

立法會
Legislative Council

LC Paper No. CB(1)1632/03-04
(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 Friday, 2 April 2004, at 8:30 am
in Conference Room A 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 Albert CHAN Wai-yip
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok, JP
- Members absent** : Hon CHAN Kwok-keung, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Howard YOUNG, SBS, JP
Hon Abraham SHEK Lai-him, JP
- Public officers attending** : Mr Francis HO, JP
Permanent Secretary for Commerce, Industry
and Technology
(Communications and Technology)
- 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 of Telecommunications
(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 : Ms Connie FUNG
Assistant Legal Adviser 3

Ms Debbie YAU
Senior Council Secretary (1)1

Action

I Confirmation of minutes and matters arising

LC Paper No. CB(1)1312/03-04 - Minutes of eighth meeting on
1 March 2004

The minutes of eighth meeting on 1 March 2004 were confirmed.

II Meeting with the Administration

LC Paper No. CB(1)1411/03-04(01) - Administration's response to the
issues raised at the meeting on 1
March 2004

LC Paper No. CB(1)1164/03-04(01) - Marked-up copy of the Committee
Stage Amendments proposed by
Hon MA Fung-kwok to the Bill

LC Paper No. CB(1)1137/03-04(01) - Committee Stage Amendments
proposed by Hon MA Fung-kwok
to the Bill

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(3)602/02-03 The Bill

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

3. Members noted the letter from Hong Kong Broadband Network Ltd (HKBN) addressed to individual members of the Bills Committee on its observation on measures against unauthorized reception of subscription TV programme services.

(Post-meeting note: HKBN has requested that the letter is not to be made available to the public and media. As such, HKBN understands that the letter, which is not to be regarded as an open submission to the Bills Committee, will not be included in the "Organizations which have submitted views to the Bills Committee on the Broadcasting (Amendment) Bill 2003" to be appended to the Bills Committee's report to the House Committee. Members have been informed of the above vide LC Paper No CB(1)1463/03-04.)

Defence clauses

4. In response to members' concern raised at the last meeting on the need to notify and consult employees on the proposed criminal liability imposed on and the defence available to employees in respect of decoder-related offences under the Bill, the Administration had advised that the proposed defence clauses in the Bill were modeled on relevant provisions in existing legislation. The Administration considered that the defence clauses were reasonable, appropriate and balanced for both the employer and employee. Members raised no further queries.

Members' stance

5. Mr Albert CHAN was of the view that given the profound implications of the proposed criminal sanction against domestic/private pirated viewing of subscription television programmes, it was not appropriate to support Mr MA's proposed Committee Stage Amendments (CSAs) at this stage.

6. On behalf of Members of the Liberal Party, Mrs Selina CHOW stated that at the present stage, they were not inclined to support Mr MA's proposed CSAs on account of enforcement difficulties and the possible interference which might be

caused to the general public. Nevertheless, Mrs Selina CHOW cast serious doubt on the efficacy of the current enforcement actions and urged the Administration to step up enforcement, particularly at points of sale of unauthorized decoders. As such, she urged the Administration to review the situation in a year's time having regard to the effectiveness of digitization, the new statutory provisions and other enforcement measures.

7. The Chairman stated that Members of the Democratic Party did not support Mr MA's proposed CSAs at this stage, but they would monitor the problem of domestic/private pirated viewing and support criminalization should future circumstances so warrant. He suggested that the Administration should evaluate the extent of the problem in about 18 months' time after the enactment of the Bill. In expressing his disappointment at current enforcement efforts, the Chairman had specifically requested the Administration to consider reviewing the lenient sentences imposed by courts in respect of decoder-related offences and to take appropriate actions so as to achieve greater deterrence against offenders.

8. Mr MA Fung-kwok was disappointed to note that members were not supportive of his proposed CSAs at this stage. He said that this might be due to members' concern about the reaction of their voters to the criminalization of domestic/private pirated viewing of pay TV programmes, particularly as the next Legislative Council election was drawing near. Mrs Selina CHOW requested to put on record her objection to Mr MA's remark. She pointed out that members had explained their reasons for not supporting the proposed CSAs which had nothing to do with political consideration.

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

9. The Administration undertook to review the effectiveness or otherwise of digitization, the implementation of the new provisions and enforcement actions one year after the commencement of the Bill, if enacted. The Administration was also requested to consider reviewing the levels of penalty imposed by courts and take any follow-up action as appropriate. The Secretary for Commerce, Industry and Technology would give an undertaking on the Administration's follow-up action in his speech during the resumption of the Second Reading debate on the Bill.

(Post-meeting note: The Administration agrees to report the outcome of the review to the Panel on Information Technology and Broadcasting for its consideration on the way forward in dealing with the problem of domestic/private pirated viewing of pay television programme services.)

Way forward

10. Mr MA Fung-kwok informed members that he would propose to move CSAs to the Bill in his own capacity. However, he might vary the format of presenting his proposed CSAs after further consultation with the Secretariat.

11. As the Bills Committee had concluded its deliberation, members agreed that the Bills Committee would report to the House Committee on 16 April 2004. The Administration said that it would confirm whether it would resume Second Reading debate on the Bill on 28 April 2004. Members noted that the deadline for giving notice to move CSAs under Rule 57(2) of Rules of Procedures was 19 April 2004.

(Post-meeting note: The Administration subsequently advised that it intended to resume Second Reading debate on the Bill on 5 May 2004. As such, the deadline for giving notice to move CSAs was 24 April 2004. Members have been notified of the change vide LC Paper No. CB(1)1459/03-04.)

III Any other business

12. There being no other business, the meeting ended at 9:25 am.

Council Business Division 1
Legislative Council Secretariat
27 April 2004

**Proceedings of the meeting of the
Bills Committee on Broadcasting (Amendment) Bill 2003
on Friday, 2 April 2004, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000001-000059	Chairman	Introductory remark and confirmation of minutes of meeting on 1 March 2004	
000100-000413	Chairman Administration	The Administration introduced its response to the issues raised at the meeting on 1 March 2004 (LC Paper No CB(1)1411/03-04(01)).	
000414-000507	Chairman	The letter of Hong Kong Broadband Network Ltd (HKBN) addressed to individual members of the Bills Committee on its observation on measures against unauthorized reception of subscription TV services.	
000508-003100	Mr MA Fung-kwok Chairman Administration Mrs Selina CHOW	<p>(a) Mr MA Fung-kwok's support for criminalizing domestic/private pirated viewing of pay TV programmes to safeguard intellectual property rights and to enhance the development of creative industries in Hong Kong.</p> <p>(b) Mr MA would move Committee Stage Amendments (CSAs) to the Bill in his own capacity if the Bills Committee would not support and move the proposed CSAs in the Committee's name.</p> <p>(c) Whether digitization could contain the problem of pirated viewing of pay TV programmes.</p> <p>(d) Efficacy of enforcement actions against the supply and sale of unauthorized decoders at blackspots such as Apliu Street.</p> <p>(e) Operators' responsibility to improve their encryption technology from time to time.</p> <p>(f) Feasibility of disconnecting the drop cables from households not subscribing to pay TV programme services.</p> <p>(g) The requirement on Hong Kong Cable Television Limited regarding service coverage.</p>	
003101-003733	Mrs Selina CHOW Administration	<p>(a) Enforcement difficulties arising from criminalization of domestic/private pirated viewing of pay TV programmes.</p> <p>(b) The need to step up enforcement against</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>the supply/sale of unauthorized decoders.</p> <p>(c) Overseas practice in dealing with domestic/private pirated viewing of pay TV programmes.</p>	
003734-003959	Mr Albert CHAN	<p>Given the profound implications of the proposed criminal sanction against domestic/private pirated viewing of pay TV programmes, Mr Albert CHAN did not consider it appropriate to support Mr MA Fung-kwok's proposed CSAs at this stage.</p>	
004000-004240	Chairman	<p>(a) Members of the Democratic Party did not support Mr MA Fung-kwok's proposed CSAs at this stage, but they would monitor the problem of domestic/private pirated viewing and support criminalization should future circumstances so warranted.</p> <p>(b) The Administration should review the lenient sentences imposed by courts in respect of decoder-related offences and take appropriate actions so as to achieve greater deterrence against offenders.</p> <p>(c) The need for future reviews of the issue.</p>	
004241-004451	Mrs Selina CHOW Chairman Administration	<p>(a) Members of the Liberal Party were not inclined to support Mr MA Fung-kwok's proposed CSAs at the present stage on account of enforcement difficulties and the possible interference which might be caused to the general public.</p> <p>(b) The need to review the situation in future having regard to the effectiveness of digitization, the new statutory provisions and other enforcement measures.</p>	
004452-004836	Mr MA Fung-kwok	<p>(a) Mr MA Fung-kwok's disappointment that his proposed CSAs were not supported by other members due to political consideration.</p> <p>(b) Preliminary findings of a survey recently conducted by Mr MA that the majority of respondents did not express objection to criminalizing domestic/private pirated viewing of pay TV programmes.</p> <p>(c) Mr MA considered that the Administration had always lagged behind in enacting legislation to safeguard intellectual property rights.</p>	

Time Marker	Speaker	Subject(s)	Action Required
004837-004926	Mrs Selina CHOW	Mrs Selina CHOW requested to put on record her grave concern against Mr MA's earlier remark that members did not support his proposed CSAs due to political consideration.	
004927-005047	Chairman Administration	Issues which required follow-up actions/consideration by the Administration	The Administration to follow-up and consider as per paragraph 9 of the minutes.
005048-005227	Chairman	Way forward and legislative timetable.	The Administration and members to note as per paragraphs 10 and 11 of the minutes.

Council Business Division 1
Legislative Council Secretariat
27 April 2004