



**Submission by
Cable and Satellite Broadcasting Association of Asia
to the Information Technology and Broadcasting Panel
Hong Kong Legislative Council
Session on 11 July 2005**

“Domestic/Private Pirated Viewing of Subscription Television Programmes”

This submission is made on behalf of the Cable and Satellite Broadcasting Association of Asia (CASBAA); we thank the Panel for the opportunity to present our organization’s views.

Headquartered in Hong Kong, CASBAA is an industry association with members and activities in 14 Asian and Australasian countries. The Association is dedicated to the promotion of multi-channel television via cable, satellite, broadband and wireless video networks across the Asia-Pacific region and represents some 120 corporations, which in turn serve more than 3 billion people. Member organizations include I-Cable, Galaxy Satellite Broadcasting, PCCW’s now Broadband TV, HK Broadband Network, Celestial Pictures, STAR Group, Time Warner, Turner Broadcasting International Asia Pacific, Sony Pictures Television International, Discovery Networks Asia, National Geographic Channel Asia, HBO Asia, MTV Networks Asia-Pacific, AsiaSat, APT Satellite, IBM, Nokia, Sun Microsystems, HSBC, Standard Chartered Bank, PricewaterhouseCoopers and Boeing Space Systems.

The issue of pirated viewing of subscription TV programmes is an important one for our members. Our industry continues to grow rapidly, but its development is seriously threatened by the theft of our members’ services. Unauthorized reception and the use of pay-TV broadcasts in Asia are estimated to cost over US\$900 million annually. The estimated cost of pay-TV signal theft in Hong Kong in 2004 was HK\$194 million (US\$ 24.9 million), a net revenue loss that neither the industry nor the community at large can sustain.

Forms of piracy are many and varied, and they are proliferating rapidly. Pirate enterprises take advantage of each new technological development as it arrives, breaking encryption systems and using new platforms such as digital transmission and internet rebroadcasts to diffuse “their” product, often for profit. In many countries, these pirate enterprises are integral parts of organized crime networks, and the profits from piracy are related to other illegal activities such as narcotics smuggling and money laundering.

In response to the growth of domestic pay-TV piracy, governments in other developed jurisdictions in the Asia-Pacific region (including Japan, South Korea, Singapore and New Zealand) have made end-user theft of subscription TV services an offence against criminal law.

On June 30, 2005, Australia – the nearest country with a common-law legal system similar to Hong Kong’s – announced that it, too, is legislating to criminalise the act of dishonestly accessing pay-TV services. The Australian Attorney-General, in making the announcement, commented: “The Government does not condone pay-TV signal theft. People shouldn’t be able to get free and unauthorised access to pay TV when other law-abiding Australians are paying for it. The proposed laws will criminalise some unauthorised activities that are not currently criminal offences, including dishonestly accessing a pay TV service in a private home.”

As we did with the Australian government, we urge the Hong Kong SAR Government to consider carefully the **international** and **moral** dimensions of its decision to legislate (or not) with regard to criminalisation of reception, access and use of unauthorized subscription television signals.

The HKSAR should not leave a large loophole in its generally strong network of intellectual property protection:

- A decision to criminalise the private appropriation of subscription television broadcasts without proper payment will send a powerful message.
- Hong Kong, with its highly-developed legal system and advanced economy, sets an example that is closely watched throughout the region. A decision by this developed economy NOT to offer meaningful protection to the intellectual property of the pay-TV industry will cause harm to the interests of content producers and distributors not only in Hong Kong, but throughout the Asia-Pacific region.
- Hong Kong is a substantial producer as well as consumer of television (and other) entertainment products. Hong Kong producers of programming are suffering severely from piracy of their works in other regional jurisdictions. Hong Kong TV programming is widely misappropriated, misused and uncompensated in other parts of China, and in the countries of Southeast Asia. The only way for Hong Kong to achieve an improvement in the way its own copyright works are treated is to set a high standard at home. Continued Hong Kong inaction on criminalising this type of activity sets an example that will contribute to a degradation in the IP climate for television throughout Asia; this will multiply the resultant harm to Hong Kong producers of television (and potentially other intellectual property) products.
- The HKSAR is anxious to encourage further growth of the pay-TV sector, with additional investment in high-end, Hong Kong-based pay-TV platforms, as befits a world city. Yet the pirating of signals - today or tomorrow - undermines the business model of the legitimate platform operators and disincentivizes more investment.
- The subscription television industry – especially in Asia – is still in its formative stages. Habits and attitudes are being established that will affect conduct (and industry development) for decades to come. It is vitally important for the success of this industry to encourage peoples throughout the region to make good choices, not destructive ones.

No one contends that piracy of pay-TV signals in Hong Kong can or should be stamped out by massive, intrusive invasions of private residential premises (though this is one of the reasons frequently cited for not legislating in this domain).

However, it is important that the HKSAR adopts a consistent approach to all unauthorized access and use of pay-TV broadcasts. We submit that in legislating in this area, the government should seek to influence the moral decisions of private citizens, at home and abroad, to demonstrate clearly that certain behaviors are unacceptable.

We note that in both the domestic and commercial domains, using an unauthorized decoder is not a one-time act, even if any one program is viewed only one time. A person who installs such a device intends to fraudulently convert to his own use, over an indefinitely long period of time, a series of digital signals which are of substantial value, and which the owner of those signals has sought to protect through encryption. Although the act is committed in private premises, it causes damage to third parties, including copyright owners, broadcasters, advertisers, their shareholders and employees. "Fraudulent conversion to his own use" is one of the common-law definitions of stealing; the fact that such activity will affect the distributor and the copyright owner's interest in a continuing stream of products and that it requires active circumvention of encryption safeguards clearly qualifies it as a theft that warrants serious sanctions.

Thus CASBAA believes that the appropriate remedy for such theft in Hong Kong is to amend Section 6 of the Broadcasting Ordinance to make all forms of pay-TV piracy, including both domestic pirated viewing of subscription TV programming and the unauthorized use of satellite delivered "overspill" programming¹, a criminal offence. The important goal is to send the clear message that theft of intellectual property, and the resultant undermining of legitimate business, will not be tolerated.

Hong Kong should not countenance theft, and neither should other legal jurisdictions. That is the message our industry would like to see broadcast by a decision to make all types of this behavior a criminal offence.

Cable and Satellite Broadcasting Association of Asia
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¹ The unauthorized distribution of satellite "overspill" programming within public venues (bars and clubs etc) is particularly prevalent in Hong Kong because it is not a criminal offense. In addition to the damage this practice does to the legitimate subscription TV industry, it represents unfair competition to the proprietors of bars that purchase a legitimate commercial license to display these pay-TV services. CASBAA has taken legal action under existing copyright laws, but these laws are not adequate to stamp out this practice.