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Panel on Information Technology and Broadcasting

Meeting on 11 July 2005

**Background brief on
issues related to domestic/private pirated viewing of
subscription television programmes**

Purpose

This paper summarizes Members' consideration of measures to deal with domestic or private viewing of subscription television programmes through the use of illicit decoders without payment of subscription fees.

Background

2. The major source of income for subscription television operators is the fees paid by subscribers. However, the unauthorized access to such services by means of illicit decoders to avoid subscription payment has affected not only the revenue and economic viability of the operators but also Hong Kong's status as a regional broadcasting hub. The easy availability of such illicit decoders and the lack of legislative sanction against unauthorized reception of subscription television programme services were regarded as the main causes for the problem.

3. Having regard to the findings of a consultation exercise conducted in late 2001 and with a view to addressing the problem, the Administration proposed to provide for both civil remedy and criminal sanction against the possession or use of unauthorized decoders for commercial purposes; and to introduce civil remedy only against any person who possessed or used an unauthorized decoder to view television programmes without payment of subscription fees. To this end, the Broadcasting (Amendment) Bill 2003 (the Bill) was introduced into the Council on 14 May 2003 and a Bills Committee was subsequently formed to study the Bill. The Bill was passed on 5 May 2004 and came into operation on 7 July 2004.

Major areas of concern

4. In the course of scrutiny, members of the Bills Committee expressed support for the proposed introduction of both criminal sanction and civil liability for the possession or use of unauthorized decoders for business or commercial purposes. However, members noted the divergent views of the Administration and the television industry on the contentious issue of whether criminal sanction should also be extended to domestic or private pirated viewing of pay television programmes through the use or possession of unauthorized decoders.

Technical solution to the problem

5. According to the Administration, the problem of pirated viewing of pay television programmes in Hong Kong had largely stemmed from Hong Kong Cable Television Limited (HKCTV)'s analogue transmission, which was vulnerable to access by illicit decoders. Considering the advent in technology and operators' responsibility in deploying reliable technology to safeguard their services, such as by changing the encryption digital key periodically, the Administration had encouraged and mandated HKCTV to complete digitization of its transmission by May 2005. If private pirated viewing remained rampant after completion of digitization by HKCTV, the Administration was prepared to consider criminal sanction against domestic end-users.

6. HKCTV however disagreed that technology alone could curb the problem and advised the Bills Committee that no security system could prove to be risk-free as the digital encryption systems of some overseas broadcasters had been hacked into soon after their deployment. It also highlighted the endless cycle of attacks and counter-attacks as manufacturers of illicit devices sought to upgrade their technology to circumvent security safeguards.

Options of criminal punishment

7. One of the major concerns about criminal sanction against domestic or private pirated viewing of pay television programmes though the use of unauthorized decoders was the enforcement difficulties arising from the need to enter domestic premises to collect evidence and the possible intrusion into privacy. In examining a joint proposal of six local free and pay television services licensees to make domestic pirated viewing a summary offence punishable by a fixed penalty, members recognized that the lesser punishment of a fixed penalty would not make enforcement easier or less intrusive because the enforcement officer was still required to catch a person committing the offence "red-handed" before he could issue him a fixed penalty notice. The fundamental issue at stake remained whether domestic pirated viewing should be made a criminal offence on top of incurring civil liability.

Arguments for and against criminal sanctions

8. In submitting views to the Bills Committee, HKCTV and other local free and pay television services licensees urged that civil remedy alone as proposed under the Bill could not effectively deter domestic or private pirated viewing. In their view, the unauthorized reception of subscription television programme services was analogous to abstraction of electricity or fraudulent use of a public phone with intent to avoid payment and was by nature a misdemeanour of theft or dishonest appropriation of property which should attract criminal liability, irrespective of whether the act was committed for commercial or personal purposes.

9. In formulating its legislative proposal, the Administration had considered the views collected during public consultation in 2001 which were not indicative of majority support for imposing criminal liability on domestic end-users. Having regard to the progress in HKCTV's digitization project and drawing reference to overseas policies and practice, the Administration had come to the view that criminal sanction was only justifiable as the last resort if pirated viewing was still rampant after completion of HKCTV's service. The Administration's approach had the support of the Consumer Council and some industry and professional associations.

Law enforcement

10. Members shared the concern of some deputations including HKCTV that the supply of unauthorized decoders was far more rampant than what had been revealed in the enforcement statistics of the Administration, notably in areas such as Apliu Street in Shamshuipo. Some members cast doubt on the efficacy of the current enforcement actions targeted at the supply of unauthorized decoders and illicit devices; and urged the Administration to step up enforcement, particularly at points of sale.

11. There was also a suggestion that the Administration should examine the sentences imposed by the Court in respect of decoder-related offences and consider taking appropriate action on lenient sentences so as to achieve greater deterrence against offenders.

The way forward

12. While most members of the Bills Committee agreed that for the time being, it might not be desirable to criminalize domestic pirated viewing of pay television programmes, they considered that the Administration should follow up various concerns raised during scrutiny of the Bill. The full report of the Bills Committee can be browsed at the following link : <http://www.legco.gov.hk/yr02-03/english/bc/bc11/reports/bc110505cb1-rpt-e.pdf>.

13. As requested by the Bills Committee and undertaken by the Secretary for Commerce, Industry and Technology during the Second Reading debate on the Bill, the Administration would follow up members' concerns as follows :

- (a) to review the effectiveness or otherwise of digitization, the implementation of the new statutory provisions and enforcement actions 12 months after implementation of the amendment ordinance;
- (b) to report how the Administration would propose to deal with the problem of private pirated viewing of pay television programme services; and
- (c) to examine the sentences imposed by the Court on decoder-related offences and, without prejudice to judicial independence, evaluate the appropriateness of taking follow-up action on the sentence imposed in individual cases.

14. The Administration will revert to the Panel on Information Technology and Broadcasting on the proposed way forward at the meeting on 11 July 2005.

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