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China (People's Republic). Consultative
Committee for the Basic Law of the
Hong Kong Special Administrative
Region. Special Group on Culture,
Technology, Education, and Religion

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Final report on freedom of the
press. [1987].

FINAL REPORT ON
FREEDOM OF THE PRESS

(passed by the Executive Committee on 14 March 1987)

Special Group on
Culture, Technology, Education, and Religion;

Special Group on
Inhabitants' and Other Persons' Rights,
Freedom, Welfare, and Duties.

1 Introduction

The booming mass communication business is one of the characteristics of the present Hong Kong society. There are many kinds of publications and newspapers available in the market. Internationally, Hong Kong is recognized as a place where freedom of speech and freedom of the press are enjoyed. However, with the signing of the Joint Declaration between China and the U.K., the sovereignty of Hong Kong will be reverted to China after 1997. Despite China's affirmation that Hong Kong's capitalist system will remain unchanged for 50 years and China will implement the policy of one country two systems, many people show concern about whether the present press freedom can be maintained after 1997. They want to find a way to enable Hong Kong to maintain the freedom of the press under the one country two systems policy. Through the Basic Law, it is hoped that the previous press freedom can be safeguarded.

2 Provisions under the Joint Declaration

2.1 Para. 3 (3) of the Joint Declaration:

"The laws currently in force in Hong Kong will remain basically unchanged."

2.2 Para. 5 of the Joint Declaration:

"The current social and economic systems in Hong Kong will remain unchanged, and so will the life-style. Rights and freedoms, including those of the person, of speech, of the press..... will be ensured by law in the Hong Kong Special Administrative Region."

2.3 Section II of Annex I to the Joint Declaration:

"The laws of the Hong Kong Administrative Region shall be the Basic Law, and the laws previously in force in Hong Kong and laws enacted by the Hong Kong Special Administrative Region legislature as above."

2.4 Section III of Annex I to the Joint Declaration:

"The courts shall decide cases in accordance with the laws of the Hong Kong Special Administrative Region and may refer to precedents in other common law jurisdictions."

2.5 Section II of Annex I to the Joint Declaration:

"The Hong Kong Special Administrative Region Government shall maintain the rights and freedoms as provided for by the laws previously in force in Hong Kong, including freedom of the person, of speech, of the press "

香港
基本法
第 100 條
第 1 項

"The provisions of International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force."

3 The Function of the Press in Modern Society

In modern society, free flow of information is of great importance. Efficient and free access to information is indispensable to commercial undertakings which would like to join the competition. The press has been rendering a highly significant service to the public in this respect. If members of a modern society are to take part in regional or national affairs actively and sensibly, they need to possess sufficient knowledge of the daily affairs, for instance, to enable them to make a fair decision during elections, and to allow them to maintain their vigilance towards their government. Therefore, modern society requires clear and accurate reports of events happening everyday, including analyses of their background and causes, so as to provide citizens with information for discussion and review. Modern society needs a sufficient variety of newspapers to keep citizens informed of different viewpoints, and to help them to understand the facts clearly and accurately.

As the press can generate pressure from public opinion to affect government personnel and policy-making, it has become another form of power for check and balance, in addition to the executive, legislative and judicial power, supervising government's administration, and promoting the growth of society.

4 The Present Situation of the Press

4.1 At present, there are 68 newspapers (Chinese:51; English:14; bilingual:1; and Japanese:2), 516 magazines (Chinese:317; English:130; bilingual:68; trilingual:1), 2 radio stations and 2 television stations registered with the Hong Kong Government. These figures reveal that the mass media are flourishing in Hong Kong. Their characteristics can be summarized as follows:

4.1.1 Apart from the requirement for a deposit or personal guarantee of ten thousand dollars, there is basically no restriction on publication

Though the law provides that a local newspaper shall initially pay a deposit of \$10,000.00 as damages for an offence or libel. As this amount is only a minimal proportion of the total investment for funding the publication, it can hardly be called a restriction.

4.1.2 Assuming sole responsibility for its profits or losses as an enterprise

Except for Radio Television Hong Kong which is owned by the Government, the large number of mass media undertakings in Hong Kong are all private enterprises. Most of the newspapers assume sole responsibility for their profits or losses. Hence, they are highly concerned about their acceptability to the public.

4.1.3 Distinct political viewpoints

In fact, the newspapers in Hong Kong have clearly distinct political viewpoints. At present, publications representing the various political forces and viewpoints may be published freely.

4.1.4 Law-abiding

At present, publications and electronic mass media must abide by the law. According to government records, there were 46 cases of magazines being prosecuted by the Hong Kong Government and 5 cases of newspapers given government warning in 1985 for infringing the Objectionable Publications Ordinance (cap 150) by publishing pornographic photographs and writing.

In addition, there were about 60 cases of newspapers and magazines being prosecuted by individuals or companies for libel in 1985.

4.2 However, tighter control is imposed on electronic media:

Since there are only limited channels and television programmes are "free-of-charge". Even though there will be cable television in the future when viewers will pay for watching programmes, the compelling nature of this mass medium will remain. Once it is switched on, the electronic medium with its particular viewpoints will intrude into the viewers' home. Hence, the impact of television is immense. Moreover, as frequency channels are generally regarded as public property, the government usually imposes certain restrictions upon the owners of electronic media (e.g. the owner must be a national of the country in which his television station operates). The operation of a electronic medium is not treated as a purely commercial activity. Hong Kong is no exception: according to the present legislation, the majority of directors of licensed television broadcasting companies who actively participate in the management of the company should be British nationals who ordinarily reside in Hong Kong. This is to prevent the abuse of such an influential medium.

4.3 At present, these laws are enforced by:

1. Court
2. Royal Hong Kong Police Force
3. Television and Entertainment Licensing Authority
4. Newspapers Registration Unit
5. Customs and Excise Department



5 The Present* Legal Restrictions on the Press and the Grounds for Such Restrictions

5.1 The content of the main legislation concerning freedom of the press Main powers exercised by the Government

5.1.1 Subsidiary legislation of Chapter 268 Printed Documents (Control) Regulations

1) All printed documents (including books, pamphlets, and newspapers) The name and address of the printer must be clearly printed, except for two types of printed documents: The Governor has the power to exempt any printed documents from the provisions of these regulations.

a) Any document solely used for a bona fide commercial or professional or social purpose, provided that such document contains no political matter whatsoever. Internal publication of organisations such as a society, club, or trade union shall not be deemed to be used for a social purpose.

b) Any document printed outside Hong Kong.

2) One is liable for conviction if one prints or publishes or assists in the distribution of any printed document which does not comply with the requirements of these regulations.

3) One is liable for conviction if one, without lawful authority or excuse, has in his possession any printed document which does not have the name and address of the printer printed on it.

5.1.2 Subsidiary legislation of Chapter 268 Newspapers Registration and Distribution Regulations

1) Every newspaper shall be registered, and the particulars of the proprietor, printer, publisher, or editor submitted. The registration fee is \$100 and the annual fee payable is \$100. The Governor has the power to exempt any printed documents from the provisions of these regulations.

2) Newspapers shall be distributed for sale only by distributor licensed by the Registrar: The fee per annum for such a licence is \$100.

* March 1987



3) The Registrar may refuse to license or may cancel the licence of any distributor if --

- a) such distributor has distributed a newspaper the suppression of which has been ordered by the Court;
- b) the Registrar deems it necessary or expedient to do so in the interests of public safety or public order. (The distributor may appeal to the Governor in Council.)

4) Bulletins issued by a news agency which has satisfied the Registrar that such bulletins are distributed only in Hong Kong and only to registered local newspapers, shall be exempted from registration.

5.1.3 Chapter 52
Television Ordinance

1) The Governor in Council may make regulations establishing standards for the following television programmes:

- a) advertisements
- b) programmes containing political or religious material

2) To co-ordinate with the law of defamation, the broadcasting of words or other matter shall be treated as publication in permanent form.

3) The licensee shall supply to the Television Authority on demand any material which is intended for broadcast, including script of plays and reading script.

4) Television Authority may prohibit the broadcasting of any programme, any part thereof or of any class of material. Where the Television Authority is of the opinion that the peace or good order of Hong Kong is threatened it may orally prohibit broadcasting. (The licensee may appeal.)

1) The Governor in Council may at any time revoke a licence, if --

- a) the licensee fails to pay, within one month after payment has been demanded, any royalty owed by him, or financial penalty imposed on him;
- b) the licensee goes into liquidation;
- c) it appears to him that the security of Hong Kong so requires; and
- d) the licensee is fined for violating the Television Ordinance on three occasions.

5.1.4 Subsidiary legislation of Chapter 52
Television (Standards of Programmes)
Regulations

These Regulations are subsidiary legislation of the Television Ordinance.

- 1) Television programmes shall include a reasonable proportion of the following:
 - a) material which is wholly of British or Commonwealth origin;
 - b) material which is wholly of Hong Kong origin;
- 2) The Television Authority shall specify from time to time such proportions as it considers reasonable.
- 3) Television programmes shall exclude matters which is likely --
 - a) to offend against good taste or decency;
 - b) to mislead or alarm;
 - c) to encourage or to incite crime, civil disorder, or civil disobedience;
 - d) to discredit or bring into disrespect the law or social institutions including any religion;
 - e) to serve the interest of any foreign political party.

5.1.5 Chapter 150
Control of Obscene and Indecent
Articles Ordinance

- 1) Establish the Obscene Articles Tribunal to determine whether an article referred to it by a court or a magistrate or any matter publicly displayed is indecent.
- 2) Membership of the Tribunal should consist of a presiding magistrate and two or more adjudicators to be appointed by the Chief Justice.
- 3) The Tribunal is to classify articles into three classes:
 - a) the article is neither obscene nor indecent, not to be restricted;
 - b) the article is indecent, must be enclosed by a wrapper and must carry a warning notice before the article can be offered for sale, but not to persons of 18 years or under; and
 - c) the article is obscene, to be restricted from sale.

5.2 The grounds for restriction

According to Justice Holmes, Supreme Court Justice in the United States, although the Constitution of the United States provides that "Congress shall make no law abridging the freedom of speech"[1], freedom has never been absolute. Without exception, freedom of the press is also subject to certain restriction. For freedom to be exercised, we need an organised society and public order, without which, freedom can be easily abused or even destroyed. Therefore, in exercising freedom of the press, we have to consider the following factors:

5.2.1 Personal Rights and Interests -- To protect the reputation, rights and interests of an individual and to respect the privacy of a person, the law normally stipulates that comments on others' privacy should not be expressed in speech or writing or publication. But if the person whose private life has been exposed is a social celebrity or public figure, the defendant (i.e. the person prosecuted for publishing or broadcasting such information in the media) will be found not guilty of libel provided that he can prove it is a truthful report in which there is absence of malice. For a public figure is the centre of attention and any of his action will naturally attract public attention. Moreover, one cannot rule out the possibility that the public figures deliberately expose their private life for publicity's sake. Thus, as long as it is truthful report in which there is absence of malice, it is not against the law.

5.2.2 Social Order

- The legislature of a country normally makes laws to maintain social order. The most common ones are the restrictions imposed on matters instigating violence and illegal actions, and pornography.

5.2.3 Justice of the law

- To guarantee that all parties are treated fairly before, during and after a trial, the press must be under certain restrictions in reporting or commenting the cases.

a) Before the trial

- Under the principle that everyone is innocent before being convicted in court, the law provides that the press in reporting a case should not assume that the suspect has committed a crime and such terms as "murderer" and "bandit" should not be applied on him. This is to ensure that should the suspect be in fact innocent and found not guilty after the trial, members of the public will not discriminate against him.

[1] American case law: 249 U.S. at 52

b) During the trial

- As criminal cases require the presence of jury, the court usually prohibit the reporting which may influence the decision of jurors. Thus, when the case is being tried, only a factual account of the proceedings is allowed. Any unauthorised addition of personal opinions may be subject to prosecution.

c) After the trial

- If the judge, in the interest of the parties to proceedings, prohibit the disclosure of the parties' names, addresses, etc. The disclosure of their identity at any time by the mass media will be deemed an act of contempt of court and will be subject to prosecution.

Therefore, when we talk about freedom of the press, we have to consider the possible conflicts with the above-mentioned factors in order to fit in with the needs of society.

6 The Limit of Freedom of the Press

Where is the limit of freedom of the press?

It is generally accepted by American journalists that speech was something in between faith and action. Faith which is spiritual is absolute and cannot be infringed upon. Government cannot interfere a person's belief, nor can it intervene an individual's spiritual freedom by any means. Actions of any individuals, on the other hand, should not interfere other people's freedom. Any actions which go beyond this limit should be restricted.

At present there are three kinds of arguments concerning the freedom of the press:

6.1 Preventive Argument

- The legislature is responsible for confirming what kind of opinion should be regarded as illegal. For example, malicious opinion advocating racial discrimination on newspapers or magazines are bound to cause violent resistance. If the legislature enacts laws to control and prevent it, it does not violate the spirit of press freedom.

6.2 Argument of Clear and Present Danger

- In Schenck v. U.S. Justice Holmes wrote "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that Congress has a right to prevent"[2]. This points out that freedom of the press is not an absolute right. Restriction may only be imposed on it under appropriate conditions. Opinion instigating riots or destruction, for example, will create direct danger and should be prosecuted according to the law.

[2] American case law: 249 U.S. at 52

6.3 Argument for No Restriction

- All writings and photographs should not be subject to any kind of suppression or prohibition. Amendment to Article 1 of the American Constitution provides that the freedom of speech should not be violated, and "only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command."

7 Methods to Resolve Conflicts and Contradictions

7.1 The Court

- All freedom and rights are to be exercised and enjoyed within the scope stipulated by law. Every citizen should enjoy the right to express his opinion through newspapers, publications or other means. This civil right is inviolable provided that the legal procedure is observed by citizens. Hence to protect her subjects, a state will provide for a high degree of freedom by her constitution and make it conditional by subsidiary legislation to prevent the abuse of freedom which will violate other people's rights. Should there be any conflicts, a fair arbitration can be sought through legal means.

7.2 Discipline

- The press must have self-discipline in order to safeguard national security, public interest and the rights of others. Discipline, negatively speaking, means not violating the laws. Discipline, on the positive side, is to give accurate reports and fair criticism, exercising the proper function of the press.

8 Specific Questions

8.1 How to enshrine press freedom in the Basic Law:

8.1.1 The understanding of the nature of freedom of the press is essential to the discussion of how the press freedom will be enshrined in the Basic Law. According to the Agreement on Freedom of the Press of the United Nations Conference on Freedom of the Press, the Universal Declaration on Human Rights, and the Report of the International Press Institute, freedom of the press includes :

- a) freedom to run the mass media (including electronic media such as radio and television broadcasting stations, as well as printing media such as newspaper and magazine).
- b) freedom of coverage
- c) freedom to impart information
- d) freedom of expression
- e) freedom to receive information and views

The Joint Declaration and the Structure of the Basic Law (Draft) which was passed by the second plenary session of the Drafting Committee make no mention of freedom of the press. Some Drafting Committee members held that "freedom of the press" is already included in "freedom of speech" and "freedom of publication". However, the five types of freedom listed above may not be covered completely by freedom of speech and freedom of publication. Thus, the press in Hong Kong generally feels that freedom of the press should be stipulated in the Basic Law so that freedom of their profession can be safeguarded.

8.1.2 However, there is controversy as to whether the provisions on press freedom should be laid down in broad principles or in great detail:

8.1.2.1 A number of journalists feel that Basic Law being a constitutional document should not be too specific. The itemising of freedom of the press is itself a kind of restriction to the press freedom because the press will be deprived of those freedom that are not listed in the Basic Law. Therefore, they advocate the setting down of general principles in the Basic Law, and they oppose strongly the idea of enacting a law on the press.

8.1.2.2 Some people feel that since freedom of the press is extremely important, the Basic Law should follow the example of the American Constitution and stipulates that the legislature of the HKSAR cannot pass any law that restrict the freedom of the press. In so doing, freedom of the press can be most securely safeguarded.

8.1.2.3 However, it was contended that the above concept has to be adjusted when put into practice. The American Constitution does give direct protection to freedom of the press, but on the other hand, in protecting the rights and interests of her nationals, the American government also imposes certain restrictions on freedom of the press. Therefore, the Basic Law should embrace the following two basic principles :

- a) Freedom of the press should be enshrined in the Basic Law,
- b) The press must abide by the laws enacted by the legislature.

8.1.2.4 Some people held that the Joint Declaration already provides that the present system of Hong Kong shall remain unchanged for 50 years. Therefore, the Basic Law should stipulate that the existing press freedom in Hong Kong shall be maintained. And all members of the press shall enjoy equal treatment.

8.1.2.5 According to other more specific proposals on the general principles, the Basic Law is to state that the press freedom should include the following:

- a) All citizens have the right to know.
- b) Hong Kong enjoys freedom of the press under capitalism, all interpretations of freedom of the press in future should be based on the conventions and precedents of the capitalist community of Hong Kong.
- c) All news broadcasting organisations and journalists should enjoy freedom of coverage, reporting, release and transmission of news, the government and government officials should not be allowed to pre-censor the news.
- d) In order to ensure the freedom and independence of the press, the government should not subsidise or bribe private press organisations.
- e) Licences and deposits are not required before a newspaper or magazine starts publishing.
- f) No one is punishable for reporting, discussing, or commenting on academic, cultural and political issues.
- g) Freedom of importing and exporting publications.
- h) Freedom of importing and exporting machinery used for the press.

8.1.3 Some members of the press pointed out that even though provisions under the Basic Law cannot be too detailed, the general principles which may be too abstract can easily be exploited by those who want to restrict freedom of the press. For instance, governments of some Southeast Asian countries ban the publishing of bad news or unfavourable comments by forcing the newspaper to close down or expelling journalists on the pretext of protecting the interests and security of their own countries. The term "state secrets", if not elaborated, can enable some immaterial regulations (such as those which have existed in a liberal country, e.g. Britain, for a long time) to become a tool of restricting freedom of the press. At present, there are still some countries in which unauthorised broadcasting of weather reports can result in prosecution and imprisonment. As a socialist country, China differs from the capitalist Hong Kong in things like vocabulary, interpretation and practice. Thus, it is necessary to set down clearly what kind of press freedom the HKSAR will enjoy so that members of the press will know exactly what rights they possess, and will be subject to more specific and greater protection in the operation of the press. Therefore, it was proposed that the various kinds of press freedom Hong Kong enjoys or even the rights and interests that the press wants to acquire in future should be listed out by a press law or

by some other means. The spirit of legislation is basically to protect, and not to restrict. It will be adequate to stress that the HKSAR will have independent judicial power.

8.2 Issues on the bottom line for freedom of the press:

- 1) As regards whether freedom of the press should have a bottom line, the Hong Kong press holds unanimously that a bottom line of freedom of the press should not be drawn in the Basic Law. The reason is that even though members of the press should not enjoy more rights than ordinary citizens, neither should they enjoy less. If a bottom line is drawn in the Basic Law, it will only restrict freedom of the press and exert invisible pressure on journalists who consequently will not be able fulfil the responsibilities of their profession.
- ii) The press of Hong Kong admits that press freedom is not absolute, but the court's arbitration is required only when it infringes upon other freedom. The abuse of press freedom can be restrained by legislation and an independent judicial system.

9. Consensus

Hong Kong, as a capitalist society, has all along been enjoying freedom of the press. Under the concept of "One country, Two systems", the Basic Law must safeguard freedom of the press in order to maintain Hong Kong's previous lifestyle successfully. In addition, the conventions and and case laws of the capitalist community of Hong Kong should serve as the basis on which freedom of the press is interpreted. It is inadvisable to include any provisions which may interfere in the press freedom or the freedom of speech. Freedom of the press should be listed with the freedom of speech and of publication in the Basic Law.

* If there is any discrepancy between the Chinese and the English versions, the Chinese version shall prevail.

新聞自由最後報告

(1987年3月14日經執行委員會通過)

中華人民共和國香港特別行政區基本法諮詢委員會
文教及居民專責小組

1. 引言 香港目前社會的一個特色是傳播事業發達，刊物報章種類繁多，在國際間亦被視為一個享有言論/新聞自由的地方。隨着《中英聯合聲明》的簽署，香港主權在九七年後將會回歸中國。雖然中國肯定了香港的資本主義制度可以不變，而將來中國會實行「一國兩制」，可是許多人便對九七以後的香港能否保有現時所享有的新聞自由表示關心，希望尋求一種形式使香港在一國兩制下保有新聞自由，並透過基本法的制訂，使原有的新聞自由受到保障。

2. 《中英聯合聲明》的有關部份

2.1 聯合聲明第三項第三節：現行的法律基本不變

2.2 " 第五節：香港的現行社會、經濟制度不變；生活方式不變。
香港特別行政區依法保障人身、言論、出版....
等各項權利和自由。

2.3 " 附件一第二節：在香港特別行政區實行的法律為《基本法》，以及香港原有法律香港特別行政區立法機關制定的法律。

2.4 " 第三節：法院依照香港特別行政區的法律審判案件，其他普通法適用地區的司法判例可作參考。

2.5 " 第十三節：香港特別行政區政府保持香港原有法律中所規定的權利和自由，包括人身、言論、出版.....的權利。
《公民權利和政治權利國際公約》適用於香港的規定將繼續有效。

3. 新聞在現代社會上的功能

在現代社會中，資訊的自由流通是十分重要的，所有商業活動，都有賴於迅速和自由地擁有資訊才可以參與競爭，而新聞業在這方面就為大眾提供了非常重要的服務。此外，為了使其成員積極地、明智地參與地區或國家的事務。市民必需對日常的事務有足夠的認識，才能使他們在選舉時可以作出公平的決定，並使他們對管治者有適當的警覺性。因此，現代的社會要求對事情有清楚及準確的報道，包括事情發生的背景與原因，給市民作為討論及批評的資料。而現代社會所必需的，便是具有足夠的不同類型的報紙，以便市民得以接觸到各個不同的觀點，清楚而準確的明瞭事情的真相。

此外，基于新聞業能產生輿論壓力，影響政府的人事和政策，新聞業可以說是繼行政、立法和司法三權之外而成為第四種制衡的力量，監察政府工作及促進社會發展。

4. 目前新聞業的情況

4.1 現時香港註冊的報章有68份(中文51份、英文14份、雙語1份、日文2份);雜誌有516份(中文317份、英文130份、雙語68份、三語1份);電台2間;電視台2間。從這些數字可以看到,香港的傳播事業十分蓬勃。綜合而言,其特性有四點:

4.1.1 出版時除需繳交保證金或人事擔保一萬元外,基本上沒有限制。

4.1.2 商業活動,自負盈虧:

香港眾多傳媒中,除了香港電台是政府擁有外,都是私人企業,屬商業活動的一種,大部份新聞機構需要自負盈虧,故此都十分重視公眾對其接受的程度。

4.1.3 不同政治觀點:

香港新聞業之間,存在着相當明顯相異的政治觀點,這些代表各種政治力量、觀點的刊物,都可以自由出版。

4.1.4 遵守法律:

香港的報刊雜誌及電子傳媒,都必需遵守法律。根據政府檔案顯示,1985年香港雜誌被政府檢控的有46宗,報章被政府警告的有5宗,全都是觸犯第150條例《不良刊物條例》,因為圖片或文字帶有淫褻性而受到檢控或警告。

此外,個人或公司在1985年以誹謗為由入稟法院控告報章雜誌的約有60宗。

4.2 在處理電子媒介的問題上,就有着更嚴格的規例:

由於電視台的頻道有限,而且可說是免費提供服務的,儘管將來或會有有線電視出現,觀眾要付錢才可以收看節目,可是卻無減其強制性,仍然是是一扭開關,電子媒介所持的觀點便自然侵入每一個家庭,故此其影響力十分龐大,加上電視台頻道通常是被視為公眾財產,所以國家通常都會對電子傳媒的擁有者予以一定限制,(例如其國籍必須是本國國籍等)並不單純視之為普通商業活動。香港亦不例外:目前法例規定,所有獲發電視牌照的公司,其大多數積極參與管理公司事務的董事必須是經常在香港居住的英國國民,以防止這強而有力的傳媒被濫用。

4.3. 現時執行此類條例的機構有:

- (1) 法庭 (2) 警務處 (3) 影視及娛樂事務管理處 (4) 報刊註冊處
(5) 海關

5. 目前*法例對新聞出版業的限制及其理由

5.1 與新聞自由有關的幾條主要法例內容

與新聞有關的條例內容

主要的政府權力

5.1.1 第268條附件

印刷品(管制)規例

(Printed Documents (Control) Regulations)

- ①所有印刷文件(包括書、單紙、報紙等)

港督有權免除任何印刷品受此條例限制。

必須印上承印人的姓名及詳細地址。

除了兩類印刷品之外：

- a. 純粹用作商業、專業、或社會目的的印刷品，而該等印刷品完全沒有政治內容。社團、俱樂部、工會等組織的內部刊物並不算是用作社會目的。

- b. 在香港以外印刷的文件。

- ②承印、出版或幫助發行觸犯上述條例者屬犯法。

- ③如果沒有合法理由，擁有沒有印刷商姓名地址的印刷品，也屬犯法。

5.1.2 第268條附件

報刊登記及發行規例

(Newspapers Registration and Distribution Regulations)

- ①所有報章必須註冊，呈交擁有人、印刷商、出版人或編輯的有關資料。註冊費\$100，另每年年費\$100。

港督有權免除任何印刷品受此條例限制。

- ②所有報章必須經領有註冊處牌照的發行人發行。發行牌照年費\$100。

③註冊官可以拒絕或取銷任何人的發行牌照，如果：

- a. 該發行人代一張已被法庭終止出版的報章辦發行工作；
- b. 如果註冊官認為在公眾安全及秩序的前提下是有需要或有利的。（發行人可向港督會同行政局提出上訴）

④新聞通訊社所發出的公報，如得到註冊官滿意，認為該公報只發給已註冊的本地報章，不會向外發售，可免註冊。

5.1.3 第52條

電視條例

[Television Ordinance]

①港督會同行政局可以制訂條例釐定下列電視節目的標準：

- a. 廣告；
含有政治或宗教內容的節目。
- b. 含有政治宗教內容的節目。

②為配合誹謗法，電視中的說話或其他，將視為與刊物的文字等同。

③電視台持牌人必須應影視及娛樂事務管理處之要求，提供任何準備播放節目的資料，包括劇本、讀稿。

④影視及娛樂事務管理處可禁止播放任何節目，任何部份或任何類型內容。如影視處認為對香港秩序及安定有影響，可以以口頭上禁播。

（持牌人有權上訴）

①港督有權在任何時間撤銷電視台的牌照，如果：

- a. 持牌人在一個月限期內無法付出指定的專利費或罰款；
- b. 持牌電視台進行清盤；
- c. 如果他認為香港的安全有此需要。
- d. 電視台三次違反電視條例而遭罰款。

5.1.4 第52條附件

電視(節目標準)規例

(Television (Standards of Programmes) Regulations)

- ① 電視節目中有關下列內容，應有合理比例：
 - a. 完全屬英國或英聯邦來源的內容；
 - b. 完全是香港來源的資料。
- ② 影視及娛樂事務管理處可以不時指定他認為合理的內容比例。
- ③ 電視節目不可包括那些可能會：
 - a. 破壞社會良好規矩及品味；
 - b. 誤導或導致恐慌；
 - c. 鼓勵或引導犯罪、破壞或不遵守社會規則；
 - d. 破壞法律或社會建制的威信，包括任何宗教；
 - e. 為外國政治組織的利益服務的節目
- ④ 電視台的國際及本地新聞報道，應該：
 - a. 公平的；
 - b. 正確的；
 - c. 其來源及供應須得影視及娛樂專員認可。

此規例屬《電視條件》附件。

5.1.5 第150條

管制色情及不雅物品條例

(Control of obscene and Indecent Articles Ordinance)

- ① 成立「色情及不雅物品審裁處」裁定法庭及裁判司所交來的物品及決定公眾地方所展示的事物是否不雅。

② 審裁處成員必須由一位主審裁判司及兩位或多位審裁員組成，審裁員由首席按察司委任。

③ 審裁處將物品評定為三類：

- a. 非色情及非不雅類，不予限制
- b. 不雅類，需要包裝及附加警告語句後才能出售，但不能售與18歲以下的人士
- c. 色情類，禁止發行及出售

5.2. 限制理由：

美國大法官 Justice Holmes 說過：“儘管美國憲法修正案規定政府不得通過任何法律以壓制言論自由，但自由從來都不是絕對的”^①。像其他權利一樣，關於言論、出版自由的權利是有限制的。就是說，它的自由行使意味着要有一個有組織的社會的存在，一種公共秩序的存在。沒有這種秩序，自由就會被濫用，甚或會喪失殆盡。所以要行使新聞自由的同時，要考慮下列的因素：

5.2.1 個人權益 -- 為了保障個人名譽及利益，尊重隱私權，通常法律都會規定凡涉及私生活的言論，都不能以語言文字或出版物加以發表。不過，假如被揭露私生活的人物是知名人士或公眾人物 (Public figure)，則被告 (即被控告刊登或播放是項消息的傳媒)，只要證明它是不含惡意 (absence of malice) 的真實報道，便不會犯誹謗罪。因為公眾人物屬大眾關注的對象，他們的一舉一動都會惹起大眾的注意，而且不能排除公眾人物故意泄露私隱以宣傳自己的成份，所以只要不是沒有惡意的真實報道，是不算犯法的。

5.2.2 社會秩序

各國立法機關通常都會立例維持社會秩序，最常見的是對有關鼓吹暴力，煽動非法行為及渲染色情的限制。

5.2.3 司法公正 -- 為了保證所有人都可以得到公平的看待，法院會在審訊前，審訊時和審訊後，對新聞報導或評論有關案件時有一定的限制。

- a. 審訊前 -- 基於任何人在未被定罪前都是清白的大前提，法律會規定報章雜誌在報導時不可肯定疑犯是犯了罪，亦要避免使用「凶徒」，「強盜」等字眼，以免被告本來是無辜的，在得到法庭公平裁定無罪後，却受到社會歧視。

^① 美國判例 249 U.S. at 52

- b. 審訊時 -- 在審訊時，所有報章都只能詳實將法庭內的審訊過程報導出來，不可擅加意見，否則便會有被檢控的可能。
- c. 審訊後 -- 有時為了保障訴訟人的權益，法官如果下令不准媒介報導訴訟人的姓名、地址等，傳播媒介在任何時間揭露訴訟人的身份都屬藐視法庭，會受檢控。

因此，在考慮新聞自由時，要同時考慮上述二類有可能與之交錯衝突的自由，才能切合社會的需要。

6. 新聞自由的界限

那麼，到底新聞自由的界限在那里呢？

有學者認為：言論界乎思想與行動兩者之間。思想是屬於精神範疇，是絕對的，不可侵犯的，政府不能干涉人的信仰，或以任何方式干涉精神自由。任何一個人的行動，都應以不損害他人的自由為限度，超過這限度就要受到限制了。

至於目前有關新聞自由的界限，有三種說法：

- 6.1 防患未然的傾向論 -- 立法機關有責任確認甚麼類型的言論應被視為非法，例如在報章雜誌中，惡意鼓吹種族歧視的論調，勢必引起暴力抵制。故此立法機關如事先立例禁制，並沒有違反新聞自由的精神。
- 6.2 立即而明顯的危機 -- 美國大法官 Justice Holmes 在 Schenck vs U.S. 案中寫道：“如使用文字的環境和性質，都會引起立即而明顯的危機，則國會有權制止引起實際禍害的言論”^②。這說明新聞自由不是絕對的權利。可是在加以限制時，要有適當的條件。即是說諸如暴亂、破壞、教唆等言論已具備行動的性質，會引起直接危險時，才可依法予以檢控。
- 6.3 不加限制的絕對論 -- 凡屬文字或照片，幾乎絕對不能受壓制或禁止，因為美國憲法第一條修正案規定言論自由不受侵犯。只有在為了避免有直接和嚴重禍害時，才可例外處理。

^②美國判例 249 U.S. at 52

7. 解决矛盾衝突的方法

7.1 法庭 -- 所有自由權利都是在法律規定的範圍內行使並享有的。每一個公民都應享有通過報刊或用其他途徑發表意見的權利。但這公民權利只有在公民遵守法定手續的條件下，才能實際存在。因此為了公平的保障每一個人，國家通常在憲法中賦予高度的自由，再在附帶法例中加以限制，以防止有濫用自由侵犯他人權利的情況出現。所以當出現矛盾衝突時，大家可以透過法律途徑以尋求公平的裁判，解決爭端。

7.2 自律 -- 新聞界在保障社會利益和他人權利等方面，必須自律。自律，在消極方面，是不違反法律；積極方面，則是正確報道，公正評論，發揮新聞的正當功能。

8. 具體問題：

8.1 基本法如何保障新聞自由：

8.1.1 討論基本法如何保障新聞自由時，了解新聞自由的本質是很重要的，綜合目前聯合國新聞自由會議的“新聞自由公約”、“世界人權宣言”及國際新聞學會文告的意見，新聞自由的內涵有：

- a. 經營大眾傳播業（包括廣播電台與電視台的電子媒介和報紙、雜誌等印刷媒介）的自由。
- b. 採訪消息自由
- c. 傳遞消息自由
- d. 發表意見的自由
- e. 接受消息與意見的自由

根據《中英聯合聲明》及基本法起草委員會第二次全體大會通過的《基本法結構(草案)》，並無特別提及新聞自由的部份。有些起草委員認為“言論自由”及“出版自由”已經可以包括了“新聞自由”，可是觀乎上述的五種自由，言論自由及出版自由似乎未可一一包括，故此香港新聞業普遍認為應在基本法內列明有新聞自由，才可以確保有新聞自由。

8.1.2 可是在究竟基本法應只寫上大原則還是詳細逐點逐項把新聞自由的部份列出這問題上，仍然存在着爭論：

8.1.2.1 許多新聞業人士都認為基本法是地方憲法性文件，不可能寫得太具體，而且逐點逐項的列出甚麼是新聞自由，反而會限制了新聞自由，因為沒有列出的，香港的新聞業就喪失權利去擁有了。所以他們贊成只須寫上大原則，並且強烈反對有新聞法的設立。

- 8.1.2.2 有人認為新聞自由是很重要的，故此基本法應仿效美國憲法的有關做法，就是寫明香港特別行政區的立法機關不可通過任何限制新聞自由的法例。這樣，可以使新聞自由得到最大保障。
- 8.1.2.3 亦有人認為上述的概念在實際推行時需加以適量修訂，例如美國亦是在憲法上直接保障新聞自由，可是另一方面，却在維護公民權益時，在法律上對新聞自由予以適當限制，故此認為基本法應具有二項精神：
- a. 新聞自由應在基本法予以明文保障
 - b. 立法機關所制定的法律，新聞業必須遵守。
- 8.1.2.4 有人認為《中英聯合聲明》保證香港現行制度九七年後五十年不變，故此基本法應寫明香港保存目前享有的新聞自由，並對所有新聞業一視同仁。
- 8.1.2.5 有些提法雖然都屬原則性，可是就比較具體，他們認為基本法要列明新聞自由應包括：
- a. 市民有知的權利。
 - b. 香港所習慣的是資本主義的新聞自由，一切解釋須以香港資本主義社會慣例及判例為準。
 - c. 所有新聞傳播機構及新聞記者，應享有採訪、報道、發布及傳遞新聞的自由；政府及政府官員不得在事前檢查或阻止。
 - d. 政府為了保障新聞的自由和獨立，不得以財力津貼或利誘私營新聞事業。
 - e. 報刊在出版前無須申領執照亦無須繳納保證金。
 - f. 任何人不會因報道、討論、批判有關學術、思想、文化、政治等問題而獲罪。
 - g. 進出口刊物的自由。
 - h. 進出口新聞傳播業機器用品的自由。
- 8.1.3 有些新聞業人士則認為儘管基本法本身未必可以寫得太詳盡，可是原則性的寫法太抽象，很容易讓有意箝制新聞自由者製造方便，例如最近東南亞有些地區政府，為了禁止發表壞消息或批評，便利用國家利益、國家安全這些字眼來迫使報紙停刊，或把記者驅逐出境；根本所謂「國家機密」，若不加以闡釋，可以令一些似乎無關痛癢的法例（一些存在於自由國家如英國中已有多年的法例），成為了限制新聞自由的工具。目前仍有一些國家，未經正式許可而發表天氣預測，即可被判監禁。實行社會主義的中國，在辭義、解釋及習慣認識上，與香港所享有的資本主義形式，都有不同。故此有需要清楚說明香港特別行政區享有甚麼的新聞自由，讓新聞業清楚明白他們擁有的權利是甚麼，保證新聞業在運作時有更大及更具體的保障。所以他們認為或許可以用新聞法或其他方法，將香港新聞業現時享有的各種權利，甚或希望可以擁有的權利列出來，因為畢竟法律的基本精神在於保障而非限制，只需強調香港特別行政區擁有司法獨立便可以了。

8.2 新聞自由的底綫問題：

- (一) 關於新聞自由應否有底綫這問題，香港新聞業一致認為在基本法內不應有列出任何底綫限制新聞自由，因為儘管新聞業人士不享有比普通居民的權利為多，亦不應比之為少。而且在基本法內列有底綫只會箝制新聞自由，使新聞工作者有無形的壓力，不能盡新聞專業的職責及發揮其主要功能。
- (二) 香港新聞業承認新聞自由不是絕對的自由，可是它只有在侵犯到其他自由時才需由法院予以仲裁，透過法制及獨立的司法架構，足可限制濫用新聞自由情況的發生。

9. 結語

香港資本主義社會一向享有新聞自由。香港特別行政區在「一國兩制」的政策下，如果要成功地保持原有的生活方式，基本法必定要保障新聞自由，並且要以香港資本主義社會的慣例與法庭判例來理解新聞自由，不宜寫上任何干涉新聞自由的文字。新聞自由在基本法中應與言論自由、出版自由並列。

