

**The Legislative Council**  
**Bills Committee on the Broadcasting Bill**

**Financial Penalties for Television Programme Service Licensees**

**Purpose**

This paper briefs Members on the Administration's policy considerations in respect of the proposed financial penalties for licensees under the Broadcasting Bill (the Bill).

**Background**

2. At the meeting held on 18 April 2000, Members requested the Administration to provide further information regarding the policy considerations for the existing and proposed financial penalties for breaches of programme content requirements and anti-competitive conduct. Members suggested pegging the financial penalty at a certain percentage of the revenue of the programme service licensee.

**Existing Practice**

3. Under section 37 of the Television Ordinance, Cap. 52, the Broadcasting Authority (BA) may impose financial penalties on the television licensees for failure to comply with any licence conditions, provisions of the Television Ordinance, any Codes of Practice, or any direction or order issued or made by the BA under the Television Ordinance. The maximum levels of financial penalty that the BA may impose on a licensee are \$50,000 for the first occasion, \$100,000 for the second occasion and \$250,000 for any subsequent occasion.

4. A summary showing the decisions of the BA in the past ten years is at Annex A. A separate table showing the cases attracting financial penalties is at Annex B. For illustration purposes, the considerations of the BA in three recent cases attracting financial penalties are set out in paragraphs 5 – 7 below.

5. In August 1996, the BA imposed a financial penalty of \$150,000 on ATV for contravening the provisions on indirect advertising as

stipulated in the Commercial Television (Advertising) Regulations, ATV's licence and the Commercial Television Code of Practice on Advertising Standards. After having reviewed the offending drama serial programme in question, the BA was of the view that the drama serial had the cumulative effect of promoting the housing projects of a property developer and that the advertising elements were not clearly identifiable as advertising material. In view of the extensive and repeated favourable comments being made to the properties and the property developer, the BA took a very serious view of the contravention and imposed a financial penalty on ATV.

6. In September 1997, the BA imposed a financial penalty of \$100,000 on TVB for breaching the provisions of the Code of Practice on Programme Standards governing decency, material of bad taste, use of offensive language and broadcast of material unsuitable for children. The BA was of view that the programme in question was likely to be watched by a large number of young viewers and that the frequent use of vulgar expressions would exert a most undesirable influence on children and young persons. In view of the offensiveness of the material in question and TVB's failure to exercise due diligence in preventing the breach after committing a similar lapse in the previous year, the BA imposed a financial penalty on TVB.

7. In June 1998, the BA imposed a financial penalty of \$100,000 on TVB for the broadcast of a prolonged interview with a figure known for his association with triads and criminal activities in Macau. The BA considered that the programme was in breach of the relevant provisions of the Code of Practice on Programme Standards concerning the glamorization of the lifestyle of criminals, glorification of criminals, the power of the triads and membership in a triad society. The programme was considered to be wholly unsuitable for broadcast particularly at a time when there was likely to be a large audience of young and impressionable viewers. In view of the seriousness of the breach, the BA imposed a financial penalty on TVB.

### **Proposed financial penalties under the Bill**

8. Under the Bill, we have proposed to increase the levels of maximum financial penalty by four times to \$200,000 for first occasion, \$400,000 for second occasion and \$1,000,000 for subsequent occasions (Clause 27).

9. The Bill does not differentiate financial penalties that may be

imposed on breaches relating to programme content requirements or those relating to competition provisions, i.e. both are subject to a maximum penalty of \$1 million. This is different from overseas practices where anti-competitive conduct is governed by a general competition law. That being the case, anti-competitive offences are subject to a different scale of financial penalty commensurate with the likely impact on the economy as a whole. For instance, the maximum financial penalty for anti-competitive conduct is invariably tied to a percentage of the revenue of a company, usually set at 10%.

### *Breaches of programme content requirements*

10. We do not think that the financial penalty for breaches of programme content requirements should be pegged to the turnover of a licensee. This cannot be justified on equity grounds if two licensees are subject to different scales of financial penalty for contravention of the same programme standard, purely because of the size of their respective operations. The BA should have regard to the nature and the severity of an offence rather than the revenue of the licensee in determining the level of financial penalty. This is in line with overseas practices<sup>1</sup>.

11. The proposed maximum financial penalty of \$1 million for breaches relating to programme content is appropriate compared with overseas countries<sup>2</sup>, given the much smaller market of Hong Kong compared with these countries.

### *Breaches of competition provisions*

12. In Hong Kong, anti-competitive conduct is regulated by a sectoral approach and this allows for specific measures to tackle the competition issues in a particular sector of business. For instance, the economic value of the telecommunications sector<sup>3</sup> clearly warrants a higher level of financial penalty if it is to serve as an effective deterrent. Indeed, the Telecommunication (Amendment) Bill 1999, which is currently being

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<sup>1</sup> USA, Canada and Australia all adopt scales of fixed financial penalties which are applicable to licensees of the same class, irrespective of their turnovers. Only UK adopts a system which imposes fines on a licensee up to 3% of the licensee's annual qualifying revenue for the first breach and up to 5% for subsequent breaches.

<sup>2</sup> The maximum penalties in USA is US\$275,000 (or about \$2.1 million), in Australia, Aus\$110,000 (or \$506,000) and in Canada, CAN\$500,000 (or \$2.6 million).

<sup>3</sup> For example, the turnover of the largest fixed telecommunication network service licensee in Hong Kong recorded a turnover of over \$32.4 billion in 1999.

separately examined by the Legislative Council, has proposed, on top of a fixed-amount penalty scale, that the maximum fines may also be pegged to the turnover of a licensee<sup>4</sup>. This would enable effective regulation of the telecommunications sector, whether a breach is related to competition provisions or otherwise.

13. It should be noted that the economic value of the broadcasting sector is much smaller than that of the telecommunications sector. Given the smaller scale of operations of the licensees<sup>5</sup>, we consider that a fixed-amount penalty system should be appropriate for the broadcasting sector. The proposed maximum penalty at \$1 million is also proportionate to the maximum fixed penalty of \$10 million proposed for telecommunications licensees (please see footnote 4).

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<sup>4</sup> Clause 22 of the Telecommunication (Amendment) Bill 1999 proposes that under certain circumstances the Telecommunications Authority may apply to the Court of First Instance to impose a financial penalty of a sum not exceeding 10% of the turnover of the licensee in the relevant telecommunications market in the period of the breach, or \$10,000,000, whichever is the higher.

<sup>5</sup> The turnover of the largest operator in the broadcasting sector in 1998 (\$3.3 billion) is less than 10% of the turnover of the largest operator in the telecommunications sector in the same year (\$35 billion).

**Annex A****Breakdown of the Sanctions Imposed by the Broadcasting Authority  
(March 1990 - April 2000)**

<b>Year</b>	<b>Mar 90 - Dec 90</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>Jan 2000 - Apr 2000</b>	<b>Total</b>
<b>No Further Action</b>	17	20	14	10	17	17	11	13	9	8	2	138 (16.7%)
<b>Attention be drawn to the relevant provisions</b>	6	4	3	0	0	0	5	4	0	0	0	22 (2.7%)
<b>Advice</b>	28	24	15	10	35	26	45	23	30	15	5	256 (31.1%)
<b>Strong Advice</b>	10	16	16	13	15	30	34	32	27	9	1	203 (24.6%)
<b>Warning</b>	12	12	11	7	9	16	13	7	9	6	4	106 (12.9%)
<b>Serious Warning</b>	3	12	9	11	13	13	3	1	5	5	1	76 (9.2%)
<b>Financial Penalty</b>	1	1	4	4	4	2	1	1	4	1	0	23 (2.8%)
<b>Total</b>	77	89	72	55	93	104	112	81	84	44	13	824 (100%)

**Annex B****Table showing Financial Penalties Imposed by the Broadcasting Authority on  
Television Broadcasting Licensees**

<b>Stations &amp; Channels</b>	<b>Tx Date &amp; Tx Time</b>	<b>Name of Programme</b>	<b>Nature of Lapses</b>	<b>Financial Penalty (HK\$)</b>
ATV Home	16.3.1989 & 30.3.1989 10:00pm- 11:00pm	The Police Archives-Dangerous Man (皇家檔案—危險人 物) The Police Archives-The Tsim Sha Tsui Dragon (皇家檔案—尖沙咀 一條龍))	Violence & suggested sex scenes	\$75,000 for each episode
ATV Home	3.8.1991 10:30pm- 11:30pm	4 WD Super Challenge (強化四驅車大比 拼)	Indirect advertising	\$10,000
ATV World	4.4.1992 4:16pm- 6:59pm & 5.4.1992 12:40pm- 6:31pm	Cathay Pacific Hong Kong Bank Invitation Sevens 1992	Indirect advertising	\$50,000
TVB Jade	8.9.1992 10:20pm- 11:00pm	Summer Holiday (暑 假玩到盡)	Indecency, bad language	\$25,000

<b>Stations &amp; Channels</b>	<b>Tx Date &amp; Tx Time</b>	<b>Name of Programme</b>	<b>Nature of Lapses</b>	<b>Financial Penalty (HK\$)</b>
TVB Jade	5.10.1992 7:35pm- 8:35pm	The Greed of Man (大時代)	Exploitative depiction of suicide-cum-homicide, violence & material unsuitable for family viewing hours	\$50,000
ATV Home	2.8.1993 - 3.9.1993 7:00pm- 7:55pm	Hong Kong Criminal Archives II (The Whole Series) (香港奇案)	Violence unsuitable for family viewing hours	\$80,000
ATV Home	13.8.1993 7:00pm- 7:55pm	Hong Kong Criminal Archives II (半山奇案)	Violence unsuitable for family viewing hours	\$40,000
ATV Home	27.8.1993 7:00pm- 7:55pm	Hong Kong Criminal Archives II (電梯情殺案)	Violence unsuitable for family viewing hours	\$40,000
ATV World	4.11.1993 6:15pm	Advertisement for the programme "Salem Asian Championships"	Tobacco advertising	\$10,000

<b>Stations &amp; Channels</b>	<b>Tx Date &amp; Tx Time</b>	<b>Name of Programme</b>	<b>Nature of Lapses</b>	<b>Financial Penalty (HK\$)</b>
TVB Jade	6.12.1993 - 14.1.1994 7:25pm- 8:30pm	The Edge of Righteousness (龍兄鼠弟)	Vulgar language & material unsuitable for children	\$100,000
TVB Jade	18.1.1994 7:25pm- 8:30pm	Glittering Moments (Catwalk 俏佳人)	Explicit and vulgar language unsuitable for family viewing hours	\$25,000
Cable Children Channel	30.5.1994 6:48pm- 7:20pm	Lonely Boy (好爸爸，壞爸爸)	Inhumane treatment of animals & material unsuitable for children	\$10,000
Cable CNBC Asia	21.6.1995 7:25am	Broadcasts of adverting materials	Breach of a then licence condition which prohibited Cable TV to carry advertising	\$10,000

<b>Stations &amp; Channels</b>	<b>Tx Date &amp; Tx Time</b>	<b>Name of Programme</b>	<b>Nature of Lapses</b>	<b>Financial Penalty (HK\$)</b>
ATV Home	4 episodes 17.4.1996 - 18.5.1996 (Sat.) 7:05pm- 7:35pm	Junk Bay's Dream (一人有一個理想)	Indirect advertising	\$150,000
TVB Jade	19.11.199 6 8:36pm- 11:43pm	TVB 29 <sup>th</sup> Anniversary Special (萬千星輝賀台慶)	Indecency, vulgar language & material unsuitable for a programme for general audience	\$100,000
TVB Jade	1.5.1998 8:35pm- 9:35pm	Focus on Focus (城市追擊)	Glorification of triads, bad influence on children & young viewers	\$100,000

<b>Stations &amp; Channels</b>	<b>Tx Date &amp; Tx Time</b>	<b>Name of Programme</b>	<b>Nature of Lapses</b>	<b>Financial Penalty (HK\$)</b>
Cable Cineplex 84	3.5.1998, 2:15am- 3:15am; 18.5.1998, 10:03pm- 10:57pm; 20.5.1998, 1:18am- 2:13am	Yuka Fujimura; Natsumi Yukimurs; Anna Kazuki	Substantial explicit sexual sequences beyond the acceptable bounds of an adult channel of the subscription television service	\$100,000
ATV Home & TVB Jade	20.10.1998- 23.10.1998 & 26.10.1998- 30.10.1998, 8:30pm- 9:30pm	Hong Kong Today (今日睇真 D) & Focus on Focus (城市追擊)	Exploitative presentation of a homicide-cum-suicide case, material unsuitable for children & young viewers, bad influence on society	\$100,000 (ATV) \$50,000 (TVB) (1 case involving 2 Penalties)
TVB Jade	30.5.1999 7:35pm- 10:35pm	Community Chest Charity Show 1999 (萬眾同心公益金)	Dangerous acts easily imitated by children & material unsuitable for family viewing hours	\$10,000