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COMMERCE AND ECONOMIC
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24 May 2019

Mr Daniel Sin
Chief Council Secretary (1)6
Council Business Division 1
Legislative Council Secretariat

Dear Mr Sin,

**Broadcasting and Telecommunications Legislation
(Amendment) Bill 2019**

I refer to your email of 15 May 2019. The requested information is as follows.

(a) Regulating Online Television and Radio

2. Regarding the regulation of online broadcasting in other jurisdictions, there is no mainstream approach. Currently, many jurisdictions (e.g. United States of America, Australia, New Zealand, Japan and South Korea) do not have dedicated regulations or regulations similar to those regulating traditional broadcasting services applicable to online television (TV) and radio. Most of them only put in place general regulations on online contents similar to the Control of Obscene and Indecent Articles Ordinance (Cap. 390) in Hong Kong. In addition, there will be practical enforcement difficulties if online TV and radio are to be regulated. For instance, operators may upload contents to overseas websites in order to evade regulation. Online contents are not necessarily produced in Hong Kong, giving rise to further enforcement difficulties.

3. As a matter of fact, we did receive views from some stakeholders that the existing regulatory approach should remain intact, i.e. online TV and radio should remain not subject to traditional broadcasting licensing controls.

(b) Licence Fee

4. Office of the Communications Authority conducts licence fee reviews having regard to its financial performance and the financial arrangements as advised by the Financial Services and the Treasury Bureau. The Office opines that there is at present no room for reduction in fee levels of broadcasting licences.

(c) Relaxation of Free TV Licence Conditions and Codes of Practice

5. We note the request of some stakeholders for relaxation of certain free TV licence conditions such as the requirements for the licensees to provide English channels and positive programmes. In this connection, the Communications Authority (CA) will conduct a holistic review of the requirements concerned in the mid-term review of the free TV licences which will commence progressively in 2021 and 2022. The licence review will entail assessment on the past performance of the licensees and public consultations to gauge views of the public and stakeholders on their performance and various regulatory issues.

6. As regards the suggestion of relaxing various codes of practice (e.g. Advertising Standards and Programme Standards), the CA will review its codes of practice from time to time to take account of changing community attitudes and standards. For instance, the CA revised its codes of practice to relax the regulation of indirect advertising in TV programme services and to lift the prohibition on the broadcast of advertisements for undertakers and associated services in July 2018.

(d) Changes to Licensee's Proposals

7. The commitments contained in the Licensee's Proposals, which mainly cover the licensee's shareholding structure, investment plan and commitments on production of programmes, are fundamental components of a licence. To ensure a licensee's continued compliance with these commitments made, it is important for the licensee to seek prior approval of the CA for any changes to such commitments contained in the Licensee's Proposal. In fact,


based on the operational experience of the CA over the years, licensees do not have difficulties in complying with the requirement.

(e) Copyright Protection

8. Section 6 of the Broadcasting Ordinance concerns endeavours of importing, exporting, manufacturing, selling, offering for sale or letting for hire an unauthorised decoder. It also provides for civil remedy against unauthorised reception of pay TV programme services without payment of a subscription, and for both civil remedy and criminal sanction against the possession of unauthorized decoders for commercial purposes.

9. On the combat against copyright infringement to, inter alia, protect the broadcasting industry, Hong Kong is fully committed to upholding a robust and effective system of intellectual property protection, and the Government stands ready to enhance our copyright regime as appropriate. On the idea of “site blocking” as raised by PCCW however, it is a proposal of much controversy, as is evident by the negative responses drawn when the idea was mentioned during the discussion of the Legislative Council Bills Committee set up to scrutinise the Copyright (Amendment) Bill 2014. It is important that in strengthening our copyright framework, the Government listens to the views of our stakeholders carefully, in identifying initiatives that are capable of engendering a meeting of minds between right owners and right users, and ones which do not give rise to serious concerns and controversy. In the meantime, on the enforcement front, the Customs and Excise Department will continue to take rigorous enforcement actions against online piracy, so as to protect the legitimate interests of copyright owners.

Yours sincerely,



(Tony Yip)

for Secretary for Commerce and Economic Development

c.c. The Office of the Communications Authority
(Attn: Miss Gloria Lo)