

**TELECOMMUNICATIONS &  
INFOTECHNOLOGY FORUM**

**HOW TO REGULATE CONVERGENCE?**

January 26, 1999

Hong Kong Convention and Exhibition Centre

**SUMMARY PAPER**

## **PROGRAMME**

- 2.00 – 3.30     **Session One: Regulating Convergence – the Experience**  
*Speakers:*     Jock Given, Director of the Communications Law Centre, Melbourne  
                    June Cheah, Associate Solicitor, Haldanes Solicitors and Notaries  
                    Michael Latzer, Deputy Director, Research Unit for Institutional Change and  
                    European Integration, Austrian Academy of Sciences, Vienna
- 3.30 – 4.00     Coffee Break
- 4.00 – 5.30     **Session Two: Regulating the Regulator in Hong Kong**  
*Speakers:*     Eddy YT Chan, Commissioner for Television and Entertainment Licencing,  
                    and Principal Executive of the Broadcasting Authority  
                    M.H.Au, Senior Assistant Director (Regulatory), OFTA  
                    Ada Leung, Assistant Director, Intellectual Property Department

## **LIST OF PARTICIPANTS**

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## Executive Summary

Policy decisions following the *1998 Review of Television Policy: A Consultation Paper*, the focus of the TIF 13<sup>th</sup> October 1998, were announced 10<sup>th</sup> December and amended 23<sup>rd</sup> December 1998. (See ITBB website). By 26<sup>th</sup> January 1999, the date of this TIF meeting, no corresponding policy announcement had been made by ITBB following the *1998 Review of Fixed Telecommunications*. However it is evident that the issues of convergence raised by the television review and subsequent policy decisions of the government pose a challenge to the regulators, currently the Broadcasting Authority (BA) and the Telecommunications Authority (TA). The issue is how to regulate the convergence when the traditional boundaries between what was considered television and what was considered telecommunications and what were separately considered online information services are becoming blurred, and when the defining characteristics of the respective markets are changing, and internationalizing.

1. **Session One** was focused upon the experiences of convergence, and the regulatory responses to it, overseas. The Forum discussed presentations covering **Australia**, the EU and Asian economies. The experience from Australia illustrated a process both of fragmentation, which accompanied early liberalization and new entrants employing new technologies and creating new media, and of industrial re-ordering. The re-entry of Cable & Wireless into telecoms and now cable tv is one example, and the transformation of Telstra is another, as the company increasingly outsources its network build-out on the one hand, and enters the retail market for new media products and services on the other. This raises the important question of how far telecoms regulation follows the path of telcos into these new markets? The crossing of frontiers was neatly summed up by Jock Given quoting an industry sage saying that if a telco executive carried out a standard SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis the answer in each case would be one word: Internet.
2. Within the **European Union** the national regulations of member states are required to conform to policies administered through the European Commission (and vetted by the European Parliament) although the detail of the regulatory approaches differ according to national circumstances. Generally, the EU states have lagged behind, but tended to follow, the lead given in the USA by the 1996 Telecommunications Act which liberalizes markets and opens them to convergence. (By contrast, the 1996 Communications Decency Act, which would have extended to individuals similar constraints imposed upon commercial service providers, was defeated. So far, there is no one agreed EU approach to this issue.) For the past decade the stress has been upon telecommunications ('telematics') liberalization and public interest issues, such as universal service, data protection and privacy. With the publication of the Green Paper on convergence in December 1997 the focus has now shifted to new media (audiovisual, Internet, online and services) issues ('mediamatics') with the emphasis shifting from purely cultural to more economic issues. This reflects the growing importance of trade issues between the triad (Japan, the USA, the EU) and the importance attached to electronic commerce. Where the EU and the USA notably differ is upon how far regulation of 'mediamatics' should go beyond self-regulation. The EU has proposed greater co-ordination of regulation internationally.
3. Across **Asia** restrictions on foreign ownership within the telecommunications and audiovisual media sectors remains an issue. In Hong Kong foreign ownership restrictions have been lifted entirely, and cross-media ownership restrictions eased, reflecting in part Hong Kong's competition with Singapore as a media hub, and in part the growing regionalization (eg. TVBI) and internationalization (eg. CNNI) of service providers and their markets. Singapore maintains foreign ownership restrictions on audiovisual media aimed at

the domestic market, but not on satellite uplinking for regional distribution. South Korea and Taiwan both restrict the free-to-air market, but allow 49% and 50% foreign ownership respectively of cable and satellite tv systems. Thailand's Constitution prohibits non-Thais owning broadcast facilities, and the Philippines and Indonesia have similar restrictions. Malaysia's promotion of the multimedia super-corridor (MSC) has resulted in the Communications and Multimedia Act, 1998 which aims at a generic set of regulations for the converging sectors, and adopts a technology-neutral stance. But it stops short of complete liberalization because all new licensees must comply with Malaysia's foreign ownership restrictions governed by the Foreign Investment Committee of the Prime Minister's Economic Planning Unit. This implies a 30% foreign ownership restriction. Of the two giants among developing Asian economies, China prohibits any foreign ownership or direct involvement in telecoms or the media. India prevents private domestic ownership of free-to-air and pay-tv, but allows up to 49% foreign ownership of cable. As satellite tv is not licensed as such in India foreign programmers have complex revenue deals with cable tv operators. In all these economies, with the exception of China, some degree of foreign ownership and participation is permitted in the telecoms markets. In some, such as China, Hong Kong, Malaysia, policy-making bodies have been combined into new ministries to handle issues of convergence. In others, such as Singapore, South Korea, Taiwan, Thailand, the process of privatization of state-owned telecoms enterprises (SOTEs) and market liberalization has reached various stages of maturity.

4. **Convergence regulation:** in Australia, having got rid of a single telecoms regulator (Austel), the regulation of telecoms and converging sectors is now spread across a number of agencies: the Australian Communications Authority (ACA), the Australian Communications and Industry Forum (ACIF), the Australian Competition and Consumer Commission (ACCC) and the Australian Broadcasting Authority (ABA). Convergence is handled through cross-membership of these bodies. In the EU, policy-making is the responsibility of the European Commission and its directorate, while regulation is handled by national regulation authorities (NRAs) with each member state retaining the right to decide its own details. This degree of federalism has some parallels in Australia where states have rights over audiovisual regulation, and in the USA where non-federal services are subject to state laws. A legacy of industry-specific regulation is the question of the universal obligation, and convergence now raises the issue of whether the concept should be extended to include Internet access.
5. **Policy convergence:** Australia, the EU and most developed economies are following multilateral agreements, such as the WTO's Basic Agreement on Telecommunications, and the World Intellectual Property Rights Organization (WIPO) and the TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights) Agreement. As one speaker put it: the law makers are becoming law takers. But content policy and policy towards cultural issues, such as programming, have so far remained outside international agreements. As the world economy shifts towards more and more to trade-in-services pressure may grow among the triad (Japan, USA and EU) to negotiate these areas. Policy differences over the regulation of content from the legal (eg. illegal or undesirable content; tax issues, etc) and consumer protection (eg. personal data protection, advertising standards, etc) perspectives exist between the USA and the EU, the former favouring self-regulation, the latter international enforcement.
6. **Economic regulation:** in Australia one of the complicating factors is that Government remains the majority (two-thirds) shareholder of Telstra, and if Telstra continues to expand beyond traditional telecoms areas this could draw ministerial responsibility into wider areas. Mergers and amalgamations of many of Australia's media and content companies

makes the industry look increasingly like the rest of the world, and this has prompted some media companies to argue that ownership issues be handled by the ACCC rather than the ABA to avoid the strict ownership and cross-ownership regulations of the Broadcasting Services Act. Within the EU national approaches remain the order of the day. For example, in response to the European Commission's Green Paper, OFTEL has argued for a series of principles which leave NRAs with primary regulatory responsibilities, adopt a light-handed approach which substitutes a 'market influence condition' (ie. regulate companies which exert undue influence within specific market segments) for a 'significant market power' approach (ie. blanket regulation of companies declared as dominant) and rely more upon general competition policy with specific application to industrial sectors as appropriate. This debate, part of the 1999 Review of telecommunications policy within the EU, is indicative of the gradual shift from industry-specific to more selective regulation based upon general competition policy.

7. **Content regulation:** within the EU it has been proposed that ISPs only be liable for content in cases where they store data. This follows the case in Germany where the courts relied upon existing press law in their judgement against CompuServe which was held to be liable for content. Other issues under debate include whether advertising standards should be limited to tv and the print media, or extended to ISPs, and whether information service providers should be required to provide information to the public on the companies providing the information. In Australia, legislation is still awaited to give the ABA formal powers over Internet content issues, but the telecommunications industry ombudsman's powers were extended in 1997 to consider not just consumer complaints with respect to the standard telephone service but also mobile and Internet services. In practice this is an industry-led scheme.
8. **Conditional access:** the Australian approach is determined by whether or not a service type is "declared" which means that it has to be available to anyone who wishes to subscribe on reasonable and non-discriminatory terms, subject to one or two conditions, such as capacity availability, and access is limited to the infrastructure and network, not to the conditional access system or to the set-top box decoders themselves. The problem question is: how far to take declaration? Where to draw the line between consumer interests (unfettered choice of access) and commercial interests (the protection of investment and competitive advantage)? The same issues are being debated in the EU. Each member state is feeling its own way. (See example of examples of Germany, Italy and the UK quoted above).
9. **Session Two** focused upon the implications of convergence for **Hong Kong's approach to regulation**. Regulation will permit virtually unrestricted entry into Hong Kong's broadcast markets except in areas where there is spectrum scarcity, but even free-to-air broadcasting should be liberalized after the advent of digital tv. This has profound implications for the means of content delivery, and therefore for content accessibility. Content originated from anywhere in the world will be available through a great variety of channels: direct-to-home satellite tv, satellite web-tv, Internet video, inter-active tv delivered over telecoms, cable tv and cable modem fast-Internet video, and so on. This raises issues of content regulation, intellectual property rights, advertising standards, consumer protection, foreign ownership issues, cross-media ownership issues, issues of vertical and horizontal ownership and control and question marks over how to define dominance and whether dominance regulation has a future. It also raises the question: does more mean better or worse, not just in terms of diversity of content but also in terms of quality (however that is defined). It further raises the question: what can, or should, Hong Kong do to promote itself as a media

hub? Finally, these changes raise the question: does Hong Kong need to restructure its regulatory agencies and their functions in light of these changes?

10. One thing seems agreed, the need for regulation in some form or other won't go away. For example, the issues of illegal and/or undesirable content raise a series of difficult questions. It is one thing to have in place IPR **legislation**, it is quite another to police it and enforce it. The latter requires a degree of international co-ordination of policy approach and cooperation between jurisdictions on issues such as the law applied to the Internet which currently hardly exists, although international treaties and conventions, such as the TRIPS agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) have been signed. The Forum learned that the most likely way forward would be through cases involving litigation. This raises the prospect that laws and agreements that prove unenforceable will have to give way to other conventions.
11. The same will eventually be true of national **content regulation** which tries to reflect local taste. The Forum learned that sooner or later a generic set of codes of conduct are likely to replace specific guidelines for censors. Technology may come to the rescue of parents who wish to block access to certain channels, but technology is double-edged. As the means and modes of access multiply, minors are likely to be exposed to more and more ways of circumventing parental controls. This raises again the issue of liability for content control and the technology available for service providers to screen and classify content, but the majority view remains against censorship by the service provider, partly on the grounds of the insuperable problems this will pose for the industry itself, and partly on the grounds that censorship should, where at all possible, reside with the self, with the individual parent and family.
12. The current procedures for licensing broadcasters and the providers of 'other television services' involve the **Broadcasting Authority** (BA) examining the application in terms of the type of television service to be offered, and the **Telecommunications Authority** (TA) who examines the application in terms of the transmission medium proposed. The Chief Executive-in-Council makes the final decision. This division between content and transmission seems to be the likely future direction of Hong Kong's regulatory approach, which shows similarities with the shift towards 'horizontal' regulation in the EU. And the shift from detailed content regulation to a more generic approach is consistent with a shift towards economic regulation, that is regulation that focuses more upon consumers' rights to access a more diverse range of services and industry's capacity to meet that demand in open and freely competitive markets.
13. One way forward in regulation proposed by the government speakers was for the generic **separation of content from transmission**, the BA taking responsibility for the former, the TA for the latter. This parallels the current UK approach. But how far does such a shift tackle the regulatory problem of devising a workable economic policy? For example, Wharf Cable, now Hong Kong Cable, is clearly dominant within cable tv (it is to only cable tv company) but it is clearly non-dominant in the tv market (it competes with ATV as the smallest of the three domestic tv service providers). As Hongkong Telecom enters the tv market, and as international satellite tv service providers also enter the market, commercial risk and uncertainty will increase. Under these circumstances, should Hong Kong Cable be required to open its small cable network to interconnection? In the ideal world every network should be open for interconnection at a reasonable fee, but does this apply when the market still has to be built, and when return on investment is questionable? These are issues which cannot easily be compartmentalized as broadcasting or non-broadcasting (or as transmission rather than content issues) because in an economic model broadcasting is a business, not a technology. Which agency should make the decision or recommendation?

Does it really make sense to have separate agencies at all? Is the cross-membership of the BA and TA sufficient to tackle these kinds of issues? Do they not require greater professional co-operation within the departments concerned?

14. **Public service broadcasting and quality:** the issue of more not meaning better in audiovisual content was an issue raised by several participants who were concerned that there was no emphasis within current policy thinking on ways to ensure quality alongside diversity. The absence of **Radio Television Hong Kong (RTHK)** from the debated was noted by several participants. Appreciation was also expressed for the points relayed to the forum by Richard Wooley, Dean of the School of Film and TV, Academy of Performing Arts, who was unable to be present. He proposed that within the newly established **Film Development Fund** a specific allocation be earmarked for scriptwriting. Participants also noted that across the EU 25% of content funds were apportioned to local production, and models existed to cross-subsidize local content from a tax on the advertising revenue of commercial broadcasters. In Australia, the Australian Broadcasting Corporation is supported by public funding, although this has come under pressure in recent years, while the much smaller Special Broadcasting Service is funded by a mix of advertising and Federal funding. Convergence implies that Internet content, and other new media content, may also have to be considered in this debate. In this context, Michael Latzer suggested that a universal service fund might have an application here also.

## **SESSION I**

### **Regulating Convergence – the Experience**

John Ure opened the meeting:

Today's Forum arises really out of the success of the Forum we had on October 13<sup>th</sup> where among our other speakers, Mrs Rita Lau was presenting the TV review, which is a document which most of you will have seen and which really raises the question of convergence. A television policy was subsequently announced at the beginning of this year and we are now moving into an era where the regulation of convergence, that is to say the actual operation of that policy, is the issue that is facing both government operators and the rest of us as consumers of television and broadcast content. How will the broadcast and content be regulated? What are the mechanisms that Hong Kong either has in place or needs to put in place to carry out that regulatory feature? Put in a nutshell we have on the telecoms side a fairly well-established regulatory procedure and a professional body in the form of OFTA. On the broadcast content side we have the Broadcasting Authority and the Television Entertainment Licensing Authority. And the question is, what does the new policy mean for their responsibilities, the way they go about organising their work, what changes will they need to have to incorporate.

Chair: Graham Meade (HKTUG Exco)

JOCK GIVEN  
DIRECTOR OF THE COMMUNICATIONS LAW CENTRE, MELBOURNE

*(Slide presentation follows)*

**Regulating Convergence -  
The Experience**

*Jock Given*  
*Director Communications Law Centre*

*Telecommunications and  
InfoTechnology Forum*  
*Hong Kong, 26 January 1999*

**History**

- Integration of state PTTs (1901)
- Separate domestic and international telecoms (until 1991)
- Separation of post and telecoms (1975)
- Domestic satellite (1975)
- Facilities-based competition (1991)
- Open competition (1997)

## Shapes

- Laws
- Regulators
- Industry

## Laws and Regulators

- Telecoms and radiocomms - ACA
- Broadcasting services - ABA
- Competition and consumer protection - ACCC
- Censorship and classification - OFLC and state agencies

## Industry

<i>Rank</i>	<i>A\$b</i>	<i>Company</i>
1/3	106.4	Telstra
2	37.7	News
9	14.2	C&W Optus
29	3.9	PBL
38	3.0	Fairfax
57	1.8	7 Network
74	1.2	AAPT
80	1.0	WA News

## Convergence: How's it happening?

### *The Internet*

## Convergence

- Technologies
- Activities
- Companies
- Regulators
- Policy Approaches

## 1. Technologies

- Convergence of service capabilities and transmission mode (digital) - BUT
- Diversification of delivery systems: mobile telephony, GEO and LEO satellites, broadband cable, trunk capacity and CBD fibre - AND
- Question - convergence of customer premises equipment?

## 2. Activities

- Traditional media forms
- Media, telecoms, computing
- Telecoms and other activities: electricity, finance, retail
- BUT what is telecoms? - construction of networks; CPE; retail?

## 3. Companies

- New heads on the block - Australis, Optus, Ozemail, Microsoft
- Convergence of institutional forms: private, listed, global
- Convergence of particular institutions
- Convergence of Australia and the world
- Media v telecoms

#### 4. Regulators

- Convergence: SMA/AUSTEL - ACA; on-line regulation - ABA
- New players: ACCC, ACIF
- Overlaps and cross memberships
- The Minister - regulator, shareholder, observer?

#### 5. Policy Approaches

- Internationalisation - WTO, ITU, WIPO
- Competition policy
- Self-regulation/co-regulation
- Technology neutral
- Litigation
- Breadth of issues

The history of media and communications regulation and institutions in Australia and other countries seems to me to shed some interesting light on convergence to date. We sometimes think that convergence is something that has been happening in the last year or the last decade or the last two decades. It seems to me a better way to think of the convergence of communications activities and technologies and institutions as historical cycles of consolidation, or convergence and fragmentation. In this particular case in Australia we can see critical convergence and fragmentation. We can see the fragmentation of monopolies and competition over time and we can particularly see the convergence and fragmentation of private and public ownership of communications institutions. Before federation in 1900 we had state-based public monopolies that converged into a single state-based post and telecommunications monopoly nearly 100 years ago. Until only six years ago we had separate domestic and international telecommunications carriers. They were amalgamated in 1991 when we introduced facilities-based competition. Just 20 years ago we separated Posts and Telecommunications as did many other countries. But it is interesting if you go back to the debates about it then. It was because people thought that the businesses of Posts and Telecommunications -- not that this was an unwieldy and unworkable size of organisation -- were such fundamentally and radically different types of organizations and there was no point in running them together. Now I think 20 years later when we look at the extent to which the postal service has become an electronically-based, computer-assisted industry like any other it might seem remarkable to think that telecommunications is a fundamentally different business from anything, particularly from posts. But just 20 years ago we split them apart. We introduced a domestic satellite system. We put it into a separate organization in 1975. It was the beginning of facilities-based competition. We introduced Optus, then Vodafone in 1991. The steps of breaking down facilities-based monopoly which was held by Telecom in domestic services and by OTC in international. In 1997 what is seen as the great stake in the ground, open competition, the great fragmentation of what was going on. It was significant that a seminar was held the day the legislation came into effect in July 1997, a day that had significance for this country as well. Within about a day of open competition coming to Australia Cable & Wireless, which had been a substantial shareholder in Optus, the second facilities-based carrier in Australia, made it clear that it intended to move to a position of control of Optus. It had been about 50 years earlier that Cable & Wireless's interests in international communications in Australia had been nationalized with the creation of a publicly-owned OTC. So if one is interested in the cycles of history the fact that 50 years later we saw essentially the same player that had been kicked out of Australian telecoms back with a vengeance in control of the dominant player. It was a very clear sign of the extent to which this is a cyclical, historical issue, not simply a once-and-for-all change.

We have a single regulator that looks after a lot of telecommunications issues and most radio communications issues, the Australian Communications Authority. It handles licensing, codes and standards; the regulation enforcement of those codes and standards; monitoring information; and most of the spectrum management. We have a broadcasting regulator which has to work very closely with the Communications Authority because it is responsible for handing out broadcasting licences and in doing so is responsible for the planning of part of the spectrum: the broadcast services bands. A new player in the regulatory game, not so much a brand new player but a much more important player since 1997, has been the Competition and Consumer Commission, the trade practices regulator, which is responsible for competition issues, interconnection, access, anti-competitive conduct and also for consumer protection issues. Finally censorship and classification issues; we have a national body but it is an area of law where the state governments in Australia retain constitutional power and essentially it is a cooperative regulatory system which works between national and state-based agencies.

There is a fairly clear sign of the extent to which the industry has converged around some key organizations. These are the numbers from the Stock Exchange closing prices on Friday afternoon in Australia (see slide above). The biggest company in the country, the amount that is listed on the Stock Exchange is only a third of Telstra's capital at the moment so I've multiplied that by three. The listed amount of Telstra is the third largest company in the country so if we multiply that by three we get the biggest company in the country by a very long margin. News Corporation, variously the second – or third-sized company in the country alongside the National Australia Bank, a long, long way ahead of Cable & Wireless/Optus which listed for the first time last year. Then a number of players who seem very large in the Australian context but are relatively small by comparison with the majors and particularly by comparison with Telstra. You can see there are 8 companies within the top 80 in Australia which are essentially media and communications organizations.

How is it happening? There was a quote in the Financial Review on Saturday about the new boss of Telstra who is expected to be announced in the next few days. It said, if the new boss of Telstra sits down in the next few weeks to do a traditional strengths, weaknesses, opportunities and threats analysis he'll find they have converged into one word, like everything else in telecommunication, the Internet. And I'm sure we'll hear a lot more of the extent to which that has changed strategies and the nature of the business.

Five issues I want to raise a few points about in convergence. Convergence is not a single concept there is convergence of technologies, of business activities, of institutions (both industry and regulatory), and there is also very clearly a convergence of policy approaches within our country and also around the world.

*Technologies:* I don't think there's anything dramatic I have to say about the Australian experience. Convergence of service capabilities within different transmission technologies. A convergence within transmission modes around digital transmission. Telstra made an important announcement recently about its facilities upgrade (so-called data mode of operation) by which it intends to migrate its whole network to Internet protocols. Convergence of transmission modes but a massive diversification of delivery systems. Mobile telephony: three separate networks built in Australia with recent spectrum auctions; the likelihood of a further two new players. GEO and LEO satellites are particularly important for Australia in servicing regional areas. Two broadband cable networks rolled out over the last four or five years. Very

substantial investment in trunk capacity on the major inner-capital routes and in central business districts.

The part of convergence that gets to much media attention is the idea that everything will converge around a single piece of customer equipment is much less clear and I suspect that experience is similar elsewhere. Mobile telephones have extraordinary penetration in Australia, something like about 1/5 of the total population owns a mobile phone. DVD recorders and players are being marketed to the public very much simply as a replacement for VCRs. Most importantly the convergence of computers and television and I suppose we're on the edge of what is seen as convergence but I guess I see it as much more the edge of a great big business challenge in digital television, the extent to which we are going to see convergence not just of the customer equipment but of styles of consuming media. Quoting from others, the way we go about using these different devices is quite different; we lean forward over the pc, we lean back and watch the television. And the fact that you might be able to receive very similar sorts of information out of those two devices doesn't mean that the two kinds of viewing are not going to remain quite different. But it is digital tv, due to be introduced from 2001 in Australia following decisions through last year, that I think is the great industry and audience challenge to see how media viewing habits, communication service habits are actually going to converge, if at all.

*Activities:* are we seeing convergence of traditional media forms? Absolutely. Newspaper and radio stations being transmitted over the Internet. All the major newspapers have invested huge amounts of money in web sites. Are we seeing convergence within media organizations? I think the ABC (Australian Broadcasting Corporation) is the best example of an organization where we're seeing multi-skilling across the Internet, audio, video, the collection of news, the distribution of news, very strong attempts to converge all of those previously disparate journalistic skills into combined multimedia news gathering and news dissemination. So the same people are out there collecting material that is being used for radio stories, for tv stories and being used over the Internet.

Another important area of convergence of traditional media forms is coming through Channel 9 (Microsoft); 9 MSN network. We are seeing Channel 9 putting a lot of work particularly into lifestyle and sports programmes as the basis for web sites. So gardening, home-improvement, sports programmes are the basis for some terribly successful web sites and in turn the basis for developing electronic commerce.

Media, telecoms and computing: the much-discussed sectors of the communications business that are converging. Our most striking example is the Optus Vision broadband cable network which now passes about 2.1m homes in Brisbane, Sydney and Melbourne. A key example, not just in Australia but around the world of the delivery of telephony, access to the internet and video signals over the one network, I think the technical difficulties they had in the early stages with delivery of telephony over that network were fairly well publicized but they claim they have moved on a long way and are now signing up local telephony customers much more successfully.

Convergence of telecommunications and other activities: An important alliance with some power companies have been announced. Developments in the finance industry, particularly Telstra, Visa and Qantas marketing a joint credit card. And very importantly the convergence between telecommunications and general retail activity; one particular convergence issue we

have at the moment is in regulating prices, terms and conditions – that is the customer relationship where under our regulatory arrangements there is an industry code being developed – to what retail players in the industry can then cover. Can it only cover people who we traditionally think of as telecommunications players, that is people who are retailing not just mobile phone handsets but the mobile service as well? This is straightforward. But once you start to move into major department stores, all of the consumer electronics companies, there has been some resistance to thinking that telecommunications regulatory arrangements put in place for consumer protection should be able to cover so wide a universe of retail players. Interestingly the industry and consumer self-regulatory group is saying that we think that is the right way to go. This sort of regulation shouldn't just apply to old-style telecommunications players, it should cover the whole retail sector. The Communications Authority has a discussion paper out at the moment that is seeking comments on exactly that issue. It seems to both the consumer movement, because they want to see consumer protection moving that widely, and to the telecommunications industry, which of course doesn't want to see asymmetric regulation out there where they are subject to more intrusive consumer protection regulations than others, are important and thorny issues about the extent to which telecommunications issues are spreading into the retail sector.

This really forces us to argue if telecoms has got its tentacles going into so many other businesses, what actually is telecommunications any more? I think the retail sector is particularly significant where we see Telstra, unlike some of the international telcos, making substantial reinvestments in its retail premises. The Telstra shops: it sees that shopfront as being very important to its activities in the future. But when you see a company like Telstra, a traditional telecommunications retailer, opening up new shops sell things which package themselves up as total computer solutions. So they want to be able to go to a shopfront marketplace, people walking in off the street who say "I want to get on the Internet. How can you help me?" And Telstra wants to be able to sell them in the shopfront not just big-pond Internet access but the computer, the modem, the people who will install it for them, the after-sales service. That's quite a sophisticated and broad-ranging concept of telecommunications. It takes telecoms into areas that I think perhaps it hasn't been before. On the other hand you see construction of networks. Telstra, like Telecom New Zealand, saying we actually want to start outsourcing, move our network construction, network build operations into a separate company which will tender for our work. Others will be able to do our network build work. But in turn it will be able to tender for other companies' build work as well. So you have some interesting fragmentation on the one hand, pushing away and outsourcing, and on the other hand reaching tentacles out to areas of retail business which they haven't been much involved in at all in the past.

Convergence of companies: over the last 18 months of open competition we have unquestionably seen substantial chipping away of Telstra's market share in areas like mobile, long distance and international. So I think telecommunication's fracturing and fragmenting without doubt. On the other hand the media sector I think it's fair to say that before you can see them as being in any way separate -- which is artificial – but to the extent that we think of traditional media organizations such as television, newspapers and pay tv, we have seen significant steps towards further concentration there. Rationalization of pay tv. A major pay tv company, Foxtel, is a joint venture between Telstra, News Corporation and PBL. If we look at the new companies that have emerged, which have been much trumpeted for their emergence in Australia: Australis, ceasing service last year essentially its customers being taken over by Foxtel in the pay tv market; Optus, always with a substantial shareholding by Cable &

Wireless but now totally controlled by that company; Ozemail subject to a big deal with MCI, our largest ISP; and Microsoft, of course the great new player of world communications over the last 15 years, in an alliance with our largest free-to-air tv player. So an extraordinary level of concentration within traditional media industries. Convergence of institutional forms: to the extent that we've seen privatization and liberalization, the kinds of organizations involved in the media business increasingly private because we no longer have the wholly-public Telstra increasingly listed, and I think that's been important in the production sector for example. Companies like Southern Star Group, Beyond International, organizations which over the last 5 years or so have grown very substantially are now traded entities. And also to the extent that companies like Artist Services, recently acquired by Granada, Grundy's Production Company recently bought by Pearson, it means the institutional forms involved in the business are much more similar. It also means to the extent we have got a much greater level of foreign participation in the industry, there is a kind of convergence between what the Australian media and comms industry looks like and what the rest of the world's looks like.

Convergence of regulators: there are trends in both directions. On the one hand the old spectrum management agency which was amalgamated with the Australian Telecommunications regulator, Austel, to become the Australian Communications Authority about 18 months ago. The Broadcasting Authority is supposed to be getting legislative authority to handle complaints, development of codes of practice etc, in the area of on-line regulation – a broadening of its charter. Both of those areas reflect convergence of regulatory activities. On the other hand some splitting, in the other direction. A much greater role for the Australian Competition and Consumer Commission than it had before. A very new and increasingly powerful player in the industry. The ACIF – the Australian Communications and Industry Forum – a self-regulatory agency responsible for the development of co-regulatory codes of practice in the industry – extraordinarily important for the set of arrangements put in place in 1997. Also the Privacy Commissioner, with the recent announcement that we are going to have statutory privacy protection in the private sector, not just in the public sector in Australia. So some new players there with new, specific responsibilities, who are very important. One of the ways we have handled the convergence issues of the overlaps is there is cross-membership between the ACCC, the ABA and the ACA.

The minister, an important convergence of roles for him. As both not so much as a regulator but a key policy maker but also a representative of two-thirds of the shares in Telstra, still the biggest player in the industry. What is the appropriate role for the minister in handling all of these issues? There has been much discussion with the now part-privatized Telstra how exactly should the minister be going about exercising his powers. I think it's fair to say that there is no great pressure that I sense for further institutional regulatory institution convergence with the possible exception of pressure from media companies to have the ACCC handle ownership regulation, for the obvious reason that certain mergers that would not be able to happen under the rules as they exist, now specific rules under the Broadcasting Services Act – might be able to happen if the only test was the substantial lessening of competition.

Finally, the convergence of policy approaches: I think there has been in Australia as in other countries, particularly with General Agreement of Trade in Services under the WTO, a very significant homogenization of policy across the board. What we're doing is not radically different from what a lot of other countries are doing. There is lots of history to that: the ITU, the World Intellectual Property Organization, but this is on a new scale, the extent to which as others have said, lawmakers in Australia become law takers.

Competition policy: a convergence of policy strategies around the idea of competition as the central driver of the interests of end-users. Quite a lot of tension about that here in Australia as elsewhere. The extent to which that is the right approach, but it is certainly right that at the level of policy rhetoric competition policy is where the game has converged.

A lot of emphasis around self-regulation and co-regulation.

The language of technology neutrality: pervasive but much more pervasive as rhetoric than as practice. We have seen the government decision to close down the analog AMPS mobile phone network in favour of GSM, a very technology-specific decision, we have seen some extremely technology-specific decisions about the introduction of digital television and some very specific decisions about the types of services that people will be able to introduce using digital tv. We have also seen a convergence of industry strategies around litigation in a way that may not have been the case in a less competitive environment. The days when the communications business was a club with a small number of players and no rules is very much changed in the last 18 months. It has seen much more fiery litigious environment.

The final point to make is that although all those issues tend to focus upon convergence around particular themes, the simple breadth of the issues to the extent that communications policy, the Internet puts its tentacles everywhere means that all sorts of policymakers and regulators are suddenly getting involved in the business of communications who were never involved in it before. Copyright is a key area of tension for Australia, where the Attorney General's department has traditionally made copyright policy as a question of legal policy (very traditional ideas, responded to an overall international copyright policy approach driven by Europeans), over the last 10 years with the TRIPS (Agreement on Trade Related Aspects of Intellectual Property Rights) agreement, a much greater involvement of the Americans in the international policy environment on copyright, we've seen great tensions in that whole debate.

During the discussion period the following points were raised:

**Participant:** You mentioned the role of the ABA in relation to on-line content. Could you just elaborate on that.

**Jock Given:** We are stuck in a little bit of a legislative limbo at the moment. Successive governments – that is the Labor Government until 1996 and the coalition government since then -- have both made it reasonably clear that they supported the idea of the ABA being the authority responsible, to the extent that we needed one. Responsible for overseeing the development of industry codes and also for perhaps handling complaints in relation to the content of on-line services. They haven't however, been successful in getting legislation through the parliament but that's only really a timing thing. It just hasn't been pushed with all the other communications issues around. Certainly that's the way they would like to see it develop. What that's meant is that the ABA has continued to do quite a lot of policy development work but hasn't actually got real legislative power to do much. That's not to suggest that the government is looking for a hugely interventionist stance from the broadcasting regulator or from whoever the content regulator would be, it is simply that it recognizes there would be value in having some government agency responsible for overseeing the development of codes. Complaints can be made about the customer service and consumer protection issues, the jurisdiction of the telecommunications industry ombudsman was extended with the 1997

legislation to require not just providers of standard telephone services – voice telephony services – but also providers of mobile telephony and internet access services to join that scheme. It is an industry-driven scheme, not a government scheme although membership of the scheme is required by legislation for those players. That means that internet access providers have got to join and people can make complaints within certain areas about them. They can't make complaints about content related issues to the telecommunications industry ombudsman so there is still a bit of a void out there.

**Participant:** tell us more about the Australian experience in regulating the internet. What are the laws and how do you deal with the various issues on the internet.

**Jock Given:** Just going a tiny bit beyond what we said there, there was about 2 years ago there was legislation introduced by a number of state governments to try to regulate the Internet. There was something of the kind of moral panic going on with a number of issues, that specific cases got a lot of attention and state governments moved quite quickly in some ways essentially to try to apply the kinds of requirements that apply to other kinds of media – films, videos, video games – to the Internet. Some states have introduced laws that make it an offence to make certain kinds of offensive material available on-line. But at the same time as those pieces of legislation were being passed, I think the Federal Government, particularly the Broadcasting Authority with the report it did on the regulation of on-line services, really tried to step in and say this doesn't make sense to be having regionally-based Internet content regulatory regimes. It hardly makes sense even to have a nationally-based regulatory regime. So the Federal Government has clearly signalled and I think most of the state governments are prepared to accept that it makes sense for there to be a nationally-based scheme in exactly the same sort of way as there is for film, videos, video games, publications. The problem is legislation hasn't been passed to give anyone the kind of responsibility that the Office of Film and Literature Classification has got by statute in relation to films, videos etc. I think that covers the content issue. *On consumer protection issues;* to the extent that traditional consumer protection laws under our Trade Practices Act – misleading and deceptive conduct, false advertising etc – to the extent that those rules apply across the economy generally they are just as applicable to what happens on the Internet as they are anywhere else and there have been prosecutions about that. So in different areas whether its simple consumer purchases, financial services etc there has been quite a lot of work done. *Electronic commerce issues:* there has been an expert group set up under the Attorney General's department which has produced a good report looking at specific legal issues raised by electronic commerce, things such as digital signatures, authentication, whereabouts a contract's made, the kinds of things that are requiring either new approaches to law or sometimes quite simple adaptations to existing laws, simply to make things work and ensure that e-commerce will work. *The privacy issue:* the government has done two backflips on it. When the current government came in to office in 1996 it committed itself to introducing statutory privacy protection. We have a federal privacy act which applies to the activities of public-sector agencies and departments. It also provides to credit providers (so a small section of providers in the finance business but that would actually apply to telecommunications companies to the extent that they don't require you to pay the bill for three months). Government initially said we were going to have privacy legislation, a year or so down the track it said we weren't going to have it, and just before Christmas it said we were, again.

JUNE CHEAH  
ASSOCIATE SOLICITOR  
HALDANES SOLICITORS AND NOTARIES

*(full text of speech follows)*

In assessing Hong Kong's proposals to regulate convergence it is more realistic and, indeed, fairer to compare Hong Kong's regulatory position with that of its Asian neighbours as opposed to the more mature and massive markets of the US and the European Union.

Looking first at some of the government's key policy objectives as stated in the Information Technology and Broadcasting Bureau's "*1998 Review of Television Policy*", these include the objectives "*to create a fair, flexible, pro-competition and technology-neutral regulatory environment that would encourage and stimulate investment, technology transfer, diversification and innovation*"; and "*to promote Hong Kong as a pre-eminent regional broadcasting, information technology and telecommunications hub*".

Clearly foreign investment plays a cardinal role in the fulfilment of these objectives particularly so given the Asian Crisis, so I now wish to consider the opportunities for foreign investment and its concomitant, foreign ownership, in Hong Kong's television broadcast market and compare them with the opportunities offered by other Asian countries:

## **HONG KONG**

In respect of commercial, subscription and pay television broadcasting, Hong Kong is in rather a singular position in that, unlike other jurisdictions, it does not restrict foreign ownership of licensed broadcasters per se. Instead, through the Television Ordinance (Cap. 52), a number of provisions restrict the influence and control of non-residents, principally s. 17D which limits the aggregate voting control that can be exercised by "*unqualified voting controllers*" (i.e. non-resident companies or individuals) by applying an equation that reduces the votes cast by non-residents at any general meeting of a licensee, so that those votes can never exceed 49% of all votes cast.

Incidentally, recent proposals to cap at 49% the aggregate ownership of non-residents have not been adopted, mainly because the fact that TVB is a listed company creates enforcement difficulties.

Turning now to satellite broadcast which is governed by the Telecommunications Ordinance (Cap. 106), the policy and licensing framework of this area was amended on 16th January 1998 so that the previous limit on foreign ownership, of 49% was abolished, enabling a satellite broadcast licensee to be wholly foreign owned.

The Hong Kong Government, in its aims to provide an environment conducive to convergence, has proposed the consolidation of all provisions relating to broadcasting under the existing Television Ordinance, Telecommunication Ordinance and Broadcasting Authority Ordinance (Cap. 391) into an omnibus 'Broadcasting Bill' which is to be technology-neutral legislation appropriate to the technology-convergent environment. How successful the bill will be and

whether it helps to enhance Hong Kong's position as a pre-eminent regional broadcaster remains to be seen.

## **INDIA**

Contrast now our liberal policies with those in the home of "Bollywood". Being predominately Government owned and controlled (particularly terrestrial television and radio broadcast), the media industry in India, has grown in the absence of legislation directly regulating it. However, with the boom of satellite television broadcasting, there has been some initiative towards regulating an already existing and growing industry such as the tabling of the Broadcast Bill in the Indian Parliament.

The television broadcast industry still largely falls within the ambit of the Indian Telegraph Act of 1885. The Act was amended in 1961 to include a now rather antiquated definition of "telegraph" which is still considered sufficient to handle radio and television regulation, largely because the Act declares that "*within India the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs*" (Section 4(1)).

It follows then that currently, private investment, let alone foreign investment in free-to-air terrestrial and pay-TV broadcasting is not allowed, these industries are government monopolies.

As for cable television broadcasting, a major step which has been taken has been the passing of the Cable Television Networks (Regulation) Act, 1995 which allows up to 49% foreign equity participation in a cable television network.

In respect of satellite television, there is no restriction on uplinking overseas and downlinking in India. Distribution in India if through a cable distribution system would be governed as mentioned earlier. No private party has set up uplinking facilities in India as yet, but there are several applications for uplinking being considered by the Government.

As regards Satellite Pay-TV broadcasting, there is no direct license that can be obtained. Currently, companies are following very circuitous routes to recover fees from cable operators and enforce compliance for distribution.

So what is the outlook for India? The Broadcasting Bill has been sitting around for a considerable time waiting to be passed, the political climate is still viewed as unstable and nationalistic, yet because it is such a massive market place, it is felt that foreign operators will still continue to find ways of circumventing the present restrictions on foreign investment and ownership.

## **INDONESIA**

In Indonesia almost all media sectors including free-to-air, cable, satellite and pay television broadcasting are closed to foreign investment.

Here again, a Broadcast Bill has been waiting for enactment, but with such a hostile commercial environment, whatever form that takes it will have to make investment extremely attractive to entice foreign investors.

## **MALAYSIA**

Malaysia has exhibited an intention to go head to head with Hong Kong and Singapore as an Asian broadcast/media hub, as can be seen in its drive to create a Multimedia Super Corridor.

A new regulatory framework has been created to replace the old regime under the Telecommunications Act 1950 and the Broadcasting Act 1988.

Central to that framework will be the **Communications and Multimedia Act 1998** (the “Act”), passed by both Houses of Parliament in August 1998 and expected to come into force early this year. The Act is designed to regulate communications over electronic media, including without limitation, telecommunication networks, traditional broadcasting and on-line services. It is aimed at providing a generic set of regulatory provisions for the industry and is intended to have sufficient built-in flexibility to cater for advances in technology. It entirely revamps the traditional categorization of service providers to be licensed and is technology neutral in recognition of the convergence of the various traditional media of communication. However, it falls short on the liberalization of restrictions to foreign ownership, as shareholdings of all new licensees under the Act must comply with existing Malaysian foreign investment restrictions.

Foreign investment in Malaysia is generally governed by the Foreign Investment Committee (“FIC”), a committee of the Economic Planning Unit of the Prime Minister’s Department which oversees acquisitions of assets and interests in Malaysian businesses and companies.

Generally, as a rule of thumb, the authorities limit foreign ownership of a Malaysian company to 30%. The other 70% of the company must be owned by Bumiputras (as to 30%) and other Malaysians (as to 40%). However, the FIC retains a wide discretion to determine the level of local and foreign ownership in a company. There are no specific laws governing foreign ownership in the media industry, and the general policy would apply in respect of all television broadcasting. However, as a matter of government policy, in certain sectors there may be foreign ownership restrictions imposed as part of the license conditions. For example, it is government policy that a foreign entity will not be granted a “*free-to-air*” television broadcasting license or a radio broadcasting license. The same policy may apply to a local company which is owned by a foreign entity. Conversely, the Government as a matter of policy is promoting electronic commerce and has in press statements promised that there will be no restrictions imposed on foreign investment in E-commerce.

Despite the new regulatory regime, the old Foreign Investment Committee Guidelines and government policy still govern foreign investment, thus creating uncertainty, and despite Malaysia’s intentions and the incentives offered to investors, the internationals currently see its political environment as unattractive and potentially hostile.

## **PHILIPPINES**

Free-to-air, subscription, satellite and pay TV are legally categorized as ‘*mass media*’ and are therefore activities in which foreign ownership is absolutely prohibited. Telecommunications service providers are classified as ‘*public utilities*’ so foreign ownership is limited to 40%.

## **CHINA**

All media/entertainment industry activity is highly regulated and almost entirely closed to foreign organizations. Free-to-air, cable and satellite television broadcasting are all government monopolies. Individuals, foreign organizations, or Sino-foreign joint ventures are

prohibited from setting up TV or radio stations in China. Agencies on behalf of the government, at various levels exert a very tight internal control over programs to be aired with censorship existing at both government level and via individual broadcasters. This is a particularly sensitive industry overseen by many government organizations including those responsible for: television and broadcasting; party propaganda; public security; and national safety.

Since the merger of the Ministry of Telecommunication and Posts and the Ministry of Radio Film and Television into the Ministry of Information and the State Administration of Radio Film and Television, it is unclear which part of which department is directly responsible for the various controls on the media industry in the PRC. Although this makes for an unclear regulatory environment, the usual avenues for circumventing foreign investment limits, such as lobbying, remain in place.

### **TAIWAN**

Under Taiwan's Radio and Television Broadcasting Law, free-to-air television broadcasting is a prohibited industry for foreign investment. Only the Taiwanese government or companies established under Taiwanese laws by Taiwanese nationals may engage in this industry.

As for cable and satellite, the Legislative Yuan passed an amended Cable Audio and Television Law on 14th January 1999 and a new law specifically governing satellite television broadcasting, entitled the "*Satellite Audio and Television Law*" the following day. The most notable change with respect to the amended Cable Audio and Television Law is the addition of antitrust provisions, foreign investment provisions, and telecommunication operation provisions. The Satellite Audio and Television Law is newly enacted to govern the coming of satellite through DTH in Taiwan and to attract foreign investment in the satellite broadcasting industry. The statutes have significantly liberalised Taiwan's approach to foreign investment and foreign ownership by allowing 50% foreign ownership of cable television operators and DTH satellite broadcasters.

### **THAILAND**

The Constitution of the Kingdom of Thailand 1997 specifically stipulates in Section 9, that "*Owners of media organizations must be Thai.*"

Any company wishing to operate television broadcasting must be a corporation registered under Thai law and must submit an application to the Public Relations Department of the Prime Minister's Office. Ownership of radio and television stations rests generally in the hands of the State and Army, principally under the supervision of the Public Relations Department and the Ministry of Defence. More recently there has been a trend to allow the use of broadcasting stations by local companies by way of long term concessions.

In Thailand, the Broadcasting Act of 1955 is the principal statute covering radio and television broadcast. While it does not specifically forbid foreign ownership of television stations, it does place the entire broadcasting spectrum under State control, whereby no broadcasting is allowed except by license.

The Broadcasting Act is presently under review, the government has completed a working paper on the broadcast industry which recommends permitting foreign investment and creation of an FCC type body as a template for regulatory control.

## **SOUTH KOREA**

Following Korea's membership of the OECD in December 1996 and the financial crisis in Southeast Asia, the Korean Ministry of Finance and Economy has been steadily opening up sections of the domestic market to foreign investment.

Foreign ownership of a free-to-air terrestrial or satellite television broadcaster is still prohibited. Last August, the Korean government announced a 33% cap on foreign and chaebol ownership in system operators only. More recently, there have been announcements that the Korean government introduced a new Cable Television Bill to pave the way for a 49% foreign ownership cap for cable system operators, non-news channels and national network providers. That legislation has now been passed and is in force, but foreign ownership was capped at 33%. It is hoped that the legislation will encourage long-awaited foreign investors in an industry which has been severely hit by the economic depression, and perhaps the legislators deserve that for acting quickly to cure the industry's ills.

## **SINGAPORE**

The Singapore Broadcasting Authority Act (the "SBA Act") established the Singapore Broadcasting Authority ("SBA") and regulates dealing in, and the operation and ownership of, broadcasting services and broadcasting apparatus. The ambit of the SBA Act is wide enough to cover any manner of broadcasting including internet broadcasting and on-line services. All companies which broadcast locally must be incorporated or registered under the Companies Act.

The following ownership and control restrictions apply to all local broadcasting companies:-

- (i) The chief executive officer and at least one-half of its directors must be citizens of Singapore.
- (ii) No person shall without the prior approval of the SBA hold more than 3% of the ordinary shares issued by a broadcasting company.
- (iii) No person shall without the prior consent of the SBA receive funds from any foreign source for the purposes of financing any broadcasting service.
- (iv) No company shall be granted a licence if (a) 49% or more of its share capital is owned by any foreign sources or if (b) a majority of the directors or management of the company are appointed by the government of a country outside Singapore.

By way of contrast there are no foreign ownership restrictions for the operation of a satellite broadcasting service uplinked from Singapore and the SBA claims that its main objective in licensing such satellite broadcasters is to prevent the broadcast from Singapore of programmes containing objectionable programming such as pornography. Since its domestic market is prohibited from receiving satellite broadcasts the SBA will allow satellite broadcasters to be responsible for their programming, requiring them to take reasonable steps to ensure the acceptability of their service and compliance with local laws in recipient countries.

Despite the liberalization of foreign investment policies throughout Asia, Hong Kong is still well positioned on a regulatory level. In comparison with many of its neighbours, it maintains the freest, most transparent, business friendly, regulatory environment which the government hopes will be built upon by the advent and the operation of the proposed Broadcasting Bill.

MICHAEL LATZER  
 DEPUTY DIRECTOR, RESEARCH UNIT FOR INSTITUTIONAL CHANGE AND EUROPEAN  
 INTEGRATION, AUSTRIAN ACADEMY OF SCIENCES, VIENNA

*(Slide presentation follows)*

**How to regulate convergence? The European Experience**

Until 1970s

since 1970s

since 1980s

Telecommunications	TELEcommunications	Electr. MEDIA
Computers (informatics)	+ inforMATICS = TELEMATICS	+ teleMATICS = MEDIAMATICS
Broadcasting (electr. Mass media incl CATV)		

**Analytical and policy problems**

Artificial separation

- in research and politics

Categorization problems, unintended overlaps

- arbitrariness, interest-driven categorization
- decreasing legal and planning security; increasing risks of investment →  
negative employment benefits

Scale of problems varies widely from country to country

### **EU activities I**

1. Green Paper on the convergence of the Telecommunications, Media and Information Technology Sectors, and the implications for Regulation (12/97)
2. Working Document: Summary of the Results of the Public Consultation on the Green Paper (7/98)
3. High-level Conference: Coping with Convergence in the European Union (11/98)

### **EU activities II**

1. The Digital Age: European Audiovisual Policy
2. Communication (policy proposals)
3. Review 1999 – proposals for new legislation
  - Telecommunications Act for Europe?

### **Central Topics**

1. Regulatory model (institutionalization)
  - vertical – horizontal
  - national – supranational – international
  - prescriptive regulation – self-regulation
  - sector specific – competition law
2. IPR
3. Digital signature
4. Public service broadcasting
5. Radio spectrum policy
6. Digital TV
7. Regulation of the internet

Apologies to Dr Michael Latzer – unfortunately the tape recording of his talk failed. Readers are recommended Michael Latzer ‘European mediamatics policies: coping with convergence and globalization’ *Telecommunications Policy*, v.22.6, 1998

*The following is a synopsis of points raised by Michael Latzer in the Telecommunications Policy article referred to above.*

1. Convergence has two historical dimensions to it: the convergence of *telecommunications* with computers towards *telematics*, and the convergence of electronic mass *media* with *telematics* toward *mediamatics*.
2. Telematics has dominated European policy thinking over the past decade, characterized by market liberalization. This began following a paper in 1984 “Council Recommendation concerning the implementation of harmonization in the field of telecommunications” and the “Green Paper on the Development of the Common Market for Telecommunications Services and Equipment” in 1987. Step-by-step liberalization was finalized in 1998. Then, with the publication of the “Green paper on the convergence of telecommunications, media and information technology sectors, and the implications for regulation” (COM 97, 623) in December 1997, the European Commission placed mediamatics at the top of the EU agenda.
3. Incentives for regulatory change in the EU arise from two sources: (a) convergence problems as new types of services can no longer fit the traditional categories of telecommunications and media regulation; (b) globalization is heightening the possible gains and losses from mediamatics competition between the triad group (Japan, the USA,

and the EU). The USA has led changes in regulations. The 1996 Telecommunications Act tries to harmonize regulations across the converging sectors, but the 1996 Communications Decency Act which tried to harmonize regulation by extending it to individual communications across the Internet and other interactive computer services had to be withdrawn due to heavy opposition from the Internet community and the courts.

4. Telecommunications policy in the EU followed not just steps towards liberalization but also public interest issues, such as universal service, consumer protection, privacy issues. Audiovisual media policies, which followed the 1989 “Television Without Frontiers Directive” (amended 1997) focused on public interest issues such as advertising standards, teleshopping, and, most contentiously, quota regulations to promote European programming. Copyright and conditional access issues have also been important. In the publishing sector similar principles have been adopted, but following a self-regulation approach. No industry-specific sector approach has been applied to information technology.
5. Within the European Commission, as among member states, different regulatory agencies deal with telecommunications and the audiovisual media. Telecommunications comes within the DG XIII (Telecommunications, Information Market and Exploitation of Research) and media within DG X (Information, Communication, Culture, Audiovisual). Within the European Parliament telecommunications issues are dealt with by the economic committee, media by the culture committee.
6. The “Green paper on the convergence of telecommunications, media and information technology sectors, and the implications for regulation” offers three basic options: (a) build on current regulatory structures; (b) develop new structures for new activities; (c) introduce new structures to cover all activities. Increasingly the running within the EC is coming DG XIII from (headed by Commissioner Martin Bangemann) rather than DG X (headed by Commissioner Marcelino Oreja). The Green Paper is sub-titled “Towards an Information Society Approach” and should be seen as a component of the European Information Society Initiatives, including electronic commerce (“A European Initiative in Electronic Commerce, 1997) and reflects the shifting focus on audiovisual and multimedia services from the cultural to the economic.
7. The European Commission (EU) and the White House (USA) have taken different approaches so far to the international co-ordination of policy. In “An International Charter for Global Communications” Commissioner Bangemann has argued for a need to recognize that national regulators can no longer act independently of each other, and has advocated the creation of a “virtual space” for business, for laws and for learning which will include regulatory principles going beyond mere self-regulation. In a joint initiative between Commissioner Bangemann and Commissioner Leon Brittan, (DG I External Relations) “The Need for Strengthening International Co-ordination” makes the argument for a legally non-binding multilateral Charter of understanding on electronic commerce and the online economy covering area such as technical interoperability, legal solutions to tax, copyright, trademarks, jurisdiction, labour law and consumer issues, and content issues.
8. Within the EU Commissioner Bangemann has raised the possibility of a move towards a single regulatory authority, but many voices within member states (which have their own views, national interests and preferences) and the European Parliament (suspicious of the powers of the Commissioners) are wary of greater centralization of policy-making and regulation. Currently each member state has its own National Regulatory Agency (NRA) for telecoms, and each state also has different ways of regulating and coordinating between audiovisual and telecoms. For example, in Germany where the distribution of powers between the federal government and the states is a crucial political fact of life, the

government decided to adopt separate regulatory structures, introducing new regulations to govern new services. But maintaining this position will be difficult as the nature of the new and old services blurs, and as the organization of these services converges. In Italy the Media and Telecommunications Authority, established in 1997, represents the integrated approach. In the UK the telecoms regulator, OFTA, was proposed to become OFCOM (Office of Communications) to embrace audiovisual currently under the ITC (Independent Television Commission), but an interim compromise gives OFTA responsibility for the transmission structure of digital satellite and terrestrial tv, while the ITC remains responsible for content.

During the discussion period the following points were raised:

**Participant:** What are the other options that Europe is looking at as far as improving self-regulation?

Michael Latzer: one of the issues was who's liable for the content and is it the information service providers. There have been some cases in the courts and there has been a decision in Germany that the manager of CompuServe is responsible for the content being provided over CompuServe. So they just took the regulatory model from the press and they didn't take the regulatory from the telecoms side. So this is a typical convergence problem. They didn't know where to put Internet. So the court decided to put it to the side of the press model where the publisher is responsible for the content. So in Germany they came up with a law and made the following revelation that the ISP is responsible only if he's the content provider himself. The second if he knows about the content and the third is the tricky one, if he can be expected to know the content. It seems maybe the only solution to that it could be the case that he can be expected to know the content. If somebody complained about it and he didn't react, is an example. But it could be much more tricky in reality. So now within this proposal for an electronic commerce directive which will be only in effect for European countries, it is proposed that the ISPs are only responsible if they store the information, otherwise they won't be responsible for it. So that's the proposal in this electronic commerce directive. The other problem is why do you have different regulations for advertising if it's on television or on Internet. So there's also not a reason for that. There also has to be horizontal regulation regarding content, in the future. You can't have different rules regarding content on the Internet and also for tv. The third issue is, if you extend the universal service goals to the Internet then there's no reason to have public service for the public wanted content which is now delivered via broadcasting only, why should it only be delivered via broadcasting. Especially if you have Internet also as a Universal service in the future. So one of the solutions that I offered in this context was that you have a sort of universal service fund also for publicly-available content and whoever wants can apply for money out of that fund. That might be a solution for a converging environment but it also needs for sure a strong diffusion of the Internet first. It has to be connected to the universal service policy which comes from the telecoms side. Another proposal which is taken more or less from the press regulation, that the companies active in the Internet, active in e-commerce, have to provide information about the companies – very detailed information. It has to be easily available for consumers. This is also one of the proposals within the e-commerce directive.

**Participant:** I'd like to know what the situation is on television conditional access in Europe and Australia. What is the policy towards it and what are the hopes?

**Jock Given:** It raises a point that John actually asked me to bring up about the Australian Competition and Consumer Commission at the moment has actually got a short discussion paper out that it's seeking comments on about the whole question of open access to broadband cable networks of which there are two substantial ones: Foxtel and OptusVision. What it's proposing is that it declare – which means if the service is declared access has to be available to anyone on reasonable, non-discriminatory terms subject to some exceptions, one of which will be capacity issues – access to the cable infrastructure and the network management system but not to the conditional access system itself or to the set-top decoders or to the servicing of that equipment. Now that proposal is out at the moment. There are also actually two elements to it: should it do relation to analogue services, should it do it in relation to digital services, given that the cable networks will both be going digital at some stage in the future. The expectation has always been that those cable networks will be subject to some kind of open access obligation. The question is if you only declare part of the whole service, whereabouts does the declaration stop; do you only declare it at the physical infrastructure or does it pick up the conditional access system as well. I think it would be reasonable to expect the cable operators to be opposing that declaration and for consumer organizations, programme suppliers to be in support of it.

**Michael Latzer:** Conditional access systems is the perfect example that the entry control shifts now from the government to the companies and that's why it's seen that there is the need for some regulation regarding these bottleneck facilities. However, like in Australia it's not settled yet. Why? Because there's not that much evidence so far. It is also a perfect example for convergence problems and seeing the different responsibilities for regulators. If you take the example of the UK, there OFTEL is responsible for the regulation of conditional access systems and the ITC's responsible for the regulation of electronic programme guides. This is also a sort of compromise but it shows that this distinction between telecom regulations and audio-visual regulations cannot be upheld. And there are also differences regarding digital tv, between the ITC and OFTEL already, because they have different approaches to the regulation of these bottleneck facilities. The problem is that competition rules aren't sufficient. There is the need for sector-specific regulations in this sector. This is the major issue that will be tackled in this communication that will be published within the next month. So it's not settled yet but I think there has to be sector-specific regulation and it's very similar to inter-connection regulation and that's also why it was clear that OFTEL which has all the know-how about interconnection regulation can rather do it than the ITC.

## **SESSION II**

### **Regulating the regulator in Hong Kong**

Chair: John Ure (TRP)

EDDY Y T CHAN  
COMMISSIONER FOR TELEVISION AND ENTERTAINMENT LICENCING AND

PRINCIPAL EXECUTIVE OF THE BROADCASTING AUTHORITY

*(full text of presentation follows)*

Regulating the Regulator in Hong Kong

I am very pleased to have the opportunity to speak to you today on the subject of Regulating the Regulator in Hong Kong.

But before we come to that, I think it would be useful for me to share with you my thoughts on what we perceive as major challenges to regulators as we move on to the next century.

Wearing my hat as the Principal Executive Officer of the Broadcasting Authority, I think it is only proper for me to say a few words about content regulation which is one of our main responsibilities but which is also seen as repressive.

I think I am probably right to say that for as long as screen entertainment, no matter big or small, has been available to a mass audience, there have been questions about its likely impact on individuals and on society. For the most part, calls for controls on broadcasting content are seen as efforts to protect the children. Children are presumed, quite justifiably, to be different from adults - to be more vulnerable, less able to apply critical judgement and more at risk. There are also other community concerns which are rooted in the morality of the times, such as the use of bad language and triad jargons; cruelty to adults especially women, equality of sexes; gruesome murders; and more recently, family values.

In more recent times, we have experienced an increase in real world violence and violent crimes while at the same time advances in technology have enabled the television media to present materials in more disturbing ways than ever before. It is not therefore surprising that this has led to a perception that the television programmes are obviously having a negative impact on society, thus rendering controls or restrictions necessary.

Considerable research has been conducted in many overseas countries to examine whether there exists a direct link between screen violence and real life events. The results of all these studies, I am given to understand, are not entirely conclusive. But there does exist a community impression that there is a direct link.

Having established a case for regulation, and I would appear to have done just that, I would now like to turn to the question of how the content of broadcasting services could be regulated under a convergent environment.

Until 1991, our broadcasting market was simple. We had just two television stations, and two radio stations. Everybody watched or listened to the same things. Because of that, these television and radio stations were held to be immensely influential. The emphasis of broadcasting regulation was on control, to ensure that this influence was not misused. And control was easy, given the small number of broadcasters.

But we are now living in a period of intense technological change. In just eight years, the number of domestic channels in Hong Kong has grown from four to over 40. Many more satellite channels are receivable in Hong Kong. And the way in which people get their television is changing too. People now get the television from terrestrial, satellite and cable

broadcasters. The promised digital explosion is just around the corner with hundreds of channels promised. Pay-per-view is available and Video-on-Demand is a reality.

These changes are not over yet, but it is possible to discern some trends that will have a fundamental effect on our regulatory framework.

First, we are likely to lose control over many of the television and radio services which people can access. At present, most people rely on communal satellite dishes and aerials to receive television. Within the next few years, technological developments may enable people to receive satellite television through ever smaller dishes, so that eventually it may be possible to mount flat dishes on walls or in windows. This is already possible in large parts of North America and Europe. In addition, computer users will be able to download television programmes via the Internet, and in due course, watch them live.

It may well be the case that, in future, the broadcasting environment is gradually evolving from a mass media based service to one that is characterized by pay-per-view and point-to-point two-way interactive transmission. This proliferation of services and products in both quantity and variety will make content control even harder to enforce, particularly in terms of cost-effectiveness. Furthermore, multi-media content can be distributed globally and consumed from any point. Indeed, once anyone can access any programme they want to see from anywhere in the world, we shall have to look again at the whole basis for regulation of locally based television and radio services.

So what does all this information say about content regulation in this brave new world of satellite, cable, digital, HDTV, Internet, VOD, pay-per-view? One thing is for sure. The conventional method of monitoring TV and radio programmes as we know it is no longer attainable. Moreover, there is a body of opinion among our community which argues very strongly for a totally de-regulated market including content regulation. The recent development of the V-chip technology has certainly added weight to this argument as it would appear that parents alone can in future decide what kind of programmes should be allowed in their homes.

The writings on the wall are thus clear by now : firstly, it will be impossible for a regulator to maintain content control over an ever increasing number of channels available to the viewers, and secondly, it would no longer be necessary to do just that because the attractions of a technological solution to a problem created by technological innovation would appear to be infinitely preferable.

So what should we do? Should we pack our bags and go home? I am sure some of you here today might say the sooner the better.

But in talking about regulation for broadcasting services, we must recognize that broadcasting represents an immense public and social good with its ability to educate, inform and entertain. The brave new world created by a convergent environment will undoubtedly call for a much lighter regulatory approach and a de-regulated market but this does not necessarily mean no regulation at all. Take the V-chip for example, questions have been raised with regard to the reliability of the technology, the affordability of the average household to purchase TV sets equipped with V-chip, the possibility of the second or third TV sets not equipped with V-chip but which may soon find their way to the children's bedrooms; and the responsibility for a rating and content labelling system. Until answers can be found, there will continue to be

community expectation of content control to be exercised by the regulator. One fundamental principle would therefore appear to be unanimously agreed by regulators world-wide and that is, I am sad to say, some form of regulation is here to stay. Our task as a regulator, I believe, is to steer a sometimes unsteady course between the extreme liberalism which says we should give up and go home and the ultra conservatism which argues for more regulation.

In times of great change, it is important for us to look again at our objectives and decide which of them remain relevant and attainable. We did just that in 1998 when we conducted a comprehensive review of the television broadcasting policy. The review has shown that our core objective is simple and straight forward. It is to ensure that Hong Kong people have access to a wide variety of broadcasting services through the creation of an environment in which diversity and freedom of expression can thrive. We seek to achieve this goal by expanding the choice and improving the quality of broadcasting, while ensuring that such programmes do not offend public standards of taste and decency.

Looking ahead, the challenge for us, as I see it, is to develop a flexible regulatory framework which is capable of responding to rapid changes in technological advancement while at the same time meeting the needs of our community in the context of protecting our children from materials that may be harmful to their development.

I do not pretend that there is a perfect system that will enable us to solve all the problems created by this brave new world. But without sounding pompous and arrogant, I do believe that the Government's vision on the future of broadcasting regulation as conveyed to you by Mrs Rita Lau, the Deputy Secretary for Information, Technology and Broadcasting, when she attended this Conference in October last year would provide a sound basis for all of us - the regulator, the regulated and the public - to work together in rising up to the challenges of a convergent environment.

Under the new policy, the Broadcasting Authority will be empowered to license non-domestic TV programme services and other licensable TV services. It will also do its part by developing a new set of generic code of practice for programme and advertising standards, in consultation with the licensees and the public, that are relevant to the four new categories of licences under the new technology neutral regulatory regime.

I think I have spoken long enough on regulation and I believe I have very little time to go back to the original question of how regulators should be regulated. Perhaps I should now pass on to the next speaker. Thank you for your patience.

M H AU  
SENIOR ASSISTANT DIRECTOR (REGULATORY)  
OFTA

*(transcript of speech follows)*

Basically I explain the role of OFTA as telecommunications regulator in an era of convergence. As you know OFTA is the regulator of the telecommunication industry. The main function of

telecommunications licencees is to convey information from one point to another and basically a telecommunications licencee is not responsible for the content of the information it transmits. Therefore in telecommunications regulation we do not regulate content. The content of the broadcasting service is regulated by Mr Eddy Chan's department. As you might be aware, in Hong Kong we still have separate regulatory frameworks for telecommunications and broadcasting as of today. For example, how a network is regulated depends on whether or not it is a telecommunications network regulated under the telecommunication ordinance or whether it is a network for the transmission of broadcasting signals which will be regulated under the appropriate ordinances for television: terrestrial television is regulated under the television ordinance; satellite uplinking and downlinking networks or facilities, normally are regulated under the telecommunications ordinance and also if the transmission facilities are for a sound broadcasting service they are also regulated under the telecommunication ordinance. With the exception of the new service called Programme Service, basically in broadcasting the act that is subject to licensing is the act of transmission so the law will prohibit someone from actually doing a transmission without the appropriate broadcasting licence. But under a Broadcasting Licence before that entity can transmit lawfully it has to comply with a series of content regulations that are administered by the Broadcasting Authority. On the conveyance side, in a telecommunication licence, the Telecommunication Authority is the regulator. In some cases the licences are actually issued by the Telecommunications Authority. Even though the licence is issued by the Chief Executive in Council, the Telecommunications Authority is responsible for the administration and enforcement of all licence conditions under a Telecommunications Licence. But in the case of broadcasting transmission, then the licence is basically a broadcasting licence issued by the Chief Executive in Council and administered by the Broadcasting Authority, supported by Mr Eddy Chan's department. The Telecommunications Authority will play a supporting role in regulating the transmission aspects under the Broadcasting Licence. The transmission aspects are still incorporated into the Broadcasting Licence. There is only one licence that covers both the content side and the transmission side; the programme service licence. This was introduced in 1996/97 when there was a separation between the service provision and the transmission aspects of the service. Because the transmission of a programme service is actually transmission of television programmes on a point to point basis, the transmission is already authorised under a Telecommunications Licence. So all fixed network operators in Hong Kong are already authorised to carry out transmission of television programme signals on a point to point basis. In this case the fixed network licences administered by the Telecommunications Authority will regulate the transmission aspect. So what is left is the service provision. For the Programme Service licence there is a separate licence under the television ordinance that regulates the service provision mainly on the content side. So the present regulatory framework is, generally, split between the telecommunications and content aspects. With the exception of Programme Service licences, one common licence is being used.

Now with the conclusion of the 1998 Television Policy Review, the government has foreshadowed that the legislation will be reviewed and a Broadcasting Bill will be introduced which will allow the introduction of separate regulatory frameworks for the transmission side and the content side of broadcasting. So when these separate frameworks are implemented, what changes will be made to the role of the Telecommunications Authority in regulating the transmission aspect of broadcasting? Let me say that in some areas there may not be significant changes, but in some areas there will be. Let me begin with areas in which I do not expect significant changes.

*Access:* the question of access is one of enabling the broadcasting networks to be physically extended into buildings to allow the signals to reach the customers the networks are supposed to be serving. In the facilitation of access the current Section 14 under the Telecommunications Ordinance is already used to enable both telecommunications networks and broadcasting networks to be physically extended to the customers' premises. That is a telecommunications network operator has the statutory right of access into buildings to lay cables to the customer premises and so does a network operator, authorised under the Television Ordinance. So in the future, Section 14 will be relied upon to facilitate access of the future networks to the customers. Of course in an era of convergence it doesn't matter whether that piece of wire is conveying broadcasting or telecoms signals. It is a wire to transmit information to the user's premises.

*Interconnection:* Another area in which we do not expect significant change is in the area of interconnection. At present the broadcasting networks are deemed to be licenced under the Telecommunications Ordinance so all the interconnection provisions in the Telecommunications Ordinance Section 36a are already applicable to interconnection between broadcasting networks and also interconnection between telecommunications networks and broadcasting networks. These provisions will continue to be refined and some of these existing concepts, for example type 1 interconnection – the interconnection between networks to enable services of one network to be accessible to customers connected to another network – will be applicable to the future environment where there is convergence. Likewise the type 2 interconnection concept which allows a new operator to gain access to customers connected to the final mile, or the local loop, of another network operator. This can be extended to regulate a broadcasting network to convey converged signal because we're just talking about the use of the final section of the network to deliver signal to the users.

Then there are the areas in which there would be some change as a result of this split of the regulatory framework.

*Competition:* At present the conditions in the telecoms licence and the fair-competition provision in the broadcasting licence are quite different. In a telecommunications licence the conditions are modeled on the fair trade conditions under article 85 and 86 of the Treaty of Rome. We have a condition prohibiting anti-competitive practice and also a condition prohibiting abuse of dominant positions. In the broadcasting type of licence the condition promoting fair competition is not modeled in this manner although in the 1998 Television Policy Review there had been an indication that it would be remodeled, possibly along the lines of a telecommunications licence. So at present as far as fair trade is concerned there is an odd situation with the transmission of signals over a broadcasting network as different licence conditions will probably apply, compared with transmission over a telecommunications network. In the future if the licensing framework for the content and the transmission side are separate that would enable uniformed, unified conditions to be applied to transmission services of the same nature. So if it is transmission of information it would probably be regulated in the same manner.

*Ownership restriction:* Another area that might see some changes is ownership restriction. For example in the telecommunications regulatory framework there is no foreign-ownership restriction. If there is any ownership restriction in the telecommunications regulatory framework it is for a different purpose. In the broadcasting context, ownership restriction is perhaps to prevent undue influence of content by foreign investors. But in the case of

telecommunications regulation, the main purpose of ownership restriction, if any, is to prevent over-concentration of market power. It is basically for the promotion of competition in the market. So if the framework for regulation of content and transmission is separate that would enable like-transmission services to be regulated in a like manner. All these changes will require further deliberation and debate. The appropriate regulatory framework will be incorporated into the amendments to the Telecommunications Ordinance and also into this new Broadcasting Bill being developed.


**Chair:** offered apologies from Richard Wooley, Dean of the School of Film and Television, Academy of Performing Arts, who was due to appear on the panel but was called to The Netherlands to represent Hong Kong at a film festival. Richard asked to have conveyed one or two points:

- \* across the European Union 25% of expenditure on film and video production is basically outsourced to local production. He would like to see that rule introduced into Hong Kong.
- \* he referred to the Channel 4 model whereby advertising revenue had been taxed and used to subsidize Channel 4 quality production. That model has now changed in the UK but he would also like to see some consideration of ways to fund quality public-interest broadcasting.
- \* the third point was on the film development fund. His point there is that he thinks that within that fund there should be targetted apportionment of monies and in particular the category he would like to see targetted is a fund to promote local script-writing and raise the quality thereof. He considers this to be the critical factor in developing the local industry.

ADA LEUNG  
ASSISTANT DIRECTOR  
INTELLECTUAL PROPERTY DEPARTMENT


*(slide presentation follows)*





*Why Protect IP?*

- ◆ Rewards the author/inventor
- ◆ protects consumer
- ◆ promotes technology transfer
- ◆ assists scientific research
- ◆ reduce barriers to trade



3




*Legal Framework*

- ◆ Copyright Ordinance
- ◆ Patents Ordinance
- ◆ Registered Designs Ordinance
- ◆ Trade Marks Ordinance
- ◆ Layout-design (Topography) of Integrated Circuits Ordinance




4



*Policy of IP Protection*

Rights of authors/inventors  
*Vs*  
needs of users of information and technology



5



*International Standards and Norms*

- ◆ International Treaties applied to HKSAR through China
- ◆ WTO - TRIPS Agreement



6



*Copyright in Telecommunication and Information Technology*



7



*Background*

Copyright Protection began in 1912  
Localised, comprehensive & modernised copyright legislation came into operation on 27.6.97



8



## Protectable Copyright Works

- ◆ literary (includes computer software)
- ◆ musical
- ◆ dramatic
- ◆ artistic
- ◆ published edition
- ◆ sound recordings
- ◆ film
- ◆ broadcasts
- ◆ cable programmes

9



## Qualification for Copyright Protection

- ◆ open system
- ◆ no formality
- ◆ all original works


10



## Exclusive Rights of Copyright owners include -

- ◆ copying
- ◆ distributing
- ◆ rental (sound recordings & software)
- ◆ making available to public
- ◆ performing in public
- ◆ broadcasting or inclusion in cable programme
- ◆ adaptation


11



## New Features for Digital Environment (A)

- ◆ copying includes
  - ◆ storing the work in any medium by electronic means
  - ◆ making transient/incidental copies

12



## New Features for Digital Environment (B)

- ◆ making available of works to public by wire or wireless means (INTERNET)
- ◆ mere provision of physical facilities excluded

13



## New Features for Digital Environment (C)

new permitted act :

making of a transient and incidental copy which is technically required for viewing or listening of the work

14



What I will try to do is to introduce to you briefly how we protect intellectual property under our existing legal framework and to ask the question whether our existing framework is sufficient to face the challenge of converging broadcasting and telecoms.

Just very briefly about background: what is intellectual property? It is a bundle of rights, consisting mainly of copyright, patents, designs and trademarks. The reason why we think it is necessary to protect intellectual property is that by providing rewards to the author and inventor we could encourage inventions and creativity. On the other hand it also protects consumers, promotes technology transfer, assists scientific research and reduces trade barriers on the broader front.

Our existing legal framework for protection of intellectual property can be seen in a couple of ordinances in Hong Kong; consisting mainly of copyright ordinances, patents ordinances, registered designs ordinances, trademarks ordinances and layout design, topography of integrated circuits ordinances. Among these various ordinances I think the most relevant legislative framework insofar as telecoms and broadcasting is concerned is copyright ordinance.

The policy of IP protection in formulating our legislative framework, in formulating our policy, we took into account the need to protect the rights of authors and inventors but on the other hand we have to balance this protection of their rights against the needs of the users of information and technology.

Again, looking at our policy and legislation, we have to look to a broader front – the international dimension. There are a couple of international treaties which have been applied to Hong Kong through China and the United States and in formulating our legislative framework we have to take into account the standards and norms which are laid out there. Apart from those international treaties, Hong Kong being a member of the WTO, we are bound to comply with those standards and norms; for example those in the TRIPS agreement. (Agreement on Trade-Related Aspects of Intellectual Property Rights).

Turning to copyright, we started to protect copyright in Hong Kong back in 1912. The first comprehensive localized copyright legislation really only came into force in 1997, just before

the change of sovereignty. Before then we had applied the UK legislation, the UK copyright act in Hong Kong.

The works which are protected under our legislative framework include: literary work. This is given a very wide definition under our ordinance, and includes copyright of computer software and also compilation of data (that is databases) provided that such compilation amounts to intellectual creation in its selection of data and arrangement of the data. Other types of work that are protected under our legislation include musical work, dramatical work, artistic work and the typographic arrangement of published edition. Also other derived works such as sound recordings, film, broadcast, cable programmes.

In Hong Kong we have adopted a very special system of protection of copyright. We quote an open system. In fact it means that we protect any type of works which are originated from any country or area in the world, and irrespective of the nationality and domicile of the author. This is a special system because, in fact, in most other countries or areas usually protect copyright on a reciprocal basis. There is no formality in giving protection for copyright. That is there is no requirement for registration before a copyrighted work can be protected in Hong Kong. But there is one very important qualification before work can be protected; the work must be original. Copyright owners have a couple of exclusive rights which means if anyone does any of these acts without authority of the right owner he is infringing the right of the right owner. This includes copying the work, distributing the work and rental of the work in the case of sound recordings and computer software and making available the work to the public by wire or wireless means.

Other exclusive rights include performing a work in public; broadcasting or including a work in cable programmes and adaptation of a work. It is worth mentioning here that adaptation is again given a very wide meaning in the ordinance. It includes, for example, in the case of computer programmes the change of version, the change of computer language from one to another, the change of computer code from one to another. It is considered as adaptation, therefore the doing of any of these acts without the authority of the owner is an infringing act.

There are a couple of new features under our copyright ordinance of 1997 that were specifically adopted in view of the digital environment. One of these is the definition of copying has been widened. Recorded copying is one of the exclusive rights of the copyright owner and copying is defined as storing the work in any medium by electronic means and also making transient or incidental copies. Therefore any storage of a work by modern technology will be covered in the meaning of "copying" and making of transient and incidental copies; such as the transient copy appearing on the computer screen or appearing in the computer memory that might be caught in the definition of copying.

Coming back to making available to the public of works by wire or wireless means, which is a new right under the 1997 ordinance granted to a copyright owner. Actually we had in mind particularly networks such as internet. The definition of "making available" is that works could be accessed by members of the public at a time and place chosen by them convenient to them and internet is one of those media which is covered. But we also take into account the need to protect the right of the ISPs. Therefore the new provision of physical facility is excluded as an infringing act.

As a result of the new right that has been granted to right owners we considered that it is necessary at the same time to create new permitted acts. That means users can do this act ie, making of a transient or incidental copy of a work which is technically required for viewing or listening of the work. This is not considered as an infringing act under the copyright ordinance. There are other new features under our copyright ordinance of 1997, in particular in view of the convenience that is offered by the digital environment for the transmission and exploitation of copyright work. This means that it is more difficult to track down unauthorized copying of copyright work. Therefore we consider that it is necessary to create additional protection of right holders. This includes, if he has adopted some sort of copy protection measures, anyone who makes or deals with devices designed to circumvent such copy protection measures incurring civil liability. Similarly interference with voice management information systems will incur civil liability.

You will notice that we do not, as far as the intellectual property protection legal regime is concerned, have a separate legal framework specifically designed for convergence. However, by providing very flexible definition of copying, broadcasting, telecoms, we think we are sufficient at the moment. But we need the challenge of convergence.

During the discussion period the following points were raised:

**Participant:** first, before I ask a question, just a general comment to Mr Chan and Mr Au. My company is reliant on guidance to a large degree from OFTA and to a lesser degree from ITBB. With regard to all the activity in our properties unleashed by liberalization and competition. I would just like to comment that we find the speed of the response to queries quite quick and the consistency of the policy applications makes my jobs easy. My question is for Mr Chan. It is a fundamental question raised as a result of new products being released by financial news services such as Reuters and Bloomberg. They have products that are called tv, RFTV, Bloomberg TV and they're delivered over co-axial and they are viewed on a tv but they claim they're not tv. My question therefore is what exactly is tv and what is not?

It is a difficult question to answer. Under the existing ordinance I think we do have a well-defined definition of what is tv. And under the existing ordinance I think it would encompass things like free-to-air tv, terrestrial tv, cable tv as we know it, satellite tv and also a new kind of form which we call Video-on-Demand, each requires a programme service licence, under the existing tv ordinance. I think without actually going to the actual wordings of the ordinance, the definition is something like: moving images. I can't give you an exact wording of the existing definition but we do have one. So if there are any new forms of tv services which come up now or sometime in the future then we will have to look at the proposed product: what is it, how is it being transmitted and how does it fit within the existing ordinance. And I am sure when we are taking our proposals in the Broadcasting Bill, which we will, then I am sure this debate will again come up as to what constitutes tv service. Is it being defined by the modes of transmission or by other measures? At the moment I can only talk about the existing ordinance which does have a very clear and finite definition. But I understand that we will be talking about something in the future and I am sure when we are preparing the drafting instructions for the Broadcasting Bill to be enacted sometime this year or next year then we will definitely have to look at the definition of tv again.

**Participant:** Mr Chairman, at the end of your presentation you referred to the title of this section of the Forum – Regulating the Regulator in Hong Kong – and it seems to me that there's a big difference between regulating the transmission and regulating the content. Although the transmission is a very complicated thing to regulate it's child's play compared to content. Because regulation of content is so subjective. We have had some decisions from the local censors which have brought great derision upon them. Maybe because they haven't been of sufficiently high calibre. And so the question really is, how will you decide in future what individuals are qualified to decide what the public may or may not see on their tv screens? (Mr Chan: can I clarify your question; who is qualified to make codes of practice which set out the standards for programmes.) I'm not thinking so much about the codes of practice but at the very sharp end there are people who say: this tv company has committed a breach of the practice. In other words we have censors who monitor the programmes and then they say: you shouldn't broadcast that. That's the level I'm talking about. How do you decide who is qualified to make those decisions.

**Eddy Chan:** Let us go back in history for the present moment. We used to pre-censor tv programmes and materials. But we have moved away from that. Ten or twenty years ago monitoring of tv and radio programmes was pretty easy as there weren't that many operators in the market and I believe at the time tv broadcasting companies had to submit programmes to us for a quick look to see whether there would be any objectionable materials like sex or violence or bad language. But I think we have gradually moved away from that type of parental control. Right now we don't have any pre-censorship so broadcasters are free to broadcast any programmes that they think will fit the audience taste. However, the Broadcasting Authority sets out standards and lays down a code of practice as to what we feel would be generally acceptable by the community in terms of language, nudity, violence, triads. In advertising standards we will also set out the basic principles which require adverts to be legal, truthful and clean. Those were the basic standards that were set. It would obviously be up to the broadcasters to think whether their programmes comply with the standards. We don't normally look over their shoulders to see whether their programmes will comply with the standards. We used to do that but in future we cannot afford to do the same thing as there will be too many broadcasting stations, there will be too many programmes. In future we will increasingly rely on a complaint-driven strategy to see whether the broadcasters comply with the codes of practice. If there is a complaint about certain programmes being indecent then we will look at that programme to see whether a breach has occurred against the practices that we set. In making that judgement we, as a regulator, would hope to be able to reflect the community's values. It is a very difficult question to answer: why am I qualified to make that decision and not anybody else? But I believe any decisions on whether a programme is acceptable or whether there has been a breach of a code of practice is essentially a very subjective opinion. It is essentially a very subjective view. We hope to be able to refine that view to make it as objective as possible. How do we achieve this? What I am now doing is to open up all the decisions that are made. For example, when I deal with complaints I will try to explain why I regard a complaint as unsubstantiated or substantiated. What I regard as the community yardstick of the basic standards that are acceptable. All my decisions are released on our home page and I also publish a bi-monthly report of all the decisions that are made and the reasons for making them. The community will be given a chance to look at the decisions that are made and they will be able to tell me if I've got it wrong. Secondly, we also operate through a series of tv advisory groups. Throughout the whole territory in Hong Kong, Kowloon and the New Territories we have established 18 district councils to advise us on what the public feel about particular tv programmes. And we have about 600 members serving on the advisory council.

So each time I make a decision I try to make that decision as transparent as possible and try to obtain feedback from the advisory group as to what they think my decision is like. Whether they approve or whether they think the values have changed, the values have remained the same, or people have gone back in time.

**Michael Latzer:** I wanted to ask a naïve question, why don't you go for an integrated regulatory model? Why don't you try to integrate both the institutional side and on the level of the norms. The examples have been given why you have problems going in a different direction, trying, for instance, to find a definition for broadcasting. Given now the European experience of what is discussed there, even the audio-visual side said: we want to distinguish between private and public communication. That should be the difference. But even that doesn't work anymore because, what is Internet? What is a web page? Is it public or private communication? This hasn't been decided yet. There are also some cases in front of the court, especially because of right-wing activities on the internet. Then it is important that laws are in place if it is public communication, not if it's private. So now again the court has to decide whether it's public or private and it really can't be done on objective criteria. So that's one of the new criteria that is being built for the regulation of content. Trying to find a horizontal model for regulation. The other would be the level of availability and persuasiveness of the content. I think that's also important because of the effect of the content on the population. And this should also include the measure of choice exercised by consumers in assessing the content in question. So these might be the new criteria for regulation. But you can't say if it's broadcasting or not. I think that's an old and outdated way to approach this problem. Because this was done by technical criteria only and not by functional criteria. It's definitely a shift from technical criteria to functional. That would be the European discussion of that. I just want to pick up one other thing you mentioned in the beginning about funding mechanism for public broadcast; there is another way to do it as shown by Finland. They are also putting a sort of tax on the advertising revenue of all other commercial broadcasters, and using that to fund public broadcasting. That is a system which is working even for smaller countries. In that sense they are very glad if commercial broadcasting is working very well, having lots of ads and they don't have to compete with commercial broadcasters.

**Participant:** Can I follow this point and Richard Wooley's. Public Service Broadcasting. These are three words that didn't appear whatever in the 1998 Review of broadcasting in Hong Kong. It appears that nobody has heard of public service broadcasting and there was no mention of RTHK and its role as public service broadcasters. However, in the talk that we heard about what's happening in Europe there was quite a short list of concerns and one of them was PBS. I would like to ask Mr Latzer why the Europeans think it's so important that it should be included for consideration. I would then like to ask our friends from government why it seems to be so unimportant that it's not mentioned at all in the Broadcasting Review?

**Michael Latzer:** There are two answers. One is the political power answer because there are very strong stakes within the political fields and they are very strongly connected to the power centres. That is an answer that shouldn't be underestimated. They have lots of privileges in the old regulatory field and they don't want to give them up. The second is that it is seen to be a societal goal to have socially valuable content. It is believed you only have quality programmes if you don't leave it to the market. This is also the belief which is still followed regarding broadcasting.

**Jock Given:** Australia is unusual in having two public sector broadcasters: the Australian Broadcasting Corporation and the Special Broadcasting Service which was set up at the beginning of the 1980s, particularly to address then multi-lingual, now multi-cultural programming and audiences. The SBS now takes advertising so it's funded by a mix of advertising and funds from Federal Government. ABC continues to be supported only by public-sector funding. I suppose the history of recent times in Australia has been that the ABC has had quite a tough time, particularly since the change of government in 1996. Its funding has been cut by 10%. On the other hand, the SBS's success is much less controversial, perhaps because the ABC is a much larger public sector broadcaster.

For the future, the ABC has been quite clever in putting not substantial resources, but substantial energy into the building of an on-line presence and has one of the most used web sites in the country now. I mentioned the point about its journalism and ABC on-line, particularly for rural audiences, is very significant. It has been quite clever in building for itself a presence in the on-line environment. The key argument to me about public broadcasting for a country like Australia which is relatively small, English speaking, competing in programme supply markets with the might of the US, is that Australian public-service broadcasters will be hugely important simply in sustaining Australian programming in an increasingly internationalized media environment. As the ownership of media enterprises internationalizes, as the programming internationalizes (particularly in tv) we have been lucky in having Australian television programming more than 50% Australian. With pay-tv being introduced that is clearly no longer the case. Most of what comes in in new markets will be foreign programming. The key role for public broadcasters is simply going to be in sustaining substantial local presence in that increasingly foreign-looking media environment.

**Chair:** that raises to Hong Kong an interesting question about whether the internationalization which is foreshadowed in the tv review of broadcasting coming into Hong Kong to some extent will actually answer the question of not just greater diversity but perhaps also the issue of quality programming coming in.

**Participant:** could I just make a point that the regulatory environment seems to be lacking in this respect. Whereas in the telecommunications areas we have a fairly clear regulatory environment which should have a positive effect on the quality of telecoms, it seems to me on the broadcasting authority front the regulation is fairly negative. It is purely to keep out what is believed to be undesirable programmes, it does nothing to actually enhance and improve the quality of programmes nor increase the local production as happens in Australia and happens in Europe. This does seem to be an enormous gap in our regulatory framework. We do nothing to try to enhance the quality of programmes.

**Chair:** that raises a wider issue that somebody might like to pick up in a moment about how far the regulation policy should or should not be in any sense a kind of industrial policy which is prefigured by the concept of building Hong Kong as a media centre.

**Participant:** I heard a couple of times about telecommunications and broadcasting signals. I wonder whether the government has some sort of definition for telecoms signal and broadcasting signal. Are you referring, for example, to image as a broadcasting signal and also to text or data as telecoms signal? But what about voice?

**M.H.Au:** I refer to broadcasting and telecommunications in context. In the present regulatory environment there are still two distinct frameworks to regulate telecommunications and broadcasting. I think using the definition of telecoms in the ITU; telecoms would include the transmission and reception of any information. So this has a very wide meaning and covers information that is intended for a particular recipient which is telecoms in a narrow sense. If I make a phone call to you and that phone call is supposed to be received by you and the information in it is for you only; that is telecoms in the narrow sense. But telecoms in a wider sense would be transmission and reception of information of any sort, even that intended for general reception. So, in the wider context, broadcasting will become a subset of telecoms and normal definition for broadcasting is something that is intended for general reception. Of course, this will have difficulties in strictly adhering to this particular definition because obviously in pay tv then the signal may not be intended for general reception. I think it is intended for someone who is willing to pay. Also you can argue that because the signal is made available to any member of the public who is willing to pay that is again some form of broadcasting. So once you get into difficulties between telecoms and broadcasting I agree that the boundary will become increasingly blurred, particularly in an area of convergence. Therefore the government and industry is deliberating on this question of whether or not the regulatory framework should be developed to remove this boundary that would become more and more blurred.

**Participant:** Mr Chairman, you hinted that you would be interested in a question on how these matters touched on broadcasting and telecommunications as industrial policy. I'd like to make just a brief observation there. It is fairly unique to conduct an allegedly comprehensive broadcasting review without once dealing with the issues of what broadcasting is about—which is programmes. But putting that aside, the paper which is available which has been prepared on behalf of TIF – Television Policy in an Era of Convergence – contains towards the back a policy-maker's checklist with a whole lot of questions that could be asked. I'd just like to repeat two of the questions from that list: what kinds of companies is Hong Kong trying to attract in these two sectors? And, secondly, are policymakers looking to promote national champions in each of these two sectors?

**Eddy Chan:** we do not wish to promote any particular broadcaster. What we wish to do, as set out in the consultation paper, is to make Hong Kong a broadcasting hub in the region and to promote or to create an environment which will be conducive for that development. I think that is what we hope to promote and achieve.

What kind of companies do we wish to attract to Hong Kong? We obviously wish to attract people who are interested in providing a broadcasting and telecommunication service in Hong Kong. I do not think we have any pre-determined ideas as to what these companies should be, how they should behave, or what they should look like. I think that in line with any government objectives, I think our objective is to make Hong Kong a thriving place for the telecoms and broadcasting industry.

**Participant:** who is actually making the decision about who gets the licence?

**Eddy Chan:** The Chief Executive in Council.

**Participant:** who makes the decision on what terms anyone interconnects with Wharf Cable's network?

**Eddy Chan:** If there is an application for a licence under the existing ordinance then I think the Broadcasting Authority is responsible for assessing that application and for making recommendations as to whether that licence application should be approved. And the approving authority will be the Chief Executive in Council. Why is OFTA also not involved in this? My answer is actually the Director of OFTA is also a member of the Broadcasting Authority so when the BA is examining or evaluating an application for a licence, be it a cable, free-to-air, programme service or satellite licence, then we will obviously look at the proposal itself and the proposal will, we hope, contain very detailed descriptions about how they intend to provide the service: the technology used in providing this service, and the programme type. So the BA would then be in a position to assess whether the applicant should be awarded a licence by giving a recommendation to the Chief Executive in Council.

**Participant:** the issue of convergence sounds like it's going to be regulated by OFTA on interconnection terms.

**M H Au:** maybe I'll try to answer the question from another angle. Right now I think the regulation is divided into telecoms and broadcasting services. In an era of convergence then perhaps a more satisfactory way of regulating convergence would be to divide the things to be regulated into two levels; first of all the transmission of information from one point to another – from the content provider to the recipient; secondly, the provision of the content for transmission. The conveyance would be regulated by OFTA as someone who is responsible for regulating conveyance and who should be licensed to provide services over the network regulated by OFTA will be a decision to be taken by the broadcasting regulator. Maybe an analogy would be: we have a shopping arcade managed by a manager, then there is another decision on who should be allowed to set up shops in the arcade. Likewise, in the regulation of convergence, there will be a network over which anyone can provide services. There will be another decision on who should be allowed to provide services over the network; how the service provision should be controlled; whether or not there should content control; whether or not there should be ownership control etc. The network, however, will be regulated in another layer, by another regulator.

**Participant:** I would just like to go back to the points raised by two previous participants a few minutes ago, focusing on this idea that one of the aims is to make Hong Kong a broadcasting hub. Surely at the moment the cart is being put before the horse. The way to make Hong Kong a potential broadcasting hub is to improve the programmes, the product. When you have a good product the hub may well follow but there's no point in pursuing this idea of a hub if no consideration is given in various reviews to the actual programme quality.

**Participant:** I am trying to spin out the implications of this conversation which I think is fascinating. It would appear that it won't be very long before anyone can get over the internet, virtually any content that they might want or not want to receive, including illegal intellectual property access, pornography, terrorist information. At that point it will become beyond the ability of authorities in any given jurisdiction (Hong Kong in particular) to do very much to prevent that content from coming in. And it's very likely we will end up with a situation in which the provider of the access link will be in a position, if anybody can, to filter what comes through those access points and may well become a kind of competitive advantage of competitors in providing services that do provide such filtering. And there is a preliminary manifestation of that in certain jurisdictions already, companies that provide certain censoring

access to the internet. But I wonder whether it's even conceivable that as a condition of receiving a licence to provide what is now called a telecommunications service the authorities would actually include as a condition of the licence the capability and commitment of companies to provide at least customer ability to select the types of information they receive. It seems to me we are not too far away from circumstances in which that would turn out to be the approach that authorities would need to take to provide services in the public interest. Because the ability to stop it in advance is probably fast eluding us.

**Participant:** In the 1998 review of television policy it is stated that the proposed omnibus broadcasting bill will contain safeguards on competition. It stated that there will be more stringent restrictions on anti-competitive practices between dominant licencees. However, the definition of dominance contained in the review was extremely vague. Please comment.

**Chair:** Following on the point raised about the accessibility of all kinds of material which is pirated or which is copyrighted and being abused. In practice, how effectively in Hong Kong, in a period of convergence and internationalization, can protection of intellectual property be implemented.

**Ada Leung:** Actually this is a difficult question because the provision is there. Making available of works over networks like internet, is an exclusive right of the right holder. But how actually this could be enforced, taking into account the bodiless nature of internet or other networks could be difficult. As far as Hong Kong is concerned we have not seen any case law but we expect there will be litigation on this issue because where actually is the infringing act committed? Is it where information is uploaded, or where the server is located, or where the information is downloaded? This is a series of questions. But as far as the legislation is concerned what we have incorporated into our ordinance reflects a definition which has been agreed at an international level, at the World Intellectual Property Organization, after discussion with the broadcasting and telecoms industry and it is thought to be the best solution at the moment. But whether there will be a lot of litigation later on, we don't know.

**Eddy Chan:** regarding the quality of programmes, I think we all recognize what good quality programmes are but I think it is very difficult to arrive at a consensus as to how that quality is defined or accepted by the majority of the population. What we can do is set the base line. This is what we know. For example what kind of violence or bad language do we feel that the community will not be able to tolerate. But if we are talking about quality programmes, it is very difficult for us to put a definition on the word. I think eventually it will be a very subjective judgement as to what constitutes quality. The other element also comes into it. What about its commercial value. They could be very good quality films but no commercial value. Would that be accepted as a good quality product? So there will be other very subjective issues that we will need to look at and I am sure the community will not be able to find a common consensus as to what constitutes quality programmes. Although we do hope that the quality of programmes could be improved and our policy is to try to make the market as vibrant as possible to ensure more entrants to the market. This will, at the end of the day, provide a much wider range of products for people to choose. We hope that the best quality products will be the best-sellers. But whether or not this is the case, of course, remains to be seen. For example, if you look at the tv programmes that you get now, particularly on the more popular Chinese channels, what would you be able to say about the quality of the programmes? Would you agree that the quality is poor? But if you say that the quality is poor then the other argument also comes in. The ratings are pretty high. So why do people actually want to watch

poor quality programmes? Is that because of a lack of choice? If this is so, then obviously what we hope to do is open up the market. Let more players in and provide, hopefully, a better service for the audience.

**Participant:** I think, perhaps, we haven't made our points quite clear. What we mean is there is virtually no mention of public broadcasting. Taking up the points that John relayed from Richard Wooley, these are extremely important. If those sort of issues are taken in conjunction with a regard for public broadcasting and there is serious consideration of what public broadcasting can do and should be doing in Hong Kong, what its future could be, that would help raise standards. The moment you open up to more and more commercial operators, you get more of the same, you don't improve quality you just increase quantity of the same. If you want Hong Kong to become a broadcasting hub it has to be able to offer something that is a bit different from everything else.

**Eddy Chan:** I understand the argument but there is also another argument. If we are talking about RTHK tv programmes, for example, and if we all agree that the programmes produced by RTHK are pretty good value and quality because they don't have the commercial considerations to consider, then we will obviously have to look at the question of how popular it is. Again, you mention about quality programmes as if quality programmes could only be produced by public service broadcaster. This might or might not be the case. In the case of RTHK programmes you also have to look at whether those programmes are commercially viable as well. So there is obviously a question of if the programmes are very good then it will obviously attract a very good rating but if the good rating is very good then obviously it could be provided by a commercial broadcaster. But if you look at what RTHK is now doing, it is still producing tv programmes. It will continue to do so and we do not envisage that, for the time being, there needs to be a change in the area of RTHK.

**Participant:** there's another aspect of the debate that hasn't been gone in to. Rather than going down the quality public broadcasters side, most other major production markets in the world have always provided content requirements. We have a production industry which, at the moment, is tanking. The number of productions is going down, the value of this market is also going down. This used to be the second or third most prolific film production in the world. Most other major production markets have required a certain percentage of content to be from that place; Australia did it, France does it, America did it. You have to have a certain amount of production being funded by the locality or a certain amount of airtime being given to the locality. That's one issue that could have been raised in the broadcast review.

**M H Au:** regarding the question of whether or not in the development of pervasive networks there is a possibility of all sorts of undesirable information reaching the users of those networks. Should there be some licence conditions in the regulation of carriers to require them to play a role to filter out some of the desirable information? I think it would be very dangerous for such a condition to be incorporated into carrier licences. A carrier, by definition, would convey information faithfully and reliably from one point to another and a carrier is not normally liable for the content of the messages it carries. So I think there is no better control of the content than by the recipient of the information themselves. For example for content receivable over the internet there is a lot of software available for the user to act as voter on the sorts of information that they think are not appropriate. Of course, for content inserted into the network in Hong Kong, there is additional control of this provision licensing, and also the

general law on the regulation of content here; defamation, control of obscene and indecent articles ordinance.

The End