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8 June 2016

Clerk to the Establishment Subcommittee
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn: Ms Alice Cheung)

Dear Ms Cheung,

**Establishment Subcommittee
Follow-up to Meeting on 23 May 2016
EC(2015-16)20**

At the meeting of the Establishment Subcommittee ("ESC") of the Finance Committee of the Legislative Council ("LegCo") held on 23 May 2016, during the discussion of EC(2015-16)20, a Member requested the Government to provide the following information: (a) to explain the coverage of the holistic review including the items that would be covered and those not to be covered, and in particular whether the regulation of the Internet media would be covered; (b) to elaborate the Administration's current policy on regulating the Internet media; and (c) to explain what principles the Administration would follow in dealing with the requests put forward by the public and councillors on tightening the

regulation of the Internet media, and explain whether the Basic Law, the Hong Kong Bill of Rights Ordinance (“BORO”)(Cap. 383) and the International Bill of Rights contain provisions to safeguard the freedom of expression online. The Administration now provides the information as follows.

Coverage of the Holistic Review

As mentioned in the discussion paper we submitted to the ESC on 31 March 2016, this review will give priority to the areas of cross media ownership restrictions, foreign ownership restrictions, licensing authorities, and appeal mechanisms, etc., as well as to review the differences among the Telecommunications Ordinance (“TO”)(Cap. 106), the Broadcasting Ordinance (“BO”)(Cap. 562) and the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391) in respect of the powers of the Communications Authority and offences and penalties, with a view to considering whether there is a need for streamlining. Other more general matters including enhancing the statutory protection for telecommunications infrastructure, the requirement to publish the tariffs by the telecommunications licensees and the access rights of the operators to buildings also fall within the coverage of the review. Since this is a holistic review on the TO and the BO, it would thus cover the various areas under the two ordinances and we have not set other restrictions on the coverage of the review.

Existing Regulatory Policies on Internet Media

Most of the laws in the real world are applicable to the Internet world. The Internet media is also governed by the general laws of Hong Kong, including the Control of Obscene and Indecent Articles Ordinance (“COIAO”)(Cap. 390). The COIAO regulates the publication of articles with obscene or indecent contents (including material which is violent, depraved or repulsive), including articles published on the Internet. In view of the vast volume of ever-changing information available on the Internet, the Government adopts a complaint-driven and co-regulatory approach to control obscene and indecent contents on the Internet. Together with the Hong Kong Internet Service Providers Association, the

Office for Film, Newspaper and Article Administration (“OFNAA”) has developed a Code of Practice. Under the Code of Practice, if the content under complaint is indecent, the webmaster will be requested to add a warning notice as required by law or remove the indecent article. If the content under complaint is likely to be obscene, the Internet service provider concerned will block access to the article or request the webmaster to remove it. Furthermore, OFNAA will refer cases involving obscene articles to the police for follow-up actions.

At present, section 5 of Schedule 3 to the BO stipulates that any service provided on the service commonly known as the INTERNET is not to be regarded as Television Programme Services. In other words, broadcasting services provided on the Internet is not governed by that ordinance.

Principles in Handling Views of the Public and Councillors on the Regulation of the Internet Media

The views collected during the review of the TO and the BO, including those related to regulation, will be handled seriously and prudently. We will consider the situation in Hong Kong as well as the international best practice during the review. In fact, any policy or legislative amendments have to be fully justified and discussed through consultation.

The operation of the Internet media is not restricted geographically and regulation thereof is difficult. The overseas jurisdictions rarely implement regulatory regime specific to the Internet media. The Administration has no inclination towards the strengthening of regulation of the Internet media and this subject is not a priority item of the review.

Provisions Safeguarding Freedom of Speech

All Hong Kong laws have to be consistent with the Basic Law and the BORO. As for freedom of speech, it is protected under Article 27 of the Basic Law, the BORO and the relevant provisions of the International Covenant on Civil and Political Rights applicable to Hong Kong.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line and a small upward flick.

(Ivanhoe Chang)

for Secretary for Commerce and Economic Development