

立法會
Legislative Council

LC Paper No. CB(1)854/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/11/02

**Bills Committee on
Broadcasting (Amendment) Bill 2003**

**Minutes of meeting
held on Tuesday, 6 January 2004, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon SIN Chung-kai (Chairman)
Hon NG Leung-sing, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Kwok-keung, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok, JP

Members absent : Dr Hon David CHU Yu-lin, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Howard YOUNG, SBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Albert CHAN Wai-yip

Public officers attending : Mrs Marion LAI, JP
Deputy Secretary for Commerce, Industry and
Technology (Communications and Technology)

Mr Eddie CHEUNG
Principal Assistant Secretary for Commerce, Industry
and Technology (Communications and Technology)

Mr Danny LAU
Assistant Director (Operations)
Office of the Telecommunications Authority

Mr Allen LAI
Senior Government Counsel

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (1)3

Staff in attendance : Miss Connie FUNG
Assistant Legal Adviser 3

Ms Debbie YAU
Senior Council Secretary (1)1

Action

I Confirmation of minutes

LC Paper No. CB(1)564/03-04 - Minutes of fifth meeting on 26
November 2003

The minutes of fifth meeting on 26 November 2003 were confirmed.

II Meeting with the Administration

LC Paper No. CB(3)602/02-03 - The Bill

LC Paper No. CB(1)2070/02-03(01) - Marked-up copy of the Bill

LC Paper No. CB(1)650/03-04(01) - Administration's response to the
Chairman's request raised at the
meeting on 26 November 2003

LC Paper No. LS31/03-04 - Information paper on "Options on
criminal sanction against domestic
pirated viewing of pay television
programme services" prepared by
the legal adviser of the Secretariat

LC Paper No. CB(1)716/03-04(01) - Letter dated 5 January 2004 from
(tabled at the meeting and Hong Kong Cable Television
subsequently circulated to members Limited in response to the
on 7 January 2004) Administration's comments on the
proposed measures against the
purchase and possession of
unauthorized decoders for domestic
use (in English only)

2. The Bills Committee deliberated (Index of proceedings attached at Appendix).

3. On one hand, members noted the position of the Administration against the introduction of criminal sanctions against domestic end-users at this stage. On the other hand, they noted the urge of Hong Kong Cable Television Limited (HKCTV) and some other members of the television-related industry that criminal sanctions should be provided. Considering that both sides held divergent views, the Chairman suggested and members agreed that meanwhile, the Bills Committee should proceed to clause-by-clause examination, while individual members could consider proposing Committee Stage Amendments (CSAs) to the Bill if necessary.

Issues which required follow-up actions/consideration by the Administration

Clause 2 - proposed definition of "unauthorized decoder"

4. Members were concerned that in the light of new technologies and changing sales practices, whether the scope of the proposed definition of "unauthorized decoder" would also include scenarios such as:

- (i) decoders lawfully obtained for receiving pay TV programme services which were provided to the user as a premium gift or as part of a bundled service the fees for which were integrated and no separate subscription was required to be paid; and
- (ii) other types of unauthorized devices or other means of receiving encrypted signals of pay TV programmes for which the subscription fees were waived.

Admin 5. The Administration noted members' concern and undertook to examine/clarify the scope of the proposed definition of "unauthorized decoder".

Clause 3 - proposed sections 6(1)(a) and 6(1)(b)

Admin 6. The Administration was requested to note/consider the comments/concerns of Assistant Legal Adviser 3 (ALA3) on proposed sections 6(1)(a) and 6(1)(b):

- (a) whether the term "business" as used in proposed sections 6(1)(a) and 6(1)(b) should receive a liberal or a restrictive interpretation and the possibility that the term "business" as used in proposed section 6(1)(b) could be interpreted in its general sense to mean "activities", which might be wider than the Administration's policy intent to impose criminal sanction on businesses which traded or made use of unauthorized decoders for profit by avoiding payment of subscription;
- (b) the scope of the reference to "for the purpose of, or in connection with, trade or business" under proposed section 6(1)(b) was wider than "in the course of trade or business" under proposed section 6(1)(a) and a

similar reference in the Copyright Ordinance was the subject of amendments in the Copyright (Amendment) Bill 2003 now under scrutiny by LegCo; and

- (c) the scope of the offence of "possession" of an unauthorized decoder under proposed section 6(1)(b) appeared to be wider than the Administration's policy intent to impose criminal sanction against the supply and use of unauthorized decoders for commercial purposes.

7. The Chairman and Mrs Selina CHOW had no strong view against the possible wide scope of the offence under proposed section 6(1)(b).

Clerk

8. To examine how far digitization could contain the problem of pirated viewing, members agreed that the Bills Committee should invite the views of Hong Kong Cable Television Limited (HKCTV) and other pay TV licensees on the extent of the problem, the effectiveness of digitization in containing the problem and measures that the Government could/should take to facilitate the digitization process.

(post-meeting note: The Secretariat has written to all pay TV licensees on 7 January 2004 inviting them to give views on the above issues).

ALA3

9. The Chairman requested ALA3 to scrutinize the Chinese version of the Bill and draw to the attention of the Bills Committee any drafting issues where necessary.

Date of next meeting

10. Members agreed that the seventh meeting of the Bills Committee would be held on 2 February 2004 at 2:30 pm.

Members

11. The Chairman advised that individual members who would like to propose CSAs to the Bill should provide them early so that the Bills Committee could have ample time to consider them. He also asked the Administration to forward its proposed CSAs, if any, for members' consideration at the next meeting.

Admin

III Any other business

12. There being no other business, the meeting ended at 6:00 pm.

**Proceedings of the meeting of the
Bills Committee on Broadcasting (Amendment) Bill 2003
on Tuesday, 6 January 2004, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 - 000344	Chairman	Introductory remarks and confirmation of minutes of meeting on 26 November 2003.	
000345 - 001104	The Administration	The Administration introduced its response to Chairman's request raised at the meeting on 26 November 2003 (CB(1)650/03-04(01)).	
001105 - 001544	Mr MA Fung-kwok The Administration	Members noted that: (a) criminal sanctions against domestic/private unauthorized reception of pay television (TV) programme services had been introduced in UK and Canada when analogue broadcasting was still prevalent; and (b) enforcement action and recent legislative amendments in Canada mainly focused on commercial dealings.	
001545 001700	Mr CHAN Kwok-keung The Administration	Examples of possible breach of certain provisions of the Copyright Ordinance by lawful subscribers of pay TV programme services who had disseminated copies of the TV programmes to other people without authorization.	
001701 - 002559	Mrs Selina CHOW Chairman The Administration	(a) Whether expediting digitization of services could effectively contain pirated viewing. (b) The practical experience of Hong Kong Cable Television Limited (HKCTV) in digitization. (c) Views of other pay TV licensees should also be sought.	The Clerk to follow-up as per paragraph 8 of the minutes.
002600 - 003100	Assistant Legal Adviser 3 (ALA3)	ALA3 introduced the information paper on options of criminal sanction against domestic pirated viewing of pay television programme services (LS31/03-04).	
003101 - 003332	The Administration	(a) The fundamental question of whether domestic/private pirated viewing should be made a criminal offence. (b) The Administration's stance against the introduction of 'fixed penalty' for the possession of unauthorized decoders if this	

Time Marker	Speaker	Subject(s)	Action Required
		<p>was made a criminal offence.</p> <p>(c) The severity or public harm caused by unauthorized decoders to justify forfeiture.</p> <p>(d) Whether domestic pirated viewing <i>per se</i> or the mere possession of unauthorized decoders was the act to be proscribed.</p>	
003333 - 003920	Mrs Selina CHOW ALA3 Chairman	Difficulty in proving that a person possessing an unauthorized decoder had the intention of using it to view pay television programme services to avoid payment of subscription and hence, the need to consider providing for presumption and defences in law if mere possession by domestic end-users was to be made a criminal offence.	
003921 - 004918	Mr MA Fung-kwok The Administration	<p>(a) Mr MA Fung-kwok was in support of criminalizing domestic pirated viewing to maintain Hong Kong's position as an important broadcasting hub and to foster the development of creative industries.</p> <p>(b) The Administration's position that it would consider criminalizing domestic pirated viewing if piracy was still rampant after HKCTV had completed its digitization project and that its approach was in line with the international practice.</p> <p>(c) Reference to i-Cable Limited's Interim Report stating, inter alia, the effectiveness of digitization.</p> <p>(d) Availability of proposed civil remedies to pay TV licensees.</p> <p>(e) Operators' responsibility to improve their encryption technology from time to time.</p>	
004919 - 005345	Chairman Mrs Selina CHOW Clerk The Administration	<p>(a) Members noted the previous submissions of HKCTV and NagraVision on the inadequacy of technology alone to deal with pirated viewing of pay TV programmes (CB(1)181/03-04(01) and (02)).</p> <p>(b) Further measures, if any, which the Government could/should take to facilitate and assist the operator(s) concerned in the digitization process.</p>	The Clerk to follow-up as per paragraph 8 of the minutes.
005346 - 005419	Chairman	(a) Members agreed to proceed to clause-by-clause examination of the Bill. The Chairman proposed to go through the English version of the Bill during clause-by-	ALA3 to note as per paragraph 9 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		clause examination and requested ALA3 to scrutinize the Chinese version of the Bill. (b) <u>Clause 1</u> Members raised no query.	
005420 - 010116	Chairman The Administration	<u>Clause 2 - proposed definition of "unauthorized decoder"</u> The scope of decoders to be covered under the proposed definition of "unauthorized decoder".	The Administration to note and follow up as per paragraphs 4 & 5 of the minutes.
010117 - 011816	Chairman ALA3 Mrs Selina CHOW	<u>Clause 3 - proposed sections 6(1)(a) and 6(1)(b)</u> (a) Applicability of proposed section 6(1)(a) at border check points. (b) The interpretation of "business" under proposed sections 6(1)(a) and 6(1)(b). (c) Difference in the scope covered by the expression "in the course of trade or business" and "for the purpose of, or in connection with, trade or business" . (d) The Chairman and Mrs Selina CHOW had no strong view against the possible wide scope of the offence under proposed section 6(1)(b).	The Administration to note/consider as per paragraph 6 of the minutes.
011817 - 012123	Chairman Mrs Selina CHOW The Administration	(a) Date of next meeting. (b) CSAs, if any, to be proposed by members and the Administration.	