

立法會
Legislative Council

LC Paper No. CB(1)2530/02-03
(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 Wednesday, 10 September 2003, at 2:30 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 Howard YOUNG, SBS, JP
Hon Albert CHAN Wai-yip
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 Abraham SHEK Lai-him, JP
- 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 of Office of the
Telecommunications Authority (Operations)

Attendance by invitation : Cable and Satellite Broadcasting Association of Asia Ltd

Mr Simon Twiston DAVIES
Chief Executive Officer

Hong Kong Cable Television Limited

Mr Eric LO
Executive Director - Cable Subscription Services

Mr Desmond CHAN
Corporate Lawyer

Motion Picture Association

Mr Frank RITTMAN
Asia - Pacific Regional Director

Nagravision SA

Mr Peter IANNAZZO
Vice President Sales - Asia Pacific

Dr Laura FULLTON
DTV Smart Card and Security Product Manager

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

Staff in attendance : Miss Connie FUNG
Assistant Legal Adviser 3

Ms Debbie YAU
Senior Assistant Secretary (1)1

I Confirmation of minutes

LC Paper No. CB(1)2285/02-03 - Minutes of 1st meeting on
7 July 2003

The minutes of first meeting on 7 July 2003 were confirmed.

II Briefing by the Administration on the Bill

2. The Administration briefed the Bills Committee on the Bill.

III Meeting with deputations and the Administration

Meeting with deputations

LC Paper No. CB(1)2381/02-03(01)- Cable and Satellite Broadcasting Association of Asia

LC Paper No. CB(1)2431/02-03(02)- Hong Kong Cable Television Limited

LC Paper No. CB(1)2445/02-03(02)- Presentation material (in CD format) (*issued to members on 11 September 2003*) provided by the Hong Kong Cable Television Limited

LC Paper No. CB(1)2381/02-03(03)- Motion Picture Association

LC Paper No. CB(1)2445/02-03(03)- Presentation material provided by (*issued to members on 11 September 2003*) Nagravis SA (English version only).

Submissions from parties not attending the meeting

LC Paper No. CB(1) 2344/02-03(01)- Joint submission from Asia Television Limited, Galaxy Satellite Broadcasting Limited, Hong Kong Cable Television Limited, Television Broadcasts Limited, TV Plus (HK) Corporation Limited and Yes Television (Hong Kong) Limited

LC Paper No. CB(1)2334/02-03(01) - Consumer Council

LC Paper No. CB(1)2381/02-03(02) - The Chinese General Chamber of Commerce

LC Paper No. CB(1) 2381/02-03(04)- The Hong Kong Bar Association

LC Paper No. CB(1) 2426/02-03(01)- Hong Kong Kowloon & New Territories Motion Picture Industry Association Ltd

Meeting with the Administration

- LC Paper No. CB(3)602/02-03 - The Bill
- 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
- LC Paper No. CB(1)2070/02-03(01) - Marked-up copy of the Bill
- LC Paper No. CB(1)2431/02-03(01) - Summary of deputations' views on major proposals in the Bill (up to 8 September 2003) prepared by the Secretariat
- LC Paper No. CB(1)2299/02-03 - Background brief on Broadcasting (Amendment) Bill 2003 prepared by the Secretariat
- LC Paper No. CB(1)2445/02-03(01) - Power-point presentation material
(tabled at the meeting and issued to members on 11 September 2003) on the Bill provided by the Administration

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

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

4. Members noted that the Hong Kong Cable Television Limited and Nagravision SA supported criminalizing the unauthorized reception of subscription television programme services by domestic end-users. The Cable and Satellite Broadcasting Association of Asia and the Motion Picture Association supported to revisit the issue after assessing the impact of digitization of television programme services. They also suggested that the proposed sanctions against the use of unauthorized decoders should cover the use of decoding devices for viewing foreign satellite pay television services not licensed in Hong Kong. The Administration would provide a detailed response to the views of members and deputations raised at the meeting and in the submissions received.

(Post-meeting note: The detailed response provided by the Administration was issued to members on 30 September 2003 vide LC Paper No. CB(1) 2525/02-03(01).)

5. At the request of the Bills Committee, the Administration would also address the following issues in its written response:

- (a) The rationale for not criminalizing unauthorized reception of subscription television programme services at domestic premises which, according to some deputations, was tantamount to theft while similar conduct like unlawful abstraction of electricity and dishonest use of public telephones were criminal offences under the Theft Ordinance (Cap 210);
- (b) the Hong Kong Bar Association's concern about the justification for enacting the presumptions in clauses 3(b) and 4 of the Bill, which, if invoked would have the effect of reversing the burden of proof into the hands of the accused;
- (c) the estimated number of unauthorized decoders currently being in use in Hong Kong and how that estimate was arrived at; and
- (d) concerns about the difficulty in ascertaining the person(s) in the domestic premises who should be held liable for unauthorized reception of subscription television programme services in case the licensee brought a civil action for damages or other remedies.

Date of next meeting

6. Members agreed that the third meeting of the Bills Committee would be held on 7 October 2003 at 2:30 pm.

IV Any other business

7. There being no other business, the meeting ended at 4:30 pm.

**Proceedings of the meeting of the
Bills Committee on Broadcasting (Amendment) Bill 2003
on Wednesday, 10 September 2003, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000012	Chairman	Introductory remarks and confirmation of minutes of meeting on 7 July 2003.	
000013 - 001127	Administration	Introduction of the Bill.	
001128 - 001231	Chairman	Deputations' presentations and submissions were not covered by the protection and the immunity under the Legislative Council (Powers and Privileges) Ordinance (Cap 382).	
001232 - 001451	Cable and Satellite Broadcasting Association of Asia Ltd (CASBAA)	Presentation of views.	
001452 - 002453	Hong Kong Cable Television Limited (Cable TV)	Presentation of views.	
002454 - 002944	Motion Picture Association (MPA)	Presentation of views.	
002945- 004025	Nagravision SA (NSA)	Presentation of views.	
004026 - 004125	Chairman	(a) Noted the submissions from parties not attending the meeting, including those from the Consumer Council and the Hong Kong Bar Association. (b) Welcomed further submissions and information from the deputations.	
004126 - 004610	Mr MA Fung-kowk Cable TV	(a) Cable TV's estimated annual loss in revenue of about HK\$390 million due to the use of some 100 000 unauthorized decoders in Hong Kong. (b) Rampant sale of unauthorized decoders across the border.	

Time marker	Speaker	Subject(s)	Action Required
004611 - 005810	Ms Audrey EU Cable TV CASBAA MPA	<p>(a) Civil actions taken by pay-TV operators so far against the possession or use of unauthorized decoders in the course of trade or business.</p> <p>(b) Feasibility of identifying those households which were involved in unauthorized reception of subscription television programme services.</p> <p>(c) The deterrent effect of introducing both civil and criminal liabilities against the use or possession of unauthorized decoders for commercial purposes, and the proposed civil remedies against unauthorized reception of subscription television programme services.</p> <p>(d) The pros and cons of imposing criminal liability on domestic end-users and whether the demand for unauthorized decoders could hence be reduced.</p> <p>(e) Level and types of penalties which might be imposed for criminal offences in relation to possession or use of unauthorized decoders for receiving subscription television programme services and the types of civil remedies available.</p> <p>(f) Financial implications on public resources if criminal liability was imposed on domestic end-users.</p>	
005811 - 010034	Mr CHAN Kowk- keung Cable TV	The need to improve encryption technology.	
010035 - 011038	Chairman Mr CHAN Wai-yip NSA Cable TV	<p>(a) Reference to other copyright-related offences committed in domestic premises such as possession of an infringing copy of a copyright work.</p> <p>(b) The need to avoid causing nuisance to/panic among the public when considering criminal sanction against domestic pirated viewing.</p>	

Time marker	Speaker	Subject(s)	Action Required
		(c) Cable TV held an open view on the proposed penalties (i.e. fine, imprisonment etc) if domestic pirated viewing was criminalized.	
011039 - 012112	Mr MA Fung-kwok Mr CHAN Wai-yip CASBAA MPA Cable TV	(a) Unauthorized reception of satellite signals broadcast by Asia-Pacific pay-TV operators due to the unavailability of Cable TV's service in some parts of Hong Kong. (b) Mr MA Fung-kwok was in support of criminalizing domestic pirated viewing to foster a proper social value and the development of creative industries. (c) Difficulty in proving an offence beyond reasonable doubt.	
012113 - 013241	Ms Audrey EU Chairman Cable TV	The effectiveness of civil actions taken out by pay-TV operators versus criminal prosecution by the Government in tackling domestic pirated viewing of subscription television programmes.	
013242 - 014438	Mr NG Leung-sing Cable TV NSA MPA	(a) The need to strengthen consumer protection against illicit devices. (b) Whether technology alone was adequate in addressing the core problem. (c) According to NSA, the annual losses to cable television operators were estimated to be 1 billion Euros in Europe and US\$1 to 4 billion in North America.	
014439 - 014843	Chairman Mr CHAN Wai-yip Cable TV	(a) Practical difficulty in ascertaining the person(s) in the domestic premises who should be held criminally liable for unauthorized reception of subscription television programme services. (b) Cable TV was welcomed to provide members with information on the enforcement experience of overseas countries which had in place end-user criminal liability.	

Time marker	Speaker	Subject(s)	Action Required
014844 - 015754	Administration NSA	The Administration's initial responses.	The Administration to follow-up as per paragraph 4 of the minutes.
015755 - 020020	Ms Audrey EU Mr MA Fung-kwok	At the request of the Bills Committee, the Administration would address the issues listed in paragraph 5 of the minutes in its written response.	The Administration to follow-up as per paragraph 5 of the minutes.
020021 - 020104	Chairman Members	Date of next meeting: 7 October 2003, at 2:30 pm.	

Council Business Division 1
Legislative Council Secretariat
3 October 2003