

14 March 2002

Your Ref.: CB1/BC/15/00

Our Ref.: HKC/JUPG/L017-02

Clerk to the Bills Committee on
Noise Control (Amendment) Bill 2001
3/F., Citibank Tower,
3 Garden Road,
Central,
Hong Kong

BY FAX & BY POST

(Fax No.: 2121-0420)

Attn.: Miss Polly Yeung

Dear Miss Yeung,

Re: Noise Control (Amendment) Bill 2001 (the "Bill")
Submission by Hong Kong Cable Television Limited ("HKCTV")

We refer to your letter dated 26 February 2002.

I. Introduction

1.1 HKCTV does not support the proposal of the Bill of imposing liability on the directors and officers of a body corporate when an offence under the Noise Control Ordinance (the "Ordinance") has been committed by that body corporate. HKCTV provides pay television service under its domestic pay television programme service licence and it also holds a Fixed Telecommunications Network Services Licence. In order to build and maintain its network, HKCTV from time to time engages contractors to carry out different types of works at various sites for example excavation and laying of ducts and cables.

II. Statistics concerning construction noise complaints and offence convictions

2.1 According to the Legislative Council Brief ("Brief") on the Bill prepared by the Government's Environment and Food Bureau, the reasons for introducing the Bill is that in view of the statistics, the situation regarding violation of the Ordinance has not improved and the Bill "will enhance the deterrent effect of the Ordinance". HKCTV does not agree with the Government's interpretation of the figures concerning noise complaints. Unlike what the Government has indicated, there is no consistent upward trend in construction noise complaints statistics and the number of these complaints has actually fallen twice in past five years in both 1997 and 2000.

For example, the number of construction noise complaints has fallen from 2,369 in 1999 to 1,777 in 2000, a drop of about 25%. We note that the considerable fall in construction noise complaints in each of 1997 and 2000 coincides with the rise in construction noise convictions in these two years and this may be attributable to the increase in enforcement activities on the part of the Environmental Protection Department. We submit that the Government should not introduce the Bill simply because a few construction companies, according to the Brief, are repeated offenders. The Government can improve the problem on construction noise by stepping up enforcement action under the existing Ordinance without enacting the Bill.

Table showing the number of construction noise complaints and construction noise offence convictions from 1996 to 2000

	1996	1997	1998	1999	2000
Number of construction noise complaints	2,027	1,888	2,201	2,369	1,777
Number of construction noise offence convictions	117	364	299	264	364

Source: Legislative Council Brief prepared by the Government's Environment and Food Bureau

III. Clarification of the position of utility company

- 3.1 However, if notwithstanding our submission above, the Government decides to go ahead to enact the Bill, HKCTV submits that the Government should state clearly in the Ordinance and the Bill that if a body corporate engages a contractor to carry out, for example, construction work, the body corporate shall not be liable for the offences under the Ordinance or the Bill which may be committed by the contractor or subcontractor.
- 3.2 Even if the Government declines to amend the Ordinance or the Bill as suggested above, HKCTV submits that the Government should assure, for example, the utility companies in public and in writing that the Ordinance and the Bill are not intended to cover them if the offence is committed by their contractors or the sub-contractors of these contractors.

- 3.3 During the meeting of the Environmental Affairs Panel of the Legislative Council ("Legco") on 8 May 2001 concerning the Bill, the Assistant Director of Environmental Protection (Environmental Assessment and Noise) explained to the Legco's members of the above panel:

"... since the proposed amendments aimed at holding the management of the body corporate liable, the Environmental Protection Department ("EPD") would initiate prosecution against the owners of industrial premises in the case of industrial noise, or the main contractors or the subcontractors as appropriate in the case of construction noise. Developers would unlikely be held liable for the noise offences. ...".

We submit that the position of utility companies like HKCTV is the same as a developer in this aspect and we hope that there will be similar assurance from the Government regarding construction noise.

IV. Addition of validity period for the written warning given to directors and officers of a body corporate under the proposed section 28B

- 4.1 During the meeting of the Legco's Environmental Affairs Panel on 8 May 2001, Legco member Miss Choy So-Yuk suggested that there should be a validity period for the written warning to the directors and officers of a body corporate under the proposed section 28B. In other words, fresh warnings should be given to the directors and officers of a body corporate if the body corporate has not violated the Ordinance again within a certain period subsequent to the issue of a written warning. Paragraph 12 of the minutes of that meeting provides:

"[Miss Choy So-Yuk] considered it necessary to provide a validity period for the written warning so that bodies corporate could be given a second chance of warning on subsequent offence committed after the expiry of the specified period. This would ensure that bodies corporate would not be prosecuted for inadvertent violations made over an extended construction which might last for years. ... [Miss Choy] pointed out that it would not be easy for bodies corporate to effectively control the operation on site. She reiterated that the Administration should give further thoughts to specifying a validity period for the written warning. Mr. Abraham Shek agreed with Miss Choy's view and hoped that there would be further consultation with the construction industry on the provision of a validity period for written warning."

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Miss Choy's suggestion was supported by another Legco member Mr. Abraham Shek. We note that this proposal was rejected by the Government because, according to the Government, this will weaken the deterrent effect significantly and run counter to the principle that the directors and officers of any construction company should comply with the [Noise Control Ordinance] at all times". While we agree that the directors and officers of a company should ensure the compliance with the Ordinance at all time, the validity period proposed by Miss Choy will help to prevent inadvertent violation of the Ordinance and the proposed amendment will not weaken the deterrent effect of the Bill significantly.

Yours sincerely,
Hong Kong Cable Television Limited

Allen Law
General Manager
OSP Engineering and Construction

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