

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1004/03-04  
(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 Monday, 2 February 2004, at 2:30 pm  
in Conference Room B of the Legislative Council Building**

**Members present** : Hon SIN Chung-kai (Chairman)  
Dr Hon David CHU Yu-lin, JP  
Hon NG Leung-sing, JP  
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP  
Hon CHAN Kwok-keung, JP  
Hon Howard YOUNG, SBS, JP  
Hon Abraham SHEK Lai-him, JP  
Hon Albert CHAN Wai-yip  
Hon Audrey EU Yuet-mee, SC, JP  
Hon MA Fung-kwok, JP

**Members absent** : Dr Hon Philip WONG Yu-hong, GBS

**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

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Action

**I Confirmation of minutes and matters arising**

LC Paper No. CB(1)854/03-04 - Minutes of sixth meeting on  
6 January 2004

LC Paper No CB(1)869/03-04 - Copies of correspondences among  
the Administration, the industry  
and the Secretariat on issues related  
to the effectiveness or otherwise of  
digitization in containing the  
problem of pirated viewing of pay  
TV programmes

LC Paper No CB(1)915/03-04(01) - Letter dated 30 January 2004 from  
Hong Kong Cable Television  
Limited (HKCTV) regarding their  
views on the effectiveness of  
digitization in containing the  
problem of pirated viewing of pay  
TV programmes (English version  
only)

LC Paper No CB(1)931/03-04(01) - Administration's response to  
(*tabled and subsequently issued on 3* HKCTV's letter of 30 January 2004  
*February 2004*) (English version only)

The minutes of sixth meeting on 6 January 2004 were confirmed.

## **II Meeting with the Administration**

### Clause by clause examination of the Bill

- 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)895/03-04(01) - Administration's response to the issues raised at the meeting on 6 January 2004
- LC Paper No. CB(1)895/03-04(02) - Committee Stage Amendments proposed by the Administration.
- LC Paper No. CB(1)908/03-04(01) - Marked-up copy of the Committee Stage Amendments proposed by the Administration (as at 28 January 2004) to the Bill prepared by the Legal Service Division
- LC Paper No. CB(1)2525/02-03(03) - Letter dated 16 August 2003 from the Assistant Legal Adviser (ALA) to the Administration
- LC Paper No. CB(1)2525/02-03(04) - Reply dated 29 September 2003 from the Administration to ALA's letter of 16 August 2003
- LC Paper No. CB(1)181/03-04(04) - Letter dated 10 October 2003 from ALA to the Administration
- LC Paper No. CB(1)181/03-04(05) - Reply dated 28 October 2003 from the Administration to ALA's letter of 10 October 2003
- ITBB(CR)9/19/1(03)Pt.19 - The Legislative Council Brief issued by the Commerce, Industry and Technology Bureau on 29 April 2003
- LC Paper No. LS104/02-03 - The Legal Service Division Report on the Bill

2. The Bills Committee deliberated (Index of proceedings attached at Appendix).
3. Members noted the divided views of the Administration and the Hong Kong Cable Television Limited (HKCTV) on the effectiveness of digitization in containing the problem of domestic/private pirated viewing of pay television programmes. In this connection, the Chairman said that if members deemed it necessary, the Bills Committee might consider seeking expert advice on the subject.

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

4. On members' concern about the efficacy of enforcement actions against the supply of unauthorized decoders, the Administration undertook that the Office of Telecommunications Authority (OFTA) would work closely with the Police to step up enforcement action.
5. In response to members' concern about the need for public education and publicity, the Administration said that after enactment of the Bill, it would consider implementing public education and publicity programmes on major provisions of the Bill, including the legal liability of using or possessing unauthorized decoders to avoid payment of subscription fees.

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

6. Members noted the Administration's intention that the term "business" in proposed sections 6(1)(a) and 6(1)(b) should receive a restrictive interpretation to refer to commercial activities for the purpose of making a profit. In other words, activities of a non-commercial and non-profit making nature would not be included. Members also noted that a definition of "business" was proposed in the offence in relation to possession of infringing copies by a copying service in the Copyright (Amendment) Bill 2003 to provide expressly that "business" means business conducted for profit. In the light of this, the Administration was asked to consider whether it was necessary to define the term "business" in this Bill to avoid any doubt and to reflect its policy intent more clearly.

*Clause 3 - proposed sections 6(6) to (9)*

7. Members noted that proposed sections 6(6) to (9) spelt out the criminal liability of an employer and employee in respect of the offence of importing, exporting or selling unauthorized decoders in the course of trade or business, or the offence of use or possession of unauthorized decoders for commercial purposes. Proposed section 6(8) stipulated that in proceedings for an offence under proposed section 6, it was a defence for the person charged to prove that he was acting in accordance with the instructions given to him by his employer in the course of his employment and he had no reasonable grounds to believe that the decoder was an

unauthorized decoder. Meanwhile, members also noted that under the Copyright (Amendment) Bill 2003, it was proposed to provide a defence against criminal liability for employees who possessed pirated copies of work such as pirated computer programme if such copies had been provided to them by their employers for use in the course of their employment.

8. Given the similar nature of the offences involving employees under the two Bills, members requested the Administration to provide an explanation on the differences in the defences available and to consider whether the proposed defences under the two Bills should be aligned for the sake of consistency and fairness.

*Clause 4 - proposed sections 7(3D) to (3G)*

9. Members noted that proposed sections 7(3D) to (3G) spelt out the criminal liability of the employer and employee in respect of the offence of providing decoders and reception equipment for television programme service on subscription basis without a licence. As these sections were drafted in similar terms as proposed sections 6(6) to (9), the Administration was requested to consider the issues relating to the proposed defence for employees as per paragraph 8 above.

*Clause 5 - proposed section 7B*

10. On whether there should be a time limit for bringing a civil action under proposed section 7B(1) and (3), the Administration was requested to provide information on the practice in overseas legislation for members' consideration.

Date of next meeting

11. The Chairman said that he would allow time for the Administration to prepare the required information and would inform members of the date of the next meeting.

*(Post-meeting note: Members has been notified that the eighth meeting of the Bills Committee would be held on Monday, 1 March 2004 at 4:30 pm vide LC Paper No. CB(1)926/03-04.)*

**III Any other business**

12. There being no other business, the meeting ended at 4:25 pm.

**Proceedings of the meeting of the  
Bills Committee on Broadcasting (Amendment) Bill 2003  
on Monday, 2 February 2004, at 2:30 pm  
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 - 000207	Chairman	(a) Introductory remarks and confirmation of minutes of meeting on 6 January 2004. (b) Members noted the following : (i) The Secretariat had written to all pay television programme service licensees on 7 January 2004 seeking their views on the effectiveness of digitization in containing the problem of pirated viewing of pay TV programmes (ii) The letter from Hong Kong Cable Television Ltd. (HKCTV) (CB(1)915/03-04(01) and the Administration's response (CB(1)931/03-04) thereto ; and (iii) Previous submissions received from deputations on the subject mentioned in (i) and the Administration's response thereto had been re-circulated (CB(1)869/03-04).	
000208 - 002310	Mrs Selina CHOW Chairman The Administration	<u>CB(1)931/03-04(01)</u> (a) Whether digitization could contain the problem of pirated viewing of pay television programmes. (b) Information provided by HKCTV and the Administration on the number of unauthorized digital decoders seized in 2003. (c) The Administration's position that it would consider criminalizing domestic/private pirated viewing if piracy was still rampant after HKCTV had completed its digitization project. (d) The Administration's report that a total of 18 raids operations mainly targeting at sales activities of unauthorized decoders at Apliu Street had been mounted for the period between January 2001 and January 2004, of which six and one operations had been mounted in 2003 and in January 2004 respectively.	

Time Marker	Speaker	Subject(s)	Action Required
002311 - 002602	Mr Howard YOUNG The Administration	(a) Whether or not unauthorized decoders used to decode digital signals of HKCTV were available for sale across the border. (b) The need for operators to change its digital key periodically to make unauthorized access to its pay television programme services costly and technically difficult.	
002603 - 004747	Mr MA Fung-kwok The Administration Chairman Mrs Selina CHOW	(a) Sanction and enforcement actions against the unauthorized use of cordless phones. (b) Feasibility of identifying those households which were involved in the unauthorized use of cordless phones. (c) The severity of public harm caused by the unauthorized use of cordless phones vis-à-vis that caused by unauthorized decoders. (d) Operators' responsibility to enhance the security of its encrypted digital signals on a continuous basis to counter the attacks by pirates. (e) Members' concern that enforcement actions against the supply of unauthorized decoders should be stepped up. (f) Public education against the use of unauthorized decoders. (g) The Chairman's remarks that if considered necessary, the Bills Committee might seek the advice of experts on the effectiveness or otherwise of digitization in containing the problem of pirated viewing of pay television programmes.	The Administration to note and follow up as per paragraphs 4 and 5 of the minutes.
004748 - 010832	Chairman Assistant Legal Adviser 3 (ALA3) Mrs Selina CHOW The Administration Ms Audrey EU	<u>Clause-by-clause examination ((CB(1)895/03-04(02)) and CB(1)908/03-04(01))</u> <u>Clause 3 - proposed sections 6(1)(a), 6(1)(b) and 6(3)</u> (a) The Administration's intention to add "without lawful authority or reasonable excuse" to proposed section 6(1)(b) of the Bill to avoid catching innocent commercial operators not supposed to be targeted by the proposed provision, such as recycling businessmen or scrap metal dealers. (b) The need to avoid possible loopholes in law as a result of the proposed Committee Stage Amendment (CSA) to proposed section 6(1)(b). (c) The proposed scope of the term "business" under proposed sections 6(1)(a) and (b) and	The Administration to consider and follow up as per paragraph 6 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		<p>whether the term needed to be defined in the Bill having regard to the Administration's proposal to define "business" under the Copyright (Amendment) Bill 2003.</p> <p>(d) The Chairman's personal view that non-government organizations, despite their activities being primarily non-profit making in nature, should also be criminally liable for pirated viewing of pay television programmes.</p> <p>(e) The proposed addition of "any" before "trade or business" under proposed sections 6(1)(b) and 6(3)(b) to reflect the Administration's intent to cover any trade or business rather than confining to the defendant's own trade or business and to make the English text tally with the Chinese text.</p>	
012004 - 012019	Chairman Mrs Selina CHOW The Administration	<p><u>Clause 3 - proposed section 6(4)</u> CSA to proposed section 6(4) as a result of the CSA to proposed section 6(1)(b).</p>	
012020 - 012345	Chairman The Administration	<p><u>Clause 3 - proposed section 6(5)</u> Members noted the proposed CSA to the Chinese text for "licensee" as used in proposed section 6(5). The new term "特許持有人" referred to a person who had been granted a licence or permission to use or occupy the premises.</p>	
012346 - 014444	Chairman The Administration Mrs Selina CHOW Mr MA Fung-kwok Ms Audrey EU Mr Howard YOUNG	<p><u>Clause 3 - proposed sections 6(6) to 6(9) and</u> <u>Clause 4 - proposed sections 7(3D) to 7(3G)</u> (a) CSA to proposed sections 6(6) and 6(7)(a) as a result of the CSA to proposed section 6(1)(b). (b) Arguments for and against providing a defence for employees under proposed sections 6(8) and 7(3F) in proceedings for an offence under proposed sections 6 and 7(1) of the Broadcasting Ordinance (Cap 562). (c) The need to explain and align the difference in the defences provided to employees under this Bill and the Copyright (Amendment) Bill 2003.</p>	The Administration to note and follow up as per paragraphs 7 to 9 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
014445 - 014734	Chairman The Administration	<u>Clause 5 - proposed section 7A</u> (a) CSA to proposed section 7A as a result of the CSA to proposed section 6(1)(b). (b) The express provision requiring the Telecommunications Authority or any public officer authorized by him to send the person arrested forthwith into the custody of a police officer. (c) The reference to "an unauthorized decoder or a decoder" in proposed section 7A(3) be replaced by "anything liable to seizure under subsection (1)(d)" to improve the drafting in the light of a similar provision in section 35(2) of the Telecommunications Ordinance (Cap 106).	
014735 - 015116	Chairman ALA3 The Administration	<u>Clause 5 - proposed section 7B</u> (a) CSA to proposed section 7B as a result of the CSA to proposed section 6(1)(b). (b) The Administration had not proposed a time limit for bringing an action under proposed sections 7B(1) and (3) so that any civil action brought by the licensee under the proposed provisions would not become time-barred. (c) Overseas practice in specifying the time limits, if any, for seeking civil remedy in the similar context.	The Administration to follow up and provide the information as per paragraph 10 of the minutes.
015117 - 015232	Chairman Members	Date of next meeting.	