters of public importance. Programmes or programme segments under concern should not be slanted by the concealment of facts or by misleading emphasis.

23. In achieving due impartiality, the term "due" is to be interpreted as meaning adequate or appropriate to the nature of the subject and the type of programme or programme segment. Due impartiality does not mean that "balance" is required in the sense of equal time or an equal number of lines in the script being devoted to each view, nor does it require absolute neutrality on every controversial issue. Judgement will always be called for by the licensees.

24. A programme host should encourage the widest possible airing of views. He/She should also be alert to the danger of unsubstantiated allegations being made by participants in live programmes. Where necessary, the programme host should correct the factual errors to the best of his/her knowledge.

### **Impartiality Over Time**

25. Although it is desirable, it is not always possible for principal opposing viewpoints to be reflected in a single programme or programme segment. Sometimes a series of programmes or programme segments may be considered as a whole. At other times, a narrower range of views may be appropriate within individual programmes or programme segments. This is an issue which calls for editorial judgement based on particular circumstances. 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.

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## **Fairness**

### *General*

28. The licensees have a responsibility to avoid unfairness to individuals or organisations featured in factual programmes, in particular through the use of inaccurate information or distortion. They should also avoid misleading the audience in a way which would be unfair to those featured in the programme.

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### *Right of Reply*

34. Licensees should take special care when their programmes are capable of adversely affecting the reputation of individuals, companies or other organizations. Licensees should take all reasonable care to satisfy themselves that all material facts are so far as possible fairly and accurately presented.

35. Where a factual programme reveals evidence of iniquity or incompetence, or contains a damaging critique of an individual or organization, those criticized should be given an appropriate and timely opportunity to respond.

## **Personal View Programmes**

36. "Personal view programmes" are programmes in which the programme hosts and, sometimes, individual contributors put forward their own views. The following rules apply to all personal view programmes on matters of public policy or controversial issues of public importance in Hong Kong:

- (a) The nature of a personal view programme must be identified clearly at the start of the programme, for example, by an announcement in the following terms, "This programme only reflects the personal views of the programme host(s) and/or the individual contributor(s)."
- (b) Facts must be respected and the opinion expressed, however partial, should not rest upon false evidence.
- (c) A suitable opportunity for response to the programme should be provided.
- (d) Licensees should be mindful of the need for a sufficiently broad range of views to be expressed in any series of personal view programmes.

### **3. Radio Code of Practice on Ancillary Visual Service Standards**

#### **Accuracy**

20. The licensees shall make reasonable efforts to ensure that AVS with factual contents of news, weather, current affairs, financial information, and any other information are accurate.

#### **Impartiality**

##### *General*

21. The licensees must ensure that due impartiality is preserved in respect of AVS of news programmes and any factual programmes or segments thereof dealing with matters of public policy or controversial issues of public importance in Hong Kong (except those of personal view programmes which are dealt with separately under paragraph 35 below). Factual programmes are non-fiction programmes which are based on material facts. They can take the form of news, current affairs programmes, personal view programmes, phone-in programmes, documentaries and programmes adopting an investigative style of reporting.

22. Due impartiality requires the licensees to deal even-handedly when opposing points of view are presented. Balance should be sought through the presentation, as far as possible, of principal relevant viewpoints on matters of public importance. AVS under concern should not be slanted by the concealment of facts or by misleading emphasis.

23. In achieving due impartiality, the term "due" is to be interpreted as meaning adequate or appropriate to the nature of the subject and the type of programme or programme segment. Due impartiality does not mean that "balance" is required in the sense of equal time, an equal number of lines in the script, or an equal amount of AVS being devoted to each view, nor does it require absolute neutrality on every controversial issue. Judgement will always be called for by the licensees.

24. The licensee should be alert to the danger of unsubstantiated allegations being made by participants in live transmission of AVS. Where necessary, the staff of the licensee should correct the factual errors to the best of their knowledge.

#### **Impartiality Over Time**

25. Although it is desirable, it is not always possible for principal opposing viewpoints to be reflected in the AVS of a single programme or programme segment. Sometimes a series of programmes or programme segments may be considered as a whole. At other times, a narrower range of views may be appropriate within individual programmes or programme segments. This is an issue which calls for editorial judgement based on particular circumstances. In achieving impartiality over time, it is not always necessary to ensure that in the AVS of a single programme or programme segment all sides have an opportunity to present their views.

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## **Fairness**

### *General*

27. The licensees have a responsibility to avoid unfairness to individuals or organisations featured in AVS, in particular through the use of inaccurate information or distortion. They should also avoid misleading the audience in a way which would be unfair to those featured in the AVS.

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### *Right of Reply*

33. Licensees should take special care when their AVS is capable of adversely affecting the reputation of individuals, companies or other organizations. Licensees should take all reasonable care to satisfy themselves that all material facts are so far as possible fairly and accurately presented.

34. Where a factual AVS reveals evidence of iniquity or incompetence, or contains a damaging critique of an individual or organization, those criticized should be given an appropriate and timely opportunity to respond.

## **Personal View Programmes**

35. "Personal view programmes" are programmes in which the programme hosts and, sometimes, individual contributors put forward their own views. The following rules apply to AVS of all personal view programmes on matters of public policy or controversial issues of public importance in Hong Kong:

- (a) The nature of such personal views must be identified clearly.
- (b) Facts must be respected and the opinion expressed, however partial, should not rest upon false evidence.
- (c) A suitable opportunity for response to the personal views should be provided.
- (d) Licensees should be mindful of the need for a sufficiently broad range of views to be expressed in the AVS.