

Bills Committee on Broadcasting Bill

Administration's Response to Outstanding Issues Raised by Members

Clauses	Subject	Members' Concerns/Requests	Administration's Responses
2(1)	Interpretation	To amend the Chinese version for "Telecommunications Authority" (局長) to avoid confusion with the Secretary for Information Technology and Broadcasting.	We will propose a CSA to change the Chinese version to "電訊局長"。
		To consider providing flexibility for lifting the maximum number of households to be served under "other licensable service".	We are considering the maximum number of households to be served under "other licensable service".
6(3)	Unauthorized decoders	To consider criminalising re-export of unauthorized decoders.	No objection since "re-export" will in effect be prohibited if "import" and "manufacture" are not allowed. We will propose a CSA to address this point.
6(6)		To provide the proposed wording for the warrant for an authorized officer to search domestic premises under the clause.	A sample warrant is attached at Annex A .

Clauses	Subject	Members' Concerns/Requests	Administration's Responses
6(7)		To provide examples where similar provision can be found in other legislation.	Examples are attached to SITB's letter to the Clerk to Bills Committee dated 5 May 2000.
8	To whom a licence may be granted	To consider spelling out the licensing criteria by subsidiary legislation.	The statutory criteria are already set out in the Bill, e.g. restrictions on unqualified voting controllers, disqualified persons, fit and proper persons, etc. To allow flexibility in the licensing framework to cater for the fast changing environment, we consider that other assessment criteria should more appropriately be set out in the guidance notes issued by the BA.
10(4)	Grant of licence	To consider specifying the mechanism or circumstances under which the terms of a licence may be revised by the BA or CE in C.	We will propose a CSA to the effect that a licensee may make representations to the BA in relation to any proposed variation and, in the case of a licence granted by the Chief Executive in Council (CE in C), the BA shall fairly reflect the representations to the CE in C.
10(5)		There is overlapping of sub-clauses (4) and (5).	We will propose a CSA to delete sub-clause (5).
11(3)	Extension or renewal of licence	To consider providing an appeal mechanism or arrangements to enable the licence applicant to make representations to the appeal channel (not only BA)	The arrangement proposed for clause 10(4) above will ensure that, in the case a licence granted by the CE in C, representations by licensees on a proposed

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		<p>against any proposed variation of licence conditions and other decisions including extension/renewal of licence, and providing public hearings for extension and renewal of licences under clause 10 and 11.</p>	<p>variation of the licence will be fairly reflected to the CE in C. In an appeal case, the CE in C shall, pursuant to Clause 34, afford the licensee concerned a reasonable opportunity to make representations. We will also propose a CSA to specify that the BA shall, in respect of a domestic free television programme service licence or a domestic pay television programme service licence, conduct a public hearing in the case where the licence is to be extended or renewed for a period of six years or more.</p>
<p>11(4) & (5)</p>		<p>To improve the drafting of clause 11 so that the licensee would be given sufficient notice in relation to the extension and renewal of licence. The guidelines should also specify the notice periods for different non-domestic or other licensable television programme services.</p>	<p>We will propose a CSA to specify that the CE in C shall “as soon as is reasonably practicable” decide whether or not to extend or renew licences. As for non-domestic and other licensable television programme services, we will propose a CSA to specify that the BA shall decide whether or not to extend or renew a licence “at a reasonable time before the expiry of a licence”.</p>
<p>12</p>	<p>Determination of whether television programme service</p>	<p>To consider specifying in clause 12 the basis of determination to provide the basis of determination to provide legal backing for BA's decisions.</p>	<p>We will propose a CSA to specify a list of factors that the BA shall take into account.</p>

Clauses	Subject	Members' Concerns/Requests	Administration's Responses
	Hong Kong		
12(4)(a)		Members are concerned that a licensee may not be able to make representations before the BA makes a new determination on whether a service primarily targets Hong Kong.	We will propose a CSA specifying that the BA, before making a new determination, shall afford the licensee concerned a reasonable opportunity to make representations.
13	Competition provisions	To provide a paper on the competition provisions and a comparison between existing and proposed provisions.	Detailed comparison provided in the paper entitled "Competition Provisions" issued on 9 May 2000.
13(1)	Prohibition on anti-competitive conduct	To provide response to issues/concerns relating to "co-dependent relationship", "distortion of playing field", and "prohibition of cross ownership" raised in the submissions of IFPI, HKCTV and the Consumer Council.	Detailed response set out in the paper entitled "Competition Provisions" issued on 9 May 2000. In brief, we consider it not appropriate to extend the jurisdiction of the BA to markets other than broadcasting market. In any case, any behaviour of a licensee that has an effect on competition in the television market will be subject to the competition provisions. We will propose a CSA to prohibit conduct which has the purpose or effect of <i>distorting</i> competition. We will also propose a CSA to put it beyond doubt that the conduct of the subsidiary of a licensee will be subject to the prohibition under

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			clause 13(1) and 14(1).
		To advise whether it constitutes an anti-competitive conduct for a television programme service licensee not to broadcast a programme after acquiring an exclusive right of the programme (while at the same time preventing other TV stations from broadcasting the programme).	Response set out in the paper entitled "Competition Provisions" issued on 9 May 2000.
13(4)(b)		To provide information on the prescribed grounds in overseas jurisdictions for exemption from the prohibition of anti-competitive conduct (such as clause 13(4)(b) in the Bill.	Examples of the exemption grounds in overseas jurisdictions are provided in the paper entitled "Competition Provisions" issued on 9 May 2000.
13(5)(b)	Competition guidelines on exemption regarding exploitation of artistic talent and ability	To provide the draft guidelines in respect of the proposed exemption under clause 13(5)(b).	To be addressed in a forthcoming paper.

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13(6)		To provide response to doubts expressed by members on the need for clause 13(6) as the list of exemptions in clause 13(5) should not be expanded.	We will propose a CSA to delete clause 13(6).
		To provide the draft guidelines on competition provisions to be issued by BA.	To be addressed in a forthcoming paper.
		To explain the interpretation of "conduct which has the purpose or effect of preventing or substantially restricting competition in a television service market".	Ditto.
		To specify in clause 13 that the Administration must issue guidelines on anti-competitive behaviour and to consult the industry on the guidelines.	We will propose a CSA specifying that the BA shall issue guidelines indicating the manner in which it proposes to perform functions conferred on it under clauses 13 and 14.
		To provide guidelines on the test of dominance and matters under clause 14(3).	
		To provide the draft guidelines and information on overseas experience.	To be addressed in a forthcoming paper.

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	Civil Remedies	<p>To provide for civil remedies for a licensee sustaining loss or damage.</p> <p>To establish an appeals mechanism similar to the proposed Telecommunications Appeals Board to deal with competition disputes and breaches of the Codes of Practice.</p>	<p>This was not a subject of public consultation during the 1998 Review of Television Policy. We will have to carefully examine the policy implications before taking a view on this issue.</p> <p>It should be noted that the Telecommunications Authority (TA) and the BA are not strictly comparable. The TA is a public officer who is also the statutory authority on telecommunications, whereas the BA is an independent statutory body comprising mainly non-official members drawn from a wide cross section of the community. We consider it appropriate that the CE in C remains as the appeal channel for BA's decisions.</p>
16(2)	Separate accounting	To make it consistent with T(A)B.	We will propose a CSA to replace "accounting practices" with "accounting principles".
17(2)	Service provision requirements	To consider tightening the conditions for exemption and specifying the grounds for exemption.	We will propose a CSA specifying that the BA shall issue guidelines indicating the conditions it proposes to consider under this sub-clause.

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18	Television programmes for schools	To improve the definition and scope of clause 18 to confine it to those educational programmes related to school subjects.	We will propose a CSA to address this.
20	Fit and proper persons	To specify that the conditions in subsection (3) are in addition to the basic requirements for a "fit and proper person". The licensee should also have the responsibility to inform BA any changes in the business records.	Our legal advice is that the administrative law requires a licensing authority to act, inter alia, reasonably when exercising its licensing and regulatory powers. As such, a licensing authority may take into account an applicant's history as a relevant consideration in reaching its decisions. We will propose a CSA to require the licensees to submit annual returns in specified forms.
21	Limitation on agreements by licensee	To change the heading and to delete subsection (1) if the intention was to protect the licensee from interference.	We will change the heading as suggested. We consider it necessary to retain sub-clause (1) as it prohibits a licensee from entering into such agreements.
22	General requirements as to television programme services	To provide a comparison on the Code of Practice as referred to in clause 22, highlighting changes to be proposed.	To be provided in a forthcoming paper.

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23(1)	Directions of Broadcasting Authority	<p>To require the BA to disclose to the public the directions given to a licensee under clause 23(1) except where commercial secrets are involved.</p> <p>To provide examples on the directions to be issued by BA under clause 23(1) and circumstances where such directions are disclosed/not disclosed.</p>	<p>We will propose a CSA to address this.</p> <p>There have been no precedent cases.</p>
24(1)	Investigation of licensee's business	<p>To specify the functions of the BA, the authority for such functions, and the range or nature of functions which will require invoking the powers of investigations under clause 24.</p> <p>To expressly exclude journalistic materials from clause 24 and provide information on the level of court for the issue of warrant to remove or seize journalistic materials.</p>	<p>We will propose a CSA to address this.</p> <p>We will propose a CSA to make it beyond doubt that the provisions of Part XII of the Interpretation and General Clauses Ordinance (Cap. 1) apply to this clause. Extracts from Cap. 1 is at <u>Annex B</u>.</p>
26(3)	Confidential matter to be safeguarded	To amend the clause so that BA will also consider representations on the proposed disclosure of information before making a final decision.	We will propose a CSA to address this.

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27	Licensee to pay financial penalty	<p>BA should hold public hearings on representations of licensees regarding a financial penalty under clause 27 except where the licensee objects to a hearing.</p> <p>To consider applying different penalties under clause 27 to breaches of competition provisions and programme content requirements so that the former will be subject to a penalty pegged with the revenue or economic gains in relation to a particular programme.</p> <p>To provide examples where the performance bond has been called (and the amounts called) due to contravention of a licence condition or other directions/requirements.</p> <p>To impose the same penalty (such as criminal liability) on licensee and non-licensee for breaches under clauses 24, 25 and 27.</p>	<p>We will discuss with the BA regarding the suggestion to allow a licensee to make representations in public.</p> <p>This was not a subject of consultation during the 1998 Review of Television Policy. We are carefully examining the policy implications before taking a view on this issue.</p> <p>There is no precedent of calling a performance bond. A sample performance bond is at Annex C.</p> <p>Our legal advice is that pursuant to section 23 of the Summary Offences Ordinance (Cap.228), “any person who resists or obstruct a public officer or other person lawfully engages, authorised or employed in the performance of any public duty or any person lawfully assisting such public officer or person therein shall be liable to a fine of \$1,000 and</p>

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			to imprisonment for 6 months". If a person resists or obstructs the enforcement of a magistrate warrant issued under section 24(3)(b) of the Broadcasting Bill, he may be prosecuted for the above-mentioned summary offence.
29(1)	Licensee to include correction or apology in television programme service	To require an apology to be made within specified time and to allow the licensee to make representations at open hearings.	We will propose a CSA to make it clear that the BA may specify the time within which such an apology is to be made by the licensee concerned. We will discuss with the BA regarding the suggestion of allowing the licensee to make representations in public.
30(3)		To consider holding public hearings for suspension of licence.	We will propose a CSA to address this.
		To consider including shortening of the licence period as a penalty for breaches of licence conditions.	We consider that the existing sanctions such as financial penalty, suspension, revocation, etc. should provide sufficient deterrent effect.
		To specify the circumstances or nature of contravention for which suspension or revocation of licence may be considered by the BA under clauses	We will propose a CSA to address this

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		licence may be considered by the BA under clauses 30 and 31.	
31(4)(a)	Revocation of licence	To improve the drafting to specify the authorities to revoke a licence under different categories.	We will propose a CSA to address this.
		To hold public hearings also for circumstances under Clause 31(4)(a) and (b).	The BA will be required to conduct an inquiry before deciding or recommending, as the case may require, a revocation of licence. Given that failure by a licensee to pay a financial penalty is purely a matter of fact rather than judgement, we consider it appropriate that the BA should have the discretion to decide whether it should, as part of the inquiry, conduct a public hearing having regard to the circumstances of individual cases.
		To clarify whether there is inconsistency between section 21 of the Broadcasting Authority Ordinance (Cap. 391) and clause 31 of the Bill.	There is no inconsistency as section 21 of the Broadcasting Authority Ordinance applies to sound broadcasting licensees.
35(1)	Court may prohibit certain television programmes, etc.	To provide information on the objectives and yardsticks for invoking clause 35(1) and case laws in this respect.	To be addressed by a forthcoming paper.

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35(3)		To improve the drafting to the effect that the court must be satisfied that it is a matter of urgency before issuing an interim order to prohibit any TV programme.	We will propose a CSA to this effect.
41(2)	Regulations	To advise whether the regulation to be made by CE in C pursuant to subsection (1)(f) will be subject to the positive vetting procedure of the LegCo.	We will propose a CSA to the effect that the grounds for exemption from Clause 13 shall be prescribed by regulation, which will be subject to the approval of the LegCo.
42(1)	Amendment of Schedules 1 to 8, etc.	Proposed exemptions of certain types of services to be subject to the positive vetting procedures of the LegCo.	We will propose a CSA to the effect that amendment to Schedule 3 shall be subject to approval of the LegCo.
Section 13 of Schedule 4	Licence fees	To provide information on the criteria for calculating the licence fees for respective types of television programme services and explain why such licence fees are not included in subsidiary legislation.	To be addressed in a forthcoming paper.
Others		To clarify whether licensees of free television programme service will be required to broadcast art and cultural programmes within specified time.	Under their respective licence conditions, ATV and TVB are already required to broadcast on the Chinese language service between 8:00 a.m. and midnight a

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		To review the composition of the BA.	<p data-bbox="1357 352 2092 619">minimum of 30 minutes of programming each week intended and suitable for promoting the development and appreciation of the literary, performing and visual arts and other topics or activities of cultural value. We will review the present arrangements in the context of the renewal of their licences.</p> <p data-bbox="1357 687 2092 1007">The BA appointment exercise follows the government policy that membership of boards and committees should have some turnover from time to time so that fresh ideas and the necessary expertise can be injected. Appointment has all along been, and will continue to be, based on the knowledge and expertise of individuals.</p>

23 May 2000

Information Technology and Broadcasting Bureau

Telecommunication Ordinance
Cap. 106 Section 35(1)

Information No. P43
Writ No. KT 272/1999

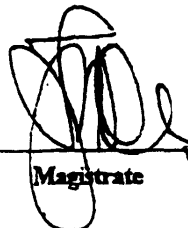
SEARCH WARRANT
IN THE MAGISTRATE'S COURT AT KWUN TONG
HONG KONG

To each and all the public officers of Hong Kong.

INFORMATION has this day been laid before the undersigned, a magistrate of Hong Kong, by FOK Kam-tong, Inspector of the Office of the Telecommunications Authority that there is reasonable cause to suspect that an offence contrary to Section 8(1) of the Telecommunication Ordinance, Cap. 106 namely Possession of Radio Apparatus without an appropriate licence ~~has been committed*~~ or is reasonably suspected to have been committed* or ~~is about to be committed*~~ or is intended to be committed* by the occupant and that there is reasonable cause to suspect that certain articles, namely telecommunication apparatus and documents which are likely to be of value to the investigation of the offence, are under the control of the occupant in a place known as _____ situated at _____ ~~_____~~ and an oath or declaration* has now been made before me substantiating the matter of such information.

You are herewith empowered to enter and if necessary to break into or forcibly enter the said place situated at as stated above and to search for and take possession of such articles as aforesaid and to detain, during such period reasonably required to permit such a search to be carried out, any person who may appear to have such articles in his possession or under his control and who, if not so detained, might prejudice the purpose of the search.

Dated this 20th day of July, 1999.



Magistrate W.C. 11

(* delete as appropriate)

Telecommunication Ordinance
Cap.106 Section 35(1)

Information No.....245.....
Writ No.....K.T. 721/1999.....

INFORMATION FOR SEARCH WARRANT
IN THE MAGISTRATE'S COURT AT KWUN TONG
HONG KONG

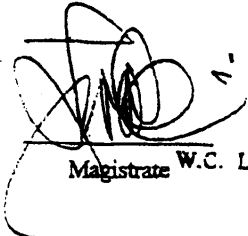
THE INFORMATION OF FOK Kam-tong, Inspector of the Office of the Telecommunications Authority taken this day before me the undersigned, a magistrate of Hong Kong, who states:-

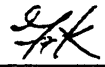
I am FOK Kam-tong, Inspector of the Office of the Telecommunications Authority. I have reasonable cause to suspect that an offence contrary to Section 8(1) of the Telecommunication Ordinance, Cap.106 namely Possession of radio apparatus without an appropriate licence ~~has been committed*~~ or is reasonably suspected to have been committed* ~~or is about to be committed*~~ or is intended to be committed* by the occupant. I have reasonable cause to suspect that certain articles, namely telecommunication apparatus and documents which are likely to be value to the investigation of the offence are under the control of the occupant in a place known as _____ situated at _____

I therefore apply for a warrant to enter and search the said place and take possession of any such articles and to detain, during such period as is reasonably required to permit such a search to be carried out, any person who may appear to have such articles in his possession or under his control and who if not detained, might prejudice the purpose of the search, on the following grounds:-

Unauthorized radio transmissions were detected by the instruments of our office from the said place situated at as stated above during the investigation.

TAKEN and ~~sworn~~ / declared* before me,
this 20th day of July, 1999.


Magistrate W.C. LI.


(FOK Kam-tong)
Informant

(* delete as appropriate)

第 XII 部

新聞材料的搜查及檢取

(由 1995 年第 88 號第 2 條增補)

81. 釋義

在本部中，除文意另有所指外——
 “處所”(premises)包括任何地方，尤其包括——
 (a) 任何車輛、船隻、飛機或氣墊船；
 (b) 任何帳幕或可移動的構築物。

(由 1995 年第 88 號第 2 條增補)

82. “新聞材料”的涵義

(1) 在符合第(2)款的規定下，在本部中，“新聞材料”(journalistic material)指為新聞傳播的目的而取得或製備的任何材料。

(2) 就本部而言，如材料由某人管有，而該人是為新聞傳播的目的而取得或製備該材料的，該材料方屬新聞材料。

(3) 凡某人自另一人處收取材料，而該另一人的意願為該收取材料的人須為新聞傳播的目的而使用該材料，則該收取材料的人須被視為是為該目的而取得該材料。

(由 1995 年第 88 號第 2 條增補)

83. 進入處所及搜查或檢取的權力

凡任何條例的條文賦權予任何人進入任何處所及搜查該處所或任何在該處所發現的人或檢取任何材料(不論是一般的或特定的種類，亦不論是否在該條文內使用“材料”一詞)，或授權發出賦權予任何人作出以上作為的手令或令狀，則如無明文的相反規定，該條文不得解釋為賦權予任何人或授權發出手令或令狀以賦權予任何人為搜尋或檢取被知為或被懷疑是新聞材料的材料的目的而進入處所。

(由 1995 年第 88 號第 2 條增補)

84. 就新聞材料申請交出令

(1) 任何獲第 83 條所適用的條文賦權或可能獲該條文賦權進入任何處所及搜查該處所或任何在該處所發現的人或檢取任何材料的人，均可就被知為或被懷疑是新聞

PART XII

SEARCH AND SEIZURE OF JOURNALISTIC MATERIAL

(Added 88 of 1995 s. 2)

81. Interpretation

In this Part, unless the context otherwise requires—
 “premises” (處所) includes any place and in particular, includes—
 (a) any vehicle, vessel, aircraft or hovercraft;
 (b) any tent or movable structure.

(Added 88 of 1995 s. 2)

82. Meaning of “journalistic material”

(1) Subject to subsection (2), in this Part “journalistic material” (新聞材料) means any material acquired or created for the purposes of journalism.

(2) Material is only journalistic material for the purposes of this Part if it is in the possession of a person who acquired or created it for the purposes of journalism.

(3) A person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

(Added 88 of 1995 s. 2)

83. Power to enter and search or seize

A provision in any Ordinance which confers on, or authorizes the issue of a warrant conferring on, any person the power to enter any premises and to search the premises or any person found on the premises or to seize any material (whether of a general or particular kind and whether or not the word “material” is used in that provision) shall not, in the absence of an express provision to the contrary, be construed as conferring, or authorizing the issue of a warrant conferring, a power to enter premises where such entry is for the purpose of searching for or seizing material which is known or suspected to be journalistic material.

(Added 88 of 1995 s. 2)

84. Application for production order in respect of journalistic material

(1) A person on whom there is or may be conferred under a provision in any Ordinance, being a provision to which section 83 applies, the power to

材料的材料向原訟法庭法官或區域法院法官申請第(2)款下的命令。(由1998年第26號第33條修訂)

(2) 在有申請根據第(1)款作出後，如法官信納第(3)款內的條件已獲符合，即可命令看似管有申請書所指明的新聞材料的人，在由命令的日期起計的7日期間完結之前或在命令所指明的較長期間完結之前——(由1998年第26號第37條修訂)

- (a) 將該項新聞材料交予申請人帶走；或
 - (b) 讓申請人取用該項新聞材料。
- (3) 為施行第(2)款而須予符合的條件如下——
- (a) 有合理理由相信——
 - (i) 有人已犯可逮捕的罪行；
 - (ii) 申請書所指明的處所內有構成或包括被知為或被懷疑是新聞材料的材料；
 - (iii) 有關材料相當可能——
 - (A) 對就該可逮捕的罪行而進行的調查有重大價值；或
 - (B) 在就該可逮捕的罪行而進行的法律程序中為有關證據；
 - (b) 若非有第83條的規定，申請人即會或本可根據第(1)款所述的條文獲授權進入申請書所指明的處所及搜查該處所或在該處所發現的人或檢取申請書所指明的材料；
 - (c) (i) 已嘗試用其他方法獲取該材料，但已失敗；或
 - (ii) 因相當可能會不成功或相當可能會嚴重損害調查而並未嘗試用其他方法獲取該材料；及
 - (d) 有合理理由相信在顧及以下因素後，作出該命令是符合公眾利益的——
 - (i) 該命令相當可能會為該項調查帶來的利益；及
 - (ii) 管有該材料的人是在甚麼情況下持有該材料。
- (4) 第(2)款下的命令的申請須屬各方之間的申請。

enter any premises and to search the premises or any person found on the premises or to seize any material, may apply to a judge of the Court of First Instance or District Court for an order under subsection (2) in relation to material which is known or suspected to be journalistic material. (Amended 26 of 1998 s. 33)

(2) If on an application under subsection (1) a judge is satisfied that the conditions in subsection (3) are fulfilled he may make an order that the person who appears to be in possession of journalistic material specified in the application shall—

- (a) produce it to the applicant to take away; or
- (b) give the applicant access to it,

not later than the end of the period of 7 days from the date of the order or the end of such longer period as the order may specify.

(3) The conditions to be fulfilled for the purposes of subsection (2) are that—

- (a) there are reasonable grounds for believing—
 - (i) that an arrestable offence has been committed;
 - (ii) that there is material which consists of or includes material known or suspected to be journalistic material on premises specified in the application;
 - (iii) that the material is likely to be—
 - (A) of substantial value to the investigation of the arrestable offence; or
 - (B) relevant evidence in proceedings for the arrestable offence;
- (b) but for section 83 the applicant would be or could have been authorized under the provision mentioned in subsection (1) to enter onto the premises specified in the application and to search the premises or a person found on the premises or to seize the material specified in the application;
- (c) other methods of obtaining the material—
 - (i) have been tried and failed; or
 - (ii) have not been tried because they were unlikely to succeed or would be likely to seriously prejudice the investigation; and
- (d) there are reasonable grounds for believing that it is in the public interest that an order should be granted, having regard to—
 - (i) the benefit likely to accrue to the investigation; and
 - (ii) the circumstances under which a person in possession of the material holds it.

(4) An application for an order under subsection (2) shall be made inter partes.

(5) 任何人無合理理由而不遵從根據第(2)款所作出的命令，即屬犯罪，可處第6級罰款及監禁1年。

(由 1995 年第 88 號第 2 條增補)

85. 申請檢取新聞材料的手令

(1) 任何獲第 83 條所適用的條文賦權或可能獲該條文賦權進入任何處所及搜查該處所或任何在該處所發現的人或檢取任何材料的人，均可向原訟法庭法官或區域法院法官申請發出第(3)款下的手令，以授權他為搜尋或檢取被知為或被懷疑是新聞材料的材料的目的而進入該處所。(由 1998 年第 26 號第 34 條修訂)

(2) 本條下的手令的申請，須經附表 7 指明為紀律部隊首長級人員批准方可作出。

(3) 在有申請根據第(1)款作出後，如法官——(由 1998 年第 26 號第 37 條修訂)

(a) 信納——

(i) 第 84(3)(a)、(c) 及 (d)(i) 條所指明的條件已獲符合；及

(ii) 第(5)款所列的進一步條件的其中一項亦已獲符合；或

(b) 信納第 84 條下的與該材料有關的命令並沒有獲得遵從，

即在符合第(4)款的規定下發出手令，授權申請人進入該處所及搜查該處所及在該處所發現的人及檢取任何材料。

(4) 根據第(3)款發出的手令不得就任何進入、搜查或檢取作出授權，但若非有第 83 條的規定即會或本可根據第(1)款所述的條文獲授權的進入、搜查或檢取則除外。

(5) 第(3)(a)(ii)款所述的進一步條件如下——

(a) 與任何有權批准進入有關申請所涉及的處所的人溝通並不切實可行；

(b) 與有權批准進入該處所的人溝通雖然可能切實可行，但與任何有權批准取用該有關材料的人溝通並不切實可行；

(5) Any person who without reasonable cause fails to comply with an order made under subsection (2) commits an offence and is liable to a fine at level 6 and to imprisonment for 1 year.

(Added 88 of 1995 s. 2)

85. Application for warrant to seize journalistic material

(1) A person on whom there is or may be conferred under a provision in any Ordinance, being a provision to which section 83 applies, the power to enter any premises and to search the premises or any person found on the premises or to seize any material, may apply to a judge of the Court of First Instance or District Court for the issue of a warrant under subsection (3) authorizing him to enter those premises for the purpose of searching for or seizing material which is known or suspected to be journalistic material. (Amended 26 of 1998 s. 34)

(2) An application for a warrant under this section shall not be made unless it has been approved by a person specified in Schedule 7 to be a directorate disciplined officer.

(3) If on an application under subsection (1) a judge —

(a) is satisfied —

(i) that the conditions specified in section 84(3)(a), (c) and (d)(i) are fulfilled; and

(ii) that one of the further conditions set out in subsection (5) is also fulfilled; or

(b) is satisfied that an order under section 84 relating to the material has not been complied with,

he may, subject to subsection (4), issue a warrant authorizing the applicant to enter onto the premises and to search the premises and any person found on the premises and to seize any material.

(4) A warrant issued under subsection (3) shall not authorize any entry, search or seizure other than such entry, search or seizure as, but for section 83, would be or could have been authorized under the provision mentioned in subsection (1).

(5) The further conditions mentioned in subsection (3)(a)(ii) are —

(a) that it is not practicable to communicate with any person entitled to grant entry to the premises to which the application relates;

(b) that while it might be practicable to communicate with a person entitled to grant entry to the premises, it is not practicable to communicate with any person entitled to grant access to the material;

(c) 送達申請第 84(2) 條下的命令的通知可能會嚴重損害有關調查。

(6) 除第 (7) 款另有規定外，根據本條發出的任何手令，須附有一項條款，內容為依據手令檢取新聞材料的人須在檢取材料後將之密封及持有該密封材料，直至根據第 87 條另有授權或規定為止。

(7) 凡法官信納不允許申請人立即取用該材料可能會嚴重損害有關調查，第 (6) 款即不適用。 (由 1998 年第 26 號第 37 條修訂)

(8) 任何獲根據本條發出的手令賦權的人可---

(a) 使用必需的武力以進入手令所指明的處所；

(b) 在該處所檢取所發現而若非有第 83 條的規定他即會或本可根據第 (1) 款所述的條文獲授權接管的材料 (包括新聞材料)；

(c) 將任何在該處所發現並可能管有或控制該材料的人扣留一段合理時間，而該人須屬若非被如此扣留即可能損害搜尋的目的者。

(由 1995 年第 88 號第 2 條增補)

(c) that service of notice of an application for an order under section 84(2) may seriously prejudice the investigation.

(6) Subject to subsection (7), it shall be a term of any warrant issued under this section that a person who seizes journalistic material pursuant to the warrant shall seal the material upon seizure and shall hold the sealed material until otherwise authorized or required under section 87.

(7) Subsection (6) shall not apply where the judge is satisfied that there may be serious prejudice to the investigation if the applicant is not permitted to have immediate access to the material.

(8) Any person empowered by a warrant issued under this section may---

(a) use such force as may be necessary to enter the premises specified in the warrant;

(b) on the premises, seize such material, including journalistic material, as may be found and as but for section 83 he would be or could have been authorized under the provision mentioned in subsection (1) to take possession of;

(c) detain for a reasonable period any person found on the premises who may have such material in his possession or under his control and who if not so detained may prejudice the purpose of the search.

(Added 88 of 1995 s. 2)

Extract from Programme Service Licence

SCHEDULE I

(Clause 17)

FORM OF PERFORMANCE BOND

THIS SCHEDULE TOGETHER WITH ITS ANNEXE SHALL FORM AND BE READ AS AN INTEGRAL PART OF THE LICENCE GRANTED TO THE LICENSEE TO ESTABLISH AND PROVIDE A PROGRAMME SERVICE IN HONG KONG.

BY THIS BOND dated _____ 1998.

We Hong Kong Telecom VOD Limited whose registered office is at 39/F Hong Kong Telecom Tower, Taikoo Tower, Quarry Bay, Hong Kong (“the Licensee”) and [*details to be provided by the Licensee] whose registered office/principal place of business is at [*address] (“the Surety”) are irrevocably and unconditionally bound to Government (together with its successors and assigns, “Government”) in the sums (“Bonded Sums Payable”) and with the Milestones set out in the Annexe hereto (“the Annexe”) for payment of which sums the Licensee and the Surety hereby bind themselves their successors and assigns jointly and severally in accordance with the provisions of this Bond.

WHEREAS

Pursuant to the terms of programme service licence granted to the Licensee for the period of 12 years beginning on February 1998 and as amended from time to time (“the licence”) the Licensee agreed to obtain a surety to be bound unto Government for the due performance of conditions of this licence by the Licensee.

NOW THE TERMS AND CONDITIONS of this Bond are:-

1. Where applicable, words and expressions used in this Bond shall have the meaning assigned to them in this licence.
2. In the event of each and every breach, non performance or default by the Licensee in respect of the Milestones and/or Deadlines for Compliance with the Milestones as set out in the Annexe, the Surety shall upon demand made in writing by the Secretary for Broadcasting, Culture and Sport on behalf of Government and without proof or conditions satisfy and discharge the Bonded Sums Payable in respect thereof.

3. The liability of the Surety under this Bond shall not be affected or discharged in any way by and the Surety hereby waives notice of:-
 - (a) any suspension, amendment or variation of this licence (including without limitation extensions of time for compliance or performance) or any forbearance or waiver by Government, Chief Executive in Council, the Chief Executive, Broadcasting Authority, Telecommunications Authority or, without limitation, any other person, in respect of the Licensee's obligations under this licence;
 - (b) the revocation of this licence;
 - (c) any forbearance or waiver of any right, power or remedy the Government, the Chief Executive in Council, the Chief Executive, the Broadcasting Authority, the Telecommunications Authority or, without limitation, any other person, may have against the Licensee;
 - (d) any act or omission of the Licensee pursuant to any other arrangement with the persons referred to in (c) above or with the Surety.
4. The liability of the Surety under this Bond shall cease on whichever of the following events first occurs:-
 - (a) payment by the Surety in full of all Bonded Sums Payable to the Secretary for Broadcasting, Culture and Sport on behalf of Government; or
 - (b) issue by the Secretary for Broadcasting, Culture and Sport on behalf of Government of all certificates of completion in respect of all of the Milestones, other than those in respect of which all Bonded Sums Payable have been paid to Government.
- 5.1 Subject to 5.2, this Bond shall remain valid for one year from the date herein and shall be renewed annually with effect from its anniversary date for an additional year and thereafter on each anniversary date from year to year until the liability of the Surety under this Bond shall cease pursuant to 4 above.
- 5.2 If not less than 45 days prior to any anniversary date referred to in 5.1, Government receives notice in writing from the Surety that it elects not to renew this Bond, this Bond shall pursuant to this provision cease on that anniversary date but not otherwise.

5.3 In the event that the Surety elects not to renew this Bond on an anniversary date pursuant to 5.2 (but not otherwise), and the Licensee fails to provide a replacement Bond in the form appearing in Schedule I to this licence by not later than 14 days prior to that anniversary date, Government shall be entitled (without limitation to any rights it may have under this licence or any law or Ordinance) to call this Bond up to a maximum of the Bonded Sums Payable in respect of Milestones which have not been performed by submitting its claim in writing at the Surety's counters prior to that anniversary date and the Surety shall forthwith pay the amount thereof to Government.

5.4 Until the liability of the Surety under this Bond shall cease pursuant to 4 above, the Milestones and/or Deadlines for Compliance with the Milestones have not been performed irrespective of whether there has been:

(a) any default by the Licensee in respect of Deadlines for Compliance set out in the Annexe;

(b) any breach or non-performance by the Licensee in respect of the Milestones set out in the Annexe.

5.5 In the event that Government makes a call on this Bond pursuant to 5.3 and subsequently the Secretary for Broadcasting, Culture and Sport on behalf of Government issues a certificate of completion in respect of one or more Milestones which had not been performed for the purpose of 5.3, Government shall, as soon as practicable, pay to the Licensee without interest the amount called under this Bond pursuant to 5.3 less the maximum of all Bonded Sums Payable in respect of Milestones which have not been performed.

6. Government shall be entitled to assign the benefit of this Bond at any time without the consent of the Surety or the Licensee being required.

7. All documents arising out of or in connection with this Bond shall be served:

(a) upon Government at : Broadcasting, Culture and Sport Bureau,
41st Floor, Revenue Tower,
5 Gloucester Road,
Wanchai,
Hong Kong
and marked for the attention of
"The Secretary for Broadcasting, Culture and Sport"

(b) upon the Surety at : *[Note 1]*

- 8. Government and the Surety may change their respective nominated addresses for service of documents to another address in Hong Kong but only by prior written notice to each other. All demands and notices must be in writing.

- 9. This Bond shall be governed by and construed according to the laws for the time being in force in Hong Kong and the Surety agrees to submit to the non-exclusive jurisdiction of the courts of Hong Kong.

IN WITNESS whereof this Bond has been executed as a deed on the date first above written.

THE COMMON SEAL OF]
 ()]
 was affixed hereto]
 in the presence of]

 Director

 Director/Secretary

OR

SIGNED, SEALED AND DELIVERED[*Note 2*]]
 for and on behalf of and as lawful attorney of]
 ()]
 under power of attorney dated ()]
 in the presence of]

 Name:

Occupation:

THE COMMON SEAL OF]
() Limited]
("the Licensee")[Note 3] was affixed hereto]
in the presence of]

Director

Director/Secretary

Notes:[for preparation of but not inclusion in the engrossment of this performance bond]

- 1. The address for service shall be in Hong Kong.**
- 2. For use where the Surety, whether a firm or limited company, executes through an attorney.**
- 3. The Licensee must execute the performance bond as well as the Surety.**

THE ANNEXE TO THE PERFORMANCE BOND

<u>Milestones</u>	<u>Deadlines for Compliance</u>	<u>Bonded Sums Payable (HK\$)</u>
1. The Licensee shall establish and provide in response to any specific request, and to the satisfaction of the Broadcasting Authority, a programme service which is available to the general public, which shall, for the purpose of this obligation, mean the residential premises in not fewer than 1000 residential buildings including those listed in Schedule II.	Unless the Broadcasting Authority otherwise approves, within 6 months of the beginning of the period of validity of this licence.	70 millions
2. The Licensee shall perform the obligations referred to in Clause 19(a) of this licence.	Throughout the period of not fewer than 28 consecutive days referred to in Clause 19(a).	70 millions
3. The Licensee shall perform the obligations referred to in Clause 19(b) of this licence.	Ditto	70 millions

Note 1 : For the purposes of paragraph 2 of this Bond (only) the maximum number of instances of breach, non performance or default (“default”) constituted by a failure on the part of the Licensee to meet the various obligations referred to above is:

Milestone 1 and the Deadline in relation thereto: one default

Milestone 2 and the Deadline in relation thereto: one default

Milestone 3 and the Deadline in relation thereto: two defaults
(being one (maximum) in respect of the minimum percentage of subscribers and one (maximum) in respect of the maximum number of minutes referred to therein).