



**2nd Submission by Hong Kong Cable Television Limited on
Review of Certain Provisions of the Copyright Ordinance
to the Commerce and Industry Panel of the Legislative Council**

The Commerce and Industry Bureau issued a paper to the Commerce and Industry Panel of the Legislative Council on January 28, outlining Government proposals following the conclusion of a consultation on certain provisions of the Copyright Ordinance. The paper contains, inter alia, a package of proposals to combat the increasing rampancy of unauthorised reception of subscription television service. In essence, the Government has proposed to introduce criminal sanctions for fraudulent reception of pay television service for commercial purposes, but NOT in private premises.

Hong Kong Cable Television Limited is very disappointed at these proposals. While Government officials have accepted that unauthorised reception of subscription TV programmes is equivalent to theft, they propose to deal with fraudulent business use and fraudulent domestic use differently. Only the former but not the latter will be made a criminal offence. If the Government is not prepared to treat the two in a similar manner perhaps it should decriminalize theft of electricity and other services and goods for private or domestic purpose. This would at least provide a degree of consistency.

We do not understand why the Government is not prepared to deal with unauthorised reception of subscription TV programmes in the same manner it would deal with any other cases of theft, i.e. to legislate for criminal sanctions against it. The conclusion is that theft is theft unless it is theft of subscription television signals for domestic consumption. We can think of no other example where known illegal avoidance of payment would not be treated as a criminal offence.

Hong Kong Cable has already demonstrated to the satisfaction of the Government officials that it is not necessary to enter domestic premises to provide evidence of fraudulent reception of subscription television. It is possible for a qualified engineer to detect signal theft from outside the premises. This should be sufficient evidence to demonstrate theft, if necessary by explicit statement in the legislation. In addition,



casual entry to domestic premises will be guarded against by the requirement of a proper warrant issued by the Court. If the Government considers this privacy-protection-mechanism not adequate for criminal enforcement actions, what makes the Government believe enforcement actions by the television operators will not be intrusive as it has only advocated civil sanction for illegal viewing at home?

The paper doubts whether the severity of the wrongdoing warrants criminal sanction. This observation justifies a number of comments. The first comment must be that theft is a criminal offence, the degree of criminality should be reflected in the penalty not in not calling it a crime! Secondly in terms of the scale of the problem, there are a large number of peddlers of unauthorised decoders at the popular shopping complexes in Shenzhen and the roadside in Apliu Street. In the few OFTA-mounted raids at stalls in Apliu Street, several hundreds of such decoders were confiscated. The large number of supplies indicate the level of demand and hence the seriousness of the pirated viewing problem in Hong Kong. The situation has been widely covered in the press and on television. If the Government feels it is unsafe to rely on the reported information and the statistics given by Hong Kong Cable, the Government should do a creditable survey itself before jumping to the conclusion that the problem is not severe. Thirdly, in terms of the value of property affected, the monetary loss resulting from signal theft is on par with electricity theft. Theft is theft irrespective of value. There is no law that says a theft of an item below a certain value is not a theft.

The Government believes that digitisation should make pirated viewing increasingly difficult and so full criminal protection is not necessary. This is like arguing that Government can dispense with the criminal protection against theft of cars on the grounds that advanced security system will make theft of cars difficult. The difficulty with any solution that relies on technology is that in due course it will eventually become obsolete. The only thing we can be sure about is that whatever encryption system is employed it will eventually be broken. This is not a statement about the limitations of encryption systems but a statement about the relentless progress of technology.

In 1993, the Law Reform Commission of Hong Kong specifically recommended that fraudulent reception of subscription television programmes should be a criminal offence. We are at a loss to understand why this recommendation has not been adopted despite the representativeness of the Law Reform Commission and the



extensive discussions and researches they have made for the recommendation.

The Government proposals have sent a wrong signal to the community as it will take some time before Hong Kong Cable could fully migrate its service to digital broadcasting which might still run the risk of being cracked. Inadvertently, the proposals have opened invaluable business opportunities for manufacturers and peddlers of illegal set top boxes and left legitimate operators greatly exposed. We wish to appeal to Honourable Members to plug the loophole before it is too late and support our call to the Government to revisit the proposals.

Hong Kong Cable Television Limited
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