12. 1970

(12)

IN THE PRIVY COUNCIL No. 26 of 1968

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG

(ORIGINAL JURISDICTION)

(In the Full Court of the Colony of Hong Kong)

BETWEEN :

THE ATTORNEY GENERAL OF HONG KONG for and on behalf of himself and all other members of the Legislative Council of Hong Kong (First Defendant) — First Appellant

GEOFFREY CATZOW HAMILTON (Second Defendant) — Second Appellant

- and -

REDIFFUSION (HONG KONG) LIMITED (Plaintiffs) — Respondent

RECORD OF PROCEEDINGS

Charles Russell & Co.,
Hale Court, 21 Old Buildings,
Lincolns Inn, London, W.C.2.
Solicitors for the Appellants.

Sydney Morse & Co.,
Alder House,
1, Aldersgate Street,
London, E.C.1.
Solicitors for the Respondent.

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GEOFFREY CATZON HAMILTON (Second Defendant) — Second Appellant

- and -

REDIFFUSION (HONG KONG) LIMITED (Plaintiffs) — Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

EXHIBITS

LIST OF DOCUMENTS OMITTED BY CONSENT OF SOLICITORS FOR BOTH PARTIES

NO.IN T.R.	DOCUMENTS OMITTED	DATE
1	Ex Parte Summons	16th April 1968
2	Affidavit of Gilbert Charles Hogg	16th April 1968
3	Notice of Motion	18th April 1968
4	Memorandum of Conditional Appearance	19th April 1968
5	Direction by Hon.C.J. under s.28 Cap. 4	20th May 1968
6	Motion for leave to appeal to Privy Council	14th June 1968
7	Affidavit of Gilbert Charles Hogg	14th June 1968

LIST OF DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL BUT NOT REPRODUCED

NO.	DESCRIPTION OF DOCUMENT	DATE
1	Writ of Summons	10th April 1968
2	Order giving First and Second Defendants leave to enter a conditional appearance	17th April 1968
9	Amended Writ of Summons	5th June 1968

EXHIBIT MARKED	REFERRED TO IN DOCUMENT NO.	DESCRIPTION OF EXHIBIT	DATE
GHO.3	3	1962 Telecommunications Ordinance	1st January 1963
GHO.4	3	1964 Television Ordinance	6th November 1964
GHO.5	3	1956 Copyright Act	5th November 1956
GHO.14	3	European Convention on the Protection of Television Broadcasts with notes as to ratification	22nd June 1960
*GHO.15	3	1946 Statutory Instruments Act	26th March 1946

* The Appellants objected to the inclusion of these documents in the Record.

In the Supreme Court of Hong Kong

Original Jurisdiction

No.1

First and Second Defendants Summons. 1st May 1968.

IN THE SUPREME COURT OF HONG KONG

ORIGINAL JURISDICTION

No. 1.

First and Second Defendants Summons - to set aside Writ of Summons under Order 12 rule 8.

BETWEEN: REDIFFUSION (HONG KONG) LIMITED

- and -

Sir DAVID C.C.TRENCH K.C.M.G.,M.C.
M.D.I. GASS C.M.G., J.P.
D.T.E.ROBERTS O.B.E.,Q.C.,J.P.,
for and on behalf of themselves and
all other members of the
Legislative Council of Hong Kong

First Defendants

GEOFFREY CATZOW HAMILTON

Second Defendant

O.12 Rule 8 Rules of the Supreme Court, 1967.

Let all parties concerned attend before the Judge in Chambers, at the Supreme Court, Hong Kong, on Monday the 27th day of May 1968, at ten o'clock in the fore-noon on the hearing of an application on the part of the Defendants for an Order -

(a) that the writ of summons herein be set aside upon the grounds that the said writ seeks reliefs outside the jurisdiction of this Honourable Court, namely reliefs designed to prevent members of the Legislative Council from proceedings with a lawful part of the legislative process of Hong Kong; and further and in the alternative

(b) that the writ of summons herein be set aside upon the grounds that the said writ seeks reliefs outside the jurisdiction of this Honourable Court, namely -

2. My Company is a company registered in Hong Kong and was formed in February 1947. My Company is a wholly owned subsidiary of Broadcast Relay (Overseas) Limited a United Kingdom company which is itself a wholly owned subsidiary of Rediffusion Limited, another United Kingdom company.

3. Since about 1947 my Company has been carrying on the distribution of broadcast programmes by wire over its distribution system in Hong Kong to subscribers to its services. My Company now distributes sound and television programmes on a commercial basis, the majority of the sound and all of the television programmes being originated by my Company, but certain of the sound programmes being originated by others. The Licences under which the sound and television programmes are distributed, were issued in 1955 and 1957 respectively and both are due to expire on the 30th April 1973. Such Licences are now produced to me marked respectively "GHO 1" and "GHO 2". Such licences were issued under the Telecommunications Ordinance then in force now replaced by one of 1962. The print of the latter Ordinance is now produced and shown to me marked "GHO 3".

4. The Television Ordinance 1964 as amended, a print of which with the amendments thereto are now produced and shown to me fastened together and marked "GHO 4", set up a Television Authority with powers in relation to wireless television broadcasts. In August 1965 my Company applied for a licence to broadcast under Section 7 of such Ordinance but the application was not accepted. Such a licence was in fact granted to Television Broadcasts Limited (hereinafter called "T.V.B."), a company registered in Hong Kong.

5. As the activities of my Company in connection with television programmes are fully set out in the Memorandum and appendages part of Exhibit "GHO 10" hereto I would only add here that my Company's networks cover the whole of the most densely populated areas of Hong Kong. They do not extend however some of the more remote country districts to which it would be completely

In the Supreme Court of Hong Kong Original Jurisdiction

No.2

Affidavit of George Henry Oldridge 18th April 1968 (Contd.)

uneconomic to extend them. The terrain of Hong Kong is hilly or even mountainous and owing to the density of population there are many tall blocks of flats and offices. Consequently satisfactory reception of television signals cannot be achieved in many areas without transmission through wires or the use of special aerials erected on such blocks of flats and offices and in other "shadow" locations, such aerials being connected by wires to the television receivers.

6. The present copyright law of Hong Kong is basically the United Kingdom Copyright Act 1911. However under Section 31 of the United Kingdom Copyright Act 1956 (hereinafter called "the 1956 Act") which came into force there on the 1st June 1957 Her Majesty may by Order in Council direct that any of the provisions of that Act specified in the Order shall extend subject to such exceptions and modifications (if any) as may be specified in the Order to, inter alia, Hong Kong. A print of the 1956 Act is now produced and shown to me marked "GHO 5", Sub-section 3 of Section 31 thereof provides that the legislature of any country to which any provisions of the 1956 Act have been extended may modify or add to those provisions in their operation as part of the law of that country in such manner as that legislature may consider necessary to adapt the provisions to the circumstances of that country, This sub-section is however subject to a proviso that no such modifications or additions, except in so far as they relate to procedure and remedies, are to be made so as to apply to any work or other subject-matter in which copyright can subsist unless, inter alia, in the case of a television broadcast or sound broadcast it was made from a place in that country.

7. In order to understand the matters hereinafter referred to, it is most important to appreciate the copyright position with regard to the relay of broadcasts under the 1956 Act as it operates in the United Kingdom. The 1956 Act created for the first time a separate copyright in a broadcast completely distinct from the copyright in the works broadcast. Thus when a broadcast is relayed two entirely separate copyrights are involved, and may be infringed. That is to say the copyright in the broadcast as such, and the entirely

separate copyright in the literary, dramatic, musical or cinematographic work which is broadcast. But whereas under such Act to relay a television broadcast could be an infringement of the copyright in the works broadcast (subject to Section 40 (3)) it cannot be an infringement of the copyright in the broadcast itself. I would respectfully refer in this connection to Sections 2, 14, 16 (6) of the 1956 Act.

8. In or about September, 1967 my Company learnt that the United Kingdom Government intended to extend the 1956 Act to Hong Kong by Order in Council and also that the Hong Kong Government intended to introduce an Ordinance to modify the provisions of such Act in their operation as part of the laws of Hong Kong. There are now produced and shown to me marked respectively "GHO 6" and "GHO 7" true copies of a draft Order in Council and a draft Ordinance intended respectively to extend the provisions of the 1956 Act to Hong Kong and to modify such provisions in their operation as part of the law of Hong Kong which were sent to my Company by the Second Defendant on or about the 5th September 1967. It will be noted in particular that such Order in Council extends Sections 14 and 31 (3) of the 1956 Act to Hong Kong, but does not so extend Section 40 (3). There are now produced and shown to me respectively marked "GHO 8" and "GHO 9" true copies of the current Royal Instructions relating to Hong Kong and the current Letters Patent constituting the office of Governor of Hong Kong.

9. The provisions of the said Ordinance caused great concern to my Company for the following reasons.

(i) Section 2 (1) thereof purports to define a television broadcast as having the meaning assigned to it by Section 14 of the 1956 Act and also as meaning visual images transmitted to the premises of subscribers to a diffusion service over wires or other paths provided by a material substance together with any sounds transmitted along with these images. The definition in the Ordinance is therefore

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Affidavit of George Henry Oldridge 18th April 1968 (Contd.)

clearly an attempt to enlarge the definition in the 1956 Act and was neither a modification or addition relating to procedure or remedies nor a modification or addition applying to television broadcasts (as defined by that Act) made from a place in Hong Kong as required by the proviso to Section 31 (3) of the 1956 Act. In this connection I respectfully refer to Section 2 (2) of the Ordinance.

(ii) Having purported to modify such definition Section 4 of the Ordinance purported to provide in Sub-section (1) that subject to Sub-section (2), the 1956 Act as extended to Hong Kong should apply in Hong Kong to every television broadcast (as so defined) made by any organisation specified in the Schedule thereto from a place in Hong Kong as it applied to every television broadcast (as defined by the 1956 Act) made by the B.B.C. or the I.T.A. from a place in the United Kingdom. Such Schedule included my Company and T.V.B. Sub-section (2) provided that it should be an act restricted by the copyright in a television broadcast to broadcast such broadcast or to cause such broadcast to be transmitted to the premises of subscribers to a diffusion service over wires or other paths provided by material substance. Since the latter is not an act restricted by Section 14 of the 1956 Act this is an attempted enlargement of the copyright in television broadcasts as such. This is made clear by Sub-section (3). This again is not an amendment dealing with procedure and remedies nor, on the basis that the definition in the Ordinance is bad, is it an amendment relating to television broadcasts (as defined by the 1956 Act) made from Hong Kong. But even assuming it was an amendment within the proviso to Section 31 (3) of the 1956 Act it still has to come within the main provisions of Section 31 (3) namely it must be an amendment necessary to adapt the provisions of such Act to the circumstances of Hong Kong and in the view of my Company it was not so necessary.

10. The effect of passing the Ordinance in this form would seriously affect my Company's rights under their licences as fully explained in the said Memorandum and appendages since it would mean that

if passed it would then become an infringement of the new copyright in television broadcasts as such to relay such broadcasts without permission. Not only is this not the position in the United Kingdom but so far as I am aware it is not the position in any other country to which the provisions of the 1956 Act have been extended.

11. Apart from the effect on my Company I am advised that it would be unlawful for the Legislative Council of Hong Kong to pass such an Ordinance as being ultra vires and/or repugnant. My Company has therefore entered into correspondence with the Second Defendant and there is now produced and shown to me fastened together in a bundle and marked "GHO 10" the correspondence which has passed between the Second Defendant and my Company since September 1967 including the Memorandum with appendages sent by my Company on the 26th September 1967 and the Note sent by my Company on the 18th November 1967. There is now produced and shown to me fastened together in a bundle and marked "GHO 11" correspondence which has passed between my Company and the Colonial Secretariat since the beginning of February 1968, and in addition there are now produced and shown to me respectively marked "GHO 12" and "GHO 13" true copies of the draft Order in Council and draft Ordinance which were sent to my Company by Mr. A.T. Clark for the Colonial Secretary with his letter of the 24th February 1968 (being one of the letters included in the aforesaid bundle marked "GHO 11") and which are referred to in such letter as being the "present" drafts.

12. On the question as to whether the insertion of Section 4 (2) in the Ordinance is necessary to adapt the provisions of the 1956 Act to the circumstances of Hong Kong I would respectfully draw attention to the terms of the letters to my Company dated the 5th September 1967, the 7th October 1967 and the 11th November 1967 (included in Exhibit "GHO 10"). In the first letter the Second Defendant refers to the Ordinance as making provision for matters of local concern. However after receiving my Company's said Memorandum the Second Defendant says in the second letter that: "It does however seem that in a small

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No. 2

Affidavit of George Henry Oldridge 18th April 1968 (Contd.)

territory with (as present) only two commercial concerns interested the need for legislative intervention is less pressing, and the matter is principally one for the parties concerned. I propose therefore to give an assurance to Hong Kong Television Broadcasts Ltd. that steps will be taken or powers exercised to ensure that any relay of their programmes, in accordance with Clause 17 of your licence, (whether taken as a complete channel service or as separate contemporaneous inserts into another programme) will be complete, uncut and unchanged in quality, with all station attributes, announcements and related advertisements and "breaks" as originally transmitted - I think that this should protect their legitimate interests and in no way run counter to your own intentions. In that event the Copyright Bill would be appropriately modified in this respect and the draft clause of which you have complained would not be proceeded with at present". Then in the third letter the Second Defendant states that the intention then was to seek the approval of the Executive Council to the introduction of legislation on the lines of Section 4 (2) of the Ordinance.

13. These changes of policy as regards Section 4 (2) inclusion - exclusion - inclusion, do not appear in the opinion of my Company to have been based on any consideration as to the circumstances of Hong Kong as required by Section 31 (3) of the 1956 Act but rather to have been arrived at as a result of local pressure and/or misunderstanding of the law.

14. On the question of pressure I would refer not only to the changes in policy themselves but also to the fact that the last change of policy followed letters from T.V.B. and their solicitors to the Second Defendant of the 24th October 1967 and the 31st October 1967. No copies of such letters are available to my Company but their existence and the purport of at least part of the contents of the letter of the 31st October 1967 is referred to in the copy of a letter dated 11th November 1967 from the Second Defendant to T.V.B., enclosed with the said letter of the 11th November 1967 to my Company, and included in Exhibit "GHO 10" hereto

15. On the question of misunderstanding of the law

the Second Defendant in the said letter of the 11th November 1967 to my Company states "The effect of such a Bill would not be very great, since the present law already confers copyright protection on most of the programmes which might be transmitted by H.K. - T.V.B., and such copyright continues to subsist whether the programmes are redistributed by "patching" or by straight relay." The phrase "the present law already confers copyright protection on most of the programmes which might be transmitted by H.K. - T.V.B." is misleading and appears to confuse copyright in works broadcast with the separate copyright in the broadcasts themselves. I am advised that whether or not the present copyright law protects the works broadcast, it does not protect the broadcasts as such. Section 4 however will create copyright in the broadcasts themselves apart from the copyright in the works broadcast which would completely change the position as far as my Company is concerned. In this regard I would refer to Paragraph 6 of the said letter of the 11th November 1967 from the Second Defendant to T.V.B. Thus if Section 4 (2) becomes law, my Company will need to clear not only the copyright in the works broadcast but in the broadcasts themselves. Further, though T.V.B. would be concerned with the copyright in its broadcasts as such it is very unlikely that it would be concerned with the copyright in the works included in such broadcasts which would belong to the author. Therefore it can hardly be said that the effect of the Ordinance will not be very great. Thus for instance T.V.B. would be under no obligation to grant a licence to relay their broadcasts, they could grant licences to all relay operators but not to my Company and they could demand any conditions they pleased for the grant of a licence to my Company to which my Company could not object. This notwithstanding the rights granted to my Company by its Government licences. In fact since my Company is the only licensed relay operator in Hong Kong Section 4 (2) can only be directed against my Company and will prevent my Company doing what it has been licensed to do by such licences.

16. There appears to be no reason why the law of Hong Kong should be different from that which has

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No. 2

Affidavit of George Henry Oldridge 18th April 1968 (Contd.)

operated and operated successfully and without objection in the United Kingdom in respect of relay services since 1957. Certainly there appears to be no reason based on the circumstances of Hong Kong which for this purpose do not appear to be in any way different from those of the United Kingdom. If the British broadcaster is not entitled to this right and does not demand it, it is difficult to see why a Hong Kong broadcaster should be entitled to it. In this regard I would refer to the European Convention on the Protection of Television Broadcasts which has been ratified by the United Kingdom subject to a reservation withholding in respect of television broadcasts, the right to the broadcaster to authorise or prohibit the diffusion of such broadcasts to the public by wire. A true copy of such Convention with a note as to such ratification is now produced and shown to me marked "GHO 14".

17. Apart from such correspondence representatives of my Company have had various discussions with the Second Defendant and T.V.B. on the question of the Ordinance but to no avail. My Company has also made representations to the Board of Trade in the United Kingdon.

18. I am informed by my London Solicitors that the Order in Council extending the 1956 Act to Hong Kong will shortly be laid before the United Kingdom Parliament, the effect of which can be ascertained from ss. 4, 5, 6 and 7 of the Statutory Instruments Act, 1946, a true copy of which is now produced and shown to me marked "GHO 15". It is thought that the Order in Council will be similar to the original draft Order in Council. Subject to the provisions of the Statutory Instruments Act, 1946, the Legislative Council of Hong Kong will be at liberty to pass legislation amending the 1956 Act in its operation as part of the law of Hong Kong in accordance with s. 31 (3) of the 1956 Act. My Company has been supplied with a copy of the Ordinance which it is proposed to put before the Legislative Council of Hong Kong which includes similar provisions to that in the original draft Ordinance.

19. For the reasons hereinbefore appearing my Company has been advised that such Ordinance

Exhibit "GHO 13" hereto if passed would be unlawful as being ultra vires the Legislative Council of Hong Kong having regard to the terms of Section 31 (3) of the 1956 Act as extended to Hong Kong (or proposed to be so extended) by such Order in Council, Exhibit "GHO 12" hereto, and repugnant to the provisions of the 1956 Act as so extended (or proposed to be so extended). I would therefore humbly request this Honourable Court to grant the relief sought in the Notice of Motion herein.

SWORN at the Courts of Justice, Victoria, Hong Kong, this 18th day of April 1968.

(Sgd) G.H. Oldridge.

Before me,

(Sgd) Chen Cheuk Wing

Commissioner for Oaths.

No. 3

Affidavit of Robert William Primrose.

I, Robert William Primrose, of the Colonial Secretariat, Central Government Offices, Main Wing, Hong Kong, Clerk of Councils, make oath and say as follows :-

1. I am the Clerk to the Legislative Council of Hong Kong, and as such the business of the Legislative Council is within my personal knowledge.

2. The first named First Defendant Sir David C.C. Trench, K.C.M.G., M.C. is the Governor of Hong Kong and as such is president of the Legislative Council

In the Supreme Court of Hong Kong Original Jurisdiction

No. 3

Affidavit of Robert William Primrose. 1st May 1968 (Contd.)

and in each capacity is an officer of the Crown; the second named First Defendant M.D.I.Gass, C.M.G., J.P. is the Colonial Secretary of Hong Kong and as such is ex-officio a member of the Legislative Council and in each capacity is an officer of the Crown; the third named First Defendant D.T.E. Roberts, O.B.E., Q.C., J.P. is the Attorney General for Hong Kong and as such is ex-officio a member of the Legislative Council and in each capacity is an officer of the Crown.

3. The First Defendants, and those whom they are named as representing, have no interest in the reliefs sought by the Plaintiffs other than in their capacities as the Governor, Colonial Secretary and Attorney General for Hong Kong, and as members of the Legislative Council.

4. The Second Defendant is acting as Colonial Secretary until the 14th May 1968 and as such is an ex-officio member of the Legislative Council, but at the date of the issue of the writ in these proceedings, he was not a member, nor will he be a member thereof upon ceasing to act as Colonial Secretary.

5. Annexed hereto and marked Exhibit "RWP" is a copy of the Standing Orders of the Legislative Council of Hong Kong.

6. There is no Bill dealing with copyright on the order of business of the Legislative Council, nor is there any notice of motion in respect of the first reading of any such Bill.

7. (a) A draft of a proposed Order-in-Council to extend certain provisions of the Copyright Act 1956 to Hong Kong and a draft of a proposed Bill intituled "a Bill to modify the Copyright Act 1956, in its application to Hong Kong and to make further provision with respect to copyright law in Hong Kong", was, on the 10th February, 1968, forwarded by the Government to the Secretary for State, for the comments of the said Secretary for

State thereon.

(b) No comments on the said drafts have yet been received.

In the Supreme Court of Hong Kong Original Jurisdiction

No. 3

Affidavit of Robert William Primrose. 1st May 1968 (Contd.)

SWORN at the Courts of Justice, Hong Kong, this 1st day of May, 1968.) (Sgd)

Before me,

(Sgd)

10 A Commissioner for Oaths.

This affidavit is filed on behalf of the First and Second Defendants and is in support of the application under Order 12 Rule 8 of the Rules of the Supreme Court.

In the Supreme Court of Hong Kong Original Jurisdiction

No. 4

Affidavit of George Henry Oldridge 24th May 1968.

No. 4

Affidavit of George Henry Oldridge
24th May, 1968.

1968 No. 507

IN THE SUPREME COURT OF HONG KONG

ORIGINAL JURISDICTION

BETWEEN:

REDIFFUSION (HONG KONG) LIMITED
Plaintiffs

- and -

Sir DAVID C.C. TRENCH K.C.M.G., M.C.
M.D.I. GASS C.M.G., J.P.
D.T.E. ROBERTS O.B.E., Q.C., J.P.
for and on behalf of themselves and all other members of the Legislative Council of Hong Kong
First Defendants

GEOFFREY CATZOW HAMILTON
Second Defendant

I, GEORGE HENRY OLDRIDGE, of 10 Bluff Path, The Peak, Hong Kong, Company Director, make oath and say as follows :-

In reply to the Affidavit of Robert William Primrose filed herein on the 1st day of May 1968 in support of the Applications on the part of the Defendants filed herein on the same date, I crave leave to refer to my earlier Affidavit in these proceedings sworn and filed herein on the 18th day of April 1968

and the Exhibits thereto.

SWORN at the Courts of Justice, Victoria, Hong Kong, this 24th day of May, 1968) G.H. Oldridge

Before me,

CHAN Cheuk-wing

A Commissioner for Oaths

In the Supreme Court of Hong Kong Original Jurisdiction

No. 4

Affidavit of George Henry Oldridge 24th May 1968 (Contd.)

This Affidavit is filed on behalf of the Plaintiffs.

No. 5

Order of Full Court dismissing Defendants' Summons under Order 12 Rule 8.

No. 5

Order of Full Court 1st June, 1968.

BEFORE THE FULL COURT THE HONOURABLE SIR MICHAEL HOGAN, C.M.G. CHIEF JUSTICE AND THE HONOURABLE MR. JUSTICE HUGGINS, IN CHAMBERS.

O R D E R

UPON hearing Counsel for the Plaintiffs and Counsel for the Defendants and upon reading the affidavit of Robert William Primrose filed herein on the 1st day of May, 1968 and the affidavits of George Henry Oldridge filed herein on the 18th day of April, 1968 and the 24th day of May, 1968 respectively IT IS ORDERED that the Defendants' summons under Order 12 Rule 8 of the Rules of the Supreme Court be dismissed and that the costs be reserved.

DATED THIS 1ST DAY OF JUNE, 1968.

(Sgd) S.H. Mayo
Assistant Registrar.

In the Supreme Court of Hong Kong Original Jurisdiction

No. 6

Decision of Full Court on Defendants' Summons to set aside Writ under Order 12 Rule 8. 1st June 1968.

No. 6

Decision of Full Court on Defendants' Summons to set aside Writ under Order 12 Rule 8.

In this case the plaintiffs sought relief set out in their writ, issued on the 10th April 1968, in the following terms :-

"1. A declaration that it would not be lawful for the Legislative Council of Hong Kong to pass an Ordinance provisionally entitled 'A Bill to modify the Copyright Act 1956, in its application to Hong Kong and to make further provision with respect to copyright law in Hong Kong' such Ordinance being ultra vires the Legislative Council of Hong Kong having regard to the terms of Section 31(3) of the United Kingdom Copyright Act 1956 as extended (or proposed to be extended) to Hong Kong and repugnant to the provisions of that Act as so extended (or proposed to be so extended).

2. An injunction to restrain the First Defendants and each of them and every other member of the Legislative Council of Hong Kong and the Second Defendant by themselves their respective servants or agents or otherwise howsoever from passing the said Ordinance and from presenting it to the Governor of Hong Kong for his assent.

3. Further or other relief.

4. Costs.".

The plaintiffs are a company registered in Hong Kong (hereinafter called "the plaintiffs" or "the Company") and a wholly owned subsidiary of a United Kingdom company. According to an affidavit (hereinafter called "the affidavit") sworn on the 18th April, 1968 by Mr. George Henry Oldridge, the company, of which he is Managing Director, has been carrying on the distribution of broadcast programmes by wire over its distribution system in Hong Kong since about 1947 and the company now distributes sound and television programmes on a commercial basis, the majority of the sound and all the television programmes being originated by the company and

certain of the sound programmes being originated by others. The programmes are distributed under licences issued under the Telecommunications Ordinance, issued for sound in 1965 and for television in 1957, both being due to expire on the 13th April, 1973.

The sound licence gave to the company :-

"the exclusive right to distribute broadcast messages and programmes, specially intended to be received by the public in general, by means of wires connected to the premises of other persons in the said Colony ..... and to the intent that the subscribers may receive in their respective premises such broadcasts, messages and programmes as transmitted from broadcasting stations included in the official list of broadcasting stations issued by the International Telecommunications Union at Geneva.....".

Similarly, the television licence gave to the Company :-

"(b) the exclusive right to maintain a service to the public consisting of television programmes and matter... by means of wires connected to the premises of other persons in the said Colony, and

(c) the right to establish, maintain and work television broadcast receiving station or stations.....and to relay from the distribution station any television programme broadcast from any broadcasting station included in the official list of broadcasting stations issued by the International Telecommunications Union at Geneva.".

In August, 1965 the company applied for a licence to broadcast under Section 7 of the Television Ordinance, 1964 but the application was not accepted and a licence was granted to Television Broadcast Limited (hereinafter called "TVB") another company registered in Hong Kong.

In the Supreme Court of Hong Kong Original Jurisdiction

No. 6

Decision of Full Court on Defendants' Summons to set aside Writ under Order 12 Rule 8. 1st June, 1968. (Contd.)

According to the affidavit, however, satisfactory reception of television signals cannot, because of the maintainous terrain and density of population with many tall blocks of flats and offices, be achieved in many areas of Hong Kong without transmission through wires or the use of special aerials erected on such blocks of flats and offices and in other shadow locations, such aerials being connected by wires to the television receivers.

It is desirable at this point to refer to certain expressions which have played a prominent part in the argument before us.

The first of these is "relay". According to the documents annexed to the affidavit, "relay" means the reception by an aerial of broadcast matter, be it sound, radio or television, and the re-distribution of this matter by means of a wired network to the premises of persons who either cannot, through technical reasons (such as "shadows") receive the broadcast matter directly by their own individual receivers, or cannot, or choose not to, bear the expense of purchasing a receiver and aerial. The other is the expression "Communal Antenna Television Systems" (CATV), an expression which is said to have originated in America but is now generally understood in Hong Kong to mean aerial devices placed on the roofs of buildings by means of which broadcast television transmissions are received and then re-distributed by means of wires connected to the television receivers or terminal units of individuals in the various parts of the buildings. The need for CATV systems is said to arise, as it does for any other form of relay, where, for technical reasons (usually "shadow areas"), reception of broadcast television by means of ordinary individual receivers is not possible or practical.

It is claimed that "a relay system is for all intents and purposes the same as a CATV system. Conversely, a CATV system is a relay system; so much so that the expression 'CATV' and 'relay' are in practice synonymous, the former expression having greater currency in the United States and the latter in the United Kingdom."

It is also desirable to note that the sound

and television licences of the company contained references to copyright which, in the latter, are expressed as follows :-

> "17. (1) Except when it is known to be contractually permissible to do so the licensee shall not record, reproduce, publish or otherwise disseminate or allow to be recorded, reproduced, published or otherwise disseminated any matter sent for general reception by any broadcasting station and received by means of the broadcast receiving station.
>
> (2) It is hereby declared that nothing herein contained authorizes the licensee to do any act which is an infringement of any copyright which may exist in any published programme or other printed matter or in any matter received by means of the broadcast receiving station."

The plaintiffs maintain that at the date of the licence there was no such station the television broadcasts of which could have been received and distributed by rediffusion; that the rights just mentioned were intended to be exercisable at some future date; and that the opportunity to exercise them has only now emerged with the advent of another broadcasting service.

The affidavit points out that the 1956 Copyright Act in the United Kingdom created, for the first time, a separate copyright in a broadcast distinct from the underlying copyright in the works broadcast but, under the provisions of the Act, to relay a broadcast is not an infringement of the copyright in the broadcast itself, though it could, subject to Section 40(3), be an infringement of the copyright in the works broadcast. Causing the broadcast "to be transmitted to subscribers to a diffusion service", is not included in the list specified by Section 14(4) of "restricted acts", which are to be breaches of this new copyright. Consequently in the United Kingdom, the relay of broadcasts is treated in a manner different from the relay of other copyright matter.

Section 31 of the 1956 Act empowers the Queen to extend the Act by Order in Council to Hong Kong

In the Supreme Court of Hong Kong Original Jurisdiction

No. 6

Decision of Full Court on Defendants' Summons to set aside Writ under Order 12 Rule 8.
1st June, 1968.
(Contd.)

and other territories, and in that event sub-section (3) authorises the local legislature to :-

> ".....modify or add to those provisions, in their operation as part of the law of that country, in such manner as that legislature may consider necessary to adapt the provisions to the circumstances of that country:
>
> Provided that no such modifications or additions, except in so far as they relate to procedure and remedies, shall be made so as to apply to any work or other subject-matter in which copyright can subsist unless -
> . .....
>
> (d) in the case of a television broadcast or sound broadcast, it was made from a place in that country.".

The affidavit states that about September 1967 the company learned that the United Kingdom Government intended to extend the 1956 Act to Hong Kong by Order in Council and, also, that the Hong Kong Government intended to introduce an Ordinance to modify the provisions of the Act as extended to Hong Kong. To the affidavit are exhibited copies of a draft Order in Council and a draft Ordinance, which had been sent to the company by the second defendant in the course of correspondence which is also exhibited. The Order in Council, as drafted, proposed to extend Sections 14 and 31(3) of the 1956 Act to Hong Kong but not to extend Section 40(3). The provisions of the Ordinance caused great concern to the company because it purported by Clause 4 to define a television broadcast as having the meaning assigned to it by Section 14 of the 1956 Act and also as meaning :-

> "visual images transmitted to the premises of subscribers to a diffusion service over wires or other paths provided by a material substance, together with any sounds transmitted along with those images.".

This, the affidavit claims, was clearly an attempt to enlarge the definition in the 1956 Act and neither a modification or addition relating to procedure or remedies nor otherwise consistent with the

requirements of the proviso to Section 31(3) of the 1956 Act. Moreover, Clause 4(2) seeks to provide that it should be an act restricted by the copyright in a television broadcast to broadcast it or cause it to be transmitted to the premises of subscribers to a diffusion service over wires or other paths provided by material substances. This is claimed to be an enlargement of the copyright in television broadcasts as such, since it includes an act which is not restricted by Section 14 of the 1956 Act, and to be in excess of the powers conferred by Section 31(3).

The affidavit claims that the effect of passing the Ordinance in this form would seriously affect the company's rights under its licence and would create a position different from that in the United Kingdom and one which, so far as Mr. Oldridge is aware, would differ from that in any other country to which the provisions of the 1956 Act have been extended.

He was, he said, advised that it would be unlawful for the Legislative Council of Hong Kong to pass such an Ordinance, as being ultra vires and/or repugnant. Consequently, the company entered into correspondence with the second defendant and it is claimed that in the course of that correspondence the Hong Kong Government vacillated, having first indicated an intention to include then exclude and finally to include the controversial Clause 4(2). It is suggested this vacillation resulted from pressure by TVB. It is also said that the correspondence indicated that the Government and its spokesman, the 2nd Defendant, were not fully aware of the significance of what they were purporting to do or the rights they were purporting to alter.

The affidavit states that Clause 4, by creating copyright in the broadcasts themselves as distinct from the copyright in the works broadcast, would completely change the position so far as the company is concerned, because if Clause 4(2) becomes law the company would need to clear with their rival the copyright in the broadcasts of TVB quite apart from any copyright

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in the works broadcast. The affidavit claims that there is no justification for thus altering the law of copyright as it is currently enforceable in the United Kingdom; and that if the British broadcaster has no such right it is difficult to see why a Hong Kong broadcaster should be entitled to it; reference is made in this connection to the European Convention on the Protection of Television Broadcasts which the affidavit says has been ratified by the United Kingdom subject to a reservation withholding in respect of television broadcasts the right to the broadcaster to authorise or prohibit the diffusion of such broadcasts to the public by wire.

The present proceedings do not purport to seek any relief in regard to the proposed Order in Council and seek only to declare illegal, and restrain action by the Legislative Council on, the draft local legislation.

The defendants have taken out a summons in which they seek the following order :-

"(a) that the writ of summons herein be set aside upon the grounds that the said writ seeks reliefs outside the jurisdiction of this Honourable Court, namely reliefs designed to prevent members of the Legislative Council from proceeding with a lawful part of the legislative process of Hong Kong; and further and in the alternative

(b) that the writ of summons herein be set aside upon the grounds that the said writ seeks reliefs outside the jurisdiction of this Honourable Court, namely -

(i) in that the said writ seeks a declaration as to hypothetical and future questions to which declaration the Plaintiffs have no right; and

(ii) in that the said writ seeks an injunction the granting of which is prohibited under section 16 of the Crown Proceedings Ordinance.".

It is on this summons that we have heard argument by the Solicitor General for the defendants and by Mr. Wells, of Her Majesty's counsel in England, on behalf of the company. In support of his first ground, the Solicitor General referred to the instances in which the Courts in England had been prepared to interfere, or had considered interfering with the Parliamentary process in the United Kingdom. They involved a sovereign legislature - and that is necessarily different from the legislature with which we are concerned here- but, he submitted, they were relevant to the problem before us as indicating how slow the courts should be to interfere with the legislative process. He claimed that interference arose only in two classes of case; the first arose from some allegedly wrong step in the actual legislative process itself, and, as an illustration of that class, he referred us to Harper and Another v. Secretary of State for the Home Department (1).

The second class of case in which the courts were, the Solicitor General said, prepared to consider interference in the United Kingdom arose when it was suggested that some individual or body was acting inequitably in seeking the enactment of a private Bill. In such circumstances the courts would be prepared or at least had been asked, to interfere, and had entertained the possibility of interfering. He referred us to the case of Bilston Corporation v. Wolverhampton Corporation (2) as an example of this class of case, and to an article in Vol. 59 of "Law Quarterly Review" by Professor Holdsworth which expressed the view that although there was perhaps such a jurisdiction in regard to private Bills it was a highly suspect jurisdiction. At page 2 of the article, a number of cases where this jurisdiction was said to exist but where in fact no relief was given are conveniently collected. The Professor observed :-

> "A principle which the Courts have consistently refused to apply is obviously suspect. In fact it is unsound because it rests on a mistaken analogy to the issue of a common injunction.".

(1) (1955) 1 All E.R. 331
(2) (1942) Ch.D. 391

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He ended by suggesting that the courts really would have been wiser if, declining to follow earlier dicta, they had finally asserted that there was no such jurisdiction.

The Solicitor General then referred to one of the cases mentioned in that article, Heathcote v. The North Staffordshire Railway Company (3) where, the jurisdiction having been exercised by the Vice Chancellor, the Lord Chancellor dissolved the injunction which had been issued but, in the course of deciding to dissolve it, made a statement which is highly indicative of the attitude taken by the courts in England on this question. He said:-

> "Upon the first, it has been suggested that this Court could not interfere without infringing upon the privileges of Parliament; so the Courts of Common Law thought at one time; and there is as much foundation for the one as for the other supposition.
>
> In both cases, this Court acts upon the person, and not upon the jurisdiction. In a proper case, therefore, I have said here and elsewhere that I should not hesitate to exercise the jurisdiction of this Court by injunction, touching proceedings in Parliament for a private Bill or a bill respecting property; but what would be a proper case for that purpose it may be very difficult to conceive.".

The Lord Chancellor went on to point out that interference was not justified merely because the Bill in question was seeking an alteration in private rights. Parliament, he said, was supposed to be a place where rights could be altered by legislation, retrospectively if necessary.

The Solicitor General also directed our attention to the case of Merricks v. Heathcoat-Amory (4) where a mandatory injunction was sought commanding the withdrawal from both Houses of Parliament of a draft scheme alleged to be ultra vires the Act under which it purported to be made.

(3) 42 E.R. 39 at 43; 2 Mac. & G. 100 at 109.
(4) (1955) Ch.D. 567

Possibly the Solicitor General mentioned this case more for the purpose of illustrating the position through the argument of counsel than for the actual decision itself, because the learned judge, Mr. Justice Upjohn, concluded his ruling by saying :-

> "A number of other points of great interest have been argued. Among them was the question whether the court had any jurisdiction and, if so, whether it would be proper in any event to interfere with the proceedings now before Parliament by making an order on the Minister to withdraw the draft scheme or restraining him by order from seeking approval of the scheme.".

He went on :-

> "I say no more than this, that I see much force in the arguments put forward by the Attorney General; but in this delicate and difficult branch of the law it is much better not to express an opinion on any matter which does not directly arise for decision.".

The application was dismissed on the ground that the Minister was acting as a Minister of the Crown and no injunction could issue, but the learned Attorney General in the course of his argument in the case had suggested that if the Order sought - had been granted, it could amount to an interference with the privileges of Parliament and might indeed be a contempt of Parliament. Mr. Walker-Smith Q.C., arguing on the other side, said (p.571) :

> "To restrain a person from seeking the approval of Parliament, or either House thereof, of a defective scheme, ultravires the enabling Act, is not to trespass upon or derogate from the sovereignty of Parliament or the right of Parliament to control its own proceedings. In relieving Parliament from the risk of having presented to it for approval by resolution a scheme which is ultra vires, the interference of the court renders a service not only to the parties but to Parliament:".

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The case aptly illustrates the conflicting points of view.

Mention was made of the Introduction to the 10th Edition of Dicey, by Professor Wade - where he expresses a view on page 44 :-

> "That the judicial process does not lie where Parliament has exclusive jurisdiction has been recognised by decisions of the courts both in the field of privilege and in Private Bill legislation.".

The professor went on to claim support for this view from his analysis of the Harper(1) and Bilston(2) cases as well as in a passage from Bradlaugh v. Gossett(5) .

The Solicitor General then turned to the question of a non-sovereign Parliament, such as the Legislative Council in Hong Kong, and referred us to decisions from New South Wales in Australia as falling into the first category, namely where some improper step was allegedly being taken. In Attorney General for New South Wales v. Trethowan(6) the applicants contended that failure to refer a Bill to a referendum of the electors in New South Wales would invalidate the next step contemplated, the presentation of the Bill for assent, and they sought to have the respondents restrained from taking that step. Whilst this is a very well-known case, the Solicitor General contended it was not very material to the instant case because, although the questions at issue may, in the lower Courts, have involved one of jurisdiction, they were confined to the merits when the case came to the High Court of Australia and subsequently to the Privy Council. At page 527 of 1932 A.C., the following passage appears :-

> "Upon the hearing of the motion, it was demurred to by the defendants upon the grounds (1) that s.7A, sub-s.6, of the Constitution Act, 1902, was invalid; (2) that no facts were alleged which gave the plaintiffs any ground for equitable relief; (3) that having regard to the object of the suit it was not competent.".

(1) (1955) 1 All E.R.331
(2) (1942) Ch.D. 391
(5) (1884) 12 Q.B.D. 271
(6) (1931) 44 C.L.R. 394

The third question was, the Solicitor General said, excluded from consideration by the higher courts. Moreover, he claimed, the value of the case is considerably impugned by subsequent references to it made in Australia, primarily the reference by Sir Owen Dixon, C.J., as he was subsequently, in the case of Hughes and Vale Proprietary Ltd. v. Gair(7) where he threw doubts on the decision in so far as it can be regarded as a decision at any stage on the question of jurisdiction.

The Solicitor General then directed attention to observations on Trethowan's(6) case and the case of McDonald v. Cain(8) made by Professor Zelman Cowen in 71 Law Quarterly Review, page 341, where he said :-

> "These two recent cases have served only to increase the doubts raised by Long Innes, J. in Trethowan v. Penden(9) as to the propriety of judicial interference with parliamentary process even where the legislature has itself pointed to the act of presentation as the illegal act. Such a form of drafting might be thought to invite judicial intervention at that stage. Yet if the view put forward by Dixon C.J. in Hughes and Vale Proprietary Ltd. v. Gair(7) prevails, so that even in such a case a court will refuse to intervene, it would seem to follow that no conceivable form of drafting can empower the courts to intervene by injunction (or presumably by declaration) at this stage of the parliamentary process.".

It was urged that similar doubts as to the propriety of judicial interference are indicated by certain observations made in the subsequent rather lengthy case of Clayton v. Heffron(10) particularly the passage which appears at page 265, where Mr. Justice Kitto said :-

(7) 90 C.L.R. 203
(8) (1953) Argus L.R. 965
(9) (1930) 31 S.R. (N.S.W.) 183
(10) 105 C.L.R. 214

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"Considerations of convenience have been thought to justify our expressing our opinions upon that question without staying to decide whether an answer to it favourable to the plaintiffs would have entitled them to any relief in the Supreme Court.".

Finally, the learned Solicitor General returned to the English authorities by referring us to the following passage in Hanbury's Modern Equity, 8th Edition page 609 :-

"It is submitted that the Court of Appeal was wrong in the Harper(1) case in admitting the possibility of the jurisdiction to restrain a legislative proposal. The cards stacked against it are too strong.....

(c) Matters brought before Parliament must be allowed to repose in the legislative sphere, into which the judiciary cannot intrude.

It was consideration (c) that led Holdsworth to deny the jurisdiction to issue an injunction to restrain an application for or opposition to a private Bill, where the proceedings are admittedly akin to judicial proceedings.".

Over the page reference is made to the view expressed by Mr. Justice Simonds, as he then was, in the Bilston(2) case, that whilst acknowledging the jurisdiction it was difficult to imagine a case in which it would be exercised. The author suggests that the existence of the jurisdiction is supported by the observations of Evershed, M.R. in Harper's(1) case but adds :-

"It is difficult to avoid the comment that the courts seem determined to keep alive in theory something that it will always be impracticable to use in practice.".

Against the background of these authorities, the Solicitor General turned to the precise terms in which the writ in this case sought relief. It

(1) (1955) 1 All E.R. 331
(2) (1942) Ch.D. 391

requests a declaration that it would not be lawful for the Legislative Council of Hong Kong "to pass an Ordinance, provisionally entitled 'A Bill to Modify the Copyright Act 1956'". Having stressed that the subject matter of the application is identified only by that description, he went on to argue that the Legislative Council in Hong Kong, under the provisions establishing it, the Letters Patent and the Royal Instructions, does not pass Ordinances: what it does is to pass Bills, which do not by the mere act of the Legislative Council move into the sphere of legislation, but remain in the sphere of advice and permission given to the Governor in Hong Kong to enact legislation in the terms of such Bills if he thinks it appropriate to do so; that the action of members of the Legislative Council in debating a measure of this kind and in expressing their views on it is certainly not an illegal act, because, not until the document, the Bill, reaches the stage of legislation - not until the moment of enactment - could it be alleged that there was any illegality through conflict with the Copyright Act. He stressed the indication in Mr. Oldridge's affidavit that the document in question has not even reached the stage of being a Bill, but is no more than a draft. It will, he said, only become a Bill when it receives a first reading from the Legislative Council. He argued that by seeking a declaration from the Court at this stage the plaintiffs are seeking to interfere with a lawful activity of the Legislative Council. When asked how a declaration would interfere, he said that it would inhibit debate in the Council: members would feel impeded if they had "hanging over them" a declaration by this court that this particular measure is or would, at a later stage, become invalid. The court, he said, should make no such declaration because it had no jurisdiction in this field. If we understood him rightly, at a later stage in his case he put his submission in a slightly different form: he said that he was asking us "not to entertain jurisdiction" in this field and emphasized that the proper time for challenging the validity of this measure, if it ever reaches the Statute Book, is after enactment, as shown by the observation of Sir Owen Dixon, C.J. in the Hughes(7) case.

(7) 90 C.L.R. 203

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In answer to these arguments, Mr. Wells referred us first to the opinion of the Privy Council in Bribery Commissioner v. Ranasinghe(11) on appeal from Ceylon where the Board said :-

> "A legislature has no power to ignore the conditions of law-making that are imposed by the instrument which itself regulates its power to make law.".

This view was expressed to apply whether the legislature was sovereign or not, but the principle is clearly applicable, Mr. Wells said, to Hong Kong, where the legislature is non-sovereign, and where its powers are limited not only by its own constitution but by the power of the Queen in Parliament to enact laws which the local legislature has no power to alter or change; laws which make void and inoperative any local legislation with which they conflict. He argued that the Trethowan(6) case provides powerful authority for the proposition that, in dealing with the non-sovereign Legislative Council of Hong Kong, the courts have jurisdiction to entertain the relief sought by the plaintiffs here. He contended that this was implicit in the decisions in that case both of the High Court of Australia and of the Privy Council; because if there had been any question of jurisdiction that point would have been raised.

We find some difficulty in ascertaining from the report in 1932 A.C. to what extent this question of jurisdiction figured in the decisions of the various courts concerned. Clearly the judge of first instance must have been satisfied that he had jurisdiction or he would not have entertained the application, and subsequent references in the Hughes(7) case indicate that the question must have been raised in some form at a higher level, because counsel there said :-

> "In Trethowan's(6) case there were five judges in New South Wales who took the view that jurisdiction existed.".

This seems to be borne out by a reference in

(11) (1965) A.C.172
(6) (1931) 44 C.L.R. 394
(7) 90 C.L.R. 203

71 L.Q.R. (p.337) where Professor Zelman Cowen said :-

> "The case raised a number of important points but the question of the availability of the injunction was considered only in the Supreme Court of New South Wales. The terms on which the High Court permitted appeal precluded further consideration of this question.".

Having relied strongly on that decision, Mr. Wells drew attention to Montreal City v. Montreal Harbour Commissioners (12) as indicating that where relief of the kind in question here is sought it should be sought promptly, lest at a later stage his clients should find themselves faced with a contention that they had waived their rights. He emphasized that, on the present summons, the simple question is whether we have jurisdiction, and that we are not concerned with the issue whether that jurisdiction should, in the circumstances now put before us, be exercised or not.

In answer to the Solicitor General's contention that what the Legislative Council would be doing - if and when it considers the document which has been furnished to the plaintiffs as a draft Bill - would be a perfectly legal operation. Mr. Wells argued that although it might not be strictly an error in procedure yet if the Legislative Council should take under consideration, and seek to pass as a Bill, something which if and when it gets to the Statute Book would be illegal, all the proceedings up to that point would be tainted proceedings and, consequently, illegal. He said that the distinction which the Solicitor General was seeking to draw between a step in the legislative process and the consideration of tainted subject matter, i.e. a Bill leading to an illegal Ordinance, was not a distinction which could be supported. He submitted that all preliminary steps would be tainted by the

(12) (1926) A.C. 299

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subsequent illegality which would supervene if and when the document came to be enacted as legislation.

We do not think that the doctrine of the separation of powers, in so far as it is recognised in England, or any other relevant doctrine compels us to hold that we have no jurisdiction under any circumstances to grant an injunction against the members of the Legislative Council. If we were to be satisfied that the Solicitor General is right in his main contention that nothing illegal on the part of the defendants is in contemplation, that would not mean that we had no jurisdiction to enter upon and determine such an issue but simply that there was no occasion for granting relief; we would be precluded from granting it by the absence of grounds for intervention. Turning to his contention that we should not entertain jurisdiction, it may be that there is only a very fine distinction between holding that there is no jurisdiction to give the relief asked and saying that the relief asked is such that the court is unlikely ever to give it. Yet it seems to us that it is a distinction we must recognize. If, as the Bribery Commissioner's (11) case so clearly showed, the validity of the legislative process can be subsequently examined and pronounced upon then, leaving aside for a moment the factor of the "hypothetical question", it would seem illogical to say that there is no jurisdiction to pronounce on its prospective exercise. Consequently, we would not set aside the writ on the first of the grounds set out in the summons.

We turn then to the second ground. This is divided into two parts: first that the writ seeks a declaration as to hypothetical and future questions and, secondly, that the injunction sought is prohibited under section 16 of the Crown Proceedings Ordinance.

Now, in support of the first of these contentions the Solicitor General drew attention to the procedure and the powers prescribed for

(11) (1965) A.C. 172

the Legislative Council by the Letters Patent and the Royal Instructions under which it operates. He stressed the limited role of the Legislative Council, which he described as being "powerfully permissive" with regard to legislation, in that the Governor could not enact legislation without having received the Council's prior advice and consent although he was not under any obligation to enact a measure because it had passed through the Legislative Council as a Bill; he is given a discretion in the matter and, in certain instances, is enjoined not to pass measures which have come through the Legislative Council. In this connection the Solicitor General drew particular attention to Clause XXVI of the Royal Instructions though we would say in passing that we are doubtful whether his argument on this clause was well-founded as the reference in it to measures repugnant to "the law of England" may embrace law which is not extended to Hong Kong.

The Solicitor General referred to the case of Re Barnato (13) as showing that where the matters put before the court are hypothetical the court has no jurisdiction to enter into them and make a declaration of the rights and obligations which would arise if the hypothetical suppositions should come to pass. He placed particular reliance on the observation by Lord Justice Cohen, as he then was, when he said :-

> "Counsel for the plaintiffs and counsel for the beneficiaries submitted that it was not really a question whether or not this was the type of case in which the court could entertain proceedings against the Crown, but was really a question of discretion. I do not think that is true, but, even if it were true, I am by no means satisfied that we ought to allow the proceedings to go on.....".

Mr. Wells subsequently discounted that passage by saying that it was obiter and merely an expression of doubt and nothing more; a

(13) (1949) 1 All E.R. 515 at 520

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description which could not, however, apply to a subsequent observation by the Master of the Rolls, Lord Greene, who concluded his judgment by saying :-

> "In my opinion, if it is desired that these courts should have power to decide hypothetical questions on the construction of taxing Acts for the guidance of the subjects of the King, that power ought to be given by legislation and not by this court arrogating it to itself.".

The Solicitor General argued that the word "power" in that passage should be equated with the expression "jurisdiction", so that the Master of the Rolls was clearly of the opinion that the court did not have jurisdiction to deal with hypothetical questions. He argued that just as in that case the court refused to act as legal advisers to trustees who were seeking advice with regard to a position which might arise in the future, the court in the present instance should not seek to act as legal advisers to the Legislative Council in regard to matters which might be put before them.

Reliance was also placed on Nixon v. Attorney General (14) which dealt with an application by civil servants for a declaration of rights with regard to pensions. Clauson, J. said the courts were entitled to make declarations only in regard to legal rights and this view, which was, the Solicitor General claimed, endorsed by the Court of Appeal, would indicate that no declaration in the nature of advice to the Crown could be made where, in the absence of a legal right, "the foundation of the jurisdiction to make such a declaration.....is gone".

He also referred us to the cases of Draper v. British Optical Association (15) where the refusal of the declaration sought would seem to come close to the circumstances of the present case but where there are difficulties in reconciling the reasons advanced for the refusal with the actual terms of

(14) (1930) 1 Ch.D, 566 at 575
(15) (1938) 1 All E.R. 115; 54 T.L.R. 245

the declaration sought, and to Howard v. Pickford Tools Co. Ltd. (16) where continued performance of a contract by an employee, after the other side had allegedly repudiated it, debarred him from obtaining a declaration as to what his rights would have been if he had accepted the repudiation. Neither case seems to throw much light on the question whether the refusal of relief should have been ascribed to lack of jurisdiction to grant it as distinct from the exercise of a discretion or a decision that the circumstances did not warrant relief. In the Howard (16) case, Lord Evershed, M.R. said, with reference to the legislation which authorises the court to make declaratory judgments :-

> "Although Ord. 25 r.5, is most useful in the jurisdiction which it confers, and I am not anxious to put unnecessary limitations upon it, it is plain that it could not, and should not, be used so as to require the court to answer academic questions.....
>
> I want to confine my observations strictly to the matter in hand, and I therefore prefer to say no more than that in this particular case, I am satisfied that the court ought not in the circumstances to entertain an action for a declaration of this nature.... this particular claim, with all respect to the judge who took a contrary view, is in my opinion beyond what I have called the intendment of the order, and I think that the action is one which the court could not properly entertain.".

Asquith, L.J. said :-

> "I agree. An unaccepted repudiation is a thing writ in water and of no value to anybody: it confers no legal rights of any sort or kind. Therefore a declaration that the defendants had repudiated their contract with the plaintiff would be entirely valueless to the plaintiff if it appeared at the same time, as it must appear in this case, that it was not accepted.".

(16) (1951)1K.B. 417

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At times the language used seems to suggest a lack of jurisdiction but the substance of the judgment appears to imply a decision on the merits

That the courts have not been entirely consistent in their approach to this question would appear to emerge from the cases collected in a useful work entitled "The Declaratory Judgment" by I. Zamir to which the Solicitor General directed our attention and on which he relied for his contention that any of the following matters, each of which he argued was present in the instant case, would take it out of the jurisdiction of the courts :-

(1) that there is no dispute in existence;

(2) that the dispute is not attached to specific facts or that, in so far as the dispute is attached to specific facts, these facts are hypothetical, and

(3) the issue is not of any practical significance or the declaration can have no practical consequence.

Mr. Wells, on the other side, said that he had never seen the rule under which the summons was taken out - Order 12 rule 8 - used to obtain the relief sought in this case on grounds such as those advanced in the present proceedings. He claimed that the court should be very slow to stifle proceedings by using that rule to set aside a writ in any circumstances, and went on to maintain that far from the facts on which reliance was placed in the present case being hypothetical they were very certain; that it had been clearly indicated to the plaintiffs that it was the intention of the officers against whom relief was sought to introduce and pass legislation along the lines shown in Mr. Oldridge's affidavit; that if such legislation was introduced and enacted then the plaintiffs would suffer much damage and that it was of considerable importance to them now to know where they stood so that they would not incur the very heavy additional expenditure currently contemplated by the company but which would not be justified if they were going to be

faced at a later stage by an enactment which would destroy the basis on which it had been planned.

He relied particularly on the decision in Guaranty Trust Company of New York v. Hannay & Co. (17) for the proposition that the courts would make a declaration even though no cause of action had actually arisen at the time when the declaration was made. He went on to argue that Re Barnato (13) (supra) was concerned with a remote contingency whereas in the present instance he and his clients are concerned with a very proximate contingency: an immediate prospect of something happening which would seriously damage them. He claimed there is a threat hanging over them and they are entitled to know where they stand in regard to it.

We have found this particular issue difficult. Some of the difficulty arises from the history of declaratory judgments themselves and the long standing reluctance of the English Courts to enter into this field. They have been slow to do so although they have been encouraged by the enactment of legislation in the form of rules of Court enabling them to make declaratory judgments in circumstances where they had previously declined to do so because the declaration was not annexed to any other claim for relief. In our consideration of the problem we have derived considerable assistance from Mr. Zamir's recent book (18). It says :-

> "The declaratory jurisdiction has sometimes been represented as virtually unlimited. Thus, in a recent case Denning L.J. (as he then was) said: 'I know of no limit to the power of the court to grant a declaration except such limit as it may in its discretion impose upon itself".".

This observation, which is taken from Barnard v. National Dock Labour Board (19), does raise a question whether a court can arbitrarily limit its jurisdiction as distinct from setting limits on the type of case in which, in its discretion,

(17) (1915) 2 K.B. 536
(13) (1949) 1 All E.R. 515
(18) The Declaratory Judgment pages 31, 44
(19) (1953) 2 Q.B. 18, 41

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it will exercise an undoubted jurisdiction. The author goes on to refer to the statement by Mr. Justice Joyce in North Eastern Marine Engineering Co. v. Leeds Forge Co. (20) where he said :-

> "To the operation of that rule" (i.e.O.25 r.5) "there must be some limitation. It cannot, I think, compel the Court to entertain any and every action for a declaration, and it cannot be that a claim for any declaration whatsoever it may be is a good ground of action.".

The author then proceeds to examine the limiting factors which the courts had observed in dispensing declarations and lists the factors already mentioned by the Solicitor General under the classification of theoretical issues, i.e. absence of a dispute in existence etc. In the layout of his book the author treats that as going to jurisdiction but in his text he says this (18) :-

> "Yet, though the courts have so far rejected all claims for declarations on theoretical issues, it is not entirely free from doubt whether they have done so because of lack of jurisdiction, or rather because they have objected, in their discretion and as a matter of practice, to making theoretical declarations".

In a footnote on the same page, he says :-

> "The view that the courts have no jurisdiction to declare upon theoretical issues may be supported by opinions expressed in Re Clay (21) and in Re Barnato (13). But in many other cases, e.g. in Re Carnarvon Harbour Acts (22).... and in Faber v. Gosworth Urban District Council (23).....in which the issues were clearly hypothetical, the courts, though declining to make the declarations, treated the claim as if it was within their jurisdiction and subject to their discretion.".

(13) (1949) 1 All E.R.515 (21) (1919) 1 Ch.66,79
(18) The Declaratory Judgment pages 31,44
(20) (1906) 1 Ch.324,328 (22) (1937) Ch.72,80
(23) (1903) 88 L.T.549

Elsewhere in criticising the decision in Faber v. Gosworth Urban District Council (23) on other grounds, he brings out very clearly the great advantages which would have accrued to the plaintiffs in that case if they could have obtained a declaration as to their rights before embarking on heavy expenditure which might prove to be abortive, the question being whether certain sewers if constructed could be joined to the main sewer which was under the control of the District Council. The declaration was refused because "not a brick had been laid, and no step has been taken towards the construction of the sewers.". However inconvenient, this decision would appear to reflect the exercise of a discretion rather than the absence of jurisdiction but both it and the Carnarvon Harbour (22) case are decisions of a court of first instance, whilst Barnato (13) and Clay (21) were decisions in the Court of Appeal. However, in Thorne v. Motor Trade Association (24) the House of Lords seems to have accepted that there is jurisdiction and even that, in exceptional circumstances, a declaration will be made although the question is hypothetical, at least in the sense that there is no dispute between the parties. Lord Wright said :-

> "Whether a declaratory judgment should be made is in any case a matter of the Court's discretion.".

Also it appears to be generally accepted that the court will deal by declaration with "future rights". But, as Mr. Zamir points out (p.203), the dividing line between hypothetical issues and future rights is at times very thin and difficult to draw. Anything which is going to arise in the future inevitably involves something hypothetical; no matter how certain it appears at the moment there is always the possibility that

(13) (1949) 1 All E.R.515
(21) (1919) 1 Ch.66,79
(22) (1937) Ch.72,80
(23) (1903) 88 L.T.549
(24) (1937) A.C.797

In the Supreme Court of Hong Kong Original Jurisdiction

No. 6

Decision of Full Court on Defendants' Summons to set aside Writ under Order 12 Rule 8. 1st June 1968 (Contd.)

it may not occur. In practice, he suggests, the line is drawn if the event in question is reasonably certain to occur. If it is reasonably certain it is a "future right"; if not reasonably certain, then it is hypothetical. There must be considerable practical difficulties in limiting jurisdiction by a line so fine and difficult to draw. Opinions of judges could well differ as to precisely where such a line might lie and such a question seems far more suitable for the exercise of discretion than as a determinant of jurisdiction.

We have, as indicated earlier, found difficulty in this particular question but, with some hesitation, we have come to the conclusion that the refusal by the courts to make declarations in particular circumstances because the questions put to them are "hypothetical" does not mean that the courts have no jurisdiction to enter into that field no matter how rare or exceptional their entries may have been in the past, but should properly be regarded as an exercise of discretion by the courts. On that account, we would not uphold the application that the writ should be set aside on the strength of the first contention set out in (b) of the summons. The Solicitor General agreed that he could not succeed on the second alone.

No. 7

Order of Full Court giving Provisional Leave to the Defendants to Appeal to Privy Council 20th June 1968.

No. 7

Before the Full Court (the Honourable Sir Michael Hogan, C.M.G., Chief Justice and the Honourable Mr. Justice Huggins) in Court.

Order of Full Court giving Provisional Leave to the Defendants to Appeal to the Privy Council

UPON hearing Counsel for the first and second Defendants and Counsel for the Plaintiffs and upon reading the Notice of Motion and the affidavit of Gilbert Charles Hogg both filed herein on the 14th day of June, 1968 IT IS ORDERED

In the Supreme Court of Hong Kong Original Jurisdiction

No. 7

Order of Full Court giving Provisional Leave to the Defendants to Appeal to Privy Council 20th June 1968 (Contd.)

that leave be granted to the first and second Defendants to appeal to Her Majesty the Queen in Her Privy Council against the Order of the Full Court herein dated the 1st day of June 1968 conditional upon that the first and second Defendants within fourteen days from the date hereof entering into good and sufficient security for the sum of $10,000.00 either by payment in cash or provision of security to the satisfaction of the Registrar of this Court for the due prosecution of the appeal, and the payment of all such costs as may become payable to the Plaintiffs in the event of the first and second Defendants not obtaining an order granting them final leave to appeal or of the appeal being dismissed for non-prosecution or of Her Majesty in Council ordering the first and second Defendants to pay the Plaintiffs' costs of the appeal (as the case may be) IT IS ALSO ORDERED that the First and Second Defendants prepare and dispatch the record of these proceedings to England within three months from the date hereof. Liberty to apply generally.

Dated the 20th day of June, 1968.

(Sgd) S. H. MAYO

Assistant Registrar.

No. 8

Order of Full Court granting Final Leave to the Defendants to appeal to the Privy Council 6th September 1968

Before the Full Court (The Honourable Sir Michael Hogan, C.M.G., Chief Justice and the Honourable Mr. Justice Huggins) in Court.

Order of Full Court granting Final Leave to the Defendants to appeal to the Privy Council.

UPON hearing Counsel for the Plaintiffs and Counsel for the First Defendant and the Second Defendant and Upon reading the Motion of the First and Second Defendants and the Affidavit of Patrick Francis Xavier Leonard both filed on

In the Supreme Court of Hong Kong Original Jurisdiction

No.8

Order of Full Court granting Final Leave to the Defendants to appeal to the Privy Council 6th September 1968. (Contd.)

the 29th day of August 1968 IT IS ORDERED that the Defendants have final leave to appeal to Her Majesty in Her Privy Council

(Sgd) S.H. MAYO

Assistant Registrar.

Exhibits

GHO.1.Sound Licence. 9th December 1955.

Exhibit GHO.1.

HONG KONG

TELECOMMUNICATION ORDINANCE

(Chapter 106)

LICENCE

TO

REDIFFUSION (HONG KONG) LIMITED.

Exclusive right to establish a Radio-distribution Service.

In exercise of the powers conferred by sections 28 and 39 of the Telecommunication Ordinance, the Governor in Council hereby grants to REDIFFUSION (HONG KONG) LIMITED (previously known as Broadcast Relay Service (Hong Kong) Limited and hereinafter referred to as the licensee), whose registered office is at Rediffusion House, Arsenal Street, Victoria in the Colony of Hong Kong, subject to the terms and conditions hereinafter contained -

(a) the right to establish, maintain and work a broadcast receiving station or stations at such place or places in the said Colony

as the Postmaster General may from time sanction and such substations and amplifying stations as may prove necessary or convenient for the operation of this licence (which stations are hereinafter collectively referred to as the radiodistribution station); and

(b) the exclusive right to distribute broadcast messages and programmes, specially intended to be received by the public in general, by means of wires connected to the premises of other persons in the said Colony (hereinafter referred to as the subscribers) and to the intent that the subscribers may receive in their respective premises such broadcast messages and programmes as transmitted from broadcasting stations included in the official list of broadcasting stations issued by the International Telecommunications Union at Geneva (hereinafter referred to as broadcast programmes) and such other matters as the licensee may be permitted to originate and distribute in accordance with this licence.

TERMS AND CONDITIONS.

Consideration.

1. The licensee shall pay to the Accountant General for and in respect of the licence hereby granted a sum of one hundred dollars annually in advance on the first day of January in each year during the continuance of this licence.

Payment in respect of each subscriber. (Cap.106).

2. (1) During the continuance in force of any order, made under section 40 of the Telecommunication Ordinance, exempting subscribers from the provisions of section 29 of the said Ordinance in respect of the possession and use of apparatus connected with the radiodistribution station, the licensee shall, in addition to the sum payable under clause 1, pay to the Accountant General on or before the last day of each month, in respect of each subscriber who was a subscriber on the

Exhibits

GHO.1.Sound Licence. 9th December 1955 (Contd.)

last day of the preceding month, a sum equal to one twelfth of the current annual fee payable under the said Ordinance for a broadcast receiving licence, less a discount of ten per cent.

(2) On the coming into force of this Licence, the Licensee shall forthwith pay to the Accountant General the total sum or sums which would have been owing to the Accountant General by the Licensee under sub-clause (1) if this licence had come into force on the prior day 1st April 1955, and if such an order had been made on or before that date and continued in force from that date until the coming into force of this licence.

Establishment of radiodistribution station.

3. (1) The licensee shall use his best endeavours to equip the radiodistribution station with apparatus for service to at least ten thousand subscribers.

(2) From time to time the licensee shall increase the capacity of the system so as to supply an efficient service to subscribers in excess of ten thousand who may apply to receive the licensee's service.

(3) The radiodistribution station shall not be used in such a manner as to cause any unreasonable or unnecessary interference with other wireless services and in particular reaction shall not be used to such an extent as to energise any neighbouring aerial.

(4) All apparatus used for the installation shall so far as possible consistent with the efficiency of the service be of British or Commonwealth manufacture.

Programmes and other matter.

4. (1) In addition to the distribution of broadcast programmes the licensee shall be permitted to distribute from the radiodistribution station or such other place as may be approved by the Postmaster General matter originated at the radiodistribution station or at such other place as may be approved by the Postmaster General subject to such conditions as the Governor in Council may see fit from time to time to impose. Any such originated matter may include advertizing matter and the licensee may receive payment

Exhibits

GHO.1.Sound Licence. 9th December 1955 (Contd.)

therefor and shall be entitled to fix such scale of charges therefor as he shall from time to time decide. The advertizing matter originated at the radiodistribution station shall be limited to ten per cent in time of the total programmes diffused in each twenty four hours. The licensee shall not include or associate advertizing matter with any programmes originated by Radio Hong Kong nor by any other broadcasting organizations without the permission of such organizations having first been obtained.

(2) Prior to the distribution from the radiodistribution station of matter received from any broadcasting station the licensee shall announce to subscribers the source from which such matter is to be or has been (as the case may be) received by the radiodistribution station and at the commencement and termination of any period during which only matter originated by the licensee is distributed by them, the licensee shall distribute an announcement to the effect.

(3) The licensee shall not intentionally use the radiodistribution station or allow the radiodistribution station to be used for the reception of matter other than broadcast programmes. If any other matter is unintentionally received by means of the radiodistribution station the licensee shall not make known or allow to be made known its contents, its origin or destination, its existence or the fact of its receipt to any person (other than a duly authorized officer of the Government or a competent legal tribunal) and shall not reproduce in writing, copy or make use of such matter or allow the same to be reproduced in writing, copied or made use of. The licensee shall take such steps as are possible to prevent such matter being received by subscribers.

(4) The licensee shall not use or allow to be used the wires connecting the radiodistribution station with the premises of subscribers for any other purpose than the distribution to subscribers of broadcast programmes and matter originated by the licensee in accordance with this licence.

Exhibits

GHO.1.Sound Licence. 9th December 1955 (Contd.)

(5) In such manner and at such intervals as the Public Relations Officer may prescribe the licensee shall submit to the Public Relations Officer the programmes and all matter intended to be distributed.

(6) The Public Relations Officer may in his discretion require the licensee to distribute or to refrain from distributing any specified matter if the Public Relations Officer considers it is in the best interest of the public so to do, and the licensee shall comply with every such requirement.

(7) The licensee shall not knowingly without the permission of the Public Relations Officer distribute to subscribers or allow subscribers to receive in their respective premises by means of the radiodistribution station any programme containing political, social, religious or economic propaganda received at the radiodistribution station in the English or any other language from any station outside the said Colony.

(8) The licensee shall not distribute to subscribers any matter of indecent, obscene or offensive character, or any matter subversive of public order.

(9) The Licensee shall distribute to all subscribers during the working hours of the radiodistribution station any Government announcement or matter related thereto which the Public Relations Officer may require. Such a distribution shall be made without charge up to a limit of one half-hour in any one day. During such times as any such announcement or matter related thereto is being distributed the same shall, if desired by the Public Relations Officer, be simultaneously distributed over all circuits of the service.

(10) Except as may be authorized by the Governor in Council the licensee shall not receive any money or other consideration from any person (other than payment from a subscriber of the licensee's usual rates as set out in clause 5 and as permitted by sub-clause (1)) for the distribution to subscribers of any matter from the radiodistribution station.

(11) The licensee shall include in his programmes for periods amounting in the aggregate to not less than 21 hours in each week

Exhibits

GHO.1.Sound Licence. 9th December 1955 (Contd.)

the programmes of the British Broadcasting Corporation or of Radio Hong Kong or such other programmes as the Public Relations Officer may require: Provided that the licensee shall not be bound to include in his programmes the programme of Radio Hong Kong under this sub-clause if at any time the aforementioned service ceases to be controlled or operated by the Government of Hong Kong.

Hours of service and charges to subscribers.

5. (1) The licensee shall, except for good cause, provide programmes to all subscribers for at least six hours in every day and for such longer period as he may wish and for such service the licensee shall be entitled to charge a sum not exceeding ten dollars per month and in addition thereto a sum equivalent to the amount payable by the licensee to the Government under clause 2 in respect of each subscriber: Provided that this charge may be increased by the licensee with the permission of the Governor in Council if the licensee establishes to the satisfaction of the Governor in Council that the expenses reasonably incurred by the licensee, or any other factors warrant such increase. The licensee shall also be entitled to make a reasonable charge for connecting the premises of each subscriber with the radiodistribution station and to collect any reasonable deposit (non interest bearing) to cover installation and apparatus placed in any subscriber's premises. The licensee shall also be entitled to rent or hire out to the subcribers headphones, loudspeakers or such other apparatus as may be requisite at such rates as may in the first instance be mutually agreed between the licensee and subscriber: Provided that the rates charged for such apparatus shall not be varied except with the consent of the Postmaster General. Such consent shall not be unreasonably withheld.

(2) The licensee shall at his own expense cause all charges to be published in such manner as the Postmaster General shall require.

Free service to certain Government Officers.

6. The licensee shall if and whenever required by the Governor in writing so to do at his own expense in all respects connect and keep connected with the radiodistribution station the

Exhibits

GHO.1.Sound Licence. 9th December 1955 (Contd.)

residence of the Governor, The Colonial Secretary, the Secretary for Chinese Affairs, the Postmaster General and the Public Relations Officer and afford to such persons free of charge all such facilities as shall for the time being be afforded by the licensee to any subscriber in pursuance of the provisions of this licence provided that such residence shall be situated in an area in which the said service is in operation and to which the licensee's wires extend. The number of such residences shall not exceed a total of six.

Licensee to keep record of distributed matter

7. The licensee shall keep a record of the matter distributed to subscribers in each period of twenty four hours showing the source of such matter with approximate times of reception and if required by the Public Relations Officer the incidence of subscribers' demands.

Maintenance of service

8. (1) The licensee shall maintain the service to the satisfaction of the Postmaster General and all apparatus and circuit arrangements in connexion therewith and all wires throughout the system shall conform to such conditions as may from time to time be prescribed by the Postmaster General. The licensee shall maintain the apparatus and wires connected with the system (except such apparatus and wires as may be provided by the Government or a licensee of the Government) in good working order and shall allow any person duly authorized by the Postmaster General to inspect the radiodistribution station and such wires as aforesaid and the record referred to in clause 7 at any reasonable time with or without previous notice.

(2) The licensee shall furnish the Postmaster General with such information regarding the operation and conduct of the service as may from time to time be reasonably required.

Powers of Postmaster General for removal of wires

9. (1) The licensee shall if and whenever required by notice in writing from the Postmaster General remove any connecting wire erected or maintained by the licensee which impedes the construction of Government plant or which interferes or, in the opinion of the Postmaster General, is likely to interfere with the working of any circuit or of any wireless telegraph station whether or not such circuit or wireless

telegraph station was working when the wire was first erected.

(2) The licensee shall not use on any connecting wire maintained by the licensee, or provided for the licensee by the Government or a licensee of the Government, any instrument, apparatus or material or apply thereto any current which injures or, in the opinion of the Postmaster General, is likely to injure any circuit, wire or apparatus of the Government or a licensee of the Government and if and whenever notice in writing is given to the licensee by any officer of the Government complaining of the use of any such instrument, apparatus or material or the application of any such current the licensee shall immediately discontinue the use thereof.

(3) None of the connecting wires erected or maintained by the licensee shall be earthed.

(4) Any wire which is erected above or in such a position that it is liable to fall upon or to be blown on to an existing power wire (including electric lighting wires) shall be guarded to the reasonable satisfaction of the owner of the power wire concerned.

(5) Any overhead wires which are led into subscribers' premises shall be fitted with an efficient device for the protection of the premises from damage by lightning.

Public Emergency.

10. (1)If whenever and so long as in the opinion of the Governor in Council an emergency exists in which it is expedient in the public interest that the Government shall have control over the receipt and distribution of matter by means of the radiodistribution station it shall be lawful for the Postmaster General to direct and cause the radiodistribution station or any part thereof to be taken possession of in the name and on behalf of the Government and so long as such emergency lasts to prevent the licensee from using it and also to cause the radiodistribution station or any part thereof to be used for Her Majesty's service and for these purposes or any of them to cause any

Exhibits

GHO.1.Sound Licence. 9th December 1955 (Contd.)

part or all of the apparatus forming the radio-distribution station to be removed to such a place as he may think fit any person authorized by the Postmaster General in the exercise of the powers conferred by this clause may from time to time enter the premises at which the radiodistribution station is maintained and take possession thereof and use the same as aforesaid.

(2) The licensee shall not be entitled to any compensation in respect of the exercise by the Postmaster General of the powers conferred on him by this clause: Provided that in the event of the Government taking over complete control for any period exceeding six months, the term of this licence shall be extended for a period equivalent to the period or periods during which the licensee has been so compelled to cease completely operating under this licence.

Compulsory purchase.

11. (1) Not less than three months prior to the expiration of this licence, the Governor in Council may by three months' notice in writing to the licensee require him to sell to the Government at the expiration of this licence (hereinafter referred to as the date of purchase) the land and/or interest in land (if any), the premises and/or interest in premises (if any) equipment, apparatus and other plant forming the radiodistribution station, and wires and other equipment and plant used by the licensee for the purpose of connecting the premises of subscribers with the radiodistribution station or installed by the licensee at the premises or subscribers.

(2) The consideration to be paid by the Government to the licensee for the purchase of the said land and/or interest in land, premises and/or interest in premises, equipment, apparatus, wires and other plant shall be a sum equal to the value thereof at the date of purchase but exclusive of any allowance or compensation for loss of profit, compulsory sale, goodwill, the cost of raising capital or any other consideration.

(3) Any difference between the Government and the licensee as to the consideration to be paid by the Government under sub-clause (2) shall be referred to arbitration in accordance with the provisions of the Code of Civil Procedure or any

statutory modification thereof for the time being in force.

Exhibits

GHO.1.Sound Licence. 9th December 1955 (Contd.)

12. This licence shall continue in force until the 30th April, 1973. Term of licence.

13. If the licensee goes into liquidation whether voluntary (save for the purpose of amalgamation or reconstruction) or compulsory or if the permitted assignee of the licensee not being a corporation becomes bankrupt or makes any assignment to or composition with his creditors, there shall be deemed to be a breach of the conditions contained in this licence. Liquidation etc.

14. The licensee shall be exonerated from observing or performing the provisions of this licence if and so long as the failure to observe or perform the same shall be directly attributable to the act of God, the Queen's enemies, restraint of Princes and Rulers, strikes, combinations of workmen, lockouts, riots, fires, typhoons, white ants or any other interferences or circumstances beyond the control of the licensee. Act of God etc.

15. The licensee shall not without the consent in writing of the Governor in Council assign or underlet this licence or any of the licensee's powers and authorities granted herein. Non-assignment of licence.

16. Any notice given to the licensee under the provisions hereinbefore contained may be signed by a duly authorized officer and may be served by being sent to the licensee in a registered post letter addressed to the licensee at his last known place of address. Service of notices.

17. Nothing in this licence contained shall prejudice or affect the right of the Government to establish, extend,maintain or work any system or systems of broadcast communication or of receiving or distributing broadcast matter or to enter into agreements or grant licences for the establishment Saving.

Exhibits

GHO.1. Sound Licence. 9th December 1955 (Contd.)

extension maintenance or working of any such system or systems: Provided that such system of broadcast communication shall not include the service which the licensee is by this licence granted the exclusive right to maintain nor any similar service: Provided further that the Government is free to provide such service to Government hospitals and schools if the licensee does not so do.

Infringement of contract and copyright.

18. (1) Except when it is known to be contractually permissible to do so the licensee shall not record, reproduce, publish or otherwise disseminate or allow to be recorded, reproduced, published or otherwise disseminated any matter sent for general reception by any broadcasting station and received by means of the radiodistribution station.

(2) It is hereby declared that nothing herein contained authorizes the licensee to do any act which is an infringement of any copyright which may exist in any published programme or other printed matter or in any matter received by means of the radiodistribution station.

(3) Nothing in this clause shall prevent the distribution by the licensee to subscribers of any programme broadcast for general reception by Radio Hong Kong contemporaneously with the broadcast of such programme.

Licensee's responsibility for acts of servants.

19. All terms and conditions herein contained or imposed hereunder to be observed by the licensee shall be complied with by all persons in any way concerned in the operation or management of the radiodistribution station and any material breach or non-observance or non-performance thereof by any such persons shall be deemed to be the act or omission as the case may be of the licensee.

Substitution for previous licence.

20. This licence is in substitution for a radiodistribution station licence dated the 16th July, 1948, (hereinafter referred as the old licence) granted by the Postmaster General to the licensee, (then known as Broadcast Relay Service (Hong Kong) Limited) and surrendered by the licensee on the coming into force of this licence, and any reference to that licence in

Exhibits

GHO.1.Sound Licence. 9th December 1955 (Contd.)

any other licence shall be deemed to be a reference to this licence: Provided always that, save in regard to specific amendments, alterations or additions made or introduced by this licence to the terms of the old licence, nothing contained in this licence shall or shall be deemed to reduce, alter, or restrict the rights of the licensee as acquired by the licensee under the terms of the old licence relating to the reception of broadcast messages and programmes and the distribution thereof by wires as set out in the old licence.

Approved by the Governor in Council

(Sgd) D.C.C.Luddington
Clerk of Councils.

9th December, 1955.

Sealed

Executive Council
Hong Kong.

Exhibit GHO.2.

GHO.2

Television Licence. 5th March 1967.

HONG KONG TELECOMMUNICATION ORDINANCE

(Chapter 106).

LICENCE

TO

REDIFFUSION (HONG KONG) LIMITED.

Exclusive right to establish a Wired Television Service.

In exercise of the powers conferred by sections 3, 28 and 39 of the Telecommunication Ordinance, the Governor in Council hereby grants to REDIFFUSION (HONG KONG) LIMITED (hereinafter referred to as the licensee), whose registered

Exhibits

GHO.2. Television Licence. 5th March 1967 (Contd.)

office is at Rediffusion House, Arsenal Street Victoria in the Colony of Hong Kong, subject to the terms and conditions hereinafter contained -

(a) the right to establish, maintain and work a telegraph together with all necessary repeaters and amplifiers within the said Colony for the purpose of distributing television by wire supplemented by such radio links as may be permitted in accordance with this licence from such station or stations as the Postmaster General may from time to time sanction (which stations are hereinafter collectively called the distribution station) and to place, lay, carry or maintain any posts, cables or wires for the purpose of such telegraph in, along, through across or under any roads or other property vested in the Crown.

(b) the exclusive right to maintain a service to the public consisting of television programmes and matter, originated at or distributed from the distribution station with such aural messages and programmes as are reasonably required for and associated with the supply of an efficient television service to the public, and of such other matters as the licensee may be permitted to distribute in accordance with this licence, distributed by means of wires connected to the premises of other persons in the said Colony (hereinafter referred to as the subscribers):

(c) the right to establish, maintain and work a television broadcast receiving station or stations at such place or places in the said Colony as the Postmaster General may from time to time sanction and such substations and amplifying stations as may prove necessary or convenient for the operation of this licence (which stations are hereinafter collectively referred to as the broadcast receiving station), and to relay from the distribution station any television programme broadcast from any broadcasting station included in the

official list of broadcasting stations issued by the International Telecommunications Union at Geneva (hereinafter referred to as broadcast programmes) contemporaneously with the broadcast of such programme.

Exhibits
GHO.2
Television Licence. 5th March 1967 (Contd,)

TERMS AND CONDITIONS.

Consideration.

1 The licensee shall pay to the Accountant General for and in respect of the licence hereby granted a sum of one hundred dollars annually in advance on the first day of January in each year during the continuance of this licence.

Payment in respect of each subscriber. (Cap.106)

2. During the continuance in force of any order, made under section 40 of the Telecommunication Ordinance, exempting subscribers from the provisions of section 29 of the said Ordinance in respect of the possession and use of apparatus connected with the distribution station, the licensee shall, in addition to the sum payable under clause 1, pay to the Accountant General on or before the last day of each month, in respect of each subscriber who was a subscriber on the last day of the preceding month, a sum equal to one twelfth of the current annual fee payable under the said Ordinance for a television broadcast receiving licence, less a discount of ten per cent.

Establishment of distribution station.

3. (1) The distribution station shall, after a period of one year from the coming into operation of this licence, be capable of distributing a daily television service to at least five thousand subscribers.

(2) (2) From time to time the licensee shall increase the capacity of the system so as to supply an efficient service to subscribers in excess of five thousand who may apply to receive the licensee's service.

(3) The distribution station shall not be used in such a manner as to cause any unreasonable or unnecessary interference with authorized wireless services and in particular reaction shall not be used to such an extent as to energize any neighbouring aerial.

Exhibits
GHO.2
Television Licence. 5th March 1967 (Contd.)

(4) All apparatus used for the installation shall so far as possible consistent with the efficiency of the service be of British or Commonwealth manufacture.

(5) The number of screen lines used in the distribution system shall be the same as that currently in use in the United Kingdom, namely 405.

(6) The distribution system shall be such that commercially manufactured 405-line interlaced, 50 frames per second television receiving apparatus may be adapted for use therewith.

(7) The licensee shall permit subscribers who so desire to receive the service by means of receiving apparatus purchased or hired from persons other than the licensee, unless such apparatus is unsuitable for connexion with the television circuit or for any other reason likely to interfere with the efficiency of the television service:

Provided that where the licensee fails to connect the apparatus of a proposed subscriber to the television circuit, the licensee shall on request by such proposed subscriber supply him with a written statement of the grounds for failing so to do, and such proposed subscriber, if dissatisfied with these grounds, may refer the matter to the Postmaster General whose decision thereon shall be final.

(8) When and where it is or may become necessary for the efficient distribution of the television service, the licensee may supplement or replace wired sections of the main distribution system (excluding connexions to individual subscribers) by such micro-wave unidirectional point to point radio links as the Postmaster General may from time to time sanction and erect and operate apparatus requisite for such purpose subject to such conditions as the Postmaster General may see fit from time to time to impose.

Programmes and other matter.

4. (1) No matter, other than matter originated at the distribution station and relayed broadcast matter, shall be distributed from the distribution station unless such matter is originated at a place

approved by the Postmaster General and such matter is transmitted from such place to the distribution station in accordance with such conditions as the Postmaster General may see fit to impose.

(2) The matter distributed may include advertising matter and the licensee may receive payment therefor and shall be entitled to fix such scale of charges therefor as he shall from time to time decide. The advertising matter originated at the distribution station shall be limited to ten per cent in time of the total programmes diffused in each twenty four hours. The licensee shall not include or associate advertising matter with any programmes originated by Radio Hong Kong nor by any other broadcasting organizations without the permission of such organizations having first been obtained.

(3) Prior to the distribution by relay from the distribution station of matter received from any broadcasting station the licensee shall inform subscribers of the source from which such matter is to be or has been as the case may be received by the distribution station and at the commencement and termination of any period during which only matter originated by the licensee is distributed by him the licensee shall distribute information to that effect.

(4) The licensee shall not intentionally use the broadcast receiving station or allow the broadcast receiving station to be used for the reception of matter other than broadcast programmes. If any other matter is unintentionally received by means of the broadcast receiving station the licensee shall not make known or allow to be made known its contents, its origin or destination, its existence or the fact of its receipt to any person (other than a duly authorized officer of the Government or a competent legal tribunal) and shall not reproduce, copy or make use of such matter or allow the same to be reproduced, copied or made use of. The licensee shall take such steps as are possible to prevent such matter being received by subscribers.

Exhibits
GHO.2
Television Licence. 5th March 1967 (Contd.)

(5) The licensee shall not, save under and in accordance with any other licence held by the licensee, use or allow to be used the wires connecting the distribution station with the premises of subscribers for any other purpose than the distribution to subscribers of relayed broadcast programmes and matter originated by the licensee in accordance with this licence.

(6) In such manner and at such intervals as the Public Relations Officer may prescribe the licensee shall submit to the Public Relations Officer the programmes and all matter intended to be distributed.

(7) The Public Relations Officer may in his discretion require the licensee to refrain from distributing any specified matter or more than a specified amount or proportion of filmed matter or class of filmed matter of non-British or Commonwealth manufacture if the Public Relations Officer c onsiders it is in the best interest of the public of Hong Kong so to do, and the licensee shall comply with every such requirement .

(8) The licensee shall not knowingly without the permission of the Public Relations Officer distribute to subscribers or allow subscribers to receive in their respective premises by means of the distribution station any programme containing political, social, religious or economic propaganda.

(9) The licensee shall not distribute to subscribers any matter of indecent, obscene or offensive character or any matter subversive of public order.

(10) The licensee shall distribute to subscribers during the working hours of the distribution station such matter as the Public Relations Officer may require in such manner as that officer may require, upon payment therefor in accordance with the scale of charges fixed under subclause (2) of clause 4. During such times as any television matter is being so distributed the same shall, if desired by the Public Relations Officer, be simultaneously distributed over all circuits of the television service and shall be accompanied by such aural matter as may be required by the Public Relations Officer.

Provided that such distribution shall be made without payment therefor during a declared state of emergency or in the case of Government announcements and matter related thereto and filmed matter for periods not exceeding fifteen minutes in any one day.

(11) Except as may be authorized by the Governor in Council the licensee shall not receive any money or other consideration from any person (other than payment from a subscriber of the licensee's usual rates as set out in clause 5 and as permitted by subclauses (2) and (10) of this clause) for the distribution to subscribers of any matter from the distribution station.

(12) No filmed matter shall be distributed to subscribers unless it has been censored and passed by a member of the panel of censors appointed under regulation (2) of the Film Censorship Regulations, 1953, or any other enactment substituted therefor, and the licensee has paid to the Accountant General a fee for such censorship equal to one tenth of the fee for the time being specified in the Schedule to such regulations or in such other enactment for the type of film concerned. (G.N.A.166/53)

(13) No matter shall be distributed between the hours of midnight and 8 a.m. except with the permission of the Public Relations Officer.

Hours of service and charges to subscribers.

5. (1) The licensee shall, except for good cause, provide programmes to all subscribers for at least three hours in every day and for such longer periods as he may wish and for such service the licensee shall be entitled to charge a sum not exceeding thirty-five dollars per month to be known as "the input charge":

Provided that this charge may be increased by the licensee with the permission of the Governor in Council if the licensee establishes to the satisfaction of the Governor in Council that the expenses reasonably incurred by the licensee or any other factors warrant such increase.

(2) In addition to the sum provided

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GHO.2

Television Licence. 5th March 1967 (Contd.)

for in subclause (1), the licensee shall be entitled to charge the subscriber -

(a) a sum equivalent to the amount applicable and payable by the licensee to the Accountant General under clause 2 in respect of such subscriber;

(b) a reasonable charge for connecting the premises of each subscriber to the distribution station as well as for the installation of apparatus placed in any subscriber's premises;

(c) such sum or sums as may be mutually agreed between the licensee and any subscriber in respect of the sale or renting or hiring out under and in accordance with a dealer's licence issued under the Radiocommunication Regulations to the subscriber of such receiving apparatus as may be requisite to enable the subscriber to receive the service of the licensee, as well as any reasonable charges for maintenance and repairs, and to collect a reasonable deposit or other security to cover such apparatus, and the licensee shall be entitled in relation to the foregoing to act as agent on behalf of manufacturers, owners or suppliers of such apparatus.

(Vol.IX, p.216).

Free service to certain Government officers.

6. The licensee shall if and whenever required by the Governor in writing so to do at his own expense in all respects connect and keep connected with the distribution station the residence or office of the Governor, the Postmaster General and the Public Relations Officer and afford to such persons free of charge all such facilities as shall for the time being be afforded by the licensee to any subscriber in pursuance of the provisions of this licence provided that such residence or office shall be situated in an area in which the said service is in operation and to which the licensee's wires extend.

Licensee to keep record of distributed matter.

7. The licensee shall keep a written record in the form of a log of the matter distributed to subscribers in each period of twenty four hours showing the source of such matter with approximate times of distribution and shall supply to the Public

Relations Officer a copy thereof at such intervals as that officer may require.

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8. (1) The licensee shall maintain the service to the satisfaction of the Postmaster General and all apparatus and circuit arrangements in connexion therewith and all wires throughout the system shall conform to such conditions as may from time to time be prescribed by the Postmaster General. The licensee shall maintain the apparatus and wires connected with the system (except such apparatus and wires as may be provided by the Government or a licensee of the Government) in good working order and shall allow any person duly authorized by the Postmaster General to inspect the distribution station, the broadcast receiving station and such wires as aforesaid and the record referred to in clause 7 at any reasonable time with or without previous notice.

Television Licence. 5th March 1967 (Contd.)

Maintenance of service

(2) The licensee shall furnish the Postmaster General with such information regarding the operation and conduct of the service as may from time to time be reasonably required.

9. (1) The licensee shall if and whenever required by notice in writing from the Postmaster General remove any connecting wire erected or maintained by the licensee which impedes the constructinn of Government plant or which interferes or, in the opinion of the Postmaster General is likely to interfere with the working of any circuit or of any wireless telegraph station whether or not such circuit or wireless telegraph station was working when the wire was first erected.

Powers of Postmaster General for removal of wires.

(2) The licensee shall not use on any connecting wire maintained by the licensee, or provided for the licensee by the Government or a licensee of the Government, any instrument apparatus or material or apply thereto any current which injures or, in the opinion of the Postmaster General, is likely to injure any circuit, wire or apparatus of the Government or a licensee of the Government and if and whenever notice in writing is given to the licensee by any officer of the Government

Exhibits
GHO.2
Television Licence.
5th March 1967 (Contd.)

complaining of the use of any such instrument, apparatus or material or the application of any such current the licensee shall immediately discontinue the use thereof.

(3) None of the connecting wires erected or maintained by the licensee shall be earthed.

(4) Any wire which is erected above or in such a position that it is liable to fall upon or to be blown on to an existing power wire (including electric lighting wires) shall be guarded to the reasonable satisfaction of the owner of the power wire concerned.

(5) Any overhead wires which are led into subscribers' premises shall be fitted with an efficient device for the protection of the premises from damage by lightning.

Compulsory purchase.

10. (1) Not less than three months prior to the expiration of this licence, the Governor in Council may by three months' notice in writing to the licensee require him to sell to the Government at the expiration of this licence (hereinafter referred to as the date of purchase) the land and/or interest in land (if any), the premises and/or interest in premises (if any), equipment, apparatus and other plant forming the distribution or broadcast receiving station, and wires and other equipment and plant used by the licensee for the purpose of connecting the premises of subscribers with the distribution or broadcast receiving station or installed by the licensee at the premises of subscribers.

(2) The consideration to be paid by the Government to the licensee for the purchase of the said land and/or interest in land, premises and/or interest in premises, equipment, apparatus, wires and other plant shall be a sum equal to the value thereof at the date of purchase but exclusively of any allowance of compensation for loss of profit, compulsory sale, goodwill, the cost of raising capital or any other consideration.

(3) Any difference between the

Government and the licensee as to the consideration to be paid by the Government under subclause (2) shall be referred to arbitration in accordance with the provisions of the Code of Civil Procedure or any statutory modification thereof for the time being in force.

11. This licence shall continue in force until the 30th April, 1973 — Term of licence.

12. If the licensee goes into liquidation whether voluntary (save for the purpose of amalgamation or reconstruction) or compulsory or if the permitted assignee of the licensee not being a corporation becomes bankrupt or makes any assignment to or composition with his creditors, there shall be deemed to be a breach of the conditions contained in this licence. — Liquidation etc.

13. The licensee shall be exonerated from observing or performing the provisions of this licence if and so long as the failure to observe or perform the same shall be directly attributable to the act of God, the Queen's enemies, restraint of Princes and Rulers, strikes, combinations of workmen, lockouts, riots, fires, typhoons, white ants or any other interference or circumstances beyond the control of the licensee. — Act of God etc.

14. The licensee shall not without the consent in writing of the Governor in Council assign or underlet this licence or any of the licensee's powers and authorities granted herein. — Non-assignment of licence.

15. Any notice given to the licensee under the provisions hereinbefore contained may be signed by a duly authorized officer and may be served by being sent to the licensee in a registered post letter addressed to the licensee at his last known place of address. — Service of notices

16. Nothing in this licence contained shall prejudice or affect the right of the Government to establish, extend, maintain or work any system or systems of broadcast communication or of receiving or distributing — Saving

Exhibits
GHO.2
Television Licence. 5th March 1967 (Contd.)

broadcast matter or to enter into agreements or grant licences for the establishment, extension, maintenance or working of any such system or systems:

Provided that such system of broadcast communication shall not include the service which the licensee is by this licence granted the exclusive right to maintain nor any similar service:

Provided further that the Government is free to provide such service to Government hospitals and schools if the licensee does not do so.

Infringement of contract and copyright.

17. (1) Except when it is known to be contractually permissible to do so the licensee shall not record, reproduce, publish or otherwise disseminate or allow to be recorded, reproduced, published or otherwise disseminated any matter sent for general reception by any broadcasting station and received by means of the broadcast receiving station.

(2) It is hereby declared that nothing herein contained authorizes the licensee to do any act which is an infringement of any copyright which may exist in any published programme or other printed matter or in any matter received by means of the broadcast receiving station.

Licensee's responsibility for acts of servants.

18. All terms and conditions herein contained or imposed hereunder to be observed by the licensee shall be complied with by all persons in any way concerned in the operation or management of the distribution or broadcast receiving station and any material breach or non-observance or non-performance thereof by any such person shall be deemed to be the act or omission as the case may be of the licensee.

Control.

19. (1) The majority of the directorate shall be British subjects.

(2) The management and the administrative staff, or an effective majority thereof to the satisfaction of the Governor in Council, shall be British subjects.

(3) The control shall be within the Colony of Hong Kong and essentially British.

Approved by the Governor in Council.

D.C.C. LUDDINGTON
Clerk of Councils.

Council Chamber,

5th March 1957.

Exhibits
GHO.2
Television Licence. 5th March 1957 (Contd.)

EXHIBIT GHO.6.

GHO.6
First draft of Order in Council.

First Draft of Order in Council

1967 No.

COPYRIGHT

THE COPYRIGHT (HONG KONG) ORDER 1967.

Made - - - 1967

Laid before Parliament 1967

Coming into Operation 1967

At the Court at Buckingham Palace, the day of 1967

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by and with the advice of Her Privy Council, and by virtue of the authority conferred upon Her by section 31 of the Copyright Act 1956(a) and of all other powers enabling Her in that behalf, is pleased to direct, and it is hereby directed, as follows :-

Exhibits
GHO.6.
First draft of Order in Council. (Contd.)

1. The provisions of the Copyright Act 1956 specified in Part I of Schedule 1 hereto shall extend to Hong Kong subject to the modifications specified in Part II of that Schedule.

2. The Copyright (International Conventions) Order 1964 (b), the Copyright (International Organisations) Order 1957 (c), as amended (d), and the Copyright (Broadcasting Organisations) Order 1961 (e) (being Orders in Council made under Part V of the said Act) shall extend to Hong Kong subject, in the case of the first mentioned Order, to the modifications specified in Schedule 2 hereto.

3. The Interpretation Act 1889 (f) shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

4. This Order may be cited as the Copyright (Hong Kong) Order 1967 and shall come into operation on 1967.

(a) 4 & 5 Eliz. 2, c. 74

(b) S.I. 1964/690 (1964 II, p.1319)

(c) S.I. 1957/1524 (1957 I, p.483)

(d) S.I. 1958/1052 (1958 I, p.363)

(e) S.I. 1961/2460 (1961 III, p.4505)

(f) 52 & 53 Vict. c.63

Exhibits
GHO.6.
First draft of Order in Council. (Contd.)

SCHEDULE 1

PART I.

Provisions of the Copyright Act 1956 extended to Hong Kong.

All the provisions of the Act as amended by the Performer's Protection Acts 1958 and 1963 (a) and the Films Act 1960 (b) except sections 23 to 30, 32, 34, 35, 42 and 44 and Schedules Four, Five and Nine.

PART II.

Modifications to the provisions extended.

General Modifications.

1. In sections 7, 8(11) and 15(4), for references to the Board of Trade there shall be substituted references to the Governor in Council.

2. In sections 8(1) and 8(10), 12(6), 21(1) and 21(6), 22(2) and 22(3), 43, 48(4) and 49(2) and paragraph 46 of Schedule Seven, for "the United Kingdom" there shall be substituted "Hong Kong".

Particular Modifications.

3. The provisions mentioned in the first column in the following table shall be modified in the manner specified in the second column.

Provision	Modification
Section 8	In subsections (2) and (4); for references to farthings there shall be substituted references to cents and for references to "three-farthings" there shall be substituted references to "five cents"; for subsection (3) there shall be substituted the following: "(3) If at any time the Board of Trade by order made under this section in its operation in the law of the United

(a) 6&7 Eliz.c.44 and 1963 c.53 (b) 8&9 Eliz.2,c.57

Exhibits

GHO.6.

First draft of Order in Council. (Contd.)

Provision	Modification
	Kingdom prescribe either generally or in relation to any one or more classes of records any different rate of, or minimum amount of, royalty the provisions of this section shall be construed subject to the provisions of any such order as is for the time being in force, provided that any reference in such an order to any sum of money shall be construed as a reference to the equivalent amount in the currency of legal tender in Hong Kong as provided by any law of Hong Kong."; in subsection (4)(a), all the words after the first reference to works shall be omitted.
Section 10	For subsection (5) there shall be substituted the following :- "(5) For the purpose of this section a design shall be taken as being applied industrially if it is applied in the circumstances for the time being prescribed by rules made by the Board of Trade under this section and section 36 of the Registered Designs Act 1949 as extended by this section in the law of the United Kingdom.".
Section 13	For subsection (3) there shall be substituted the following :- "(3) Copyright subsisting in a cinematograph film by virtue of this section shall continue to subsist until the film is published and thereafter until the end of the period of fifty years frm the end of the calendar year which includes the date of its first publication and shall then expire, or, if

Provision	Modification
	copyright subsists in the film by virtue only of the last preceding subsection, it shall continue to subsist as from the date of first publication until the end of the period of fifty years from the end of the calendar year which includes that date and shall then expire.";
	in subsection (8), for "any such film as is mentioned in paragraph (a) of subsection (1) of section 38 of the Films Act 1960 (which relates to newsreels)" there shall be substituted "any film consisting wholly or mainly of photographs which, at the time they were taken, were means of communicating news";
	subsection (11) shall be omitted.
Section 17	There shall be inserted, after subsection (4), the following subsection :- "(4A) No action in respect of an infringement of copyright shall be commenced after the expiration of a period of six years from the date at which the right of action accrued.";
	subsection (6) shall be omitted.
Section 18	In subsectinn (1), for the proviso there shall be substituted the following :- "Provided that if by virtue of section 5 of the Limitation Ordinance (which relates to limitation in cases of successive conversion and extinction of title of the owner of converted

Exhibits

GHO.6.

First draft of Order in Council. (Contd.)

Provision	Modification
	goods), the title of the owner of the copyright to such a copy or plate would (if he had then been the owner of the copy or plate) have been extinguished at the end of the period mentioned in that section, he shall not be entitled to any rights or remedies under this subsection in respect of anything done in relation to that copy or plate after the end of that period.";
	subsection (4) shall be omitted.
Section 21	In subsections (7) and (8), for the words "forty shillings" and "fifty pounds" there shall be substituted respectively "five hundred dollars" and "fifty thousand dollars" and for the words "two months" there shall be substituted "twelve months";
	subsection (10) shall be omitted.
Section 22	In subsection (1), for "the Commissioners of Customs and Excise (in this section referred to as "the Commissioners")" there shall be substituted "the Director of Commerce and Industry" and, subject to the modifications to subsection (4) hereinafter provided, for subsequent references to the said Commissioners there shall be substituted references to the said Director;
	in subsection (4), for "the Commissioners" where those words first occur there shall be substituted "the Governor in Council" and for "the Commissioners consider" there shall be substituted "the Governor in Council considers";
	subsection (6) shall be omitted;

Provision	Modification
	for subsection (7) there shall be substituted the following :- "(7) Where by virtue of this section the importation into Hong Kong of any copy to which the section applies of a work is prohibited, the importation into Hong Kong of such a copy shall, for the purposes only of section 17 of the Importation and Exportation Ordinance, be deemed to be a contravention of the provisions of that Ordinance or any regulations made thereunder.".
Section 31	Subsections (1) and (2) shall be omitted; in subsection (4), for "the United Kingdom" there shall be substituted "Hong Kong" and for "in a country" there shall be substituted "in the United Kingdom or in any country other than Hong Kong".
Section 33	For subsection (1) there shall be substituted the following :- "(1) An organisation to which this section applies is one declared to be such by an Order in Council made under this section as part of the law of the United Kingdom which has been extended, in relation to that organisation, to Hong Kong.".
Section 37	Subsection (4) shall be omitted.
Section 39	In subsection (8), for "section three of the Crown Proceedings Act, 1947" there shall be substituted "section 5 of the Crown Proceedings Ordinance".

Exhibits

GHO.6.

First draft of Order in Council. (Contd.)

Provision	Modification
Section 40	Subsection (3) shall be omitted;
	in subsection (4), for "either of the two last preceding subsections" there shall be substituted "the last preceding subsection" and"or the programme to be transmitted, as the case may be" shall be omitted;
	in subsection (5), the reference to a work shall be omitted.
Section 41	In subsection (7), for the definition of "school" there shall be substituted ""school" has the same meaning as in the Education Ordinance".
Section 46	Subsection (1) shall be omitted;
	in subsection (2), "(including any enactment of the Parliament of Northern Ireland)" shall be omitted.
Section 47	The whole section except subsection (4) shall be omitted;
	in subsection (4), "or rules" shall be omitted.
Section 48	For subsection (3) there shall be substituted the following :-
	"(3) References in the Act to the transmission of a work or other subject matter to subscribers to a diffusion service are references to the transmission of such work or other subject matter to the premises of subscribers to the service over wires, or other paths provided by material substance, whether the programme so transmitted is provided by the person operating the service or by some other person; and for the purposes of the Act, where a work or other subject matter is so transmitted-

Exhibits
GHO.6.
First draft of Order in Council. (Contd.)

Provision	Modification
	(a) the person operating the service (that is to say, the person who, in the agreements with subscribers to the service, undertakes to provide them with the service) shall be taken to be the person causing the work or other subject matter to be so transmitted; and (b) no person, other than the person operating the service, shall be taken to be causing it to be so transmitted, notwithstanding that he provides any facilities for the transmission of the programmes: Provided that, for the purposes of this subsection, and of references to which this subsection applies, no account shall be taken of a service of distributing broadcast or other programmes, where the service is only incidental to a business of keeping or letting premises where persons reside or sleep, and is operated as part of the amenities provided exluclusively or mainly for residents or inmates therein.".
Section 50	For subsection (2) there shall be substituted the following :- "(2) Subject to the said transitional provisions the Copyright Act 1911 and the Copyright Order Confirmation (Mechanical Instruments: Royalties) Act 1928 are hereby repealed.".
Section 51	For subsection (2) there shall be substituted the following :- "(2)(a) Any provision of this Act empowering the Governor in Council

Exhibits

GHO.6.

First draft of Order in Council. (Contd.)

Provision	Modification
	to make regulations shall come into operation on the commencement of the Order in Council extending that provision to Hong Kong. (b) All the other provisions of this Act shall come into operation on 1967
	subsection (3) shall be omitted.
Schedule 1	In paragraph 2, for "section seven of the Act of 1949" there shall be substituted "section 2 of the United Kingdom Designs (Protection) Ordinance".
Schedule 7	Paragraphs 25, 26, 40 and 41 shall be omitted.

SCHEDULE 2.

Modifications to the Copyright (International Conventions) Order 1964 :-

(i) Articles 2(1) and 7 to 11 together with Schedules 2 and 4 to 7 shall be omitted.

(ii) In Article 1, for "any part of the United Kingdom" there shall be substituted "Hong Kong".

(iii) In Article 2(2), "before 27th September 1957" shall be omitted and there shall be added at the end "if (a) the country is one in the case of which this Order applies immediately after the commencement of the Act in Hong Kong and the publication took place before such commencement; or (b) the country is one in the case of which this Order applies by reason of the subsequent extension of an amending Order and the publication took place

before the date mentioned in relation to that country in Schedule 2 to this Order in its operation in the law of the United Kingdom.".

(iv) There shall be substituted for Article 2(3) the following :-

"(3) In the case of any such country as mentioned in paragraph (2)(b) of this Article any relevant provisions of Schedule 7 to the Act shall have effect as if there were substituted for references to the commencement of the Act references to the date so mentioned.".

(v) In Article 2(4)(a), there shall be added references to Malawi and Zambia.

(vi) In Schedule 1, there shall be added in Part 1 references to Cameroon and the Malagasy Republic and in Part 2 references to Guatemala, Malawi, New Zealand, Yugoslavia and Zambia.

(vii) In Schedule 3, there shall be added references to Brazil and Czechoslovakia and the references to Congo (Brazzaville) and South Africa shall be omitted.

Explanatory Note.

(This Note is not part of the Order)

This Order extends the provisons of the Copyright Act 1956 with certain exceptions and modifications to form part of the law of Hong Kong.

The Order also extends three Orders in Council made under Part V of that Act. The extension of these Orders will afford protection in Hong Kong to works originating in countries party to International Copyright Conventions, to works produced by certain international organisations and to lawfully authorised broadcasts originating in other Commonwealth countries to which the 1956 Act has already been extended.

Exhibits
GHO.6.
First draft of Order in Council. (Contd.)

The copyright protection afforded in the law of Hong Kong will be similar to that afforded in the law of the United Kingdom.

GHO.7.
First draft of copyright Ordinance.

EXHIBIT GHO.7.

First draft of Copyright Ordinance.

A BILL

To

Modify and to add to the Copyright Act 1956, in its application to Hong Kong.

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

Short title

1. This Ordinance may be cited as the Copyright Ordinance 1967.

Interpretation.

2. (1) In this Ordinance, unless the context otherwise requires -

4 & 5 Eliz. 2, c.74.

"Act" means the Copyright Act 1956;

"Director" means the Director of Commerce and Industry;

"Hong Kong work" means -

(a) in the case of a literary, dramatic, artistic or musical work -

(i) a work the author of which was domiciled or resident in Hong Kong at the time when, or during the period while, the work was made; or

(ii) a work that was first published in Hong Kong;

(b) in the case of a sound recording or

cinematograph film -

(i) a sound recording or cinematograph film the maker of which was domiciled or resident in Hong Kong at the time when, or during the period while, the recording or film was made; or

(ii) a sound recording or cinematograph film that was first published in Hong Kong; and

(c) in the case of a published edition of a literary, dramatic, artistic or musical work -

(i) an edition the publisher of which was domiciled or resident in Hong Kong at the date of its first publication; or

(ii) an edition that was first published in Hong Kong;

"sound broadcast" has the meaning assigned to it by section 14 of the Act and also means sounds transmitted otherwise than as part of a television broadcast to the premises of subscribers to a diffusion service over wires, or other paths provided by a material substance; and

"television broadcast" has the meaning assigned to it by section 14 of the Act and also means visual images transmitted to the premises of subscribers to a diffusion service over wires, or other paths provided by a material substance, together with any sounds transmitted along with these images.

(2) Subject to the provisions of this Ordinance, any word or expression used in the Ordinance to which a meaning is assigned by the Act shall have in or for the purpose of the Ordinance the meaning that it has in or for the purposes of the Act.

Act restricted by copyright in a sound recording that is a Hong Kong work

3. (1) It shall be an act restricted by the copyright in any sound recording that is a Hong Kong work to cause the recording to be transmitted to the premises of subscribers to a diffusion service over wires, or other paths

Exhibits
GHO.7.
First draft of Copyright Ordinance. (Contd.)

provided by a material substance, whether a record embodying the sound recording is utilized directly or indirectly in doing this.

(2) The Act as extended to Hong Kong shall apply to the restricted act specified in subsection (1) in the same manner as it applies to the acts specified in subsection (5) of section 12 of the Act as the acts restricted by the copyright in a sound recording.

Acts restricted by copyright in television and sound broadcasts by Hong Kong organizations. Schedule.

4. (1) Subject to subsection (2), the Act as extended to Hong Kong shall apply in Hong Kong to every television broadcast and every sound broadcast made by any organization specified in the Schedule from a place in Hong Kong as it applies to every television broadcast and every sound broadcast made by the British Broadcasting Corporation or the Independent Television Authority from a place in the United Kingdom.

(2) It shall be an act restricted by the copyright in a television broadcast or a sound broadcast to broadcast the television broadcast or sound broadcast or to cause the television broadcast or sound broadcast to be transmitted to the premises of subscribers to a diffusion service over wires, or other paths provided by material substance.

(3) The Act as extended to Hong Kong shall apply to the restricted acts specified in subsection (2) in the same manner as it applies to the acts specified in subsection (4) of section 14 of the Act as the acts restricted by the copyright in a television broadcast or a sound broadcast.

Schedule.

(4) The Governor may from time to time by notice published in the Gazette amend the Schedule

(5) For the purposes of this section -

(a) the expressions "television broadcast" and "sound broadcast" shall in the Act have the meanings assigned to them for the purposes of this Ordinance; and

(b) references in the Act to broadcasting

shall be construed as including references to a transmission to the premises of subscribers to a diffusion service over wires, or other paths provided by a material substance as well as to broadcasting by wireless telegraphy (within the meaning of the Wireless Telegraphy Act 1949) whether by way of sound broadcasting or of television.

Offences of possession of infringing copy of a Hong Kong Work.

5. (1) Without prejudice to section 21 of the Act, any person who, at a time when copyright subsists in a Hong Kong work, has in his possession for the purposes of trade or business any article that is an infringing copy of such work or any plate used or intended to be used for making infringing copies of such work shall, unless he proves to the satisfaction of the court that he did not know and that he had no reason to believe that the article was an infringing copy of such work, be guilty of an offence and shall be liable on conviction -

(a) if it is his first conviction of an offence under this section, to a fine not exceeding five hundred dollars for each article to which the offence relates; and

(b) in any other case, to such a fine and to imprisonment for six months;

Provided that a fine imposed by virtue of this subsection shall not exceed fifty thousand dollars in respect of articles comprised in the same transaction.

(2) The court before which a person is charged with an offence under this section may, whether he is convicted of the offence or not, order that any article in his possession which appears to the court to be an infringing copy of a Hong Kong work or a plate used or intended to be used for making infringing copies of such work shall be destroyed or delivered up to the owner of the copyright in question or otherwise dealt with as the court may think fit.

Exhibits
GHO.7.
First draft of Copyright Ordinance. (Contd.)

Powers of Investigating Officers.

6. (1) Any police officer, or any public officer authorized in writing in that behalf by the Director, may -

(a) subject to subsection (2), enter and search any place, or board and search any vessel (other than a ship of war) or any aircraft (other than a military aircraft) or search any vehicle, in which he reasonably suspects that there is an infringing copy of a work or other subject matter in which copyright subsists; and

(b) seize, remove and detain -

(i) any article which appears to him to be an infringing copy of any work or other subject matter in which copyright subsists or any plate which appears to him to be intended for use for making infringing copies of any work or other subject matter in which copyright subsists; and

(ii) anything that appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under the Act or this Ordinance.

(2) Where he is satisfied by information on oath that there is reasonable ground for suspecting that there is in any premises used for dwelling purposes anything that is liable to seizure under paragraph (b) of subsection (1), a magistrate may issue his warrant authorizing such premises to be entered and searched by a police officer, or by a public officer authorized in writing in that behalf by the Director; and no premises used for dwelling purposes shall be entered or searched under this Ordinance except pursuant to the warrant of a magistrate issued under this subsection.

(3) Any police officer, or any public officer authorized in writing in that behalf by the Director, may -

(a) break open any outer or inner door of any place that he is empowered or authorized by or under this Ordinance to enter and search;

(b) forcibly board any vessel, aircraft or vehicle that he is empowered by this Ordinance to board and search;

(c) remove by force any person or thing obstructing any detention, search, inspection, seizure or removal that he is empowered by or under this Ordinance to make;

(d) detain any person found in any place that he is empowered or authorized by or under this Ordinance to search until such place has been searched;

(e) detain any vessel or aircraft that he is empowered by this Ordinance to board and search, and prevent any person from approaching or boarding such vessel or aircraft until it has been searched;

(f) detain any vehicle that he is empowered by this Ordinance to search until it has been searched.

Affidavit of ownership of copyright in court proceedings.

7. (1) An affidavit purporting to be made in accordance with subsection (2) by or on behalf of the owner of the copyright in any literary, dramatic or musical work or in any sound recording, cinematograph film or published edition of any literary, dramatic or musical work and stating -

(a) that at a time specified therein copyright subsisted in such work or other subject matter;

(b) that he or a person named therein is the owner of the copyright; and

(c) that a copy of the work or other subject matter annexed thereto is a true copy thereof,

shall be admitted in evidence in proceedings for an offence under section 21 of the Act on its production by the prosecution without further proof, and -

(d) until the contrary is proved, the court

Exhibits

GHO.7.

First draft of Copyright Ordinance. (Contd.)

before which such affidavit is produced shall presume -

(i) that the affidavit was made in accordance with subsection (2); and

(ii) that the affidavit was made by or on behalf of the owner of the copyright in such work or other subject matter; and

(e) such affidavit shall be prima facie evidence of the matters stated therein pursuant to paragraphs (a), (b) and (c).

(2) An affidavit made for the purposes of subsection (1) shall be made on oath before a magistrate in any part of the Commonwealth or before a British consular officer elsewhere and the making thereof shall be authenticated by the signature of the magistrate or British consular officer before whom it was made.

Repeal. (Caps.39 and 40.)

8. The Copyright Ordinance, the Copyright (Application of the Copyright Act) Regulations and the Fine Arts Copyright Ordinance are repealed.

SCHEDULE. (s.4.)

Broadcast Organizations.

1. Radio Hong Kong

2. Hong Kong Commercial Broadcasting Co. Ltd.

3. Rediffusion (Hong Kong) Ltd.

4. Television Broadcasts Ltd.

Exhibits
GHO.8.
Royal Instructions 14th February 1917.

EXHIBIT GHO.8.

Royal Instructions.

Arrangement of Clauses.

Clause	
I	Administration of Oaths
II	Constitution of Executive Council
	Vacation of seats
III	Provisional appointment of Members of the Executive Council
IV	Such provisional appointments to be immediately reported
V	[Revoked]
VI	Governor to communicate Instructions to Executive Council
VII	Executive Council not to proceed to business unless summoned by Governor's authority
	Quorum
VIII	Presiding in Executive Council
IX	Minutes of Executive Council to be kept
	To be transmitted home twice a year
X	Governor to consult Executive Council
XI	Governor alone entitled to submit questions
XII	Governor may act in opposition to Executive Council
	Reporting grounds for so doing
	Members may require their adverse opinions to be recorded on Minutes
XIII	Constitution of Legislative Council
XIV	Provisional appointment of members
	Where there has been a vacancy

Exhibits

GHO.8.

Royal Instructions 14th February 1917 (Contd.

XV	/Revoked/
XVI	Tenure of Office of Unofficial Members of Legislative Council
	Unofficial Members eligible for reappointment
XVII	Seats declared void in certain cases
XVIII	Resignation of Members
XIX	Council may transact business notwithstanding vacancies
	Quorum
XX	/Revoked/
XXI	Presiding in Legislative Council
XXII	Questions to be decided by a majority
	Governor to have original and casting vote
XXIII	Rules and Orders to be made
XXIV	Questions, etc.for debate
XXV	Rules and regulations under which Ordinances are to be enacted
	1. Form of enacting Ordinances
	2. Ordinances to be numbered and methodically arranged
	3. Different subjects not to be mixed in same Ordinance
	No clause to be introduced foreign to what title of Ordinance imports
	Temporary Ordinances
XXVI	Description of Bills not to be assented to
	Proviso in cases of emergency for immediate operation of an Ordinance
XXVII	Private Bills
XXVIII	Ordinances, etc. to be sent home duly authenticated
XXIX	Collection of Ordinances to be published every year
XXX	Minutes of proceedings of Legislative Council to be kept, and sent home after every meeting
XXXI	Surveys and reservations to be made before waste lands are disposed of

ROYAL INSTRUCTIONS.

Passed Under the Royal Sign Manual and Signet to the Governor and Commander-in-Chief of the Colony of Hong Kong and its Dependencies.

Dated 14th February, 1917 (Proc.No.3 of 1917)

/Amended 30th April 1938 (G.N.519/38)

Amended 17th February 1955 (S.I.1955 II.p.3190) (G.N.A. 20/55).

Amended 12th May 1964 (S.I.1964 II.p.3119) (L.N.83/64)./

I. The Governor may, whenever he thinks fit, require any person in the public service of the Colony to take the Oath of Allegiance, in the form prescribed by the Act mentioned in Our said recited Letters Patent, together with such other Oath or Oaths as may from time to time be prescribed by any laws in force in the Colony. The Governor is to administer such Oaths, or to cause them to be administered by some public officer of the Colony.

Administration of oaths

II. The Executive Council of the Colony shall consist of the Senior Military Officer for the time being in command of Our regular troops within the Colony, the persons for the time being lawfully discharging the

Constitution of Executive Council. (amended on 30.4.38)

Exhibits
GHO.8.
Royal Instructions 14th February 1917 (Contd.)

functions of Colonial Secretary, of Attorney-General, of Secretary for Chinese Affairs, and of Financial Secretary of the Colony, who are hereinafter referred to as ex officio Members, and of such other persons as We may from time to time appoint by any Instructions or Warrant under Our Sign Manual and Signet, or as the Governor in pursuance of Instructions from Us through one of Our Principal Secretaries of State may from time to time appoint by an Instrument under the Public Seal of the Colony. Persons so appointed are hereinafter referred to as Official Members or Unofficial Members according as they hold, or do not hold, office under the Crown in the Colony at the time of appointment

Vacation of seats.

Every Unofficial Member shall vacate his seat at the end of five years from the date of the Instrument by which he is appointed or of such other period as may be specified in that Instrument, but shall be eligible to be re-appointed in the manner aforesaid for a further period or periods, each period not exceeding five years:

Provided that if any such Member is provisionally appointed to fill a vacant seat in the Council and his provisional appointment is immediately followed by his definitive appointment, the said period of five years shall be reckoned from the date of the Instrument provisionally appointing him.

If any Official Member cease to hold office under the Crown in the Colony his seat in the Council shall thereupon become vacant.

Provisional appointment of Members of the Executive Council.

III. Whenever any Member, other than an ex officio Member, of the Executive Council of the Colony shall, by writing under his hand, resign his seat in the Council, or shall die, or be declared by the Governor by an Instrument under the Public Seal of the Colony to be incapable of exercising his functions as a Member of the Council, or be absent from the Colony, or shall be acting in an office the holder of which is an ex officio Member of the Council, or shall be suspended from the exercise of his functions as a Member of the Council, the Governor may, by

an Instrument under the Public Seal of the Colony, provisionally appoint any public officer to be temporarily an Official or Unofficial Member of the Council, and any person not a public officer to be temporarily an Unofficial Member of the Council in the place of the Member so resigning, or dying, or being suspended, or declared incapable, or being absent, or sitting as an ex officio Member.

Such person shall forthwith cease to be a Member of the Council if his appointment is disallowed by Us, or if the Member in whose place he was appointed shall be released from suspension, or, as the case may be, shall be declared by the Governor by an Instrument under the Public Seal capable of again discharging his functions in the Council, or shall return to the Colony, or shall cease to sit in the Council as an ex officio Member.

Such provisional appointments to be immediately reported.

IV. The Governor shall, without delay, report to Us, for Our confirmation or disallowance, through one of Our Principal Secretaries of State, every provisional appointment of any person as a Member of the said Executive Council. Every such person shall hold his place in the Council during Our pleasure, and the Governor may by an Instrument under the Public Seal revoke any such appointment.

V. [Revoked 17.2.55.]

Governor to communicate instructions to Executive Council.

VI. The Governor shall forthwith communicate these Our Instructions to the Executive Council, and likewise all such others, from time to time, as We may direct, or as he shall find convenient for Our service to impart to them.

Executive Council not to proceed to business unless summoned by Governor's authority.

Quorum.

VII. The Executive Council shall not proceed to the dispatch of business unless duly summoned by authority of the Governor, nor unless two Members at the least (exclusive of himself or of the Member presiding) be present and assisting throughout the whole of the meetings at which any such business shall be dispatched.

Exhibits
GHO.8.
Royal Instructions 14th February 1917 (Contd.)

Presiding in Executive Council.
(Amended on 17.2.55.)

VIII. (1) The Governor shall, so far as is practicable, preside at meetings of the Executive Council.

(2) In the absence of the Governor there shall preside at any meeting of the Council -

(a) such Member of the Council as the Governor may appoint; or

(b) in the absence of a Member so appointed, the senior ex officio Member present; or

(c) in the absence of a Member so appointed or of an ex officio Member, the senior Official Member present.

(3) For the purposes of sub-paragraphs (b) and (c) of paragraph (2) of this clause -

(a) the Senior Military Officer shall not be regarded as an ex officio Member of the Council;

(b) the remaining ex officio Members of the Council shall have seniority in the order in which their offices are mentioned in clause II of these Instructions; and

(c) the Official Members of the Council shall have seniority according to the priority of their respective appointments to the Council:

Provided that Members appointed by the same Instrument shall have seniority among themselves according to the order in which they are named therein.

Minutes of Executive Council to be kept.

IX. Minutes shall be regularly kept of all the proceedings of the Executive Council; and at each meeting of the Council the Minutes of the last preceding meeting shall be confirmed or amended, as the case may require, before proceeding to the dispatch of any other business.

To be transmitted home twice a year

Twice in each year a full and exact copy of all Minutes for the preceding half year shall be transmitted to Us through one of Our Principal

Secretaries of State.

Exhibits
GHO.8.
Royal Instructions 14th February 1917 (Contd.)

X. In the execution of the powers and authorities granted to the Governor by Our said recited Letters Patent, he shall in all cases consult with the Executive Council, excepting only in cases which may be of such a nature that, in his judgment, Our service would sustain material prejudice by consulting the Council thereupon, or when the matters to be decided shall be too unimportant to require their advice, or too urgent to admit of their advice being given by the time within which it may be necessary for him to act in respect of any such matters. In all such urgent cases he shall, at the earliest practicable period, communicate to the Executive Council the measures which he may so have adopted, with the reasons therefor.

Governor to consult Executive Council.

XI. The Governor shall alone be entitled to submit questions to the Executive Council for their advice or decision; but if the Governor decline to submit any question to the Council when requested in writing by any Member so to do, it shall be competent to such Member to require that there be recorded upon the Minutes his written application, together with the answer returned by the Governor to the same.

Governor alone entitled to submit questions.

XII. The Governor may, in the exercise of the powers and authorities granted to him by Our said recited Letters Patent, act in opposition to the advice given to him by the Members of the Executive Council, if he shall in any case deem it right to do so; but in any such case he shall fully report the matter to Us by the first convenient opportunity, with the grounds and reasons of his action. In every such case it shall be competent to any Member of the said Council to require that there be recorded at length on the Minutes the grounds of any advice or opinion he may give upon the question.

Governor may act in opposition to Executive Council.

Reporting grounds for so doing.

Members may require their adverse opinions to be recorded on Minutes.

Exhibits
GHO.8.

Royal Instructions 14th February 1917 (Contd.)

Constitution of Legislative Council.

(Amended on 12.5.64)

XIII. The Legislative Council of the Colony shall consist of the Governor, the Senior Military Officer for the time being in Command of Our regular troops within the Colony, the persons for the time being lawfully discharging the functions of Colonial Secretary, Attorney-General, Secretary for Chinese Affairs, and Financial Secretary of the Colony and such other persons holding office under the Crown in the Colony, and not exceeding seven in number at any one time, as We may from time to time appoint by any Instructions or Warrants under Our Sign Manual and Signet, or as the Governor, in pursuance of Instructions from Us through one of Our Principal Secretaries of State, may from time to time appoint by an Instrument under the Public Seal of the Colony, and all such persons shall be styled Official Members of the Legislative Council; and further of such persons, not exceeding thirteen in number at any one time, as the Governor, in pursuance of Instructions from Us through one of Our Principal Secretaries of State, may from time to time appoint by an Instrument under the Public Seal of the Colony, and all such persons shall be styled Unofficial Members of the Legislative Council.

If any Official Member of the Legislative Council cease to hold office under the Crown in the Colony, his seat in the Council shall thereupon become vacant.

Provisional appointment of members.

(Amended on 30.4.38)

XIV. Whenever any Member of the Legislative Council, other than an ex officio Member, shall, in the manner hereinafter provided, have resigned his seat in the Council or shall die, or whenever the seat of any such Member shall otherwise become vacant, or whenever any such Member shall be suspended from the exercise of his functions as a Member of the Council, or be declared by the Governor by an Instrument under the Public Seal to be incapable of exercising his functions as a Member of the Council, or be absent from the Colony, or shall be acting in an office the holder of which is an exofficio Member of the Council, the Governor may, by an Instrument under the Public Seal appoint some person to be provisionally a Member of the Council in the place of such Member

Where there has been a vacancy.

Such person shall hold his place in the

Exhibits
GHO.8.
ROyal Instructions 14th February 1917 (Contd.)

Council during Our pleasure and shall forthwith cease to be a Member of the Council if his appointment is disallowed by Us, or revoked by the Governor or superseded by the definitive appointment of a Member of the Council, or if the Member in whose place he was appointed shall be released from suspension, or, as the case may be, shall be declared by the Governor capable of again exercising his functions in the Council, or shall return to the Colony, or shall cease to sit in the Council as an ex officio Member.

When any person shall be lawfully discharging the functions of more than one of the offices the holders of which are ex officio Members of the said Council, the Governor may, by an Instrument under the Public Seal, appoint any fit person to be provisionally a Member of the Council so long as the said offices shall continue to be so discharged by one person but any such appointment may be disallowed or revoked as aforesaid.

The Governor shall, without delay, report to Us, through one of Our Principal Secretaries of State, every provisional appointment of any person as a Member of the Legislative Council.

XV. /Revoked 15.11.28./

Tenure of Office of Unofficial Members of Legislative Council. (Amended on 30.4.38.)

XVI. Every Unofficial Member of the Legislative Council shall vacate his seat at the end of four years from the date of the Instrument by which he is appointed or of such other period as may be specified in that Instrument, but shall be eligible to be re-appointed in the manner hereinbefore provided for a further period or periods, each period not exceeding four years:

Unofficial Members eligible for reappointment.

Provided that if any such Member is provisionally appointed to fill a vacant seat in the Council and his provisional appointment is immediately followed by his definitive appointment, the aforesaid period of four years shall be reckoned from the date

Exhibits
GHO.8.
Royal Instructions 14th February 1917 (Contd.)

of the Instrument provisionally appointing him.

XVII. If any Unofficial Member of the Legislative Council shall become bankrupt or insolvent, or shall be convicted of any criminal offence, or shall absent himself from the Colony for more than three months without leave from the Governor, the Governor may declare in writing that the seat of such Member at the Council is vacant, and immediately on the publication of such declaration he shall cease to be a Member of the Council.

Seats declared void in certain cases.

Resignation of Members. (Amended on 30.4.38)

XVIII. Any Member of the Legislative Council, other than an ex officio Member, may resign his seat in the Council by writing under his hand, but no such resignation shall take effect until it be accepted by the Governor in writing, or by Us through one of Our Principal Secretaries of State.

Council may transact business notwithstanding vacancies.

Quorum

XIX. The Legislative Council shall not be disqualified from the transaction of business on account of any vacancies among the Members thereof; but the said Council shall not be competent to act in any case unless (including the Governor or the Member presiding) there be present at and throughout the meetings of the Council five Members at the least.

XX. /Revoked 17.2.55./

Presiding in Legislative Council. (amended on 17.2.55)

XXI. (1) The Governor shall, so far as is practicable, preside at meetings of the Legislative Council.

(2) In the absence of the Governor there shall preside at any meeting of the Council -

(a) such Member of the Council as the Governor may appoint; or

(b) in the absence of a Member so appointed, the senior Official Member present.

(3) For the purposes of sub-paragraph (b) of paragraph (2) of this clause -

(a) the Senior Military Officer shall not be regarded as an Official Member of the

Council; and

(b) the remaining Official Members of the Council shall have seniority as follows -

(i) First, the persons discharging the functions of the offices specified in clause XIII of these Instructions, in the order in which those offices are mentioned therein;

(ii) Second, the other Members according to the priority of their respective appointments to the Council

Provided that Members appointed by the same Instrument shall have seniority among themselves according to the order in which they are named therein.

Questions to be decided by a majority. Governor to have original and casting vote.

XXII. All questions proposed for debate in the Legislative Council shall be decided by the majority of votes, and the Governor or the Member presiding shall have an original vote in common with the other Members of the Council, and also a casting vote, if upon any question the votes shall be equal.

Rules and Orders to be made.

XXIII. The Legislative Council may from time to time make standing rules and orders for the regulation of their own proceedings, provided such rules and orders be not repugnant to Our said recited Letters Patent, or to these Our Instructions, or to any other Instructions from Us under Our Sign Manual and Signet.

Questions etc. for debate.

XXIV. It shall be competent for any Member of the Legislative Council to propose any question for debate therein; and such question, if seconded by any other Member, shall be debated and disposed of according to the standing rules and orders:

Provided always that every ordinance, vote, resolution, or question, the object or effect of which may be to dispose of or charge any part of Our revenue arising within the Colony, shall be proposed by the Governor, unless the proposal of the same shall have been expressly allowed or

Exhibits
GHO.8.
Royal Instructions 14th February 1917 (Contd.)

directed by him.

Rules and regulations under which Ordinances are to be enacted.

XXV. In the passing of Ordinances the Governor and the Council shall observe, asfar as practicable, the following Rules -

Form of enacting Ordinance

1. All laws shall be styled "Ordinances", and the enacting words shall be, "enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof."

Ordinances to be numbered and methodically arranged.

2. All Ordinances shall be distinguished by title, and shall be divided into successive clauses or paragraphs, numbered consecutively, and to every such clause there shall be annexed in the margin a short summary of its contents. The Ordinances of each year shall be distinguished by consecutive numbers, commencing in each year with the number one.

Except in the case of Bills reserved for the signification of Our pleasure, all Ordinances passed by the Legislative Council in any one year shall, if assented to by the Governor, be assented to by him in that year, and shall be dated as of the day of which the assent of the Governor is given, and shall be numbered as of the year in which they are passed. Bills not so assented to by the Governor, but reserved by him for the signification of Our pleasure shall be dated as of the day and numbered as of the year on and in which they are brought into operation..

Different subjects not to be mixed in same Ordinance.

No clause to be introduced foreign to what title of Ordinance imports.

Temporary Ordinances.

3. Each different matter shall be provided for by a different Ordinance, without intermixing in one and the same Ordinance such things as have no proper relation to each other; and no clause is to be inserted in or annexed to any Ordinance which shall be foreign to what the title of such Ordinance imports, and no perpetual clause shall be part of any temporary Ordinance.

XXVI. The Governor shall not, except in the cases hereunder mentioned, assent in Our name to any Bill of any of the following classes. -

Description of Bills not to be assented to.

1. Any Bill for the divorce of persons joined together in holy matrimony:

2. Any Bill whereby any grant of land or money, or other donation or gratuity, may be made to himself:

3. Any Bill affecting the Currency of the Colony or relating to the issue of Bank notes:

4. Any Bill establishing any Banking Association, or amending or altering the constitution, powers, or privileges of any Banking Association:

5. Any Bill imposing differential duties:

6. Any Bill the provisions of which shall appear inconsistent with obligations imposed upon Us by Treaty:

7. Any Bill interfering with the discipline or control of Our forces by land sea or air:

8. Any Bill of an extraordinary nature and importance, whereby Our prerogative, or the rights and property of Our subjects not residing in the Colony, or the trade and shipping of Our United Kingdom and its Dependencies, may be prejudiced:

9. Any Bill whereby persons not of European birth or descent may be subjected or made liable to any disabilities or restrictions to which persons of European birth or descent are not also subjected or made liable:

10. Any Bill containing provisions to which Our assent has been once refused, or which have been disallowed by Us:

Proviso in cases of emergency for immediate operation of an Ordinance.

Unless in the case of any such Bill as aforesaid the Governor shall have previously obtained Our instructions upon such Bill through one of Our Principal Secretaries of

Exhibits
GHO.8.
Royal Instructions 14th February 1917 (Contd)

State, or unless such Bill shall contain a clause suspending the operation of such Bill until the signification of Our pleasure thereupon, or unless the Governor shall have satisfied himself that an urgent necessity exists requiring that such Bill be brought into immediate operation, in which case he is authorized to assent in Our name to such Bill, unless the same shall be repugnant to the law of England, or inconsistent with any obligations imposed on Us by Treaty. But he is to Transmit to Us, by the earliest opportunity, the Bill so assented to, together with his reasons for assenting thereto.

Private Bills.

XXVII. Every Bill intended to affect or benefit some particular person, association or corporate body shall contain a section saving the rights of Us, Our heirs and successors, all bodies politic and corporate, and all others except such as are mentioned in the Bill and those claiming by, from, and under them. No such Bill, not being a Government measure, shall be introduced into the Legislative Council until due notice has been given by not less than two successive publications of the Bill in the Hong Kong Government Gazette, and in such other manner as may be required by the Standing Rules and Orders for the time being in force; and the Governor shall not assent thereto in Our name until it has been so published. A certificate under the hand of the Governor shall be transmitted to Us with the Bill signifying that such publication has been made.

Ordinances, etc. to be sent home duly authenticated.

XXVIII. When any Ordinance shall have been passed or when any Bill shall have been reserved for the signification of Our pleasure, the Governor shall transmit to Us, through one of Our Principal Secretaries of State, for Our final approval, disallowance or other direction, thereupon, a full and exact copy in duplicate of the same, and of the marginal summary thereof, duly authenticated under the Public Seal of the Colony, and by his own signature. Such copy shall be accompanied by such explanatory observations as may be required to exhibit the reasons and occasion for passing such Ordinance or Bill.

Collection of Ordinances to be published every year.

XXIX. At the earliest practicable period at the commcement of each year, the Governor shall cause a complete collection to be published,

Exhibits
GHO.8.

for general information, of all Ordinances enacted during the preceding year.

Royal Instructions 14th February 1917 (Contd.)

XXX. Minutes shall be regularly kept of the proceedings of the Legislative Council and at each meeting of the said Council, the Minutes of the last preceding meeting shall be confirmed or amended, as the case may require, before proceeding to the dispatch of any other business.

Minutes of proceedings of legislative Council to be kept, and sent home after every meeting.

The Governor shall transmit to Us, through one of Our Principal Secretaries of State, as soon as possible after every meeting a full and exact copy of the Minutes of the said Council.

Surveys and reservations to be made before waste lands are disposed of.

XXXI. Before disposing of any vacant or waste land to Us belonging, the Governor shall cause the same to be surveyed, and such reservations to be made thereout as he may think necessary for roads or other public purposes. The Governor shall not, directly or indirectly, purchase for himself any of such lands without Our special permission given through one of Our Principal Secretaries of State.

Governor not to purchase lands.

Appointments by Governor to be during pleasure.

(Amended on 30.4.38)

XXXII. All commissions to be granted by the Governor to any person or persons for exercising any office or employment shall, unless otherwise provided by law, be granted during pleasure only.

XXXIII. /Revoked 30.4.38/

Regulation of power of pardon in capital cases.

Judge's report to be laid before Executive Council.

Governor to take advice of Executive Council in such cases.

XXXIV. Whenever any offender shall have been condemned by the sentence of any Court in the Colony to suffer death, the Governor shall call upon the Judge who presided at the trial to make to him a written report of the case of such offender, and shall cause such report to be taken into consideration at the first meeting of the Executive Council which may be conveniently held thereafter, and he may cause the said Judge to be specially summoned to attend at such meeting and to produce his notes thereat. The Governor shall not pardon or reprieve any such offender unless it shall appear to him

Exhibits

GHO.8.

Royal Instructions 14th February 1917 (Contd.)

May exercise own judgment entering his reasons on Council Minutes, if unable to accept the advice of the majority.

expedient so to do, upon receiving the advice of the Executive Council thereon; but in all such cases he is to decide either to extend or to withhold a pardon or reprieve, according to his own deliberate judgment, whether the Members of the Executive Council concur therein or otherwise, entering, nevertheless, on the Minutes of the Executive Council a Minute of his reasons at length, in case he should decide any such question in opposition to the judgment of the majority of the Members thereof.

Blue Book.

XXXV. The Governor shall punctually forward to Us from year to year, through one of Our Principal Secretaries of State, the annual book of returns for the Colony, commonly called the Blue Book, relating to the Revenue and Expenditure, Defence, Public Works, Legislation, Civil Establishments, Pensions, Population, Schools, Course of Exchange, Imports and Exports, Agriculture, Produce, Manufactures, and other matters in the said Blue Book more particularly specified, with reference to the state and condition of the Colony.

Governor's absence.

XXXVI. The Governor shall not upon any pretence whatever quit the Colony without having first obtained leave from Us for so doing under Our Sign Manual and Signet, or through one of our Principal Secretaries of State.

Term "the Governor" explained.

XXXVII. In these Our Instructions the term "the Governor" shall, unless inconsistent with the context, include every person for the time being administering the Governmentof the Colony.

APPENDIX I.

Exhibits

GHO.8.

Royal Instructions 14th February 1917 (Contd.)

LETTERS PATENT, ROYAL WARRANTS, REGULATIONS AND MISCELLANEOUS INSTRUMENTS.

1. The Chronological List set out at page 3 of Appendix I is amended by the insertion, after item 22, of the following -

23. L.N.80/65	United Kingdom Forces(Jurisdiction of Colonial Courts) (Service Organizations) Order 1965.	United Kingdom Forces(Jurisdiction of Colonial Courts) Order 1965(S.I. 1203 of 1965).

2. The Royal Instructions are amended - L.N. 3/66

(1) in clause XIII, set out at page D6 of Appendix I -

(a) by the deletion of "the Senior Military Officer for the time being in Command of Our regular troops within the Colony,";

(b) by the substitution of "eight" for "seven";

(2) in clause XXI, set out at page D8 of Appendix I, by the deletion of paragraph (3) and the substitution therefor of the following -

(3) For the purposes of sub-paragraph (b) of paragraph (2) of this clause the Official Members of the Council shall have seniority as follows - L.N. 3/66

(i) first, the persons discharging the functions of the offices specified in clause XIII of these Instructions in the order in which those offices are mentioned therein;

(ii) second, the other Members according to the priority of their respective appointments to the Council:

Provided that Members appointed by the same Instrument shall have seniority among

Exhibits.

GHO.8.

Royal Instructions 14th February 1917 (Contd.)

themselves according to the order in which they are named therein.

3. The Hong Kong Air Navigation (Investigation of Accidents) Regulations are amended -

(1) in regulation 2, set out at page L2 of Appendix I, by the deletion of the definition "Director" and the substitution therefor of the following -

LN 82/66

"Director" means the Director of Civil Aviation and also includes any assistant

LN 82/66

director of civil aviation;

GHO.9.

Letters Patent 14th February 1917.

EXHIBIT GHO.9.

LETTERS PATENT.

Arrangement of Articles.

Article.

LETTERS PATENT.

PASSED UNDER THE GREAT SEAL OF THE UNITED KINGDOM CONSTITUTING THE OFFICE OF GOVERNOR AND COMMANDER-IN-CHIEF OF THE COLONY OF HONG KONG AND ITS DEPENDENCIES.

Dated 14th February, 1917 (S.R. & O.1917,p.1317)
(Proc. No.3 of 1917)

(Amended 30th April 1938 (S.R. & O.1938 II,p.3449)
(Proc. No.4 of 1938)

Exhibits
GHO.9

Letters Patent 14th February 1917 (Contd.)

Amended 29th June 1939 (S.R. & O. 1939 II, p.3573) (Proc. No.9 of 1939)

Amended 16th March, 1950 (S.I. 1950 II, p.1545) (G.N.A. 111/50).

Amended 19th Janaury, 1955 (S.I. 1955 II, p.3185) (G.N.A. 19/55)

Amended 19th July 1960 (S.I. 1960 III, p.4169) (G.N.A. 92/60))

Office of Governor constituted.

I. There shall be a Governor and Commander-in-Chief in and over Our Colony of Hong Kong and its Dependencies (hereinafter called the Colony), and appointments to the said Office shall be made by Commission under Our Sign Manual and Signet.

Governor's powers and authorities.

II. We do hereby authorize, empower, and command Our said Governor and Commander-in-Chief (hereinafter called the Governor) to do and execute all things that belong to his said office, according to the tenour of these Our Letters Patent and of any Commission issued to him under Our Sign Manual and Signet and according to such Instructions as may from time to time be given to him, under Our Sign Manual and Signet, or by Order in Our Privy Council, or by Us through one of Our Principal Secretaries of State, and to such laws as are now or shall hereafter be in force in the Colony.

Publication of Governor's Commission.

III. Every person appointed to fill the office of Governor shall, with all due solemnity, before entering upon any of the duties of his office, cause the Commission appointing him to be Governor to be read and published in the presence of the Chief Justice or other Judge of the Supreme Court, and of such Members of the Executive Council of the Colony as can conveniently attend; which being done he shall then and there take before them

Oaths to be taken by Governor.

the Oath of Allegiance, in the form provided by an Act passed in the Session holden in the Thirty-first and Thirty-second years of the reign of Her Majesty Queen Victoria, intituled "An Act to amend the Law relating to Promissory Oaths"; and

Imperial Act, 31 & 32 Vict. c.72.

likewise the usual Oath for the due execution of the office of Governor and for the due and impartial administration of justice; which Oaths the said Chief Justice or Judge, or if they be

unavoidably absent, the senior Member of the Executive Council then present, is hereby required to administer.

Public Seal

IV. The Governor shall keep and use the Public Seal of the Colony for sealing all things whatsoever that shall pass the said Public Seal.

Executive Council.

V. There shall be an Executive Council in and for the Colony, and the said Council shall consist of such persons as We shall direct by Instructions under Our Sign Manual and Signet, and all such persons shall hold their places in the said Council during Our pleasure. The Governor may upon sufficient cause to him appearing suspend from the exercise of his functions in the Council any Member thereof pending the signification of Our pleasure, giving immediate notice to Us through one of Our Principal Secretaries of State. If the suspension is confirmed by Us through one of Our Principal Secretaries of State the Governor shall forthwith by an instrument under the Public Seal of the Colony revoke the appointment of such Member, and thereupon his seat in the Council shall become vacant.

Legislative Council.

VI. There shall be a Legislative Council in and for the Colony, and the said Council shall consist of the Governor and such persons as We shall direct by any Instructions under Our Sign Manual and Signet, and all such persons shall hold their places in the said Council during Our pleasure. The Governor may upon sufficient cause to him appearing suspend from the exercise of his functions in the Council any Member thereof pending the signification of Our pleasure, giving immediate notice to Us through one of Our Principal Secretaries of State. If the suspension is confirmed by Us through one of Our Principal Secretaries of State the Governor shall forthwith by an instrument under the Public Seal of the Colony revoke the appointment of such Member, and thereupon his seat in the Council shall become vacant.

Governor, with advice and consent of Council to make Laws.

VII. The Governor, by and with the advice and consent of the Legislative Council, may

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Letters Patent 14th February 1917 (Contd.)

make laws for the peace, order, and good government of the Colony.

Disallowance of Laws.

VIII. We do hereby reserve to Ourselves, Our heirs and successors, full power and authority to disallow, through one of Our Principal Secretaries of State, any such law as aforesaid. Every such disallowance shall take effect from the time when the same shall be promulgated by the Governor in the Colony.

Power of legislation reserved to the Crown.

IX. We do also reserve to Ourselves, Our heirs and successors, Our and their undoubted right, with the advice of Our or their Privy Council, to make all such laws as may appear necessary for the peace, order, and good government of the Colony.

Assent to Bills.

X. When a Bill passed by the Legislative Council is presented to the Governor for his assent he shall, according to his discretion, but subject to any Instructions addressed to him under Our Sign Manual and Signet or through one of Our Principal Secretaries of State, declare that he assents thereto, or refuses his assent to the same, or that he reserves the same for the signification of Our pleasure.

Reserved Bills.

XI. A Bill reserved for the signification of Our pleasure shall take effect so soon as We shall have given Our assent to the same by Order in Council, or through one of Our Principal Secretaries of State, and the Governor shall have signified such assent by message to the Legislative Council or by proclamation: Provided that no such message shall be issued after two years from the day on which the Bill was presented to the Governor for his assent.

Governor and Legislative Council to observe Instructions.

XII. In the making of any laws the Governor and the Legislative Council shall conform to and observe all rules, regulations, and directions in that behalf contained in any Instructions under Our Sign Manual and Signet.

Disposal of lands. (Amended on 26.8.60).

XIII. (1) The Governor, in Our name and on Our behalf, may make and execute grants and dispositions of any lands within the Colony that may be lawfully granted or disposed of by Us.

(2) The powers conferred on the

Governor by this Article may be exercised on behalf of the Governor by any person authorized, whether by name or by reference to an office, to exercise those powers by the Governor and such authorization shall be notified in the Hong Kong Government Gazette.

(3) Any such authority shall be subject to such conditions and restrictions (if any) as the Governor may specify, and may be varied or revoked by the Governor, and such conditions, restrictions, variation or revocation shall be notified in the Hong Kong Government Gazette.

(4) Grants and dispositions of land made under this Article shall be made in conformity with the provisions of such Instructions as may from time to time be given to the Governor under Our Royal Sign Manual and Signet or through a Secretary of State and such laws as may for the time being be in force in the Colony.

Governor empowered to appoint Judges and other officers.

XIV. The Governor may constitute and appoint all such Judges, Commissioners, Justices of the Peace, and other necessary Officers and Ministers in the Colony, as may lawfully be constituted or appointed by Us, all of whom, unless otherwise provided by law, shall hold their offices during Our pleasure.

Concurrent appointments (Amended on 19.1.55).

XIVA. (1) When the holder of the Office of Governor or of any office constituted under Article XIV of these Letters Patent is on leave of absence pending relinquishment of his office, it shall be lawful for another person to be appointed substantively to the same office.

(2) When two or more persons are holding the same office by reason of an appointment made pursuant to paragraph (1) of this Article, then for the purposes of Articles XVII and XVIIA of these Letters Patent and for the purpose of any function conferred upon the holder of that office, the person last appointed to the office shall be deemed to be the holder of the office.

Exhibits
GHO.9.
Letters Patent 14th February 1917 (Contd.)

Grant of pardon.

XV. When any crime or offence has been committed within the Colony, or for which the offender may be tried therein, the Governor may, as he shall see occasion, in Our name and on Our behalf, grant a pardon to any accomplice in such crime or offence who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders, if more than one; and further, may grant to any offender convicted of any crime or offence in any Court, or before any Judge or other Magistrate within the Colony, a pardon, either free or subject to lawful conditions, or any remission of the sentence passed on such offender, or any respite of the execution of such sentence for such period as the Governor thinks fit, and may remit any fines, penalties, or forfeitures due or accrued to Us. Provided always that the Governor shall in no case, except where the offence has been of a political nature unaccompanied by any other grave crime, make it a condition of any pardon or remission of sentence that the offender shall be banished from or shall absent himself or be removed from the Colony.

Remission of fines. Proviso. Banishment prohibited. Exception. Political offences.

Dismissal and suspension of officers. (Amended on 30.4.38.)

XVI. The Governor may, subject to such instructions as may from time to time be given to him by Us through one of Our Principal Secretaries of State, upon sufficient cause to him appearing, dismiss or suspend from the exercise of his office any person holding any public office within the Colony, or, subject as aforesaid, may take such other disciplinary action as may seem to him desirable.

Succession to Government. (Amended on 29.6.39.)

XVII. Whenever the office of Governor is vacant, or the Governor is absent from the Colony, or is from any cause prevented from, or incapable of, acting in the duties of his office, then such person as may be appointed under the Royal Sign Manual and Signet, or, if there shall be no such person or the person so appointed shall be absent from the Colony or prevented from, or incapable of acting as aforesaid then the person lawfully discharging the functions of Colonial Secretary, or if there shall be no person discharging such functions, then the senior member of the Executive Council actually present in the Colony, shall, during Our pleasure administer the Government

of the Colony, first taking the Oaths hereinbefore directed to be taken by the Governor and in the manner herein prescribed; which being done, We do hereby authorize, empower and command such person, to do and execute, during Our pleasure, all things that belong to the Office of Governor and Commander-in-Chief, as provided in these Our Letters Patent:

Provided that the Governor or the person appointed as aforesaid, when visiting any neighbouring territories in the exercise or discharge of any powers or duties by these Letters Patent or otherwise conferred or imposed upon him by Us, or through one of Our Principal Secretaries of State, shall not be regarded as absent from the Colony for the purposes of this Article.

Any such person as aforesaid shall not continue to administer the Government after the Governor or some other person having a prior right to administer the same has notified that he is about to assume the administration.

Appointment of Deputies to Governor. (Amended on 29.6.39).

XVIIA. In the event of the Governor having occasion at any time to be temporarily absent for a short period from the seat of Government, or, in the exercise or discharge of any powers or duties by these Letters Patent or otherwise conferred or imposed upon him by Us, or through one of Our Principal Secretaries of State, to visit any neighbouring territories, he may by an Instrument under the Public Seal of the Colony appoint any person or persons to be his Deputy or Deputies within the Colony or any part or parts thereof during his absence from the seat of Government or from the Colony, as the case may be, and in that capacity to exercise, perform and execute for and on behalf of the Governor during such absence, but no longer, all such powers and authorities by these Letters Patent or otherwise vested in the Governor as shall in and by such Instrument be specified and limited, but no others. Every such Deputy shall conform to and observe all such Instructions as the Governor shall from time to time address to him for his guidance. By the appointment of a Deputy or Deputies as

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Letters Patent
14th February 1917 (Cont.)

aforesaid the power the authority of the Governor shall not be abridged, altered, or in any way affected otherwise than We may at any time hereafter think proper to direct.

Officers and others to obey and assist Governor.

XVIII. And We do hereby require and command all Our officers and ministers, civil and military, and all other the inhabitants of the Colony, to be obedient, aiding and assisting unto the Governor and to any person for the time being administering the Government of the Colony.

Term "the Governor" explained.

XIX. In these Our Letters Patent the term "the Governor", shall include every person for the time being administering the Government of the Colony.

Power reserved to His Majesty to revoke, alter or amend present Letters Patent.

XX. And We do hereby reserve to Ourselves Our Heirs and successors, full power and authority, from time to time, to revoke, alter, or amend these Our Letters Patent as to Us or them shall seem meet.

Publication of Letters Patent.

XXI. And We do further direct and enjoin that these Our Letters Patent shall be read and proclaimed at such place or places within the Colony as the Governor shall think fit, and shall come into operation on a day to be fixed by the Governor by Proclamation.

Note. Publication in accordance with Article XXI of the Letters Patent was effected by Proclamation No.3 of 1917 in the Hong Kong Government Gazette of 20th April, 1917.

EXHIBIT GHO. 10.

Bundle of Correspondence between Defendant and Plaintiff.

INDEX TO EXHIBIT GHO.10.

ITEM NO.	DESCRIPTION
1	Letter - Rediffusion (Hong Kong) Limited to 2nd Defendant - 2nd September 1967.
2	Letter - Colonial Secretariat to Rediffusion (Hong Kong) Limited - 5th September 1967.
3	Letter - Rediffusion (Hong Kong) Limited to 2nd Defendant - 8th September 1967.
4	Letter - Rediffusion (Hong Kong) Limited to 2nd Defendant - 11th September 1967.
5	Letter - Rediffusion (Hong Kong) Limited to 2nd Defendant - 11th September 1967.
6	Letter - Rediffusion (Hong Kong) Limited to Colonial Secretary - 26th September 1967.
7	Memorandum of Rediffusion (Hong Kong) Limited, enclosed with last item, with attached appendices:
8	..... "A" .....
9	..... "B" .....
10	..... "D" .....
11	..... "E" .....
	(Appendix "C" to the above Memorandum is not attached, as the same is Exhibit "GHO 2" to the Affidavit of G.H. Oldridge).

Exhibits	ITEM NO.	DESCRIPTION
GHO.10.		
Bundle of Correspondence between Defendant & Plaintiff. (Contd.)	12	Letter - 2nd Defendant to Rediffusion (Hong Kong) Limited - 7th October 1967.
	13	Letter - Rediffusion (Hong Kong) Limited to 2nd Defendant - 12th October 1967.
	14	Letter - 2nd Defendant to Chairman, Television Broadcasts Limited - 11th November 1967.
	15	Letter - 2nd Defendant to Rediffusion (Hong Kong) Limited - 11th November 1967.
	16	Letter - Rediffusion (Hong Kong) Limited to 2nd Defendant - 14th November 1967.
	17	Letter - Rediffusion (Hong Kong) Limited to 2nd Defendant - 18th November 1967.
	18	Note enclosed with latter item .

REDIFFUSION (HONG KONG) LIMITED

2nd September, 1967.

G.C. HAMILTON, Esq.,
Deputy Colonial Secretary,
Colonial Secretariat,
Central Government Offices, Main Wing,
Lower Albert Road,
Hong Kong.

Dear Sir,

You will recall that Government has taken the initiative in considering the potential difficulties which might arise from the installation, by parties other than ourselves, of CATV systems consequent upon the advent of broadcast television in Hong Kong.

Exhibits

GHO.10.

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

Following receipt of your letter to us of the 3rd July 1967, Mr. Dundas and the writer called on you, and at that meeting you indicated that Government would like to see some form of agreement arrived at between ourselves and Television Broadcasts Limited on the subject of CATV. At your specific request we undertook to arrange a meeting with Television Broadcasts Limited, and in fact this meeting took place the following day. The outcome was reported to you in our letter of the 15th July, a copy of which was sent to Television Broadcasts Limited. On the 22nd July Television Broadcasts Limited wrote to you and stated that they had not then formed any intention of establishing CATV systems. By the closing paragraph of their letter you were no doubt intended to believe, as in fact we were, that any further move towards the establishment of a CATV system would be the subject of discussions with Government and ourselves. Since that time we have been waiting for some response to our approach to Television Broadcasts Limited, an approach made on your specific initiative and request.

We can well imagine therefore our alarm and anxiety at the discovery that Television Broadcasts Limited have taken completely unilateral action, and are currently operating in public a CATV system. Quite apart from the fact that this was done without any reference to Government, and without obtaining the licence which is required under the provisions of the Telecommunications Ordinance, it is clearly discourteous to both Government and ourselves and is also a substantial infringement upon our existing rights.

Our information is that the Community Antennae Television (CATV) System has been installed by the Philips Company at the Ocean Terminal in Kowloon. We further understand that this system has been purchased by, and is now the outright property of Television Broadcasts Limited. It would appear that with effect from yesterday, the system has been operated by Television Broadcasts Limited,

Exhibits
GHO.10.
Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

providing a service to some 150 television sets, with a charge being levied on each set attached to the CATV system. From press reports it would seem that this CATV system will not relay merely Test Cards, but in fact a television service of limited hours (five hours per day) consisting of travelogue films, American and British feature films, fashion parades and pop groups. This project may, therefore, be readily described as a miniature model of the existing Rediffusion wired television service for which we hold an exclusive licence.

It would seem that Television Broadcasts Limited in it's unilateral action, wishes to avoid coming to the type of co-operative agreement with us which Government letters to us indicate it desires. Having regard to the stage of discussion reached by Government, Television Broadcasts Limited and ourselves, we find it difficult to believe that Government will permit the operation of this CATV system to continue.

We further find it difficult to either understand or accept the decision conveyed by Mr. Talbot-Jones by telephone, following a meeting at the Secretariat, that Government has no responsibility in this matter, and that this Company should take it's own action against any party which is infringing our rights. The only contractual arrangement we have, so far as television is concerned, is with Government and we have no legal ground for protesting directly to Television Broadcasts Limited.

There can be no doubt in your mind that the next development we both expected on CATV was a response to the approach made by us to Television Broadcasts Limited at your specific request. May we ask, therefore, if it is Government's intention to enforce the law and prohibit the continuing operation of this unlicensed telecommunications equipment.

We earnestly request Government to take all necessary steps to protect our interests in this matter, furthermore as a matter of priority as every day that passes occasions considerable damage to our rights.

Yours faithfully,

REDIFFUSION (HONG KONG) LIMITED
(Sd) G.H. Oldridge - Managing Director.

Document 2.

Exhibits
GHO.10.
Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

RECEIVED 7 SEP. 1967

COPY

GR 3245/57 II

COLONIAL SECRETARIAT.
HONG KONG.

5th September 1967.

Sir,

I enclose draft copies of the Copyright (Hong Kong) Order 1967 and the Copyright Bill 1967 for your information.

2. The purpose of the Order in Council is to extend the Copyright Act 1956 of the United Kingdom, with such modifications as appear necessary, to make it applicable to Hong Kong. The Order would be made by Her Majesty in Council under section 31 of the Act. The modifications of the Act are, in the main, procedural measures and matters of form.

3. The Bill makes provision for matters of local concern for which provision cannot be made in the Act as extended to Hong Kong. I would add that it is appreciated that the reference in clause 4 (2) to transmission to the premises of subscribers to a diffusion service is not appropriate in the context of communal antennae, and this is receiving further consideration.

4. I hope to be in a position to send these drafts to the Commonwealth Office by the end of September, and should therefore be grateful to receive as soon as possible any comments you may have on these documents.

I am, Sir,
Your obedient servant,
(Sd.) G.C. Hamilton
Deputy Colonial Secretary

General Manager,
Rediffusion (H.K.) Ltd.,
P.O. Box 121, Hong Kong.

Exhibits

GHO.10,

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

Document 3.

C O P Y

REDIFFUSION (HONG KONG) LIMITED

GHO:H
GR 3245/57 II

8th September, 1967.

G.C. Hamilton, Esq.,
Deputy Colonial Secretary,
Colonial Secretariat,
HONG KONG.

Dear Sir,

COPYRIGHT

We greatly appreciate your courtesy in sending us draft copies of the Copyright (Hong Kong) Order of 1967 and the Copyright Bill 1967 under cover of your letter of the 5th September, 1967.

These documents are now receiving our attention and if we have any comments to make, these will be communicated to you at the earliest possible date.

Yours faithfully,
REDIFFUSION (HONG KONG) LIMITED,
(Sd) G.H. Oldridge
MANAGING DIRECTOR.

Document 4

C O P Y

REDIFFUSION (HONG KONG) LIMITED

GHO:H

11th September 1967.

G.C. Hamilton, Esq.,
Deputy Colonial Secretary,
Colonial Secretariat,
HONG KONG.

Dear Sir,

Community Antenna Television Systems

We have been somewhat dismayed and embarrassed

Exhibits

GHO.10.

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

at the recent Press publicity concern the current misunderstanding on the above topic, and we imagine that perhaps Government has to some extent shared in this embarrassment.

It must be clear from previous correspondence that whilst still contending that this Company has the exclusive rights to operate C.A.T.V. systems we are not making this the point at issue at the present juncture.

In the belief that the matter could be resolved by discussion, the writer and Mr. Dundas visited you on 5th July and had talks with Television Broadcasts Ltd. on the 7th July.

We were left with the distinct impression that further discussions would take place, and we still believe that this is the right and proper way to explore a settlement to the dispute.

The writer will be absent from the Colony from the 15th to the 25th September inclusive, but if you feel that further talks between yourself and the writer would be helpful I shall be very happy to make myself available to you at any time between now and Thursday evening.

I believe that a further discussion would be most useful and may eventually lead to full scale discussions with the participation of Television Broadcasts, Ltd.

If you are in favour of a meeting, would you please telephone me at 725555.

Yours faithfully,

REDIFFUSION (HONG KONG) LIMITED

(Sd) G.H. Oldridge

MANAGING DIRECTOR

Exhibits

GHO.10.

Bundle of Correspondence between Defendants & Plaintiff. (Contd.)

Document 5

COPY

REDIFFUSION (HONG KONG) LIMITED

GR 3245/57 II 11th September ,1967.

G.C. Hamilton, Esq.,
Deputy Colonial Secretary,
Colonial Secretariat,
HONG KONG.

Dear Sir,

With further reference to your letter of the 5th September 1967, it is now quite certain that the wording of Clause 4(2) either as it now stands or in an amended form, could have a profound effect on the future operations of this Company.

Consequently, it would be greatly appreciated if we could defer commenting on the Bill as requested by you, until we have had time to consider the amended wording of Clause 4(2) when it is made known to us.

Yours faithfully,

REDIFFUSION (HONG KONG) LIMITED

(Sd) G.H. Oldridge
MANAGING DIRECTOR.

Document 6

REDIFFUSION (HONG KONG) LIMITED

Our Ref: GHO:H 26th September 1967.

The Hon. Colonial Secretary
HONG KONG.

Dear Sir,

In the light of Mr. Hamilton's letter to us of 3rd July 1967, and subsequent events and discussions concerning Community Antenna Television Systems (CATV) and with the view to making clear our

Exhibits

GHO.10.

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

position in this matter, and to remove any possible misunderstandings, we enclose a Memorandum which sets out our representations on our rights in the field of relay and CATV under our Television Licence. This Memorandum also indicates our specific proposals, which we intend to implement in the exercise of our rights, and are designed to enable, in the shortest possible space of time, the largest number of viewers in "shadow" areas to receive broadcast television, in a form which provides maximum reliability, at competitive cost.

In order to save time and space, our enclosed Memorandum has not been written so as to be exhaustive in detail, and we would like to reserve the right to add to same as occasion may require. We would be pleased to explain or amplify, in person or in writing, any parts of our Memorandum, as you may request.

We trust you will understand us when we say that the proposals set out in the enclosure are an outline of our presently held intentions, and it may come about that owing to a change in circumstances, or in the light of experience gained, some revisions to our proposals would be necessary. Needless to say, the implementation of our proposals depends upon Government honouring the rights we contend we have been granted, and upon Government not introducing copyright legislation which specifically discriminates against our particular field of operation.

We would be grateful for an expression of the views of the Government on the enclosed Memorandum, at an early date.

Yours faithfully,

REDIFFUSION (HONG KONG) LIMITED

G. H. OLDRIDGE
MANAGING DIRECTOR

Exhibits

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Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

Document 7

MEMORANDUM

OF REDIFFUSION (HONG KONG) LTD.
ON C.A.T.V./RELAY

1. Rediffusion (Hong Kong) Ltd. previously named Broadcast Relays Ltd., is a Hong Kong Company and wholly-owned subsidiary of the Rediffusion Group of Companies, which is based in the United Kingdom. The Group's primary interests are, as its name would suggest, in the field of relay of radio and broadcast television and certain other related activities, carried on both in the United Kingdom and in Commonwealth Territories. The Group is by far the biggest relay operator in the world and was in fact the originator of the relay systems presently in use, and has substantial research and experimental facilities.

2. To understand fully the interest of the Group generally and of Rediffusion (Hong Kong) Ltd., in particular, in relay, it is necessary that there should be no misunderstanding as to the expression "relay". Relay means the reception by an aerial of broadcast matter (be it sound radio or television) and the redistribution of same by means of a wired network to the premises of persons who either cannot, through technical reasons "such as "shadows") receive the broadcast matter directly by their own individual receivers, or cannot, or choose not to, bear the expense of purchasing a receiver and aerial.

3. Operation of television relay systems in the United Kingdom commenced in 1951, and has expanded dramatically up to the present time. As at December 1966 there were 1,082,750 subscribers to television relay systems in the United Kingdom, about half of whom were subscribers to Rediffusion Group television relay services and the remainder were subscribers to other television relay services. The immense popularity and success of relay systems operated in the United Kingdom and elsewhere may be attributed to -

(i) The need, for technical reasons, for reception of Broadcast matter by special

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Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

equipment, and the redistribution of it, or relay, by some means (wire) which obviates the viewer having to receive the broadcast by an ordinary individual receiver.

(ii) It's reliability. Relay by wire is not vulnerable to changing signal strength, electrical interference, "ghosting" from tall buildings, interference from passing aircraft, atmospheric conditions or otherwise, and thereby provides a high quality picture.

(iii) It's relatively low cost. As, for obvious reasons, an ordinary individual aerial receiver is not required, the charges for a relay service are modest. The average television relay subscriber in the United Kingdom can, at modest cost, receive either on his terminal unit, or, where feasible, on his (adapted) ordinary television receiver the full programmes, at his choice, of B.B.C. and I.T.A.

4. Communal Antenna Television Systems (CATV) as seems to be understood locally, are aerial devices placed on the roofs of buildings, and by means of which broadcast television transmissions are received, and then re-distributed by means of wires connected to the television receivers or terminal units, of individuals in the various parts of the buildings. The need for CATV systems arises, as it does for any other form of relay, where, for technical reasons (usually "shadow areas") reception of broadcast television by means of ordinary individual receivers is not possible or practical. In the present state of technical knowledge, UHF communal aerials have distinct limitations, and can only satisfactorily serve a limited number of UHF receivers, the number of receivers depending upon the distance of the receivers from one another and from the aerial. The cost of an UHF aerial system cannot at present be estimated accurately, as, so far as is known, these have not been manufactured in commercial quantities, their viability at present still being undetermined. To the best of Rediffusion's information in no sophisticated countries such as United Kingdom, United States,

Exhibits
GHO.10.
Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

and Japan etc., are UHF communal aerial systems in use.

5. There appears to be the impression that the installation of CATV aerials in Hong Kong should be by way of fitting one aerial to the roof of each major building, which requires assisted television reception. The economics of the matter make this proposition really untenable.

The truth of the matter is, particularly in a densely populated urban area such as Kowloon, the most economical way of providing proper reception to viewers is to establish one central aerial in a suitable location, and from which can be re-distributed, by means of wiring, wireless television to any number of receivers, the service extending without limit throughout buildings, blocks of buildings, streets, areas, and so on. The capital cost factor per viewer drops in proportion to the number of viewers connected to the one system, and it will be understood that before the cost factor drops to a modest level, a large number of viewers resident in many different buildings would have to be connected to the one system.

CATV aerials installed on the roof tops of average sized local buildings, on a building-by-building basis, is likely to make the cost of viewing to the ordinary viewer needlessly expensive, un less there is a sufficient high proportion of viewers in each building willing to subscribe the capital cost and maintenance of the CATV system.

6. A relay system is for all intents and purposes the same as a CATV system; conversely, a CATV system is a relay system, so much so that the expression "CATV" and "relay" are in practice synonymous, the former expression having greater currency in the United States, and the latter in the United Kingdom, and both apply to what the British call "relay". Both have as common fundamental features, the reception of broadcast television by a central aerial and the re-distribution of the matter received by means of wires connected to the premises of viewers.

7. The best technical advice on the subject is

Exhibits

GHO.10.

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

that an extensive wired system using one suitably located aerial is far superior to a multiplicity of individual common aerials erected ad hoc on a large number of roof tops. In this connection a copy of a Report made by Professor Barlow of University College, London in 1960, to Leicester City Council on this very subject is appended (Appendix "B") and attention is particularly drawn to the concluding paragraph of his Report. It should be noted that the expression "H.F." (High Frequency) used throughout this report, applies to Rediffusion's present and proposed wired television system in Hong Kong.

8. On the 5th March 1957 Rediffusion (Hong Kong) Limited was granted a Licence by Hong Kong Government, valid until the 30th April 1973, whereby Rediffusion was granted the exclusive right to establish a wired television service. Included in the correspondence between Government and Rediffusion, leading to the grant of the Licence was a letter dated the 18th June 1956 from the Deputy Colonial Secretary, C.B. Burgess Esq., with which was enclosed a rough draft of the provisions which were intended to be incorporated in the Licence. In Paragraphs (G) and (H) of that enclosure, the right to relay broadcast television is clearly referred to. Elsewhere in the correspondence exchanged in the course of detailed and deliberate negotiation of, drafting, and revising, the Licence until its final form was agreed, there were other references to the relay rights to be conferred by the Licence. The Licence in its final form grants Rediffusion the exclusive right to maintain a service to the public of television programmes, either originated by Rediffusion, or consisting of broadcast television relayed by Rediffusion, through a wired network connected to the premises of subscribers. In Paragraph (c) of the Licence, a copy of which is appended for easy reference (Appendix "C") Rediffusion was specifically authorised to relay television broadcasts or any television broadcasting station listed by the International Telecommunications Union at Geneva. At the date of the Licence there was not in existence any station, the broadcasts of which could have been received and re-distributed by Rediffusion

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and clearly, therefore, the right to do so was intended to be exercisable at some future date, if and when such broadcasts would become available.

9. Rediffusion maintains that there is no doubt or ambiguity whatever arising from its Licence as to its right to relay by means of a wired service any broadcast television matter. The language of the Licence plainly so states, and is entirely consistent and compatible with the Rediffusion Group's primary operational interests. Since the inception of Rediffusion's wired television service in Hong Kong, it has had, perforce, to originate or provide its own programme matter, in the absence of any local television broadcasting station, the broadcasts of which could be picked up and relayed. This situation is, of course, about to change, with the advent of television broadcasting by Television Broadcasts Limited and Rediffusion now intends, not only to continue with distribution of its own programme matter as hitherto, but, in addition to exercise the rights to relay which it deliberately sought, were deliberately granted by Government, and which until now have had to remain unexercised.

10. Rediffusion maintains that any form of CATV necessarily involves the reception of broadcast television matter by a central aerial from which the broadcast matter is re-distributed, or relayed by means of wires connected to the premises of viewers, and is, therefore, precisely a service of the type over which the exclusive right was granted to Rediffusion by Paragraph (b) of its Licence Rediffusion contends that the grant by Government of a licence, under the Telecommunications Ordinance, to any party other than Rediffusion, to operate what is locally called a CATV aerial, would be a derogation from the express and exclusive right conferred upon Rediffusion by its Licence.

By Clause 16 of the Licence Government agreed not to grant licenses to others for receiving or distributing broadcast matter, which would include the service which by its Licence Rediffusion was granted the exclusive right to maintain, or any similar service. As stated elsewhere in this Memorandum, it is not possible either on theoretical

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Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

or practical grounds to distinguish between a CATV system, as locally understood, and a relay system, and Rediffusion maintains that an authorisation by Government enabling a third party to operate a CATV system would infringe the undertaking given by Government in Clause 16.

11. A superficial approach to Rediffusion's Licence might lead to the thought that as "CATV" is not specifically mentioned as such, the Licence grants no rights in respect of CATV. Such a conclusion could only be founded in a fundamental misconception as to what is "relay" (the rights to which are specifically granted in, and which is repeatedly mentioned throughout, the Licence) and the mistaken belief that "CATV" is something different from "relay". As explained elsewhere, whilst there may be a difference in terminology, in theory and practice both are essentially the same thing. Furthermore it is not surprising that no specific mention of CATV is made in the Licence, that expression (as opposed to what it describes) is an Americanism, which has only come into usage in Hong Kong comparatively recently, The Licence, not unexpectedly, no more unexpectedly, no more refers to CATV, common aerials, and such like, than it does to any other specific aspect or method of relay.

12. Rediffusion is fully aware of the value of the rights conferred upon it by its Licence, and it is also fully aware of Government's desire to ensure that broadcast television is received by viewers who may find technical difficulties in reception. Rediffusion intends, and has for some while past planned, to exercise its rights to relay broadcast television and in so doing will enable a high proportion of such viewers within a reasonable time to receive broadcast television in a form which provides maximum reliability. Proposals to this end are set out below. So long ago as 30th December 1965, before any Broadcast Television Licence was granted, Rediffusion made application to the Telecommunication Authority for the allocation of frequencies, so as to enable planning for the relay of broadcast television to proceed. In this connection a copy of Rediffusion's letter of 30th December 1965 and

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subsequent letters exchanged with the Authority, are appended as Appendix "D".

Any arbitrary abrogation of, or derogation from, Rediffusion's exclusive right to relay broadcast television matter by means of a wired system or systems, would occasion most substantial damage, and would furthermore render it impossible for Rediffusion to proceed further with the substantial capital outlays and major works programmes which are required to implement the proposals set out below, as, clearly they could not be expected to accept the commercial risks involved in such outlays if it were to be the case that individual building-by-building CATV aerials were to be licensed for installation piece-meal, and indiscriminately.

13. Government has indicated that it wished Rediffusion to enter into an agreement with Television Broadcasts Ltd., on the question of installation of CATVsystems. In this connection a copy of the Deputy Colonial Secretary's letter to Rediffusion of 3rd July 1967 is appended. From this letter, Rediffusion obtained the impression that Television Broadcasts Ltd., had evinced to Government an intention of establishing CATV systems, and following said letter, representatives of Rediffusion had an interview with the Deputy Colonial Secretary at which he requested Rediffusion to meet with Television Broadcasts Ltd., to discuss CATV. Whilst Rediffusion had no reason to doubt the extent of their rights contained in their Licence, but bearing in mind the threats implicit at the end of the second and last paragraphs of the Deputy Colonial Secretary's letter, they immediately arranged to meet, and did meet, a representative of Television Broadcasts Ltd. At this meeting the latter made it quite clear that they had not formed any intentions or plans as to establishment of CATV, and the results of this meeting were reported to the Deputy Colonial Secretary by the letter of Rediffusion of 20th July and of Television Broadcasts Ltd., of 22nd July, copies of all these letters being appended as Appendix "E".

Since the date of the last letter Rediffusion has heard nothing from Television Broadcasts Ltd., on the subject of CATV, and it is still unknown to

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Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

Rediffusion what interest or intentions, if any, that Company may have in regard to CATV, save what has been reported in the local Press recently.

14. Notwithstanding that Rediffusion expects Government to respect the rights it believes were granted by its Licence, and on the understanding that these rights will be repeated, Rediffusion is prepared to recognise that the public interest would be served by allowing co-owners or occupiers of any single building to co-operate in the purchase and installation of a roof-top aerial, so as to provide reception of broadcast television and re-distribution thereof to them within that building. Rediffusion on the other hand would take the strongest exception to any contractor or operator providing, at a charge, the service of relaying broadcast television from a common aerial to occupiers of a building, as such a service would clearly be similar in nature to that provided by Rediffusion, in exercise of its exclusive right. The reason why Rediffusion considers that co-owners or occupiers of a building themselves ought to be free to install a common aerial, is that there would be not element of provision, for profit, of a wired television service by an independent party to the homes of such co-owners and occupiers.

15. There exists another factor having a fundamental bearing on the above, and that is the matter of changes in the Copyright Law. Rediffusion has recently been given sight of the draft of the proposed Order-in-Council intended to apply the Copyright Act 1956 to Hong Kong, and of the draft Copyright Ordinance. In the United Kingdom, by virtue of the Act, the relay of broadcast television to subscribers to a diffusion service, in specifically not made a breach of the special copy right, created by the Act for the first time, in a television broadcast. However, the proposed Hong Kong Ordinance goes out of its way, by Section 4(2) to achieve the reverse effect, namely, to make it a breach of copyright for broadcast television to be relayed to subscribers to a diffusion service. It is most difficult to understand this unique piece of discrimination, and becomes even

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Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

more incomprehensible when one considers that in the 22 (about) Commonwealth Countries to which the 1956 Act has been applied, not one Colonial Legislature has brought in any legislation to the same effect as Section 4(2) of the Copyright Bill. Hong Kong will therefore be unique by creating a special copyright in a television broadcast, and making it a breach of copyright, as done nowhere else, to relay television to diffusion service subscribers.

This Section 4(2) would completely remove from Rediffusion's Television Licence, its right to relay broadcast television. So doing would arbitrarily and radically alter the basis upon which Rediffusion has entered into commitments in the field of wired television in Hong Kong, and cause most serious damage and loss. The completely unprecedented Section 4(2) now proposed, could be construed as a deliberate move to eliminate from Rediffusion's franchise a vital element, without which its wired television service would become disastrously crippled and possibly put out of business entirely. Rediffusion trust that this construction is completely unjustified, and that Hong Kong Government will honour the relay rights it has granted Rediffusion by its Licence, and will not by means such as Section 4(2) arbitrarily attempt to extinguish those rights. Under the circumstances, and until Government's final attitude on Section 4(2) is made known, Rediffusion most strongly protests at any attempt to bring that Section into force, and reserves the right to make objections thereto on grounds partly indicated above, and on certain others.

16. As if the apparent discrimination referred to in the preceding paragraph were not bad enough, in a letter to Rediffusion dated 5th September 1967 the Deputy Colonial Secretary, stated that consideration was being given by Government to revision of Section 4(2) as:

> ".....it is appreciated that reference in Clause 4(2) to transmission to the premises of subscribers to a diffusion service is not appropriate in the context of communal antennae ....."

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Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

The very grave implication of this, is that Government may be considering a revised Section 4(2) which would have the effect of:-

1. Preventing the relay by Rediffusion of broadcast television by any means, including common aerials, thereby extinguishing the relay rights conferred by the Licence.

2. Allowing all and sundry to establish relay systems for the re-distribution of broadcast television by means of common aerials.

In other words, at one step. Rediffusion's relay rights would be removed, and at the same time others would be enabled to relay by common aerials. The manifest injustice to Rediffusion found in the new proposed Section 4(2) would thereby be so compounded as to ensure the virtual destruction of Rediffusion. Rediffusion feel entitled to enquire whether it is Government's deliberate policy, and in the public interest, to adopt measures of this nature in the knowledge of the disastrous consequences.

17. In planning its wired television operations Rediffusion has placed complete reliance upon the exclusive rights which are set out in its licence, including the right to relay the transmissions of any television broadcasting station. Indeed Rediffusion may never have entered into the television field at all had it not had these rights, in the knowledge that the advent of broadcast television in Hong Kong was only a matter of time, and that Rediffusion's wired subscription television service could not, on a long term basis, compete with broadcast television, unless it could simultaneously relay broadcast television and thereby offer a service of four or more programmes, which would be unique to Hong Kong. As any businessman will realise, to have planned on any other basis would have been a commercial absurdity.

18. It is not out of place to mention that Rediffusion has pioneered wired television in Hong Kong, and has thus provided something of

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Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

a ready made viewing market for broadcast television. It has invested very substantial amounts of capital, well in excess of $41,000,000.00, in establishing its wired television system, and its acceptance of the commercial risk implicit in such a venture which after substantial initial losses, has been rewarded by profits all of which have been ploughed back into its wired television service and Rediffusion have as a result not declared any dividend since 1957. Recently further commitments to the extent of $16,000,000.00 have been entered into.

19. Rediffusion having made its plans and commitments on the basis of the rights conferred by Government's licence, if those rights are arbitrarily removed or cut down, it could well be that in a matter of time Rediffusion would be compelled to close its doors. The expression "put out of business entirely" in paragraph 15 above was not written lightly. Government should have some regard for the livelihood of the some 1200 locally born people who are employed by Rediffusion.

Attached as Appendix "A" is a statement of Rediffusion's intentions in respect of relay of Television Broadcasts Ltd.'s programmes.

Document 8

APPENDIX "A"

1. Rediffusion has for a considerable while past appreciated and estimated the technical obstacles in the way of reception of broadcast television in Hong Kong, and long before a tender for broadcast television was called for, came to the conclusion that broadcast television in Hong Kong was not a generally viable proposition from the point of view of reception, unless worked in conjunction with a wired system, or, at least having a wired relay system work concurrently with it.

By reason of such technical obstacles, Rediffusion takes the view that a substantial number of wireless television viewers will be unable to obtain clear and reliable reception, without assistance in the form of relay.

Rediffusion now intends to exercise its rights to relay by means of augmentation of its existing 11 million route yards of wired television network. In the first instance the augmentation will be on a planned basis in the areas where the service is most required. The augmented network will be fed from a head end roof top equipment which will be capable of serving any number of subscribers. The UHF off air signal will be converted to HF before feeding into subscribers' sets.

Before outlining details of these proposals it would be as well to state precisely their objective which is:

To ensure that in the shortest space of time and at competitive cost, television viewers in Hong Kong will have a choice of :-

(i) the existing two Rediffusion programmes in black and white

or (ii) the two programmes to be broadcast by Television Broadcasts, Ltd. in both black and white and colour

or (iii) a four-programme service consisting of two programmes from Rediffusion in black and white and two from Television Broadcasts, Ltd. in both black and white and colour.

2. Those viewers who will be unable to obtain adequate reception of wireless television may be divided into two categories, viz. those who are already subscribers to Rediffusion's wired television system, and those who are not but who will eventually purchase some type of television receiver.

In order to consider what accommodation the first category of viewer will require it is necessary to note the following points:-

(a) The broadcasts of Television Broadcasts, Ltd. will be UHF and will use the 625 line system.

(b) Unless it was specially designed to do so, a television set using the 405 line system

Exhibits
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Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

is incapable of receiving 625 lines transmission.

(c) A set designed for black and white picture reception is incapable of receiving a colour picture.

(d) Unless specially designed to do so, an UHF set cannot receive VHF or HF: and HF set cannot receive either UHF or VHF: A VHF set cannot receive either UHF or HF.

3. The existing 83,000 television sets in use in Hong Kong can be categorised as follows:

	UHF CAPABILITIES
18,000 Dual Purpose 405 Wired/625 Wireless	These receivers if in line of sight of the transmitter, are theoretically capable of receiving Television Broadcast Ltd. programmes but can readily receive Rediffusion's two programmes.
11,000 Miscellaneous receivers	These receivers can be converted at varying and often high cost to become dual purpose, thereby giving them the same capabilities as above.
54,000 Terminal Units and receivers 405 line only	These receivers cannot receive Television Broadcasts Ltd. programmes.
83,000	
	WIRED CAPABILITIES
24,000 Terminal units 405/625 lines	Could receive wired 625 lines as well as 405 line programmes.

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Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

9,000 Miscellaneous receivers	Could receive wired 625 line as well as 405 line programmes with a small modification costing approximately $50.
13,000 Miscellaneous receivers	Could receive wired 625 line as well as 405 line programmes with a modification costing approximately $120.
7,000 Miscellaneous receivers	Could receive wired 625 line as well as 405 line programmes with a modification costing approximately $180.
30,000 Miscellaneous receivers	Could not receive wired 625 line programmes but will continue to be able to receive wired 405 line programmes.
83,000	

The 83,000 receivers already connected to the existing Rediffusion network will be able to receive educational programmes when originated by Government.

From the above it will be seen that some 53,000 television set owners will be in a position to receive any one of the three choices mentioned in para.1 without having to purchase a new set.

4. Looking to the future there must be many potential television viewers of limited means to whom the matter of cost is a most important factor.

Wireless television sets vary substantially in cost and range from $7,500 for a colour set to $ 799 for a 19" black and white set. In addition, a large percentage of wireless television sets will need the assistance of some form of out-door or communal aerials at an additional cost.

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On the other hand the viewer who is served by the proposed Rediffusion augmented relay service, capable of receiving any one of the three choices mentioned in para.1, can purchase a 19" terminal unit for $599, an obvious substantial saving in capital cost to the viewer. Alternatively, such terminal units can be hired from Rediffusion at a modest monthly charge. In either event he is spared the cost of the aerial. Government might well think it to be in the public interest for the less well off members of the public to have the benefits of wireless television provided at a modest cost by an efficient and reliable relay company. No doubt this would also serve the interests of Television Broadcasts, Ltd.

5. It should be appreciated that the cost of a subscription to a relay or communal aerial system is largely dictated by the demand and the density of would be subscribers in any one building. The charge can only be determined when the extent of the demand is known but Rediffusion is confident that it will be able to offer this service at a very competitive price.

6. Augmentation of Rediffusion's existing wired network for the purposes above-mentioned cannot, for obvious reasons, take place immediately and will have to be programmed so that areas in which maximum density of population coincide with difficulties of wireless television reception, are reached first. Rediffusion's present plans and target dates for augmentation are as follows:-

(a) substantial progress in urban areas where the service is most likely to be required within a period of 12 months.

(b) complete coverage of the urban areas within 24 months.

7. It will be appreciated that the augmentation of the network and installation of such internal wiring within buildings as may be required, are works of a major order requiring very substantial outlays of capital, but which Rediffusion feels confident it is within their technical and administrative resources to carry out. However, it may be that demand arising within a short space of time might outstrip Rediffusion's resources, and if

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Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

this should come about, it is Rediffusion's intention to explore with major manufacturers of the required equipment means of sub-contracting part or parts of the works programmed to them, in the interests of expediting completion of the whole augmentation programme.

8. The existing Rediffusion HF wired television service in Hong Kong is of a proven and undisputed quality and technical proficiency. It is exactly the same system as is extensively used throughout 150 towns and cities in the United Kingdom where some half million receivers are connected to Rediffusion Group systems. This system is the product of substantial research and technical facilities of the Rediffusion Group which maintains a constant review of the Group's technical services. The wired network as augmented to accommodate the relay of two programmes of Television Broadcasts Limited, will naturally be of the same standards and proficiency as the existing network and will be maintained and operated eighteen hours a day by Rediffusion's highly qualified and trained network staff whose number will have to be increased. Rediffusion has no doubt whatever that the quality of the pictures of wireless television as relayed by them by means of the additional channels will be as good as that obtained by means of the existing wired network, and that pictures will, in most cases, be far superior to the pictures obtained by viewers using their own individual wireless television receivers and aerials. Furthermore relayed wireless television will not be vulnerable to electrical interference, passing aircraft, (and this is an important consideration in regard to the urban areas of Kowloon) fluctuating signal strength and interference caused by atmospheric and meteorological conditions.

9. Rediffusion wishes it to be understood (and the above is conditional upon) that it is pointless to provide a service when there is no demand, and that the planned augmentation of the wired network for the purposes of relaying wireless television depends upon the successful impact on the latter, and upon it sustaining an attractiveness to the viewing public.

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Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

10. Throughout the above review, the question of colour television has been virtually ignored. Rediffusion believes that for some considerable time the high price of colour sets will make this a luxury service, available only to a small affluent minority with ample means, and will be beyond the financial reach of the vast majority of the public.

However, it should be placed on record that the Rediffusion network referred to in this paper will carry relays in colour.

Document 9

APPENDIX "B"

REPORT ON TECHNICAL ASPECTS OF WIRED TELEVISION SYSTEMS UNDER CONSIDERATION FOR THE CITY OF LEICESTER

With acknowledgements to the Leicester City Council
Printed by permission of Mr. G.C.Ogden, M.A.
Town Clerk.

INTRODUCTION

In this report an attempt is made to present in simple terms, a broad technical appraisal of the three systems of Wired Television which have been under consideration by your Council for the City of Leicester.

It should be borne in mind that Leicester cannot be regarded as a fringe area for television reception by radio and consequently any wired system of distribution put into service would presumably have to compete with the usual radio.

The three systems to which special attention was directed are as follows :-

MULTISIGNALS LTD.

V.H.F. (very high frequency) distribution of both vision and sound, employing special cable with only two conductors arranged coaxially, to provide for a number of distinct communication

channels electrically superimposed.

REDIFFUSION LTD. AND
BRITISH RELAY WIRELESS AND TELEVISION LTD.

H.F. (high frequency) distribution of vision and in some cases also of sound, employing a number of twin-wire circuits side-by-side in parallel, usually one for each television channel with its accompanying sound.

COMPARISON OF V.H.F. AND H.F. SYSTEMS OF WIRED DISTRIBUTION.

In the first place it will be convenient to assess the relative merits of V.H.F. and H.F. distribution arrangements which are so clearly distinguishable from one another.

Both arrangements are carrier operated, which means that they employ an electric 'carrier' wave, modulated in such a way as to have impressed upon it the signals representing in general both vision and sound.

In the V.H.F. application the carrier frequencies employed are within the range 40 to 100 megacycles per sec., deliberately chosen to cover the television Band 1 and the F.M. (frequency modulated) sound of Band II. Thus, in this case, for Bands I and II standard receivers can be used, but for Band III the signals have to be converted to Band I and when Band IV and V come into operation, a similar procedure will presumably be attempted.

In H.F. applications carrier frequencies ranging from 3.5 to 10 megacycles per sec., are usually adopted.

As a rule, the lower the frequency at which distribution can be successfully carried out, the simpler the whole process, including reproduction of the picture and the sound by the subscriber's receiver.

A comparatively expensive cable with many more amplifiers en route is required for V.H.F.

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Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

distribution, and from the purely technical point of view, I see nothing to compensate for this, except the very doubtful advantage of a single coaxial cable in place of a multiple cable made up of several separate pairs of conductors. In V.H.F. working all T.V. and sound programmes go over the same physical circuit, so that if a fault occurs all channels are put out of action, simultaneously, whilst in the H.F. arrangements there are a number of parallel independent circuits, usually one for each channel. Interference and distortion of signals is also more acute at the higher frequencies. A double screen is required for the V.H.F. coaxial cable and, even so, experience has shown that the kind of braided sheath employed, tends to deteriorate with time, and to maintain good performance it is necessary to distribute at a much lower voltage than is the usual practice in H.F. working. Thus, at the subscriber's terminals the voltage is often less than 0.2 milli-volts on a V.H.F. distribution, compared with anything from 2 to 20 milli-volts or more when H.F. is employed.

The advocates of V.H.F. distribution emphasise the fact that a standard receiver, without modification can be used. From the technical standpoint this is, in fact, a disadvantage because standard receivers include equipment that can be dispensed with when H.F. distribution is applied and the simpler the receiver the less maintenance required.

If wired distribution is to be adopted then in my view for a large area like Leicester, there is an unanswerable case for making the subscriber's equipment as simple as possible and that is achieved by the use of the lowest acceptable frequency of distribution.

It is technically not feasible to go below a few megacycles per sec., and therefore what has been classified as H.F. distribution is, I maintain, the right choice. Not only does this arrangement offer a simplified subscriber's receiver but it also helps to ease the problem of distribution, the sole possible disadvantage being the multi-core cable required.

Provision is sometimes made at the subscriber's end for conversion back again from H.F. to V.H.F. so that a standard receiver may be installed but no technical argument can be sustained for doing this.

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Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

Looking to the future with the possible advent of (a) a higher standard of picture definition in Bands IV and V with 625 lines, (b) coin-in-the-slot subscription T.V. and (c) colour, T.V., there is no reason to anticipate that H.F. distribution will be at a disadvantage in any way. To meet such requirement at H.F. 'multiple pair' cables can still be used and indeed 'six pair' cables with an outside diameter of only ⅝ inch have already been installed in anticipation of the need for additional services.

The present 405 line T.V. requires a band of frequencies for each channel of 5 megacycles per sec., and when 625 line T.V. comes, it will occupy a band up to 8 megacycles per sec. Thus a single pair of conductors on H.F. will satisfactorily provide for one T.V. channel with the higher definition and at the same time give facilities for sound programmes (each occupying a band of about 0.5 megacycle per sec.) if required.

If and when colour T.V. comes, a wired system of distribution at H.F. specially designed for the purpose, should have advantages over radio distribution because here again a simpler subscriber's receiver should be possible.

Television services extended into Bands IV and V will undoubtedly present some problems, particularly for wired V.H.F. distribution. Conversion from the U.H.F. (ultra high frequencies) of Bands IV and V to a lower frequency, suitable for transmission over the coaxial cable used, is unavoidable and the superimposition of the different channels with appropriately spaced carrier waves on the cable becomes difficult. Moreover, the probable accompanying introduction of a higher standard of definition (625 lines), will, for a transitional period, demand services both on this standard and the existing 405 line standard unless new receivers are provided at the same time for all subscribers. This is possible only in the case of H.F. distribution, when the receivers are not privately owned, For the V.H.F. system, services on both the old and the new standards will, it appears, have to be made available simultaneously for some years

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Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

until practically complete changeover has become effective.

On a technical basis, I have no hesitation in recommending the adoption of an H.F. system of distribution in preference to a V.H.F. one.

H.M. BARLOW
Pender Professor of Electrical Engineering and Head of Department,
University College,
London.

7th November, 1960.

Appendix.

FREQUENCY BANDS OF SPECIAL INTEREST IN T.V. AND SOUND BROADCASTING

Band I (Television)	41 to 68 Mc/s
Band II (V.H.F. Sound)	87.5 to 95 Mc/s
Band III (Television)	174 to 216 Mc/s
Band IV (Future Television)	470 to 585 Mc/s
Band V (Future Television)	610 to 800 Mc/s

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APPENDIX "D"

CE227/66 26th May 1966

The Chief Controller,
Telecommunication Services,
General Post Office, Hong Kong

Dear Sir,

Thank you for your letter (52) in PMG.B.C/3 dated 23rd May 1966, on the subject of VHF allocations for CATV and similar uses.

It is accepted that each proposal would have to

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Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

be studied separately in view of the fact that the channels used elsewhere for television broadcasting in Band III are not available for this purpose in Hong Kong. We note also that the new requirements for CATV licences in the U.K. to be introduced to cater for the special features of UHF television, would have to be followed in Hong Kong, and that the existing U.K. licences are not due to expire for about two years.

Regarding the use of the invertor this is in effect a frequency-changing stage added to a normal television receiver. The signal generated is of course at a very low voltage and is in any case confined strictly to a short and completely screened route. We are not quite sure of your meaning when you say that "each application will have to be studied separately".

Replying to your specific question: our wired television system as operated at present uses the 405 line system and the vision bandwidth is therefore that of the British Standard, namely, a nominal 3 mc/s. Vision and audio carrier frequency separation, with the use of invertors, does not arise since our audio signal is transferred at fundamental frequency and power direct to the receiver's voice coil without any r.f. processing. This is the normal Rediffusion system for audio distribution and the use of invertors does not normally affect it.

Yours faithfully,
REDIFFUSION (HONG KONG) LIMITED

A.T.B. BARDENS
Chief Engineer.

ATBB/bw

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Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

General Post Office,
Hong Kong.
23rd May 1966

Your Ref. CE.169/66.

Tele:223832
Telegrams POSTGEN P.O.Ref (52) in PMG.B/C 3

The Chief Engineer,
Rediffusion (Hong Kong) Limited,
P.O. Box 121,
HONG KONG.

Dear Sir,

The delay in replying to your letter on VHF allocations has been due to the time taken in obtaining information from overseas and is regretted.

You are no doubt aware that the frequency band used for Band III television in other countries has been allocated to other services in Hong Kong. It is therefore considered advisable to study each proposal for the use of the frequencies for CATV purposes to ensure that interference to and from other telecommunication services does not arise.

The licences for CATV in the United Kingdom are due to expire in about two years time and I understand that new technical requirements to meet the needs of UHF television are to be introduced. These new requirements would need to be introduced in Hong Kong.

Your proposal to introduce "invertors" is a cause of concern as it is a further source of possible interference to telecommunication services. It is considered that each application will have to be studied separately to avoid mutual interference. As your wired television service uses the 405 line system, can you please advise the band width together with the vision and audio carrier frequency separation you would use.

Yours faithfully,

R.V.TALBOT-JONES
Chief Controller,
Telecommunication Services.

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Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

CE.169/66 22nd April 1966.

Chief Controller
Telecommunication Services
Telecommunications Division
General Post Office, 3rd Floor,
Hongkong.

Dear Sir,

V.H.F. ALLOCATIONS

We refer to our letter CE.414/65 dated 30th December 1965, and now write to ask if you have anything to add to your acknowledgment of same dated 31st December, 1965.

Perhaps we should mention that we are beginning to consider the matter in a light approaching that of urgency, as both CATV and the use of "invertors" are functions of Rediffusion in several regions of the U.K., where these questions must have been answered by the G.P.O. authorities some years ago. It is becoming very difficult for us to plan ahead in the absence of definite information as to the availability of suitable closed-circuit frequencies in the V.H.F. bands,

Yours faithfully,
REDIFFUSION (HONG KONG) LIMITED

A.T.B. BARDENS
Chief Engineer.

Telecommunications Division
Post Office, 3rd Floor,
Hong Kong.

31st December 1965

Your Ref: CE.414/65
P.O.Ref (111) in PMG.R.49 II

Rediffusion (Hong Kong) Ltd.,
P.O. Box 121, Hong Kong.

For Attention : Mr. A.T.B. Bardens

Exhibits

GHO.10

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

Dear Sir,

I acknowledge your letter of 30th December, 1965 in connection with the use of V.H.F. channels for distribution of television signals on "closed circuit" systems.

Your application is under consideration and I shall advise you of the position in due course.

Yours faithfully,

R.V. Talbot-Jones
Chief Controller,
Telecommunication Services.

CE414/65 30th December 1965

The Chief Controller
Telecommunications Services
General Post Office
Hong Kong

Dear Sir,

V.H.F. Allocations

In view of expected developments in the general field of television in Hong Kong in the foreseeable future, I now wish on behalf of this Company to make formal application for the use of certain V.H.F. channels. The intention is to utilise these channels on so-called "closed circuit" or non-radiating distribution systems of wired vision - this Company's normal business - and two separate channels at least would be required.

They would be in Band III and since the object is to distribute, through a coaxial or similar cable system, a 625-line television signal to approved standards, complete with audio, presumably those channels above 190 mc/s, namely F, G. H and I, would be suitable. As simultaneous transmission of English and Chinese programmes is mandatory we would prefer the channels not to be adjacent; our information is that the above four channels are "recognised VHF channels for 625 lines" in the United Kingdom and

Exhibits

GHO.10

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

are tabulated as follows:

Channel	Vision	Sound
F	191.25	197.25
G	199.25	205.25
H	207.25	213.25
I	215.25	221.25

The above application refers to the use of V.H.F. channels for distribution of television signals by cable systems which include those generally described as "Communal Aerial TV" sometimes abbreviated to "CATV". The implication here is that, for each programme, a single radio signal is received, duly processed and/or amplified, and distributed to a number of separate dwelling units within one or two sizeable blocks of apartments or tenements.

It happens that this Company has a separate application of V.H.F. transmission on "closed-circuit" for this purpose, but applicable to single dwelling units rather than to numbers. In cases where a television viewer wishes to make use of our wired vision facility, but does not permit any modification of his own television receiver, we interpolate, between the wired termination and his own set, a unit we call an "invertor". The function of this unit is to change the frequency of the wire-borne television signal into one suitable for feeding into the aerial socket of the normal receiver.

Up to now of course there has been no demand for this type of unit in Hong Kong although it is in widespread use throughout our networks in the U.K. However, applications may arise in the future, and I wish to avail myself of this opportunity to ask you if specific allocations will be required for the use of our invertors, in the same manner as we are now applying in this letter for V.H.F. allocations in Band III for CATV purposes.

Yours faithfully,

REDIFFUSION (HONG KONG) LIMITED

A.T.B. Bardens, Chief Engineer.

Exhibits

GHO.10

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

Document 11

APPENDIX "E"

COLONIAL SECRETARIAT,
HONG KONG

TC 98/67

3rd July 1967

Dear Sir,

Community Antenna Television Systems
(C.A.T.V.)

Following Crown Counsel's letter to you (Ref: AGO 26/20/64 II) of 19th April, 1967, your solicitor, Mr. Richard Dennis, had discussions with Crown Counsel (Mr. Hogg) of a purely non-committal character. Since then it has been noted from your letter to Mr. Hogg of 8th June, 1967 that you are prepared to meet with Messrs. Television Broadcasts Limited to discuss the question of distribution of wireless television through community antenna systems. In entering these discussionsit is clearly important that you should understand Government's position in the matter, and I am, therefore, writing to you now to clarify this.

Careful consideration has been given to the position of the two television companies in this matter and it has been decided that a situation cannot be accepted where one of the companies claims the exclusive right to install C.A.T.V. It is quite clear from the relevant documents and correspondence at the time of issue of your licence that Government never had any intention to confer such an exclusive right. Furthermore it would be against the public interest to allow disputes to arise which would inhibit the development of this important public service. It is, therefore, considered that unless an agreement is reached within the next two months between the two television companies on the C.A.T.V. issue, which is acceptable to Government, there will be no alternative but to clarify the intentions of Government by legislation.

It should not be taken, however, that the reference to possible legislation in the preceding

paragraph implies that you have a right which is legally exclusive. Government's position is simply that an unforeseen situation has risen since the granting of your licence and the possibility of any dispute must be avoided, if necessary by legislation.

Yours faithfully,

(Sd. G.C. Hamilton
Deputy Colonial Secretary.

G.H. Oldridge, Esq.,
Managing Director,
Rediffusion (H.K.) Ltd.,
77 Gloucester Road,
Rediffusion House,
Hong Kong.

REDIFFUSION (HONG KONG) LIMITED

15th July, 1967.

G.C. Hamilton, Esq.,
Deputy Colonial Secretary,
HONG KONG

Dear Sir,

Community Antenna Television Systems (C.A.T.V)

We refer to your letter of the 3rd July 1967 with particular reference to para. 2, and to further discussions which you had with the writer and Mr. Dundas.

At your suggestion, we have initiated discussions with Television Broadcasts Limited and it is anticipated that further discussions will take place. It appears that they have not, as yet, formed any intention of establishing C.A.T.V. and our own plans for C.A.T.V. are, as you know, held up for want of allocation by Government of the desired frequencies. Inthe meantime it has been mutually agreed by Television Broadcasts Limited and by this Company that there is no immediate urgency to this problem of C.A.T.V. and that no further action is necessary until

Exhibits
GHO.10

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

the discussions between the two television companies have been finalised one way or the other.

We will communicate with you again as soon as possible.

Yours faithfully,

REDIFFUSION (HONG KONG) LIMITED

(Sd.)G.H. Oldridge
Managing Director.

REDIFFUSION (HONG KONG) LIMITED

20th July, 1967

G.C. Hamilton, Esq.,
Deputy Colonial Secretary,
HONG KONG.

Dear Sir,

Community Antenna Television Systems (C.A.T.V.)

In our letter of 15th July 1967 we gave you an interim acknowledgment of your letter of 3rd July 1967 insofar as the reference to some type of agreement between this Company and Television Broadcasts Limited is concerned.

However, in your letter you make reference to possible doubts as to Rediffusion's exclusive rights to operate all types of wired television services in the Colony, and you further make reference to the possibility of Government introducing legislation which may possibly detract from our rights.

Although the extent of our rights is not in issue at this stage, we feel that we must place on record the belief that we do hold exclusive rights which we regard as a fundamental feature of our Licence. It is, of course, most undesirable that any dispute should arise, but this possibility cannot be accurately gauged until such time as we have completed our discussions with Television

Broadcasts Limited.

Yours faithfully,

REDIFFUSION (HONG KONG) LIMITED,

(Sd) G.H. Oldridge,
Managing Director.

Exhibits

GHO.10

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

Television Broadcasts Limited

Prince's Building
25th Floor
Hong Kong

July 22nd 1967.

G.C. Hamilton, Esq.,
Deputy Colonial Secretary,
Colonial Secretariat,
Central Government Offices,
HONG KONG.

Dear Mr. Hamilton,

We have received from Mr. G.H. Oldridge, Managing Director of Rediffusion (Hong Kong) Limited, a copy of a letter addressed to you on July 15 last, under the heading of Community Antennae TV Systems (CATV).

Mr. Oldridge, along with Mr. Dundas, called on me at this office on July 7.

It was explained to me that our meeting was the result of a suggestion made by your goodself.

Our conversation was exploratory as this was the first occasion on which I had had the pleasure of meeting these gentlemen in Hong Kong.

It goes without saying that, up to now, all the efforts of our Company have been directed to the establishment of a wireless broadcast service.

We have, therefore, not had the opportunity, as yet, to study the possibilities and various

Exhibits
GHO.10
Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

complexities of the operation of a "CATV System" as we understand the meaning of that term.

In any event, we feel that the operation of such a system would be subject to the policies and views of Government, and we would always hold ourselves available for further discussions.

Yours sincerely,

Colin B. Bednall
General Manager.

CBB:eart

Document 12

Colonial Secretariat
Hong Kong

7th October, 1967.

TC166/67

RECEIVED 9 OCT 1967

Sir,

Thank you for your letter of 26 September 1967 and for the memorandum enclosed, which has been closely studied. Many of the technical and other arguments cannot in fact be accepted, but the urgency of a public decision does not, as you undoubtedly accept, allow of protracted discussion of detailed points now. It is essential that the Governor in Council be enabled to settle the matter, and it is intended to place the matter before Council at an early date.

2. Government's general view was explained to you in my letter TC98/67 of 3 July 1967. It is not felt that to "extinguish" the exclusive right which you appear to claim to instal and operate "CATV" (as popularly understood and described in paragraph 4 of your memorandum) would in any way either infringe the spirit or intentions behind the grant of your licence, or (having regard to the facts of your submission and declared intentions) disastrously cripple your enterprise or possibly compel you in a matter of time to close your doors. The wider public interest seems to remain as previously suggested to you.

Exhibits

GHO.10

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

3. On the other hand, it must be clear that Government has no desire whatever to renegue on its express intentions, still less to take steps which would unnecessarily hamper your entirely legitimate commercial and public service operations, or place more than reasonable competition in your path at the present state of Hong Kong's television development, as it was anticipated. There can be little doubt that it would be preferable to recommend to the Governor in Council, if wider public interest would not be prejudiced thereby, that he should approve some compromise modification which you might feel disposed to accept to your licence, such as would obviate any further claims on your part, and leave you well able to compete on pure commercial merits of programme standards and maintenance. Otherwise I can hold out little practical hope of any other alternative being recommended than clarific ation by legislation that would put beyond all doubt the absence of any exclusive right in yourselves (or any other body) to monopolize communal antennae or aerial distribution systems generally. You will realise that the fact of your being not only the furnishers of a simple relay service, but also the originators of television programmes (now in competition) differentiates the situation from the circumstances elsewhere which you describe.

4. Accordingly the following suggestion is made, subject of course to the final advice to His Excellency of the Executive Council. It is in fact based on your present intentions and facilities as known to us. This is to amend your licence in such terms as would clarify that your company does have the exclusive right to provide and to operate communal antenna systems for relaying broadcast television services to communities, and aerial distribution systems for distributing broadcast television services to occupants of single buildings, using only the HF (high frequency) system in both cases (i.e. converting the received ultra high frequency broadcast signal to high frequency before wired distribution); this would incidentally involve making it clear that all your television distribution rights are restricted to the HF

Exhibits

GHO.10

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

system. The appropriate powers under your licence would of course be used to ensure the maintenance by you of the full technical standards of all broadcast programmes which you relayed contemporaneously, to ensure that the quality was as good as that of your own programmes.

5. Regulations would then be made under the Telecommunication Ordinance allowing (under Licence) aerial distribution systems which distributed signals at the same frequency as received from a television broadcasting station to television screens of occupiers within the same building. For this latter purpose public interest would require that such wholly UHF systems be available for installation, operation, hire and maintenance from any body who wished to engage in such commercial operations. The licence fee contemplated is nominal, to cover administrative costs only.

6. I should be grateful if you would address any queries you may have on this proposal to the Telecommunications Authority. Should you have any representations to make for consideration by the Governor in Council (or alternatively if you should decide to accept the proposal or reject it outright) I should have to receive them by 18 October in order to embody them in the paper to be submitted to the Executive Council.

7. You have also raised the question of copyright. You will be aware that the lack of modern copyright protection has been a growing cause of concern in Hong Kong for some years. The proposal to give protection to television broadcasts would not of course of itself have removed from your licence the right to relay, subject to the provisions of clause 17 of your licence. It would have given the originators of broadcast television programmes the right to impose conditions or restrictions, which might seem vexatious to a purely relay company but is more comprehensible in the case of a competitive programme company. It does however seem that in a small territory, with (at present) only two commercial concerns interested, the need for legislative intervention is less pressing, and the matter is principally one for the parties concerned. I propose therefore to give an assurance to Hong Kong Television Broadcasts Ltd. that steps will be taken or powers exercised to ensure that any relay

Exhibits
GHO.10
Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

of their programmes, in accordance with clause 17 of your licence, (whether taken as a complete channel service or as separate contemporaneous inserts into another programme) will be complete, uncut and unchanged in quality, with all station attributes, announcements and related advertisements and "breaks" as originally transmitted - I think that this should protect their legitimate interests and in no way run counter to your own intentions. In that event the Copyright Bill would be appropriately modified in this respect and the draft clause of which you have complained would not be proceeded with at present.

8. This letter is written in an endeavour to settle matters between us and is entirely without prejudice to the rights of the Government.

I am, Sir,
Your obedient servant,

(G.C. Hamilton)
Deputy Colonial Secretary

G.H. Oldridge, Esq.,
Managing Director,
Rediffusion (Hong Kong) Ltd.,
P.O. Box 121,
HONG KONG.

Document 13

REDIFFUSION (HONG KONG) LIMITED

GHO:H CONFIDENTIAL 12th October 1967

G.C. Hamilton Esq.,
Deputy Colonial Secretary,
Secretariat,
HONG KONG.

Sir,

1. We acknowledge receipt of your letter of the 7th instant, the contents of which we have carefully noted.

Exhibits

GHO.10

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

2. Subject to resolution satisfactory to us of the matters referred to in the fourth and fifth paragraphs of this letter, we accept the compromise proposals indicated in paragraph 4 of your letter, on the basis of the conditions stated in that paragraph and elsewhere in your letter.

3. In so doing we are naturally disappointed that Government has not expressed full recognition of the exclusive rights which we contend were conferred upon us by our wired Television Licence but we respect the fact that the public interest requires special consideration under the circumstances likely to come about. In saying this, we do not wish it to be understood that any requirement of the public interest is ground for derogating from our licence rights.

4. With reference to the last sentence in paragraph 7 of your letter, we should like an assurance from you in the event that Government should proceed in the future with legislation in terms of Clause 4(2) of the Copyright Bill, or legislation having a similar effect, rights under our existing Licence (as it may be amended to conform with the conditions set out in your letter) will not be therefore affected or diminished in any way.

5. Furthermore, you will appreciate that our letter to you of the 26th September and its enclosures made no attempt to make representations on the proposed Copyright legislation in any specific detail, other than Section 4(2) of the Copyright Bill which is particularly relevant in regard to our relay of broadcast television. We take it from your letter under reply that it is Government's intention that we should be able to exercise our rights to relay broadcast television within the same framework of law (and subject, of course, to the terms of our Licence) as applied in the United Kingdom. In this connection, it is important that Section 40(3) of the Copyright Act should be applied to Hong Kong in the same way as it is applied in the United Kingdom but substituting the words "Corporation or Authority" by appropriate local references. You will no doubt understand that a failure to make Section 40(3) applicable to Hong Kong would largely frustrate our implementation of the compromise proposals set out in your letter.

Exhibits
GHO.10
Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

6. We place the utmost importance on assurances from Government in these respects as we will be committing ourselves to expenditure of millions of dollars in order to exercise our relay rights.

7. We note that our licence is to be amended so as to restrict our exclusive right to relay by our wired network to use of the H.F. system. No reference is made in your letter to use by any party of VHF and we assume that this is because no VHF frequencies in Bands I or III are available. In this connection we draw your attention to the correspondence which forms Appendix 'D' with our letter to you of the 26th September. We assume that our previously expressed interest in VHF system will be borne in mind when VHF frequencies become available.

8. We look forward to receiving further advice from you when the matter has been considered by Governor-in-Council.

We are, Sir,

Your obedient servants.

REDIFFUSION (HONG KONG) LIMITED

G.H. OLDRIDGE
Managing Director.

Document 14

CONFIDENTIAL

Ref: TC 166/67
(GR 7/1036/67) 11th November, 1967.

Sir,

Please refer to our meeting of 17 October your confidential letter of 24 October and your solicitor's letter dated 31 October. With regard to the second mentioned letter, I must point out that its final paragraph is both unfortunate and

Exhibits

GHO.10

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

unnecessary, and has in no way influenced the decisions that have been taken. If I may say so, I am sorry that it has not proved possible for yourselves and Television Broadcasts Ltd. to discuss the question of copyright and the implications of clause 17 of the terms and conditions of your licence directly. This might well have shown the existence of avoidable misunderstandings, both on this subject and on that of community antennae or aerial distribution systems. I feel in fact that an exchange between you of the various correspondence between each company and this Secretariat would have led to recognition that the true differences were very small.

2. The reference to aerial distribution systems for "single building" in my letter of 7th October to Mr. Bednall was intended to distinguish between:

(a) aerial distribution systems where distribution of signals, using the high frequency system only, would be made to independent detached premises by line which has to cross any "street" as defined in the Interpretation and General Clauses Ordinance, Chapter I. The intention is that this type of distribution (generally known as community antenna systems or "CATV")may be provided only by RTV, in accordance with the terms of their licence;

(b) any aerial distribution system which is not covered by (a). It would be open to anyone to provide this kind of system.

3. The above would be achieved by legislation which would make it an offence to erect any aerial distribution system without a licence. Licence to erect systems of type (a) would be issued to RTV only and licences to erect type (b) to any applicant.

4. On the question of licence fees, it is essential to license aerial distribution systems in order to afford control over possible telecommunications interference degrading reception standards. The quality of your broadcast transmissions may be marred not only by poor UHF aerial distribution systems degrading the signals going directly into receivers but also by their interference with adjacent well-maintained equipment. I understand your objection to any additional aerial fee in theory, but in

Exhibits
GHO.10
Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

practice an annual fee of twenty dollars or less, paid by the erector of the ADS, even if passed on and divided among a number of output points, will hardly inhibit the growth of your business. There is also the factor that free licences tend to be ignored and lead to calls for abolition. Individual aerials connected to individual screens will not of course be licensed.

5. I think your real concern is copyright and the right to relay. By paragraph (c) of their licence dated 5 March 1957 Rediffusion (Hong Kong) Limited has the right to relay any television programme broadcast ..... contemporaneously with the broadcast of such programme. "Contemporaneously" must, in this context, mean "simultaneously" since recording and later transmission of such programmes is prohibited by clause 17 of their licence, a clause which also makes it clear that the licence in no way purports to authorise any infringement of copyright. The effect of this clause depends, of course, on what protection the law of copyright gives to television broadcasts. I am advised that the present law in Hong Kong, which is based on the Copyright Act 1911, would have the effect of giving copyright protection to any original works which were broadcast by your company - i.e. to any items in which, on general principles, copyright may subsist.

6. It was because the present law would possibly protect most of your programmes that I thought that it was unnecessary to proceed with clause 4(2) of the Copyright Bill. However, it has now been decided to seek to extend the protection to cover all material transmitted by your company and to recommend to Executive Council that legislation on the lines of clause 4(2) should be introduced.

7. You will appreciate that nothing in this letter can in any way bind the Governor in Council or Legislative Council. I enclose a copy of the letter which I have today sent to the Managing Director of Rediffusion (Hong Kong) Ltd.

I am, Sir,

Your obedient servant,

G.C. Hamilton. Deputy Colonial Secretary.

Exhibits
GHO.10
Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

H.W. Lee, Esq., (in duplicate)
Chairman,
Television Broadcasts Ltd.
Prince's Building,
25th Floor,
HONG KONG.

Ref:TC 166/67
(GR 7/1036/67)

Document 15

CONFIDENTIAL

Ref: TC 166/67
(GR 7/1036/67)

Colonial Secretariat
Hong Kong.

11th November, 1967.

Sir,

I thank you for your confidential letter GHO:H of 12 October and for your assurances. If I may say so, I am sorry that it has not proved possible for yourselves and Television Broadcasts Ltd. to discuss the question of copyright and the implications of clause 17 of the terms and conditions of your licence directly. This might well have shown the existence of avoidable misunderstandings, both on this subject and on that of community antennae or aerial distribution systems. I feel in fact that an exchange between you of the various correspondence between each company and this Secretariat would have led to recognition that the true differences were very small. In particular a statement to HK-TVB of your precise plans, with regard to exercise of relay rights would have reduced the area of speculation and misgiving, particularly since commercial negotiation was at some time inevitable.

2. Of course, the effect of clause 17 of your licence depends on what protection the Law of copyright gives to television broadcasts. I am advised that the present law in Hong Kong, which is based on the Copyright Act 1911 would have the effect of giving copyright protection to any original works which were broadcast by your company or by HK-TVB i.e. many items in which, on general principles, copyright may subsist. Taking into account the failure of your company and HK-TVB to attempt to

Exhibits

GHO.10

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

reach any commercial agreement on this matter, it was felt necessary to re-examine the problem.

3. I have to inform you that the intention now is to clarify the position by seeking the approval of Executive Council to the introduction of legislation on the lines of clause 4(2) of the Bill to which you refer in your letter. The effect of such a Bill would not be very great, since the present law already confers copyright protection on most of the programmes which might be transmitted by HK-TVB, and such copyright continues to subsist whether the programmes are redistributed by "patching" or by straight relay. Similarly, all programmes originated by your company will, under that clause, receive the protection of copyright.

4. I take note of your paragraph 7 concerning VHF allocation, and your interest will be remembered if (as at present seems most unlikely) such frequencies do become available.

5. You will appreciate that nothing in this letter can in anyway bind the Governor in Council or Legislative Council. I enclose a copy of the letter which I have today sent to the Chairman of Television Broadcasts Ltd.

I am, Sir,

Your obedient servant,

G.C. HAMILTON
Deputy Colonial Secretary.

G.H. Oldridge, Esq.,
Managing Director,
Rediffusion (Hong Kong) Ltd.
P.O. Box 121,
HONG KONG.

Exhibits

GHO.10

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

Document 16

REDIFFUSION (HONG KONG) LIMITED

GHO:H
TC 166/67
(GR 7/1036/67) 14th November 1967

CONFIDENTIAL AND URGENT

G.C. Hamilton, Esq.,
Deputy Colonial Secretary,
Colonial Secretariat,
HONG KONG

Dear Sir,

Your letter of the 11th instant comes as a considerable shock, particularly in view of the quite unusual circumstances which accompanied its delivery.

At about 12.40 p.m. on the 11th November we received a telephone call from the Secretariat informing that a letter to us was in the process of being typed, and that it was important that we made arrangements to receive the letter on that same day. The letter was delivered to this office at about 3.30 p.m. on the Saturday. The fact that Monday was a holiday and that there is a meeting of the Executive Council today gives rise to suspicion in our minds that it may be your intention to "railroad" this legislation through today's meeting without giving this Company proper time to consider the implications of these new and completely unexpected developments. If this is your intention Sir, then we can assure you that, perhaps unwittingly, you will be a party to a grave miscarriage of justice.

We have up to now relied upon the assurances given in your letter of the 7th October 1967, and we contend that in the light of the abrupt and unjustified change of policy as indicated in your letter under reply, we must be given fair and reasonable time to make further representations before your revised decision is implemented.

You will appreciate that most of the points raised in your letter are of a complicated legal nature, and obviously it has not been possible for us to make proper contact with our legal adviser over the

Exhibits

GHO.10

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

long week-end holiday.

In the fleeting contact that has been possible, the immediate reaction of our legal adviser was that your letter under reply appears to contain a fundamental misunderstanding as to the nature and affect of the copyright protection referred to. Our legal adviser has undertaken to give the import of your letter immediate consideration, and will, within the next few days, contact the Government legal adviser in order to remove what in almost certainty appears to be a misunderstanding which, if not removed, could result in very grave consequences.

In the meantime, as an interim measure, and without in anyway prejudicing the rights which are so clearly set out in our licence, we give a categorical assurance that we will not relay any programme of Television Broadcasts Limited until these matters have been resolved, and a fair and just resolution would seem to be possible only through further discussion between the interested parties.

We fully share the regrets mentioned in the opening paragraph of your letter under reply. As you know, at your specific request, we visited Television Broadcasts Limited to discuss the question of C.A.T.V. and Relay system, and this was confirmed in writing to you by both parties. The fact the T.V.B. failed to make the follow up, which was so obviously expected after our first approach, can hardly be a cause of reproach from Government, to this Company. Notwithstanding, this Company, as ever, is prepared to attend any number of meetings which will bring about a solution to a situation, which as it stands, quite unfairly and irrationally places this Company in a position of grave peril.

Yours faithfully
REDIFFUSION (HONG KONG) LIMITED

G.H. OLDRIDGE
Managing Director.

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GHO.10

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

Document 17

REDIFFUSION (HONG KONG) LIMITED

CONFIDENTIAL AND URGENT 18th November 1967.

G.C. Hamilton, Esq.,
Deputy Colonial Secretary,
Colonial Secretariat,
HONG KONG

Dear Sir,

1. In continuation of our letter dated 14th instant we have now had time to further consider the contents of your letter of the 11th November 1967.

2. In your letter of 7th October last you suggested terms for the settlement of the C.A.T.V. difficulty, which we accepted, although our acceptance involved us in a surrender of part of our relay rights. In that letter you indicated that Clause 4(2) of the Copyright Bill would not be proceeded with.

3. In your letter of the 11th instant it now appears to be your intention, contrary to what you stated in your letter of the 7th October, to recommend adoption of Clause 4(2). That Clause would virtually destroy the suggestions made in your letter of the 7th October, as we would, as a matter of copyright, no longer be able to relay freely Television Broadcasts Limited's broadcasts, without their copyright licence. They would be free to withhold such licence from us entirely, or grant same only on such terms as they might stipulate. T.V.B. would be at liberty to give licences to any and all C.A.T.V. operators, but to withhold same from us.

4. Our licence permits us to relay broadcast television, subject to the copyright law. Either under the existing law or under the 1956 Copyright Act, as it stands, we would be perfectly free to exercise our relay rights without hindrance until 1973 when our licence expires. But what you are now suggesting is that the existing law should be scrapped and the 1956 Act should be introduced in its place, not as that Act now stands, but deliberately and materially amended (by means of the Copyright Bill) in an important respect which would have the following results :-

Exhibits

GHO.10

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

(a) Our relay rights would be virtually abrogated.

(b) T.V.B. would obtain unique rights, which neither the B.B.C. nor I.T.A. in the U.K. have vis-a-vis relay operators, and which furthermore, are not necessary for their protection.

5. Put another way, your suggestion appears to be that Government should deliberately manipulate the law in a manner done nowhere else, in such a way as to render our relay rights useless, and without this result being in any way in the public interest, but, on the contrary, conferring gratuitously upon T.V.B. a valuable right it does not need, nor is entitled to have, and one which is not conferred upon any British broadcaster.

6. It is a matter of perplexity to us to understand the justification for the apparent discrimination against us as compared with United Kingdom relay operators, in the shape of Clause 4(2), which exactly reverses the law applicable to relay of television broadcasts in the United Kingdom. We can see no difference whatever between our intended relay of T.V.B's broadcasts in Hong Kong, and the operations of the ordinary relay companies in the United Kingdom, and we cannot understand why you should think it necessary for different laws to apply in Hong Kong, whose only effect would be to damage us.

7. We cannot over-emphasize that our relay of T.V.B.'s broadcasts would be an entirely distinct activity, quite separate from the diffusion of our originated programmes. Our relay of T.V.B.'s broadcasts would be done contemporaneously with the making of those broadcasts, our Licence requiring relay to be done contemporaneously. Furthermore, T.V.B's programmes would be relayed in their entirety, without substraction, addition, adulteration in any shape or form, or intermingling with any of our programmes. The relay of the two T.V.B. programmes would be carried by two separate channels or wires. You will appreciate that in this manner we will be exercising one of our

Exhibits

GHO.10

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

functions, i.e. the diffusion of our own programmes, and exercising the other of our functions, i.e. the pure relay of T.V.B.'s programmes, simultaneously and side by side, both functions being absolutely separate and distinct from each other. Insofar as the relay of T.V.B.'s programmes is concerned, we shall be doing exactly what the relay operator in the United Kingdom does, within the ambit of the 1956 Act. This being the case, we can see no reason why in the exercise of our relay rights in Hong Kong we should not be subject to exactly the same law as applies in the United Kingdom and we cannot conceive of any justification for such a drastic and gravely damaging departure from the provisions of that Act, in its application to Hong Kong, as you now propose.

8. T.V.B.'s broadcasts are, without doubt, intended for general reception within Hong Kong. The viewers who avail themselves of our relay of these broadcasts, are part of the audience which T.V.B. are trying to reach, and those viewers would be merely choosing one particular mechanical means of reception of those broadcasts. In many cases they could no doubt achieve reception by other means if they chose to do so. Our relay would enable about 50,000 of our existing viewers, whose sets are not capable of conversion to direct off-air UHF reception, to receive T.V.B.'s broadcasts at a minimum cost.

9. We understand that allegations have been made to the effect that we intend to video-tape T.V.B.'s broadcasts, and relay them at times of our own choosing; and also to the effect that we intend interpolating our own advertisements in the course of relaying T.V.B.'s broadcasts. We are astonished at these suggestions, which are completely without any foundation, and can only assume they have been made mischievously and with intent to confuse the real issues.

10. In case you may find it of interest, we enclose a note by our legal adviser on the legal implications of the strictly copyright aspects of your letter under reply.

11. We have concentrated this letter on the vitally important topic of Clause 4(2). There are other aspects of the proposed copyright legislation upon

Exhibits

GHO.10

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

which we should like to make separate representations, as we do not wish to confuse the fundamental issues dealt with above.

12. It is difficult to deal with the many and inter-related details of this matter by correspondence, which tends to become turgid and indigestible. We would very much welcome an opportunity of discussing these very important matters with you personally, and we think it would be of assistance if at such a discussion both Government's and our own legal advisers could be present. We hope you will be able to suggest an early date for such meeting.

13. This letter and enclosure are sent in duplicate in case you should require copies for your legal adviser.

Yours faithfully,

REDIFFUSION (HONG KONG) LIMITED,

(Sd) G.H. Oldridge
Managing Director.

Document 18

NOTE

1. I have now had an opportunity of considering the legal implications of Mr. Hamilton's letter of the 11th instant, and also a copy of his letter of the same date to TVB. The really striking feature of this latest letter is that Government is now to recommend adoption of Clause 4(2) of the Copyright Bill, in which respect Mr. Hamilton now resiles from the position on this Clause stated in his letter of 7th October, and takes the reverse position.

2. Not knowing what form the representations of TVB have taken, it is somewhat difficult to discern from Mr. Hamilton's letter of the 11th instant what is the reason for the fundamental change of attitude. However from the language

Exhibits
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Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

used in paragraphs 2 and 3 of Mr. Hamilton's letter, I have come to the conclusion that, somehow or other, someone has pretended that TVB requires special and unusual copyright protection for its broadcasts, and, most curiously, there is a direct reference to the copyright subsisting in the matter broadcast, and also an indirect reference to the copyright in a television broadcast as such, appearing in the same context of that letter. These are two entirely different and distinct matters but somehow they have been equated, in a most dangerous and misleading manner.

3. Take paragraph 2 of Mr. Hamilton's letter in which he says:

> "I am advised that the present law in Hong Kong which is based on the Copyright Act 1911, would have the effect of giving copyright protection to any original works which were broadcast by.....HK-TVB, i.e. many items in which on general principles, copyright may subsist."

I take the reference to "original works" to mean those musical, dramatic, artistic, and cinematographic works which for one reason or another have copyright protection either under the 1911 Act or the 1956 Act (herein referred to as "ordinary copyright"). If this is correct, no objection can be taken to the passage quoted. It is most important to realise that, generally speaking, TVB have no interest whatever in the ordinary copyright in the matter broadcast by them. In many cases their broadcasts will consist of films not made by them and in respect of which they are not the owners of the ordinary copyright therein, and hence can have no interest in protecting that copyright - that interest, of course, always remains in the owner of the copyright, whoever he may be. If by relaying a broadcast, Rediffusion were to infringe an ordinary copyright, Rediffusion alone would be answerable to the copyright owner, but not to TVB.

4. To the extent that TVB may create works in which copyright is capable of subsisting, and broadcasts those works, then of course, TVB would have the same rights of protection and otherwise over the ordinary copyright in those works as would any other copyright owner. Unless TVB permitted you to do so, you would take care not to relay any programme of

Exhibits
GHO.10
Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

theirs which is their own original creation - and this type of programme is easily identifiable in advance.

5. Now take Paragraph 3 of Mr. Hamilton's letter, and you will see he says:

> "I have to inform you that the intention now is to clarify the position by seeking the approval of Executive Council to the introduction of legislation on the lines of Clause 4(2) of the Bill to which you refer in your letter. The effect of such a Bill would not be very great, since the present law already confers copyright protection on most of the programmes which may be transmitted by HKTVB and such copyright continues to subsist where the programmes are re-distributed by "patching" or by straight relay".

The passage quoted appears to me to contain a non-sequiter, as Mr. Hamilton says in one part "since the present law already confers copyright protection on most of the programmes....." - and in this context clearly he can only be referring to the protection of the ordinary copyright held by the copyright owner in the matter broadcast and which copyright is in the majority of cases no concern at all of the broadcaster - and then, in another part, goes on to refer to Clause 4(2) of the Bill, which is relevant only to an entirely different topic of copyright, namely, the special limited copyright in a television broadcast as such - that right existing regardless of content of the broadcast itself. He then goes on to imply that the second type added to the first type will not make a great deal of difference. With the greatest of respect to Mr. Hamilton, it must be emphasised that ordinary copyright and the copyright in a television broadcast are separate and distinct copyright matters. It is only the owner of the ordinary copyright who is concerned with the first-mentioned category, and obviously it is only the television broadcaster who is concerned with the second mentioned category, and save in special circumstances (where the broadcaster is the creator of the work in which original copyright may subsist) these two copyright

Exhibits

GHO.10

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

interests are mutually exclusive.

6. It is no concern at all of TVB to protect from infringement the ordinary copyright in the matter they broadcast. Leaving aside the effect of Section 40 of the Act, take, for example, a copyright musical work: if TVB were to broadcast such a work (assuming always they have the copyright owner's licence to do so) and Rediffusion were to relay same, the matter of Rediffusion's relay is entirely one to be dealt with between Rediffusion and the copyright owner. As we all know, in this particular circumstance the matter is covered by licences from The Performing Right Society Limited. I cannot over-emphasise that the relay by you of a broadcast work, in which ordinary copyright subsists, cannot give rise to any complaint on that ground alone at the instance of TVB as, quite simply, they have no status in the matter at all.

7. The question of the special copyright in a television broadcast as such needs careful understanding. This type of copyright was created for the first time by the Copyright Act of 1956. As you are aware, throughout that Act the breaches of various kinds of copyright are designated "restricted acts". Section 14(4) specifies and lists what are the particular "restricted acts" relating to a television broadcast, and the listed acts do not include causing the broadcast "to be transmitted to subscribers to a diffusion service". This is very significant as it will be noted that in other Sections of the Act where appear references to literary, dramatic and musical works, cinematographic films, recordings, etc. in every case one of the restricted acts applicable to those works is causing such a work "to be transmitted to subscribers to a diffusion service". It will be appreciated therefore, that the United Kingdom Parliament has gone out of its way, no doubt for very good reason and after full consideration, to treat the relay of broadcast television in a manner particularly different from other copyright matter.

8. Clause 4(2) of the Copyright Bill proposed for Hong Kong, achieves exactly the reverse of the effect intended by the 1956 Act in regard to the relay of broadcast television. In other words, the copyright of the TVB in its broadcasts as such, would

Exhibits
GHO.10
Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

include the right to prevent relay of such broadcasts. This would place Hong Kong in a unique position of being the only country, out of the twenty odd which have adopted the 1956 Act, which would have so drastic a departure from the Act.

9. When in Paragraph 3 of his letter Mr. Hamilton says "The effect of such a Bill would not be very great....." I find it hard to believe that he has understood the full import of Clause 4(2). That Clause would place you entirely in the hands of TVB as regards your relay of their broadcast; they would thereby be given by legislation a right such as exists nowhere else in British territories, which could prevent you from relaying their broadcasts; you could relay their broadcasts only with their copyright licence, which they would be under no obligation to give; it would be open to them to grant licences to all other CATV operators but to refuse one to you; they would be free to demand an exhorbitant price or impose onerous conditions as consideration for the grant of a licence to you. If they were to refuse to grant you a licence, or to subject you to harsh conditions, you would have no right of redress and no appeal to any quarter.

10. You will perceive that Clause 4(2) of the Bill would, at the very best, gravely detract from your relay rights granted by Government, and in all probability abrogate those rights entirely - for it appears abundantly clear that TVB are anxious to prevent you from relaying your broadcasts by all means possible. Try as I might, I can find no justification in law for Government deliberately going out of its way to bend the 1956 Copyright Act in its application to Hong Kong, in such a way as will not only destroy your relay rights, but will furthermore gratuitously place in the hands of TVB a valuable right which they do not need, and no other television broadcaster has.

11. Sight seems to have been lost in the fact that in exercising your rights to relay broadcast television, your so doing will be an entirely separate operation from the diffusion

Exhibits

GHO.10

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

of your own originated programmes; you will contemporaneously relay TVB's broadcasts in their complete and unadulterated form by separate wires, and the two operations, although simultaneously conducted, will be entirely distinct from each other. Insofar as the relay operation is concerned, I cannot conceive of any reason why the applicable copyright law should not be exactly the same as it is in the United Kingdom, where it has worked successfully and without complaint for over ten years. The lack of justification for the piece of discrimination now proposed is, to me, at any rate, patent. Hav ing regard to the fact that your Television License is subject to the operation of the copyright law in force for the time being, it seems that if Government deliberately and needlessly brings into force a piece of law which has the effect of destroying the rights it has granted, then you can make out a case for compensation for the arbitrary deprivation of your rights. It would be strange indeed if the Hong Kong taxpayer were to foot a bill for compensation to Rediffusion, as a result of governmental action taken without need or cause.

12. From the point of view of copyright protection afforded to TVB, Clause 4(2) is pointless and irrelevant. So far as ordinary copyright is concerned, it is the copyright owner, and not TVB who ought to protect same. So far as the special copyright in a television broadcast is concerned, TVB requires the protection afforded by Section 14(4) of the Act and nothing else. I have heard nothing which begins to justify TVB having extraordinary and special copyright benefits which no British Broadcaster has. As you are the only licensed relay operator in Hong Kong, Clause 4(2) can only be directed against you and designed to prevent you from doing that very thing which Government has licensed you to do.

13. I would remind you of the opinion obtained in London to the effect that any attempt by the legislature of Hong Kong to extend copyright so as to restrict relay could be challenged on constitutional grounds, having regard to the provisions of Section 31 of the 1956 Act, and if Government persists in attempting to introduce a measure which contradicts the word and the spirit of the 1956 Act, we shall have to consider what steps must be taken.

Exhibits

GHO.10

Bundle of Correspondence between Defendant & Plaintiff. (Contd.)

14. I would also remind you that although broadcaster's copyright is not the subject of any of the revisions to the Berne Copyright Convention, it was the subject of the European Convention on the Protection of Television Broadcasts, effective as from the 1st July 1961, and which has been ratified by the United Kingdom. When the United Kingdom ratified this Convention, it specifically reserved the right, under Article 10, not to give broadcasting organisations the right to control relay of their programmes in the United Kingdom. It would seem that Hong Kong Government is in danger of being persuaded, on no valid grounds at all, to do precisely the opposite of what the United Kingdom Government has informed its European partners in the Convention it will not do.

17/11/67 R.E.G.D.

EXHIBIT GHO.11.

GHO.11.

Bundle of Correspondence between Second Defendant and Plaintiff since February 1968.

Bundle of Correspondence between Second Defendant and Plaintiff since February 1968.

COLONIAL SECRETARIAT
Lower Albert Road,
Hong Kong.

TC 166/67 10th February 1968.

Sir,

Television : Aerial Distribution systems and Copyright

I am directed to inform you that the Governor in Council has ordered that in relation to aerial distribution systems :

(a) amending regulations be made to permit the establishment of aerial distribution systems under licence;

(b) the Governor in Council would issue an

Exhibits

GHO.11

Bundle of Correspondence between Second Defendant and Plaintiff since February 1968 (Contd.)

exclusive licence under sections 7 and 34 of the Telecommunication Ordinance to erect that form of aerial distribution which is known as the communal antenna television system, a system which transmits signals by the High Frequency system only to independent detached premises by wires which cross any street as defined in the Interpretation and General Clauses Ordinance (Chapter 1);

(c) any aerial distribution system other than that referred to in paragraph (b) above may be erected by any person under licence granted by the authority under the amending regulations;

(d) (i) the exclusive licence to erect the system referred to in paragraph (b) (i.e. the CATV System) would be issued to Rediffusion (Hong Kong) Limited for a period which will commence on its date of issue and expire on the 30th April, 1973;

(ii) licences to erect systems referred to in paragraph (c) could be issued to any applicant.

I attach a proposed press release on the subject for your information. This will be issued on 13 February 1968.

2. The Governor in Council further ordered that in relation to copyright, legislation be introduced which would:

(a) confer copyright in a television broadcast as such (this would be done by an Order in Council extending the United Kingdom Copyright Act 1965 to Hong Kong); and

(b) provide (by a local Ordinance) that the relaying of a television broadcast to the premises of a subscriber to a diffusion service would be an act restricted by copyright.

3. I have written in identical terms to the Chairman,

Exhibits

GHO.11

Bundle of Correspondence between Second Defendant & Plaintiff since February 1968 (Contd.)

Television Broadcasts Limited.

I am, Sir,
Your obedient servant,

G.C. Hamilton
Deputy Colonial Secretary

G.H. Oldridge, Esq.,
Managing Director,
Rediffusion (Hong Kong) Ltd.,
P.O. Box 121,
Hong Kong.

PRESS RELEASE

It will shortly be possible for people who live in multi-storey buildings to erect or have erected communal aerials on their buildings in order to receive wireless television transmissions. These aerials distribution systems are a means by which a number of television sets can be connected to a single aerial with extension cables connecting to the sets in the individual apartments in the blocks.

Announcing this today the Telecommunications Authority said that it is the intention to license communal aerials for individual private buildings providing that the wiring of such systems does not cross public highways. If aerial distribution systems are improperly designed or erected they may cause radio interference and to safeguard against this it is necessary to enact legislation to provide for the issue of licences for the erection of such aerials.

The effect of these proposals is that, if an aerial is required on a building to feed television sets belonging to more than one householder, a licence will have to be obtained from the Telecommunications Authority before erecting such a system. These proposals do not affect individual householders who wish to erect their own private aerial systems within their own property. These householders must however ensure that these systems are erected

Exhibits
GHO.11

Bundle of Correspondence between Second Defendant & Plaintiff since February 1968. (Contd.)

in accordance with the provisions of the Telecommunications Ordinance.

A further announcement will be issued shortly covering the licensing procedure.

****

(NOTE: The above will be released to the Press on Monday evening for publication on Tuesday, 13 February a.m.)

REDIFFUSION (HONG KONG) LIMITED

GHO:H 12th February, 1968.

G.C. Hamilton, Esq., 10
Deputy Colonial Secretary,
Colonial Secretariat,
HONG KONG.

Dear Sir,

1. We acknowledge receipt of your letter of the 10th instant, the contents of which we found profoundly disturbing, as the decisions you have indicated carry with them a very serious threat to the future of this Company.

2. We understand the net results of the decisions announced in your letter to be, to the Company, as follows :- 20

(i) Government does not intend to respect the exclusive element of the right to relay broadcast television granted to this Company by its Wired Television Licence.

(ii) Government, regardless of the express relay rights conferred by our Licence, intend to place us entirely in the hands of Television Broadcasts Limited as regards relay of their programmes. As we have repeatedly pointed out before, there would be nothing to prevent Television Broadcasts Limited from refusing us a copyright licence to relay their programmes, but at the same time they would be free to grant 30

Exhibits

GHO.11

Bundle of Correspondence between Second Defendant & Plaintiff since February 1968. (Contd.)

licences to any and all other C.A.T.V. operators. The result could be that we, who are the only party to hold Governments' licence to relay broadcast television, could end up by being the one party unable to relay.

3. In our reply of 12th October 1967 to your letter of 7th October 1967, we indicated we were prepared to agree, as a concession, to Government licensing other parties to instal C.A.T.V. systems within single buildings, but this was on the conditions enumerated in your said letter, from some of the most important of which Government has resiled, so it would appear from the correspondence, not because of any matter of principle, but apparently as a result of pressure from Television Broadcasts Limited (see your letter to them dated 11th November 1967). Accordingly, any agreements or concessions in our letter of 12th October last are withdrawn, much as we, at any rate, deplore a departure from the given word.

4. The proposed Regulations described on page 1 of your letter, in more respects than one, seem to ignore the existence of ourWired Television Licence. The proposals at (b) and (d)(i) on page 1 of your letter would purport to give us as a matter of licence right, that which we already have under the terms of our existing Licence. The proposals at (a), (c) and (d)(ii) on page 1 of your letter, amount to a diminution of the exclusive right to relay broadcast television granted by our Licence, and in fact eliminate the exclusive element of that right.

5. The completely arbitrary and unjustified emasculation of our licence rights, which would be brought about by the proposed Regulations, would cause this Company serious damage, for which we intend to hold Government liable. We should like to have your assurance that Government recognises in principle, a duty to compensate us for such damage, and agrees to enter into negotiations to settle compensation at an early date. It goes without saying that we in no way approve the terms of the proposed Press Release enclosed with your letter, and

Exhibits
GHO.11
Bundle of Correspondence between Second Defendant & Plaintiff since February 1968. (Contd.)

unless we receive Governments' assurance requested above, immediately, we will be free to take such steps both as regards the proposed Press Release and in respect of the damage that will be done to us by the proposed Regulations, as may best protect our interests.

6. Turning now to the proposed revisions to the copyright law, the relay rights conferred by our Licence (and even the licence referred to at (b) and (d)(i) on page 1 of your letter) are largely rendered meaningless if the exercise of them is to be, as a matter of copyright, placed under the unilateral control of Television Broadcasts Limited, by virtue, of the extraordinary and unique copyright privileges which will be conferred gratuitously upon them by the legislation described on page 2 of your letter.

7. Assuming Government fully appreciates all of the consequences of its copyright proposals, then the only and disheartening conclusion to be drawn is that Government is deliberately going out of its way to invent copyright legislation, without parallel in the United Kingdom, and not demanded in the public interest or justified by any general principles, the effects of which will be to serve the special interests of Television Broadcasts Limited, and on the other hand, to place our expressly granted relay rights in peril of not being exercisable. In other words, Government intends to benefit Television Broadcasts Limited at our expense, and regardless of the grievous damage which will be occasioned to us and which will gravely prejudice our whole future. We most strongly protest at this apparent partisanship, which is clearly incompatible with your recently expressed view that Government is willing and anxious to see two television companies in Hong Kong.

8. We have stressed to you that this Company would never have contemplated pioneering wired television in Hong Kong unless we had in hand, from the very beginning, a grant by Government of the exclusive franchise to relay broadcast television upon its advent in Hong Kong. Having been granted that franchise, and relying thereon, we have outlayed very substantial capital in our wired system in Hong Kong, only to find now that Government intends gravely to undermine, by means deliberately devised, an essential premise to our commitments in Hong Kong.

Exhibits
GHO.11
Bundle of Correspondence between Second Defendant & Plaintiff since February 1968. (Contd.)

You will pardon us for wondering just what value and reliance we may safely place on any licence rights granted to us by Government.

9. In the several representations we have made to you, we believe we have indicated strong and cogent reasons why it would be quite improper for Government to introduce legislation which would make it a restricted act in the copyright in a television broadcast to relay same. We have not been given the courtesy of one word of explanation by Government why none of our representations have been accepted, nor have we had any indication that there exist other considerations which justify the overriding of our interests. We feel that, having regard to the grave consequences of Government's decisions, we could at least be advised of the reasons therefor.

10. With respect to (a) and (b) on page 2 of your letter, it may, perhaps, have escaped the notice of Government, that the origin of Section 14 of the 1956 Act, (which, although creating a copyright in a television broadcast as such, did not, in contrast to Sections 2(5)(e), 3(5)(d) and 13(5)(d), make it a restricted act to relay broadcast television) is to be found in paragraph 201, and other related paragraphs, of the Report of the Copyright Committee (Gregory Committee). The Committee, with patient reluctance, recommended the creation of a special copyright in a television broadcast, for the narrow and special purpose of assisting B.B.C. with their difficulties with promoters of sporting events. See also the Official Report of Standing Committee B on the Copyright Bill, particularly column 345, paragraphs 1 and 4 and elsewhere therein. We find it most surprising that Government should see fit to attempt to extend the effect of this Section, in its application to Hong Kong, not to further its original limited purpose, but to confer a special and unwarranted copyright on Television Broadcasts Limited which seriously damages our interests.

11. Finally, as to (b) on page 2 of your letter, we do not accept that the legislation indicated would be intra vires the Hong Kong legislature,

Exhibits
GHO.11
Bundle of Correspondence between Second Defendant & Plaintiff since February 1968. (Contd.)

and we shall have to consider our position carefully in this respect, and we must reserve all rights to claim damages and other relief in respect of such injury to our interests as might be occasioned by such legislation. It is most important that we should be provided with a copy of the draft Bill at your earliest convenience.

Yours faithfully,
REDIFFUSION (HONG KONG) LIMITED

G.H. OLDRIDGE
Managing Director.

Colonial Secretariat
Lower Albert Road
Hong Kong

Ref TC 166/67 24th February 1968.

RECEIVED 27 FEB 1968

Sir,

I am directed to acknowledge your letter dated 12 February 1968, the contents of which have been noted.

2. As requested, I enclose copies of the present draft Copyright (Hong Kong) Order 1968 and draft Copyright Bill 1968 for your retention. You will recall that earlier working copies of these drafts wer e sent to you with my letter dated 5 September 1967.

3. I shall reply to your letter of 21 February very shortly.

I am, Sir,
Your obedient servant,

A.T. CLARK
for Colonial Secretary

G.H.Oldridge, Esq,
Managing Director,
Rediffusion (Hong Kong) Ltd.
P.O. Box 121, Hong Kong.

EXHIBIT GHO.12

Exhibits
GHO.12
Second Draft Copyright Order in Council.

Second Draft Copyright Order in Council

1968 No.

COPYRIGHT

THE COPYRIGHT (HONG KONG) ORDER 1968

made - - - 1968

Laid before Parliament 1968

Coming into Operation 1968

At the Court at Buckingham Palace, the

day of 1968

Present,

The Queen's Most Excellent Majesty in Council Her Majesty, by and with the advice of Her Privy Council, and by virtue of the authority conferred upon Her by section 31 of the Copyright Act 1956 (a) and of all other powers enabling Her in that behalf, is pleased to direct, and it is hereby directed, as follows :-

1. The provisions of the Copyright Act 1956 specified in Part I of Schedule 1 hereto shall extend to Hong Kong subject to the modifications specified in Part II of that Schedule.

2. The Copyright (International Conventions) Order 1964 (b), the Copyright (International Organizations) Order 1957 (c), as amended (d), and the Copyright (Broadcasting Organizations) Order 1961 (e) (being Orders in Council made under Part V of the said Act) shall extend to Hong Kong subject, in the case of the first mentioned Order, to the modifications specified in Schedule 2 hereto.

(a) 4 & 5 Eliz 2, c.74
(b) S.I. 1964/69 (1964 II, p.1319)
(c) S.I. 1957/1524 (1957 I, p.483)
(d) S.I. 1958/1052 (1958 I, p.363)
(e) S.I. 1961/2460 (1961 III, p.4505)

Exhibits
GHO.12
Second Draft Copyright Order in Council. (Contd.)

3. The Interpretation Act 1889 (f) shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

4. This Order may be cited as the Copyright (Hong Kong) Order 1968 and shall come into operation on , 1968.

SCHEDULE 1

PART I.

Provisions of the Copyright Act 1956 extended to Hong Kong

All the provisions of the Act as amended by the Performer's Protection Acts 1958 and 1963 (a) and the Films Act 1960 (b) except sections 23 to 30, 32, 34, 35, 42 and 44 and Schedules Four, Five and Nine.

PART II

Modifications to the provisions extended

General Modifications

1. In sections 7, 8(11) and 15(4), for references to the Board of Trade there shall be substituted references to the Governor in Council.

2. In sections 8(1) and 8(10), 12(6), 21(1) and 21(6), 22(2) and 22(3), 43, 48(4) and 49(2) and paragraph 46 of Schedule Seven, for "the United Kingdom" there shall be substituted "Hong Kong".

Particular Modifications

3. The provisions mentioned in the first column in the following table shall be modified in the manner specified in the second column.

(f) 52 & 53 Vict. c.63

(a) 6 & 7 Eliz. c.44 and 1963 c.53

(b) 8 & 9 Eliz. 2, c.57

Provision	Modification
Section 8	In subsections (2) and (4); for reference to farthings there shall be substituted references to cents and for references to "three-farthings" there shall be substituted references to "five cents"; for subsection (3) there shall be substituted the following :- "(3) If at any time the Board of Trade by order made under this section in its operation in the law of the United Kingdom prescribe either generally or in relation to any one or more classes of records any different rate of, or minimum amount of, royalty the provisions of this section shall be construed subject to the provisions of any such order as is for the time being in force, provided that any reference in such an order to any sum of money shall be construed as a reference to the equivalent amount in the currency of legal tender in Hong Kong as provided by any law of Hong Kong."; in subsection (4)(a), all the words after the first reference to works shall be omitted.
Section 10	For subsection (5) there shall be substituted the following :- "(5) For the purpose of this section a design shall be taken as being applied industrially if it is applied in the circumstances for the time being prescribed by rules made by the Board of Trade under this section and section 36 of the Registered Designs Act, 1949 as extended by this section in the law of the United Kingdom.".

Exhibits

GHO.12

Second Draft Copyright Order in Council. (Contd.)

Provision	Modification
Section 13	For subsection (3) there shall be substituted the following:- "(3) Copyright subsisting in a cinematograph film by virtue of this section shall continue to subsist until the film is published and thereafter until the end of the period of fifty years from the end of the calendar year which includes the date of its first publication and shall then expire, or, if copyright subsists in the film by virtue only of the last preceding subsection, it shall continue to subsist as from the date of first publication until the end of the period of fifty years from the end of the calendar year which includes that date and shall then expire."; in subsection (8), for "any such film as is mentioned in paragraph (a) of subsection (1) of section 38 of the Films Act 1960 (which relates to newsreels)" there shall be substituted "any film consisting wholly or mainly of photographs which, at the time they were taken, were means of communicating news"; subsection (11) shall be omitted.
Section 17	Subsection (6) shall be omitted.
Section 18	In subsection (1), for the proviso there shall be substituted the following :- "Provided that if by virtue of section 5 of the Limitation Ordinance (a))which relates to limitation in cases of successive conversion and extinction of title of the owner of

(a) Chapter 347.

Provision	Modification
	converted goods), the title of the owner of the copyright to such a copy or plate would (if he had then been the owner of the copy or plate) have been extinguished at the end of the period mentioned in that section, he shall not be entitled to any rights or remedies under this subsection in respect of anything done in relation to that copy or plate after the end of that period.";
	subsection (4) shall be omitted.
Section 21	In subsections (7) and (8), for the words "forty shillings" and "fifty pounds" there shall be substituted respectively "five hundred dollars" and "fifty thousand dollars" and for the words "two months" there shall be substituted "twelve months"; subsection (10) shall be omitted.
Section 22	In subsection (1), for "the Commissioners of Customs and Excise (in this section referred to as "the Commissioners") there shall be substituted "the Director of Commerce and Industry" and, subject to the modifications to subsection (4) hereinafter provided, for subsequent references to the said Commissioners there shall be substituted references to the said Director;
	in subsection (4), for "the Commissioners" where those words first occur there shall be substituted "the Governor in Council" and for "the Commissioners consider" there shall be substituted "the Governor in Council considers"; subsection (6) shall be omitted;
	for subsection (7) there shall be substituted the following :-

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GHO.12

Second Draft Copyright Order in Council. (Contd.)

Provision	Modification
	"(7) Where by virtue of this section the importation into Hong Kong of any copy to which the section applies of a work is prohibited, the importation into Hong Kong of such a copy shall, for the purposes only of the provisions of the Importation and Exportation Ordinance (a) providing for forfeiture, be deemed to be a contravention of that Ordinance."
Section 31	Subsections (1) and (2) shall be omitted; in subsection (4), for "the United Kingdom" there shall be substituted "Hong Kong" and for "in a country" there shall be substituted "in the United Kingdom or in any country other than Hong Kong".
Section 33	For subsection (1) there shall be substituted the following :- "(1) An organization to which this section applies is one declared to be such by an Order in Council made under this section as part of the law of the United Kingdom which has been extended, in relation to that organization, to Hong Kong.".
Section 37	Subsection (4) shall be omitted.
Section 39	In subsection (8), for "section three of the Crown Proceedings Act, 1947" there shall be substituted "section 5 of the Crown Proceedings Ordinance".
Section 40	Subsection (3) shall be omitted; in subsection (4), for "either of the two last preceding subsections" there shall be substituted "the last preceding subsection" and"or the programme to be transmitted, as the case may be" shall be omitted;

(a) Chapter 50.

Provision	Modification
	in subsection (5), the reference to a work shall be omitted.
Section 41	In subsection (7), for the definition of "school" there shall be substituted ""school" has the same meaning as in the Education Ordinance"(a).
Section 46	Subsection (1) shall be omitted;
	in subsection (2), "(including any enactment of the Parliament of Northern Ireland)" shall be omitted.
Section 47	The whole section except subsection (4) shall be omitted;
	in subsection (4), "or rules" shall be omitted.
Section 48	In subsection (3), for "references to the transmission thereof in the course of a service of distributing broadcast programmes, or other programmes (whether provided by the person operating the service or other persons) over wires, or other paths provided by a material substance, to the premises of subscribers to the service; and for the purposes of this Act, where a work or other subject matter is so transmitted, - (a) the person operating the service (that is to say, the person who, in the Agreements with subscribers to the service, undertakes to provide them with the service, whether he is the person who transmits the programmes or not)" there shall be substituted the following :-

(a) Chapter 279.

Exhibits

GHO.12

Second Draft Copyright Order in Council. (Contd.)

Provision	Modification
	"references to the transmission of such work or other subject matter to the premises of subscribers to the service over wires, or other paths provided by material substance, whether the programme so transmitted is provided by the person operating the service or some other person; and for the purposesof this Act, where a work or other subject matter is so transmitted, - (a) the person operating the service (that is to say, the person who, in the agreements with subscribers to the service, undertakes to provide them with the service)".
Section 50	For subsection (2) there shall be substituted the following :- "(2) Subject to the said transitional provisions the Copyright Act 1911 and the Copyright Order Confirmation (Mechanical Instruments: Royalties) Act 1928 are hereby repealed.".
Section 51	For subsection (2) there shall be substituted the following :- "(2) This Act shall come into operation in Hong Kong on a day to be appointed by the Governor of Hong Kong by notice in the Hong Kong Government Gazette.".
Schedule 1	In paragraph 2, for "section seven of the Act of 1949" there shall be substituted "section 2 of the United Kingdom Designs (Protection) Ordinance".
Schedule 7	Paragraphs 25, 26, 40 and 41 shall be omitted.

Exhibits
GHO.12
Second Draft Copyright Order in Council. (Contd.)

SCHEDULE 2.

Modifications to the Copyright (International Conventions) Order 1964 :-

(i) articles 2(1) and 7 to 11 together with Schedules 2 and 4 to 7 shall be omitted.

(ii) In Article 1, for "any part of the United Kingdom" shall be substituted "Hong Kong".

(iii) In Article 2(2), "before 27th September 1957" shall be omitted and there shall be added at the end "if (a) the country is one in the case of which this Order applies immediately after the commencement of the Act in Hong Kong and the publication took place before such commencement; or (b) the country is one in the case of which this Order applies by reason of the subsequent extension of an amending Order and the publication took place before the date mentioned in relation to that country in Schedule 2 to this Order in its operation in the law of the United Kingdom".

(iv) There shall be substituted for Article 2(3) the following :-

"(3) In the case of any such country as mentioned in paragraph (2)(b) of this Article any relevant provisions of Schedule 7 to the Act shall have effect as if there were substituted for references to the commencement of the Act references to the date so mentioned.".

(v) In Article 2(4)(a), there shall be added references to Malawi and Zambia.

(vi) In Schedule 1, there shall be added in Part 1 references to Cameroon and the Malagasy Republic and in Part 2 references to Guatemala, Malawi, New Zealand, Yogoslavia and Zambia.

(vii) In Schedule 3, there shall be added references to Brazil and C zechoslovakia and the references to Congo (Brazzaville)

Exhibits

GHO.12

Second Draft Copyright Order in Council. (Contd.)

and South Africa shall be omitted.

Explanatory Note.

(This Note is not part of the Order)

This Order extends the provisions of the Copyright Act 1956 with certain exceptions and modifications to form part of the law of Hong Kong.

The Order also extends three Orders in Council made under Part V of that Act. The extension of these Orders will afford protection in Hong Kong to works originating in countries party to International Copyright Conventions, to works produced by certain international organizations and to lawfully authorized broadcast originating in other Commonwealth countries to which the 1956 Act has already been extended

The Copyright protection afforded in the law of Hong Kong will be similar to that afforded in the law of the United Kingdom.

GHO.13

Second Draft Copyright Bill.

EXHIBIT GHO.13

Second Draft Copyright Bill.

A BILL

TO

Modify the Copyright Act 1956, in its application to Hong Kong and to make further provision with respect to copyright law in Hong Kong.

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

Short title and commencement.

1. This Ordinance may be cited as the Copyright Ordinance 1968, and shall come into operation on a day to be appointed by the Governor by notice in the Gazette.

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GHO.13
Second Draft Copyright Bill. (Contd.)

Interpretation. (4 & 5 Eliz. 2, C.74.)

2. (1) In this Ordinance, unless the context otherwise requires -

"Act" means the Copyright Act 1956;

"Director" means the Director of Commerce and Industry;

"Hong Kong work" means -

(a) in the case of a literary, dramatic, artistic or musical work -

(i) a work the author of which was domiciled or resident in Hong Kong at the time when, or during the period while, the work was made; or

(ii) a work that was first published in Hong Kong;

(b) in the case of a sound recording or cinematograph film -

(i) a sound recording or cinematograph film the maker of which was domiciled or resident in Hong Kong at the time when, or during the period while, the recording or film was made; or

(ii) a sound recording or cinematograph film that was first published in Hong Kong; and

(c) in the case of a published edition of a literary, dramatic, artistic or musical work -

(i) an edition the publisher of which was domiciled or resident in Hong Kong at the date of its first publication; or

(ii) an edition that was first published in Hong Kong;

"sound broadcast" has the meaning assigned to it by section 14 of the Act and also means sounds transmitted otherwise than as part of a television broadcast to the premises of subscribers to a diffusion service over wires, or other paths provided by a material substance; and

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GHO.13
Second Draft Copyright Bill (Contd.)

"television broadcast" has the meaning assigned to it by section 14 of the Act and also means visual images transmitted to the premises of subscribers to a diffusion service over wires, or other paths provided by a material substance, together with any sounds transmitted along with these images.

(2) Subject to the provisions of this Ordinance, any word or expression used in the Ordinance to which a meaning is assigned by the Act shall have in or for the purpose of the Ordinance the meaning that it has in or for the purposes of the Act.

Act restricted by copyright in a sound recording that is a Hong Kong work.

3. (1) It shall be an act restricted by the copyright in any sound recording which is a Hong Kong work to cause the recording to be transmitted to the premises of subscribers to a diffusion service over wires, or other paths provided by a material substance, whether a record embodying the sound recording is utilized directly or indirectly in doing this

(2) The Act as extended to Hong Kong shall apply to the restricted act specified in subsection (1) in the same manner as it applies to the restricted acts specified in subsection (5) of section 12 of the Act.

Acts restricted by copyright in television and sound broadcasts by Hong Kong organizations. Schedule.

4. (1) Subject to subsection (2), the Act as extended to Hong Kong shall apply in Hong Kong to every television broadcast and every sound broadcast made by any organization specified in the Schedule from a place in Hong Kong as it applies to every television Broadcast and every sound broadcast made by the British Broadcasting Corporation or the Independent Television Authority from a place in the United Kingdom.

(2) It shall be an act restricted by the copyright in a television broadcast or a sound broadcast to broadcast the television broadcast or sound broadcast or to cause the television broadcast or sound broadcast to be transmitted to the premises of subscribers to a diffusion service over wires, or other paths provided by material substance.

(3) The Act as extended to Hong Kong shall apply to the restricted acts specified in subsection (2) in the same manner as it applies to the restricted acts specified in subsection (4) of section 14 of

the Act.

(4) The Governor may by order amend the Schedule.

(5) For the purposes of this section -

(a) the expressions "television broadcast" and "sound broadcast" shall in the Act have the meaning assigned to them for the purposes of this Ordinance; and

(b) references in the Act to broadcasting shall be construed as including references to a transmission to the premises of subscribers to a diffusion service over wires, or other paths provided by a material substance, as well as to broadcasting by wireless telegraphy (within the meaning of the Wireless Telegraphy Act 1949) whether by way of sound broadcasting or of television.

Offences of possession of infringing copy of a Hong Kong work.

5. (1) Without prejudice to section 21 of the Act, any person who, at a time when copyright subsists in a work under the Act or this Ordinance, has in his possession for the purposes of trade or business any article that is an infringing copy of such a work or any plate used or intended to be used for making infringing copies of such a work shall, unless he proves to the satisfaction of the court that he did not know and that he had no reason to believe that the article was an infringing copy of such a work or that the plate was used or intended to be used for making an infringing copy of such a work, be guilty of an offence and shall be liable on summary conviction -

(a) if it is his first conviction of an offence under this section, to a fine not exceeding five hundred dollars for each article to which the offence relates; and

(b) on any second or subsequent conviction of an offence under this section, to such a fine and to imprisonment for six months;

Provided that a fine imposed by virtue of this subsection shall not exceed fifty thousand

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Second Draft Copyright Bill(Contd.)

dollars in respect of articles comprised in the same transaction.

(2) The court before which a person is charged with an offence under this section may, whether he is convicted of the offence or not, order that any article in his possession which appears to the court to be an infringing copy of a work in which copyright subsists under the Act or this Ordinance or a plate used or intended to be used for making infringing copies of such a work shall be destroyed or delivered up to the owner of the copyright in question or otherwise dealt with as the court may think fit.

Powers of investigating officers.

6. (1) Any police officer, or any public officer authorized in writing in that behalf by the Director, may -

(a) subject to subsection (2), enter and search any place, or stop, board and search any vessel (other than a ship of war) or any aircraft (other than a military aircraft) or stop and search any vehicle, in which he reasonably suspects that there is an infringing copy of a work or other subject matter in which copyright subsists under the Act or this Ordinance; and

(b) seize, remove and detain -

(i) Any article which appears to him to be an infringing copy of any work or other subject matter in which copyright subsists under the Act or this Ordinance or any plate which appears to him to be intended for use for making infringing copies of any such work or other subject matter; and

(ii) anything which appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under the Act or this Ordinance.

(2) Where he is satisfied by information on oath that there is reasonable ground for suspecting that there is in any premises used for dwelling purposes anything that is liable to seizure under paragraph (b) of subsection (1), a magistrate may issue his warrant authorizing such premises to be entered and searched by a police officer, or by a public officer authorized in writing in that behalf by the

Director; and no premises used for dwelling purposes shall be entered or searched under this Ordinance except pursuant to the warrant of a magistrate issued under this subsection.

(3) Any police officer, or any public officer authorized in writing in that behalf by the Director, may -

(a) break open any outer or inner door of any place which he is empowered or authorized by or under this Ordinance to enter and search;

(b) forcibly board any vessel, aircraft or vehicle which he is empowered by this Ordinance to stop, board and search;

(c) remove by force any person or thing obstructing any detention, search, inspection, seizure or removal which he is empowered by or under this Ordinance to make;

(d) detain any person found in any place which he is empowered or authorized by or under this Ordinance to search until such place has been searched;

(e) detain any vessel or aircraft which he is empowered by this Ordinance to stop, board and search, and prevent any person from approaching or boarding such vessel or aircraft until it has been searched;

(f) detain any vehicle which he is empowered by this Ordinance to stop and search until it has been searched.

Affidavit of ownership of copyright in court proceedings.

7. (1) An affidavit purporting to be made in accordance with subsection (2) by or on behalf of the owner of the copyright in any work or other subject matter in which copyright subsists under the Act or this Ordinance and stating -

(a) that at a time specified therein copyright subsisted in such work or other subject matter;

(b) that he or a person named therein is

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the owner of the copyright; and

(c) that a copy of the work or other subject matter annexed thereto is a true copy thereof,

shall be admitted in evidence in proceedings for an offence under section 21 of the Act on its production by the prosecution without further proof, and -

(d) until the contrary is proved, the court before which such affidavit is produced shall presume -

(i) that the affidavit was made in accordance with subsection (2); and
(ii) that the affidavit was made by or on behalf of the owner of the copyright in such work or other subject matter; and

(e) such affidavit shall be prima facie evidence of the matters stated therein pursuant to paragraphs (a), (b) and (c).

(2) An affidavit made for the purposes of subsection (1) shall be made on oath before a magistrate in any part of the Commonwealth or before a British consular officer elsewhere and the making thereof shall be authenticated by the signature of the magistrate or British consular officer before whom it was made.

Repeal. (Caps.39 and 40.)

8. The Copyright Ordinance and the Fine Arts Copyright Ordinance are repealed.

SCHEDULE. /S.4./

Broadcasting Organizations.

1. Radio Hong Kong.

2. Hong Kong Commercial Broadcasting Company Limited.

3. Rediffusion (Hong Kong) Limited.

4. Television Broadcasts Limited.

EXHIBIT "RWP"

Exhibits "RWP" Standing Orders of the Legislative Council. 19th December 1929.

STANDING ORDERS

of the

LEGISLATIVE COUNCIL OF HONG KONG

Made by the Legislative Council of Hong Kong on the 19th day of December, 1929, in pursuance of the provisions of Clause XXIII of the Instructions of His Majesty the King under His Sign Manual and Signet bearing date the 14th day of February, 1917.

Oath of Allegiance.

1. (1) No member of the Council shall sit or vote therein until he shall have taken and subscribed the oath of allegiance, provided that any person authorized by law to make an affirmation instead of taking an oath shall be permitted to make a solemn affirmation in lieu of the oath of allegiance.

(2) The oath or affirmation shall be administered by the Governor.

Language.

2. (1) The proceedings and debates of the Council shall be in the English language.

(2) A Member may present a petition in Chinese, if the petition be accompanied by an English translation certified to be correct by the member who presents it.

Sittings of Council.*

3. (1) The meetings of the Legislative Council shall be held on such day and at such hour as may from time to time be ordered by the Governor.

(2) At the beginning of each meeting, and before proceeding to the despatch of any other business, the President shall, if the minutes of the last preceding meeting have been circulated to the members, propose

* On the subject of the quorum, and of who should preside, see respectively clauses XIX and XXI of the Royal Instructions.

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that they be confirmed. If the said minutes have not been circulated they shall be read by the Clerk and the President shall then propose that they be so confirmed. Upon any proposal that the minutes be confirmed no debate shall be allowed except as to the accuracy of the minutes and with reference to an amendment actually proposed.

(3) The President may at any time adjourn or suspend any meeting.

Standing Committees.

4. (1) There shall be the following standing committees of the Council :-

(a) The Finance Committee, which shall consist of the Colonial Secretary (Chairman), the Treasurer, the Director of Public Works and the unofficial members of the Council.

(b) The Public Works Committee, which shall consist of the Director of Public Works (Chairman), the Treasurer, and the unofficial members of the Council.

(c) The Law Committee, which shall consist of the Attorney General (Chairman), and four other members of the Council appointed at the first meeting of the year by the President, who shall have power to fill vacancies arising in the Committee during the course of the year.

(2) Three members shall form a quorum of any standing committee.

(3) The Governor may at any time refer direct to the Finance Committee any proposal concerning additional expenditure not already provided for in the annual estimates.

(4) Any member of the Council shall be entitled to attend any meeting of a standing committee but no member may take any part in the proceedings of a committee of which he is not a member.

Select Committees.

5. (1) Any matter before the Council may be referred by the President, or upon a motion duly passed by the Council, to a select committee

(2) A select committee shall consist of at least three members who shall be nominated by the President: Provided that any member may move that another member be substituted for any member so nominated, and if the motion be seconded the amendment shall, after debate, be put to the vote, and the question shall be decided accordingly.

(3) The Chairman of a select committee shall be appointed by the President.

(4) Three members of a select committee shall form a quorum except when the select committee consists of three members only in which event two shall form a quorum.

(5) In the event of the death, resignation or absence from the Colony of any member of a select committee the President may appoint another member in his place.

Procedure on Standing and Select Committees.

6. (1) In the absence of the chairman of a standing or select committee the senior member present shall act as chairman.

(2) The chairman of a standing or select committee shall have an original vote and shall also have a casting vote if the votes be equal.

(3) The chairman of any committee may require the attendance and services of the Clerk of the Council.

(4) The report of a committee shall be signed, and presented to the Council, by the Chairman.

(5) Any member of a committee dissenting from the opinion of the majority may put in a written statement of his reasons for such dissent, and such statement shall be appended to the report of the committee.

Duties of the Clerk.

7. (1) The Clerk shall send to each member written notice of each meeting of the Council, accompanied by a copy of the Order of Business and of any bill which it is proposed to read a first time at the meeting in question, at

Exhibits
"RWP"

Standing Orders of the Legislative Council. 19th December 1929.(Contd.)

least two clear days before the day fixed for the meeting, except in case of emergency when such notice shall be given as the circumstances may permit.

(2) The Clerk shall keep the minutes of the proceedings of the Council, and of committees of the whole Council, and shall send to each member the draft minutes of each meeting as soon as possible after the meeting.

(3) The minutes of the proceedings of the Council shall record the names of the members attending and all decisions of the Council, and shall, when confirmed at the next following meeting of the Council, be signed by the President.

(4) In the case of divisions of the Council or committee of the whole Council, the minutes shall include the numbers voting for and against the question, and the names of the members so voting.

(5) The Clerk shall be responsible for the custody of the votes, records, bill,s and other documents laid before the Council, which shall be open to inspection by members of the Council and other persons under such arrangements as may be sanctioned by the President.

Order of Business.

8. Unless the Council otherwise direct, the business of each sitting day shall be transacted in the following order :-

1. Confirmation of minutes of last preceding meeting.
2. Oath or affirmation of allegiance of a new member.
3. Announcements.
4. Papers, including any reports of standing or select committees which are laid upon the table by order of the Governor and which are not the subject of any motion.
5. Petitions.
6. Questions.
7. Government business.
8. Unofficial members' motions.

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Standing Orders of the Legislative Council. 19th December 1929 (Contd.)

Government business shall be set down in such order as the President may direct, and unofficial members' motions shall be set down in the order in which notice of each motion was given.

Petitions.

9. (1) Every petition intended to be presented to the Council must conclude with a prayer setting forth the general object of the petitioner.

(2) A petition shall not be presented to the Council unless it be in accordance with the rules then in force in regard to petitions.

(3) The members presenting a petition may state concisely the purport of the petition.

(4) All petitions shall be ordered to lie upon the table without question put unless a member when presenting a petition movefor it to be read, prin'ed or referred to a select committee.

(5) The Council will not receive any petition-

(a) which is not addressed to the Council;

(b) which is not properly and respectfully worded;

(c) which has not at least one signature on the sheet on which the prayer of the petition appears;

(d) which has not at least the prayer at the head of each subsequent sheet of signatures;

(e) which asks for a grant of public money or the release of a debt to public funds unless the recommendation of the governor thereto has been signified; or

(f) which does not conform with such rules as may from time to time be prescribed by the Council.

Papers.

10. (1) All papers shall be presented by an official member of the Council and their

Exhibits "RWP"

Standing Orders of the Legislative Council. 19th December 1929 (Contd.)

presentation shall be entered upon the minutes.

(2) A member presenting a paper may make a short explanatory statement of its contents.

(3) All papers shall be ordered to lie upon the table without question put and any motion for the printing thereof shall be determined without amendment or debate.

(4) All Rules and Orders made by the Governor in Executive Council under the authority of an Ordinance, which do not require the approval of the Legislative Council, shall be laid on the table as soon as may be after being made.

Questions to Members.

11. (1) Questions may be put to official members relative to public affairs with which they are officially connected, proceedings pending in the Council, or any matter of administration for which such members are responsible.

(2) Questions may also be put to other members relating to a bill, motion, or other public matter connected with the business of the Council for which such members are responsible.

(3) A question shall not contain arguments, inferences, opinions, imputations, epithets, ironical expressions, or hypothetical cases.

(4) A question shall not include the names of persons, or statements, not strictly necessary to render the question intelligible, nor contain charges which the member who asks the question, is not prepared to substantiate.

(5) A question must not be asked for the purpose of obtaining an expression of opinion, the solution of an abstract legal case, or the answer to a hypothetical proposition.

(6) A question shall not be asked without written notice unless it is of an urgent character and the member has obtained the leave of the President so to ask it.

(7) A question must not be made the pretext for a debate, nor can a question fully answered be asked again without the leave of the President.

Exhibits

"RWP"

Standing Orders of the Legislative Council. 19th December 1929(Contd.)

(8) A member may ask a supplementary question for the purpose of further elucidating any matter of fact regarding which an answer has been given; but a supplementary question must not be used to introduce matter, not included in the original question.

Messages from the Governor and Address by the Governor.

12. A message from the Governor, if presented to the Council by an official member, may be brought up at any time before the commencement or at the close of public business, and shall be considered forthwith or ordered to be considered upon a future day as the member presenting it may appoint. The Governor may address the Council at any time.

Manner of giving Notices.

13. (1) Where under any Standing Order (or the practice of the Council) notice is required, such notice shall be given by being handed in at the Table during the sitting of the Council or by delivery at the office of the Clerk or other place appointed by Standing Order (or the President) within the hours prescribed for the purpose.

(2) Except with the permission of the President, no notice shall be valid for any particular meeting of Council unless it shall have been so handed in or delivered at least three clear days before such meeting of Council. Sundays and holidays shall not be included in the computation of the said period of three days.

(3) Any such notice shall be printed and shall be circulated to members of the Council if possible not less than two clear days before the next meeting of the Council for which it is valid.

(4) Any such notice shall be printed in the form in which it is handed in or delivered.

(5)Motions or amendments sent to the Clerk shall be printed and circulated by him, even if they be matters notice of which is not required, and in the case of amendments to bills shall be arranged to far as may be in the order in which they will be proposed.

Exhibits
"RWP"
Standing Orders of the Legislative Council. 19th December 1929 (Contd.)

(6) A notice given orally in Council, shall not have any force after that sitting of the Council unless it be supplemented by a notice given in accordance with paragraph (1) of this Order.

14. Unless the Standing Orders otherwise direct, notice shall be given of any motion which it is proposed to make with the exception of the following :-

Notice of Motions.

1. A motion for the confirmation or correction of the minutes of the Council.
2. A motion made in committee of the whole Council.
3. A motion for the adjournment of the Council or of any debate.
4. A motion that a petition be read, printed or referred to a select committee.
5. A motion that the report of a standing committee be adopted.
6. A motion that the report of a select committee be referred to a committee of the whole Council or be printed.
7. A motion for the withdrawal of strangers.
8. A motion for the suspension of a member.
9. A motion for the withdrawal or postponement of any item in the Order of Business.
10. A motion for the substitution of another member for a member nominated to a select committee.
11. A motion for the reference of any matter to a committee.
12. A motion for the suspension of any Standing Order.

Dispensing with Notice.

15. Notice shall not be dispensed with in the case of a motion or in respect of any other proceeding for which notice is required except

with the consent of the President.

Exhibits

"RWP"

Standing Orders of the Legislative Council. 19th December 1929 (Contd.)

16. (1) A member desiring to speak in Council shall rise in his place and address his observations to the President.

(2) A member desiring to speak in committee shall address his observations to the Chairman.

(3) If two or more members offer at the same time to speak, the President or Chairman shall call on the member who first catches his eye.

Rules of Debate.

(4) A member must confine his observations to the subject under discussion.

(5) Reference shall not be made to any matter on which a judicial decision is pending, in such a way as may prejudice the interests of parties thereto.

(6) No member shall impute improper motives to any other member.

(7) Except when the Council be in committee no member shall speak more than once on any proposition before the Council except in explanation (as provided in paragraph 8 of this Order), or to a point of order, or, in the case of the mover of a substantive motion, in reply, but any member may second a motion or amendment by rising in his place and bowing to the chair without prejudice to his right to speak at a later period of the debate.

(8) A member who has spoken to a question may again be heard to offer explanation of some material part of his speech which has been misunderstood, but he must not introduce new matter.

(9) A member who has spoken may speak again when a new question has been proposed from the chair such as a proposed amendment.

(10) Any member who dissents from the opinion of the majority may, if he give notice forthwith of his intention to do so, lay upon the table a statement of the grounds

Exhibits "RWP"

Standing Orders of the Legislative Council. 19th December 1929 (Contd.)

of his dissent, either at the same or a subsequent meeting of the Council.

(11) His Majesty's name shall not be used to influence the Council.

(12) The conduct of His Majesty, members of the Royal Family, Governor or Administrator, members of the Council, and judges or other persons engaged in the administration of justice, shall not be raised except upon a substantive motion; and in any amendment, question to a member, or remarks in a debate on a motion dealing with any other subject, any reference to the conduct of the persons aforesaid shall be out of order.

Relevancy in Debate.

17. (1) Debate upon any motion, bill or amendment shall be relevant to such motion, bill or amendment.

(2) Where an amendment proposes to leave out words and insert other words instead of them, debate upon the first question proposed on the amendment may include both the words proposed to be left out and those proposed to be inserted.

(3) On an amendment proposing to leave out words or to insert words debate shall be confined to the omission or insertion or such words respectively.

Anticipation.

18. (1) It shall be out of order to make a motion or move an amendment dealing in anticipation with the subject of a bill or other matter appointed in the Order of Business for consideration; and an amendment shall also be out of order if it deal in anticipation with the subject matter of a motion of which notice has been given.

(2) A matter appointed in the Order of Business or a motion or amendment of which notice has been given, shall not be anticipated in any other debate.

Termination of debate.

19. (1) No member may speak to any question after the same has been fully put by the President or Chairman.

(2) A question is fully put when the President or Chairman has collected the voices both of the ayes and of the noes.

20. By the indulgence of the Council, a member may make a personal explanation, although there be no question before the Council but no debatable matter may be brought forward or debate arise, upon the explanation.

20.Personal Explanation.

21. Whenever the President, or the Chairman, rises during a debate, any member then speaking, or offering to speak, must if standing sit down, and must in any case refrain from speaking, and the Council or Committee is to be silent so that the President or the Chairman, may be heard without interruption.

21.President to be heard without interruption.

22. The President in Council, and the Chairman in any committee, shall be responsible for the observance of the rules of order in the Council and committee respectively and their decision upon anypoint of order shall not be open to appeal and shall not be reviewed by the Council except upon a substantive motion made after notice.

Responsibility for Order.

23. (1) If a member show disregard to the authority of the chair, or abuse the rules of the Council by persistently and wilfully obstructing the business of the Council, or otherwise, the President shall direct the attention of the Council to the incident, mentioning by name the member concerned. A motion may then be made upon which the President shall forthwith put the question, no amendment, adjournment, or debate being allowed, "That such member be suspended from the service of the Council". If such an offence shall have been committed in a committee ofthe whole Council, the Chairman shall forthwith suspend the proceedings of the committee and report the circumstances to the Council; and the President shall on a motion being made thereupon put the same question, without amendment, adjournment or debate, as if the offence had been committed in the Council itself.

Breaches of order.

(2) Not more than one member shall be

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named at the same time, unless several members present together have jointly disregarded the authority of the chair.

(3) If a member be suspended under the provisions of this order his suspension shall last until determined by the Council.

(4) The President or Chairman, after having called the attention of the Council or committee to the conduct of a member who persists in irrelevance or tedious repetition either of his own arguments or of the arguments used by other members in debate, may direct the member to discontinue his speech.

(5) The President or Chairman shall order members, whose conduct is grossly disorderly to withdraw immediately from the Council Chamber during the remainder of the day's sitting.

(6) If a direction to withdraw under paragraph (5) of this order be not complied with at once or if on any occasion the President or Chairman deems that his powers under that paragraph are inadequate, he may name such member or members in pursuance of paragraph (1) of this order.

(7) The President or Chairman whether acting under paragraph (1) or (5) of this order may direct such steps to be taken as are required to enforce his order.

(8) Members who are suspended under paragraph (1) of this order or are directed to withdraw under paragraph (5), shall forthwith withdraw from the precincts of the Council Chamber.

(9) Nothing in this order shall be deemed to prevent the Council from proceeding against any member for any breach of order not specified herein or from proceeding in any other way it thinks fit in dealing with the breaches of order herein mentioned.

Voting.*

24. (1) All questions shall be decided by a majority of votes, including the vote of the

* On the subject of decision by the majority and on the Governor's original and casting vote, See Cl.XXII of the Royal Instructions.

President, or in any committee the Chairman, and whenever the votes are equal the President, or in any committee the Chairman, shall have a casting vote.

(2) At the conclusion of a debate the question shall be put by the President, or in any committee by the Chairman, and the votes may be taken by voices aye and no and the result shall be declared by the President or Chairman, but any member may claim a division when the votes shall be taken by the Clerk asking each member separately how he desires to vote and recording the votes accordingly.

(3) In taking the division the names of all the unofficial members shall be called before the names or official titles of any of the official members. In both cases the names, or official titles as the case may be, shall be called in order, beginning with the senior members, provided that the President, or in any committee the Chairman, shall vote last.

(4) When a division is claimed either in Council or in any committee every member present shall, unless he expressly state that he declines to vote, record his vote either for the ayes or noes. The Clerk shall enter on the minutes the record of each member's vote and shall add a statement of the names of members who declined to vote.

(5) As soon as the Clerk has collected the votes the President, or in any committee the Chairman, shall state the numbers voting for the ayes and noes respectively and shall then declare the result of the division or give his casting vote as the case may be.

(6) If a member state that he voted in error or that his vote has been counted wrongly, he may claim to have his vote altered, provided that such request is made as soon as the President has announced the numbers and before he shall have declared the result of the division.

(7) A member shall not vote on any subject in which he has a direct personal pecuniary

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interest but a motion to disallow a member's vote on this ground shall be made only as soon as the numbers of the members voting on the question shall have been declared. If the motion for the disallowance of a member's vote shall be agreed to the President, or in committee the Chairman, shall direct the Clerk to correct the numbers voting in the division accordingly. In deciding whether a motion for the disallowance of a member's vote shall be proposed from the chair, the President, or, in any committee the Chairman, shall have regard to the character of the question upon which the division was taken and to the consideration whether the interest therein of the member whose vote is challenged is direct and pecuniary and not an interest in common with the rest of His Majesty's subjects and whether his vote was given on a matter of state policy.

First Reading of a Bill.

25. (1) The mover of a bill, on moving the first reading thereof, shall state the object and intention of the measure and the reasons on which it is founded.

(2) After such motion has been seconded by another member, and has been adopted, the bill shall be read a first time. The President may address the Council on the first reading of a bill should he desire to do so, but no further discussion shall be permitted.

(3) Except as provided for in paragraph (2) of Standing Order 29, every bill shall be published in the Gazette after having been read a first time and before it is read a second time.

Second Reading of a Bill.

26. When a motion for a second reading of a bill shall have been made and seconded, a debate may be taken only upon the general merits and principles of the bill.

Committee Stage of a bill.

27. (1) When a bill has been read the second time the Council may, at the same or any subsequent meeting, upon motion made and seconded, resolve itself into a committee of the whole Council to consider the bill clause byclause, or may refer the bill to a standing committee or to a select committee.

(2) The principle of a bill shall not be

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discussed in committee but only its details.

(3) In committee the Clerk shall read the marginal notes to the bill, clause by clause, unless the Chairman directs him to read the clauses, or any particular clause, in full.

(4) Subject to the provisions of paragraph (5) of this Order, the committee may make in the bill such amendments as they shall think fit, provided that the amendments are in the opinion of the Chairman relevant to the subject matter of the bill, and provided that if any amendments are in the opinion of the Chairman not within the title of the bill the committee shall amend the title accordingly.

(5) No amendment shall be moved which is inconsistent with any clause already agreed upon or with any decision already come to by the committee, and the Chairman may at any time during the discussion of a proposed amendment withdraw it from the consideration of the committee if in his opinion the amendment violates the provisions of this paragraph.

(6) The Chairman may require any proposed amendment to be handed to the Clerk in writing.

(7) If no amendment be proposed to any particular clause when the marginal note has been read by the Clerk, or when all the proposed amendments shall have been disposed of, the Chairman shall put the question "That the clause (or the clause as amended) stand part of the bill". If any amendment is proposed which the Chairman considers need not be disposed of separately he may put the question "that the clause, amended as proposed, stand part of the bill."

(8) If a new clause or a new schedule be proposed the Chairman may put the question "That the proposed clause (or schedule) stand part of the bill", and if the question is agreed to the clause (or schedule) shall thereupon stand part of the bill. A new clause or a new schedule may be proposed at any time which seems convenient to the Chairman.

(9) On consideration of the schedules the Clerk shall call out the word "Schedule",

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if there is only one schedule, or shall read out the ordinal numbers of the schedules if there are more schedules than one, unless the Chairman directs him to read the schedules or any particular schedule in full, or to proceed in any other manner, and the Chairman may thereupon put the question "That this schedule stand part of the bill".

(10) Any clause or schedule may be postponed for consideration at a later stage of the same meeting or for consideration at some future meeting of the committee. The whole bill may be left in committee for consideration at some future meeting of the committee

(11) When all the clauses and schedules of the bill have been disposed of the Chairman shall put the question "That the enacting clause and title stand part of the bill". If the bill contains a preamble the above question shall be preceded by the question "That the preamble stand part of the bill".

(12) When the bill has been entirely disposed of the Council may upon motion made and seconded resume and proceed with the remaining business of the day.

(13) A bill may be referred to a standing committee or to a select committee at any stage of its progress prior to the third reading.

(14) If any standing committee or select committee to which a bill has been referred reports that it recommends any material amendment therein, the bill may be printed with such amendment, and, after publication in the Gazette, may with the permission of the Council be substituted for the bill as read a second time. Every bill so reported shall be considered in the committee of the whole Council.

Third Reading of a Bill.

28. (1) When a bill has passed through committee the member in charge of the bill may at the same or any subsequent meeting report to the Council that the bill has passed through committee and may at the same time move that the bill be read a third time, provided that if in the opinion of the President any material amendment of the bill shall have been made in committee the bill shall not be

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read a third time at the same meeting except after the suspension of the Standing Orders. If the third reading of any bill is for this reason postponed to a subsequent meeting of the Council the bill shall be published in the Gazette as amended before it is read a third time.

(2) If upon the third reading of a bill being proposed and seconded any member desires to omit or amend any provision contained in the bill, or to introduce any fresh provision into it, the bill may upon motion made and seconded be re-committed, and thereafter the Council shall again resolve itself into a committee of the whole Council for the consideration of the proposed amendment, but no bill shall be re-committed after it shall have been read a third time.

(3) When a bill has been read a third time it shall be deemed to have been passed.

General Provisions relating to Bills.

29. (1) On each reading of a bill the Clerk shall read only the long title of the bill.

(2) If at any stage in the progress of a bill the President declares that in his opinion an emergency exists and that it is desirable in the public interest that the Standing Orders should be suspended in order to enable the bill to pass through all its stages, or all its remaining stages, at that meeting of Council, it may be moved and seconded that the Standing Orders be suspended accordingly, and if the motion be adopted the bill may be carried through all its stages, or all its remaining stages, at that meeting.

Bills affecting Private Rights.

30. (1) Where any bill shall be proposed which is intended to affect or benefit some particular person, association, or corporate body, notice of the bill shall be given by the promoters, by two advertisements in some daily newspaper published in the Colony, and, if any of the persons likely to be benefited or prejudiced may be Chinese, by two additional advertisements in some Chinese newspaper published in the Colony, and in any case by two successive publications of the bill in the

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Gazette, as required by Clause XXVII of the Royal Instructions of the 14th February 1917; provided that, as laid down in the said Clause XXVII this paragraph shall not apply to any such bill which is a Government measure.

(2) If any person considers that his individual rights or interests would be affected by the provisions of any such bill, he may petition to be heard on the bill either in person or by counsel, and he shall be heard accordingly, either upon motion made, seconded and adopted, or by order of the President. The President shall direct whether the person in question or his counsel shall be heard before the Council, or before a committee of the whole Council, or before a standing committee or a select committee.

(3) On any such petition the petitioner, or any member , shall, upon motion made, seconded and adopted, or by order of the President, be entitled to call and examine witnesses on oath or affirmation, provided that a list containing the names, residences and occupations of the witnesses shall have been delivered to the Clerk at least two clear days before the meeting of the Council or committee as the case may be. Any such witness if called by the petitioner may be cross-examined by any member, and if called by any member may be cross-examined by any other member or by the petitioner. The oath or affirmation shall be tendered by the Clerk, or, in any committee, by the Chairman.

(4) Every bill intended to affect, or benefit some particular person, association or corporate body shall in accordance with Clause XXVII of the Royal Instructions of the 14th February 1917, contain a section saving the rights of His Majesty the King, His Heirs and Successors, all bodies politic and corporate, and all others except such as are mentioned in the bill, and those claiming by, from, and under them.

Relevancy of Amendments.

31. (1) When any bill, or clause of a bill or motion, is under consideration in the Council or a committee thereof, an amendment may be proposed to such bill, clause or motion if it be relevant to the bill, clause or motion to which it is proposed.

(2) An amendment may be proposed to any amendment proposed from the chair if it be relevant to the original amendment,

(3) In committee on a bill a new clause or schedule may be proposed if it be relevant to the subject matter of the bill, and an amendment may be proposed to it if the amendment be relevant to the new clause or schedule.

(4) An amendment, or a new clause or schedule, shall not require notice.

(5) The President, or the Chairman as the case may be, may require any proposed amendment to be handed to the Clerk in writing.

Seconding of Motions and Amendments

32. A motion or amendment shall not be proposed from the chair in Council unless it shall have received a seconder, but in committee a seconder shall not be required for any amendment or for any new clause or schedule.

Method of Putting the Question on Amendments.

33. Subject to the provisions of paragraph (7) of Standing Order 27, upon an amendment to leave out words and insert other words instead of them a question shall first be proposed from the chair "that the words proposed to be left out stand part of the question", and if that question be negatived, the question for the insertion of the alternative words shall then be proposed, provided that on consideration of a bill in committee the Chairman shall if possible put as the test question on an amendment only such words as will not prevent a subsequent amendment which is in order from being moved. If the question so proposed be negatived the words proposed by the amendment to be left out shall be deemed to be left out without further question.

Withdrawal of Motions or Amendments.

34. When any motion or amendment has been proposed from the chair, it may be withdrawn at the request of the mover if, on the President, or in committee the Chairman, asking whether it be the pleasure of the Council or committee that the motion or amendment be withdrawn, a dissenting voice be

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not raised thereto.

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35. The evidence taken before any committee of the Council and any documents presented to such committee which have not been reported to the Council shall not be published by any member of such committee or by any other person, except with the premission of the President.

35. Publication of Evidence.

36. (1) In cases of doubt the Standing Orders of this Council shall be interpreted in the light of the relevant practice of the Commons House of Parliament of Great Britain and Northern Ireland.

Practice of Parliament.

(2) In any matter for which these Standing Orders do not provide the said practice shall be followed, but no restrictions which the House of Commons has introduced by Standing Order shall be deemed to extend to the Council or its members until the Council has provided by Standing Order for such restriction.

Suspension of Standing Orders.

37. A question the object or effect of which may be to suspend any Standing Order of the Council shall not be proposed except with the consent of the President.

Absence of Members.

38. Any member who is prevented from attending a meeting of the Council shall acquaint the Clerk as early as possible of his inability to attend.

Employment of Members in Professional Capacity.

39. No member of the Council shall appear before the Council or any committee thereof as counsel or solicitor for any party, or in any capacity for which he is to receive a fee or reward.

Strangers.

40. Strangers shall be admitted to debates in the Council Chamber subject to such rules as the President may make from time to time for that purpose, provided that if any member take notice that strangers be present, the President, or in committee the Chairman, shall put forthwith the question "That strangers be ordered to withdraw".

Press.

41. The President may grant a general permission to the representative of any journal to attend the sittings of the Council provided that, if the journal publish a report of the proceedings which the President considers unfair, such permission may be revoked.

IN THE PRIVY COUNCIL No. 26 of 1968

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG

(ORIGINAL JURISDICTION)

(In the Full Court of the Colony of Hong Kong)

BETWEEN :

THE ATTORNEY GENERAL OF HONG KONG for and on behalf of himself and all other members of the Legislative Council of Hong Kong (First Defendant) — First Appellant

GEOFFREY CATZOW HAMILTON (Second Defendant) — Second Appellant

- and -

REDIFFUSION (HONG KONG) LIMITED (Plaintiffs) — Respondent

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