

By Fax & By Post (Fax No. 2869 4413)

April 18, 2001

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URGENT

The Intellectual Property (Miscellaneous Amendments) Ordinance 2000

We notice that the Government intends to suspend indefinitely implementation of the above ordinance over various copyright works. We consider the suspension in relation to cable programmes inappropriate.

Since the commencement of our television service in 1993, we have been facing the headache of pirated viewing in both private and public places. The problem deteriorates with the increasing availability of aggressively priced unauthorized decoders in the markets of Mainland China and Hong Kong. By estimation, our loss of subscription revenue amounts to millions of dollars each month. This is a serious blow to a business which relies (and is fully licensed by the Government to rely) on subscription as its primary source of revenue.

We have considered but concluded civil remedies would not really be useful. The procedures involved are complicated and time-consuming. By the time the case is tried, the culprit may have wound up its business on the writ and continue its infringement in a different business name at a different location. Moreover, civil actions have no deterrent effect. Given the huge legal costs and the slim chance of recovery, we could sue only a handful of culprits. Their majority are 'pardoned'. Even if we are fortunate enough to get



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damages from the defendants, the sum obtained is minimal, compared to our loss in aggregate.

Although the suspension would not apply to films and musical works, that would not help our case at all. Like other pay TV operators, a large proportion of our contents are acquired by licence. Our rights in many programmes and almost all the musical works are non-exclusive. As a non-exclusive licensee, we have no right to institute proceedings for pirating the corresponding copyright works. Even if we hold the exclusive rights over some programmes, we may not be able to sue on our own unless the copyright owners are joined in the actions or the court grants a special leave.

The Broadcasting Ordinance contains a section which purportedly bans unauthorized decoders. Nonetheless, it targets traders but not users of unauthorized decoders. Thus, for instance, pubs and karakoe bars using such decoders to provide our programmes to their customers are not liable under the Broadcasting Ordinance. Nor are they liable for sure under the original Copyright Ordinance which requires the infringement be made 'for the purpose of trade or business'. The Amendment Ordinance removes the uncertainty and addresses the inadequacy in the Broadcasting Ordinance. If Hong Kong is to become a regional broadcasting hub, it needs clear and sufficient measures to combat not only trading but also use of apparatuses for infringing copyrights.

The recent public complaints about the Amendment Ordinance revolve around the reproduction of cuttings of newspapers and other publications which are necessary for the daily operation of all educational institutions, business entities and government agencies. Nonetheless, very few of them need to record or receive our programmes for their legitimate business. Thus, the continuance of the Amendment Ordinance over cable programmes will not jeopardize the public interest.

For the reasons aforesaid, we would urge the Government to take out cable programmes from the list of suspension.

Yours sincerely,
HONG KONG CABLE TELEVISION LIMITED



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Stephen T. H. Ng
Chairman
President & Chief Executive Officer

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