

ssrc special feature

The Role of Academic Research in the Making of Broadcasting Policy: The Case Study of Hong Kong

MEI NING YAN

Hong Kong Baptist University

Introduction

Ideally, a government consults all stakeholders before devising an important policy. In the process, academics may make meaningful contributions by researching what kind of policy and any detailed arrangements of such policy, that would be in the best interest of the public. Unfortunately, this is not the norm in Hong Kong. It seems that the making of broadcasting policy, particularly arrangements and changes arising from convergence, has been largely influenced by industry players in which contributions by academics are minimal in most cases.

Hong Kong's Major Broadcasting Policymaking Exercise in the Mid-1980s

In Hong Kong, the most comprehensive review of broadcasting policy was conducted in the mid-1980s. In February 1984, the Governor-in-Council asked the Broadcasting Review Board (BRB) to recommend the broadcasting policies to be adopted by the colonial government at the time. This was done in anticipation of the expiration of the territory's television and radio licenses in the late 1980s. The BRB conducted its review and submitted a report in mid-1985. The Hong Kong government quickly implemented two major recommendations of the BRB: 1) revamp the regulatory mechanism for the territory's broadcasting industry and establish the Broadcasting Authority (BA) to serve as the regulator for the broadcasting industry; and 2) invite interested parties to launch a cable television service. Nonetheless, the colonial government did not take up some other important but sensitive recommendations made by the BRB, such as 1) turning Radio Television Hong Kong (RTHK), a government department, into an independent public broadcaster; and 2) setting up a pilot scheme to test the feasibility of community radio stations. As will be mentioned below, the reluctance of the Hong Kong government to adopt these two recommendations has had serious repercussions in recent years.

The BRB was a high-powered committee chaired by a High Court judge, Justice Noel Power. It had eight official members, all heads of various government departments. Eight other unofficial members included a member from the Executive Council and a member from the Legislative Council. Among the other unofficial members was Professor Lam Yat-wah, dean of the Faculty of Science at the Chinese University of Hong Kong (CUHK). Apparently, Professor Lam was appointed because of his expertise in science and engineering as he had not been involved in any broadcasting policymaking before. As the BRB

presented its research and recommendations as a group, further research is required to determine the exact contributions of Professor Lam. The BRB report listed in its annex A the names of people, groups and companies who wrote to BRB during the review period. Further research is also needed to find out if any academics were among the some 200 individuals mentioned.

When the BRB report was published for consultation, the Hong Kong government received 777 submissions from individual members of the public or groups of individuals; 91 submissions from 166 organizations and associations; and 73 submissions from commercial and industrial companies.¹ The magnitude of responses reflected the widespread interest of the public and the media in the topic. Meanwhile, it is interesting to note the following remarks summarizing public opinions at the time:

"The BRB Report enjoyed less support from commercial and industrial sectors, whose attention was drawn to those recommendations which they felt were incompatible with normal business practices or which could be harmful to the commercial broadcasting industry, such as a ban on tobacco advertising, the proposal for the public broadcaster to monopolize prime time on commercial channels, and proposals aimed at limiting the corporate structure of commercial licensees."²

These recommendations, though opposed by broadcasters, were soon taken up by the Hong Kong government. At the time, Hong Kong had only two television broadcasters, Television Broadcasts Limited (TVB) and Asia Television (ATV), both offering free-to-air television. TVB was the dominant broadcaster commanding 80% of the territory's television viewership and it took the lead in fighting against the BRB. The author joined the news department of TVB in September 1987. The author observed in the immediate years before and was also told by TVB colleagues that TVB lobbied hard, first for the BRB to accept its views and later against many BRB recommendations.³ Nonetheless, because of the BRB composition and the support by the general public for most of the BRB recommendations, the lobbying by TVB was generally ineffective. This contrasted with what happened in later consultation exercises in the early 2000s.

The Broadcasting Authority

The BA came into being in late 1987. It is a statutory body responsible for broadcasting regulation. However, it is far from being an independent regulator because of its composition and operations. Each of its 12 members are hand-picked by the Hong Kong government. Three are government officials and nine others, including the chairman, are unofficial members from different walks of life. Among the latter, there has always been a mixture of lawyers, accountants, headmasters,

¹ See Administrative Services and Information Branch, Hong Kong Government (1986), *A Summary of Public Opinion on The Broadcasting Review Board Report*, para. 1.5.

² *Ibid.*, para. 2.3.

³ See also Television Broadcasts Limited (1986), *Observations on the Broadcasting Review Board Report: A Submission to the Government*.

academics and media professionals. Before the 1997 Handover, three communications lecturers from CUHK, Drs. Paul Lee, Kenneth Leung and Joseph Chan, and one media law lecturer, Johannes Chan, from the Faculty of Law at the University of Hong Kong, have served on the BA. However, all four served for a single term of two years. Some left on their own accord while others were not re-appointed. It is difficult to figure out the exact reasons why these lecturers were not re-appointed with the one exception of Dr. Lee who left Hong Kong to live in Australia. Sources said that the Hong Kong Special Administrative Region (HKSAR) government formed after the 1997 Handover was reluctant to re-appoint Johannes Chan, who is also a human rights expert. Since the 1997 Handover, no communications or law lecturers have been appointed. From 2003, Professor Leonard Cheng from the Hong Kong University of Science and Technology, specializing in economics and competition, has sat on the BA. Apparently, his appointment is longer than his academic predecessors.

In Hong Kong, most government-appointed statutory or advisory bodies include the above-mentioned mixture of membership. The appointment process is far from transparent and accountable. Moreover, like many other such bodies, the BA conducts most of its meetings behind closed doors. It is therefore very difficult to gauge the contribution and competence of individual BA members. From interviews conducted by the author of this paper,⁴ an impression emerges that many BA members in their monthly meeting heavily rely on briefings prepared by the BA secretariat. The latter composes of officers from the Television and Entertainment Licensing Authority (TELA), a government department.

The author consulted Professor Joseph Chan when revising this paper.⁵ While serving on the BA, Chan said he had opportunities to express views on various broadcasting topics. One important issue then was whether public access channels should be introduced. But he was not sure what weight his views carried especially when government officials found them disagreeable. He also agreed that the operation of the BA has been largely led by TELA officials. Professor Chan has no idea why he was not re-appointed.

Policymaking and Consultations Since the Late 1990s: Issues Arising from Convergence

The row between the British colonial government and the Chinese communist government in the early 1990s over the transitional arrangements of Hong Kong prevented the territory from devising an effective broadcasting policy to cope with convergence. It was one year after the 1997 Handover that the HKSAR government began to work on the policy issues arising from convergence. Since then, several major consultation papers have been published, as shown in *Table 1*.⁶

⁴ Over the years, the author has talked with those within the BA and from the broadcasting industry who made representations before the BA.

⁵ The author expresses her sincere thanks to Professor Joseph Chan, who graciously spared time to talk about his observations and insights on the topic, some of which have been incorporated into the revised version of this paper.

⁶ Source: HKSAR Commerce and Technology Branch (<http://www.cedb.gov.hk/ctb/eng/broad/info-consult.htm>).

Table 1. Consultations on policy issues arising from convergence

| | |
|----------------|---|
| February 1998 | Review of the television environment |
| September 1998 | Review of television policy |
| December 2000 | First consultation on digital terrestrial broadcasting |
| December 2003 | Second consultation on digital terrestrial broadcasting |
| March 2006 | Consultation on the establishment of the Communications Authority |
| January 2007 | First consultation on mobile television and related digital broadcasting matters |
| March 2007 | The Committee on Public Service Broadcasting Review submitted its report to the HK government. As of today, the HK government has not published any consultation paper on this topic. Moreover, although this is a very important issue in broadcasting, it is not so much related to convergence |
| January 2008 | Second consultation on mobile television |

The consultations listed in *Table 1* were conducted in a manner markedly different from the BRB exercise in the mid-1980s. The BRB consisted of many unofficial members, including at least one member from the academic circle, and their input was included in the BRB report. On the other hand, the consultation papers concerning convergence listed in *Table 1* regularly followed another pattern. Like most consultation papers published by the HKSAR government in recent years, they were researched and written in-house by government officials. Currently, the Communications and Technology Branch (CTB) is responsible for broadcasting policy. The officials at the CTB are administrative officers who have postings in different departments and, as a general rule, do not have expertise in broadcasting matters. When writing up these consultation papers on convergence, they sought assistance from the departmental officers in the Television and Entertainment Licensing Authority [Hong Kong] (TELA), who have years of experience in broadcasting regulatory matters. But the TELA only has a few officers in charge of research. The consultation papers listed in *Table 1* therefore relied heavily on consultation papers on similar topics published in the UK, Australia and other Western countries. This is a very common practice in Hong Kong⁷ because all administrative officers in the government are proficient in English and a few of them even come from the UK or Australia.

⁷ This is an impression gathered after reading many consultation papers, both local and overseas, over the years.

Consultations on Digital Terrestrial Broadcasting

Therefore, as usual practice, no input was made by local academics to these consultation papers. Instead, the government officials outsource research topics and hire consultancy firms if they find a need for external expert assistance. In the first consultation paper on digital terrestrial broadcasting (DTB) published in late 2000, two consultancy firms were hired, one to examine the frequency planning options for the introduction of digital terrestrial television (DTT) in Hong Kong⁸ and the other to assess the economic and market potential of digital audio broadcasting (DAB).⁹ In recent years, the author came across letters from the HKSAR government sent to local universities, inviting interested parties to bid for consultancy work on telecommunications topics. Nonetheless, there are major differences between academic research output and consultancy output. The latter is the product of a commercial venture, and its focus is more on fulfilling the demands of the HKSAR government rather than finding out what is in the public interest.

Once a consultation paper is published, it is open for all parties to make submissions. The consultation period usually lasts for three months. But on a number of occasions, submissions were so few that the consultation deadline had to be postponed. In relation to broadcasting policy, the stakeholders can roughly be grouped into two: 1) those from the broadcasting and telecommunications industries and the related fields; and 2) the public as viewers and listeners. For the consultations listed in *Table 1*, the submissions were mainly from broadcasters, telecommunications services providers and companies and groups from the related industries (see *Table 2*).

In the first DTB consultations, there were only 24 submissions. Among these, 17 were from radio and television stations, and only three were from individuals, including one retired academic from Beijing who made a very short submission of a couple of pages commenting on purely technical matters. When the HKSAR government conducted its second consultation on DTB, there were 29 submissions. Again, only three were from private individuals. Amongst whom, none of them was an academic. No academic made any submission in the first consultations on mobile television services, all submissions were from those with a commercial interest.

⁸ See para. 4.5 of the Consultation Paper.

⁹ *Ibid.*, para. 8.3.

*Table 2. Total number of submissions to consultation papers and their distribution*¹⁰

| | TV and radio operators | Telecom services operators | Related industries and bodies | Political parties | Public bodies | Private individuals | Academics | Total submissions |
|---------------------------------------|------------------------|----------------------------|-------------------------------|-------------------|---------------|---------------------|-----------|-------------------|
| 1st consultation on DTB | 7 | 2 | 8 | 2 | 2 | 2 | 1 | 24 |
| 2nd consultation on DTB | 10 | 2 | 9 | 2 | 3 | 3 | 0 | 29 |
| Consultation on CA | 7 | 8 | 5 | 1 | 2 | 5 | 2 | 30 |
| 1st consultation on mobile television | 6 | 6 | 11 | 0 | 0 | 0 | 0 | 23 |

Indeed, the DTB consultations were dominated by the two free-to-air television broadcasters — TVB and ATV. They lobbied hard and bitterly opposed the first DTB consultation paper published in late 2000. This led to delays in the introduction of DTT in Hong Kong. The HKSAR government came up with the second DTB consultation paper in late 2003, yielding to demands of TVB and ATV. The most obvious change was that the HKSAR government did not allow any new entrants to operate DTT so to protect TVB and ATV from competition. Eventually, DTT was launched in late 2007. Nonetheless, Hong Kong viewers had no choice for some years other than to watch programs produced by TVB and ATV. In addition, RTHK asked for a dedicated television channel when DTT was launched, but the request was turned down. Meanwhile, the HKSAR government came up with the decision that it would not take the lead to launch DAB. As a result, Hong Kong for years to come will continue to have only a handful of analog radio channels.

It is a pity that the lobbying for DTT arrangements was so one-sided, wholly dominated by the incumbent television broadcasters. There was no input from academics in the preparation of the two consultation papers. Moreover, upon the publication of the two consultation papers, no academics made any submissions during the public consultation period on the possible impact of DTT licensing on the viewers or on the refusal by the HKSAR government to give RTHK a dedicated television channel and to

¹⁰ Source: <http://www.cedb.gov.hk/ctb/eng/broad/info-consult.htm>.

launch DAB. Basically, viewers and listeners as stakeholders were absent in DTB consultations and their interests were not properly voiced and protected. Of course, apart from the lobbying efforts of the television broadcasters, the HKSAR had other important considerations, mainly political ones, in its decisions whether to open more television and radio channels for public use or access.

Backlash is emerging, albeit slowly. In 2005, some political activists took things into their own hands by launching a pirate radio station. They were prosecuted. The trials surrounding this case attracted significant public attention in late 2007 and early 2008. This has led to debates as to why DAB and community broadcasting have not been introduced in Hong Kong. More petitions, demonstrations and forums have also been held since 2006 on the future of RTHK. One issue highlighted is whether RTHK or future public broadcasters should have a dedicated television channel. In other words, social movements have emerged and momentum built up to challenge the existing HKSAR broadcasting policy.

Consultations on Single Regulator and Mobile Television

In mid-2006, the HKSAR completed its consultation on the issue of a single regulator. But it has so far not come up with any decision whether to establish the Communications Authority. Two academics made submissions on this consultation paper. One is Professor Leonard Cheng who has been a BA member for some years. His submission was only one page long, mainly expressing his agreement with the proposals contained in the consultation paper. Another submission came from Dr. Mark Williams, who is an expertise on competition matters. His submission was five-pages and limited to the competition aspects of the proposed new regulator.

As seen in *Table 2*, no academic made any submission to the January 2007 mobile television consultation paper. The second consultation paper was just published in January 2008. Further research is needed to find out why the HKSAR government needs to come up with two consultations on the same topic in such a short time period.

Hong Kong Academics and Their Role in Broadcasting Policymaking

This part examines the role of Hong Kong academics in broadcasting policymaking by answering the following questions: a) Where are the academics? b) What have they been doing? c) What should they do in the future in relation to broadcasting policymaking in Hong Kong?

As seen above, there has always been one academic on the BA since its formation. Professors Paul Lee and Johannes Chan were interested in broadcasting topics but have been fully committed in other topics and matters in recent years. The two are therefore not very active in their broadcasting research. Another former BA member, Professor Joseph Chan, is a very well-established communications academic who has conducted research into broadcasting matters. But he has spent much more time on journalism and communications topics and on issues concerning China.

Professor Leonard Cheng, the academic currently serving on the BA, specializes in economics and

competition. Indeed, there is not a single established academic in Hong Kong, at the moment, who has his or her research effort concentrated on the territory's broadcasting policy.

The Author's Own Experience

This author was a working journalist until September 1999 when she joined the Department of Journalism at the Hong Kong Baptist University (HKBU). Since then, she has written conference papers¹¹ and a book chapter on Hong Kong broadcasting policy.¹² But her time is split between media law and broadcasting policy. For example, the author spent a lot of time in 2003 researching Article 23 legislation, when the HKSAR government attempted to introduce harsh national security laws and sparked off a big row. This time period somewhat coincided with the DTB consultations. Throughout these years, the author has done her broadcasting policy research single-handedly. She has so far not been able to team up with senior colleagues to locate the necessary resources. Nor did she have the help of postgraduate research students for the purpose. At Hong Kong universities, research students seldom work on broadcasting policy.

The author has some experience participating in the consultation process. In early 2006, Hong Kong invited seven members of the public to form a committee to review the territory's public service broadcasting (PSB). This is a very important issue concerning Hong Kong's broadcasting policy. The HKBU's School of Communication held a symposium jointly with CUHK's School of Journalism and Communication to discuss the topic. On that occasion, the author, along with several other academics, made presentations.

Later, the author was invited along with others to participate in focus groups formed by the review committee. The author joined the PSB governance structure focus group. In that focus group, there were a total of nine people: two other academics, one specializing in politics and the other specializing in Chinese language as well as an accountant who chaired the group; other members included two more accountants, one media professionals and two NGO executives. The focus group had four meetings during the summer. The chairman of the review board, Mr. Raymond Wong, had served as controller of TVB News for many years, and the author had worked under him. As far as Wong was concerned, the author was not an academic with legal training or expert knowledge in broadcasting policy, but a former

¹¹ Yan, M.N. (2007) *Broadcasting freedom in post-1997 Hong Kong*, IAMCR conference. Yan, M. N. (2006) *Public service broadcasting in Hong Kong – Current affairs programme and independent production* (in Chinese). HKBU seminar. Yan, M. N. (2004) *Introducing digital sound broadcasting to Hong Kong: policy issues* (in Chinese), RTHK-HKBU seminar. Yan, M. N. (2003). *Is self-regulation the way forward for Hong Kong broadcast media?* Southeast Asia Press Alliance Conference. Yan, M.N. (2001) *Revamping Hong Kong's broadcasting policies: issues addressed and problems outstanding*. International Telecommunications Society Asia-Pacific Regional Conference.

¹² Yan, M.N. "Broadcast Media Regulation" in Weisenhaus, D., *Hong Kong Media Law - A Guide for Journalists and Media Professionals*. (Hong Kong University Press) (2007).

subordinate. Mr. Wong, though not the convener of the focus group, was always at the meetings expressing his views. The author's opinion carried no weight in the focus group. The author would say that the two other academics in the focus group did not contribute much. All three academics did not make any written submissions on the topic of PSB governance. Nearly all papers discussed at the focus group meetings were largely prepared by a government official acting as Mr. Wong's assistant. The views of this government official, Mr. Wong and his ally accountant members prevailed. In the author's opinions, they were more on the conservative side.

Observations Made by Professor Joseph Chan and the Author

Professor Joseph Chan shared his observations with this author about contributions by an academic to the making of broadcasting policy. He pointed to the fact that Hong Kong is a small place. Fewer than 40 academics are actively researching communications topics. Quite a number of them come from mainland China and overseas and may not be so keen on Hong Kong topics. It is therefore natural that there has been little research done on Hong Kong's broadcasting policy. In recent years, public service broadcasting is the only topic that has commanded more attention from academics. Professor Chan and his colleagues at CUHK formed a group to look into the issue. He said this also happened in the Article 23 Legislation in 2003 and in the Amendment of the Public Order Ordinance in 1987. Throughout the author's nine years with HKBU, public service broadcasting and Article 23 Legislation are the only two topics that the School of Communication has written on and submitted to the HKSAR government. In short, communications academics joined their efforts to respond to some very important topics which have had significant impact on the Hong Kong's media freedom, but these are ad hoc responses and interventions in times of crises. This pattern of social participation in HKSAR government policymaking is quite common among various bodies and groups in Hong Kong, not just confined to academics. This also explains why academics have contributed far less to the consultations concerning convergence, a topic at first sight deals more with technology than freedom. In addition, many communications academics have little expertise or interest in telecommunications, which are both needed in researching the issue of convergence.

Meanwhile, the Central Policy Unit of the HKSAR government has allocated an annual amount of HKD20 million for three years from 2005 to promote public policy research in Hong Kong universities.¹³ Professor Chan was granted funds to research on the setup of the Film Council. A colleague of his has recently been granted funds to work on aspects concerning the future Communication Authority. But Professor Chan noted that the funds are for pure academic research. There is no indication that the HKSAR government would make reference to or make use of their research outcome. Professor Chan added that if the HKSAR is to open up its decision-making process and be more transparent and democratic, academics may be willing to spend more time and effort researching into policy issues, including those relating to broadcasting matters.

¹³ It was recently announced that there will be a new scheme called "Strategic Public Policy Research" funded annually by the Central Policy Unit for three years starting from 2008.

More Interesting Developments Ahead

To sum up, academic input is minimal in the HKSAR government broadcasting policymaking process, particularly in the matters arising from convergence. It does not command a special role. Indeed, the input has been extremely small and often carried little weight. In Hong Kong, the HKSAR government is the main driver behind the territory's broadcasting policy and can be heavily influenced by the commercial sectors, namely the broadcasters and telecommunications services operators. Meanwhile, many considerations of the HKSAR governments have been political because it is well aware of the fact that convergence opens up more media platforms for public use and for the public to express political dissent.

Unlike the United States and the UK, Hong Kong has no civic groups representing the interests of viewers and listeners, whether liberal or conservative. As such, the conservative views of the HKSAR government and private entrepreneurs prevail. But some as-of-yet unorganized activities and movements are slowly coming onto the stage — thanks to the effectiveness of the Internet in connecting strangers with common endeavors. In the past couple of years, loose alliances have formed to counteract HKSAR government policies on broadcasting, copyright and obscenity laws. This is an extremely interesting development. What academics can contribute to this upsurge is a topic worthy of exploring.