

立法會
Legislative Council

LC Paper No. CB(1) 331/03-04
(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 Thursday, 30 October 2003, at 8:30 am
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
Dr Hon Philip WONG Yu-hong, GBS
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok, JP
- Members absent** : Dr Hon David CHU Yu-lin, JP
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 Eric LAM
Senior Controller of Telecommunications
(Enforcement)
Office of the Telecommunications Authority
- Mr Vidy CHEUNG
Senior Government Counsel

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 and matters arising

- LC Paper No. CB(1)103/03-04 - Minutes of third meeting on 7 October 2003
- LC Paper No. CB(1)131/03-04(01) - Administration's additional information in response to issues raised by Members at the Bills Committee meeting on 7 October 2003
- LC Paper No. CB(1)181/03-04(01) - Submission from Hong Kong Cable Television Limited on inadequacy of technology-only approach to pay TV piracy (English version only)
- LC Paper No. CB(1)181/03-04(02) - Submission from Nagravision SA on inadequacy of technology-only approach to pay TV piracy (English version only)
- LC Paper No. CB(1)181/03-04(03) - Joint letter from Asia Television Limited, Galaxy Satellite Broadcasting Limited, Hong Kong Cable Television Limited, Television Broadcasts Limited, TV Plus (HK) Corporation Limited, Yes Television (Hong Kong) Limited and Nagravision SA on proposed sanction for domestic users of unauthorized decoders (English version only)

The minutes of third meeting on 7 October 2003 were confirmed.

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

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

3. At the request of the Bills Committee, the Administration would provide:

- (a) a detailed response to the joint letter of seven operators on proposed sanction against domestic users of unauthorized decoders (CB(1)181/03-04(03)), which should include the following information:
 - (i) an analysis of all possible options of dealing with pirated viewing of subscription television programmes for domestic purposes summarily by statutory fines with reference to existing legislation, including the implications on criminal records and on eligibility for certificates of no criminal conviction; and
 - (ii) the questions of double penalty, if any, if domestic users of unauthorized decoders were held liable to both statutory fines and civil remedies; the appropriate level of fines; whether criminal prosecution should precede civil action or vice versa; and examples, if any, of existing legislation imposing both criminal sanction and civil liabilities in respect of the same prohibited act.
- (b) details of enforcement actions taken against persons who brought into Hong Kong unauthorized decoders, including the number of prosecution and penalties imposed, in the past few years.
- (c) a considered view on all possible measures other than the proposed civil remedy against the possession or use of unauthorized decoders in domestic premises with a view to containing the problem of domestic pirated viewing such as:
 - (i) possible sanction (including immediate confiscation) against the person who purchased unauthorized decoders or brought into Hong Kong such decoders, irrespective of the purpose; and
 - (ii) how enforcement under existing legislation against the supply of unauthorized decoders and the import of unauthorized decoders in the course of trade or business could be stepped up.
- (d) comments on:
 - (i) the interpretation of proposed section 7B(2) as to whether a person who was in breach of proposed section 6(1)(a) or (b) would be liable to both criminal sanction and civil remedies;
 - (ii) in general, whether a person bringing into Hong Kong an unauthorized decoder should be subject to sanction irrespective of the purpose or use of the decoder; and
 - (iii) whether the scope of the offence under proposed section 6(1)(b) was too wide.

4. Members agreed to further deliberate on the policy objectives of the Bill before proceeding to clause-by-clause examination.

Date of next meeting

5. Members agreed that the fifth meeting of the Bills Committee would be held as scheduled on 19 November 2003 at 8:30 am unless the Administration would require more time to prepare its response.

(Post-meeting note: The fifth meeting has been rescheduled to be held on 26 November 2003, at 8:30 am vide LC Paper No. CB(1)256/03-04)

II Any other business

6. There being no other business, the meeting ended at 9:50 am.

Council Business Division 1
Legislative Council Secretariat
14 November 2003

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

Time Marker	Speaker	Subject(s)	Action Required
000000 - 000510	Chairman	(a) Introductory remarks and confirmation of minutes of meeting on 7 October 2003. (b) Members noted the following: (i) Administration's response to members' request for additional information (CB(1)131/03-04(01)). (ii) Deputation's further views on inadequacy of technology-only approach to pay TV piracy (CB(1)181/03-04(01) and (02)) and on proposed sanction against domestic users of unauthorized decoders (CB(1)181/03-04(03)).	
000511 - 000833	Assistant Legal Adviser 3	Different ways of dealing with a prohibited act summarily by statutory fines under existing legislation, namely: (a) Contraventions punishable by fixed penalty as provided in the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237) and Mass Transit Railway (Transport Interchange) Bylaw (Cap. 556 sub. leg. D); (b) Offences for which the offenders will be offered an opportunity to discharge their liability for the offences by the payment of a fixed penalty, as in the case of public cleanliness offences; and (c) Summary offence punishable by a fine only.	The Administration to provide the information as per paragraph 3(a)(i) of the minutes.
000834 - 001438	Mrs Selina CHOW Chairman The Administration	(a) Sanction against purchasers of unauthorized decoders at the points of sale. (b) Relative degree of difficulty in substantiating an offence committed in domestic premises and in public places.	The Administration to provide the information as per paragraph 3(c)(i) of the minutes.
001439 - 002222	Ms Audrey EU Chairman The Administration	(a) Enforceability of criminal sanction against domestic users of unauthorized decoders. (b) Feasibility of sanction against the person who purchased unauthorized decoders from sellers or brought into Hong Kong such decoders, irrespective of the purpose. (c) The questions of double penalty, if any, if domestic users of unauthorized decoders were held liable to both statutory fines and	The Administration to provide the information as per paragraphs 3(a)(ii) 3(c)(i) and 3(d)(i) of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		<p>civil remedies; the appropriate level of fines; and whether criminal prosecution should precede civil action or vice versa.</p> <p>(d) Examples, if any, of existing legislation imposing both criminal sanction and civil liabilities in respect of the same prohibited act.</p> <p>(e) Interpretation of proposed section 7B(2) of the Bill as to whether a person who was in breach of proposed section 6(1)(a) or (b) would be liable to both criminal sanction and civil remedies.</p>	
002223 - 003451	Mrs Selina CHOW ALA3 Chairman The Administration	<p>(a) The absence of any sanction against the import of unauthorized decoders other than for commercial purposes.</p> <p>(b) Whether the Bill could serve as an effective deterrent against the acquisition of unauthorized decoders by domestic users.</p> <p>(c) Enforcement of existing section 6(1) of the Broadcasting Ordinance (BO) (Cap 562).</p> <p>(d) Whether digitization could contain the problem of domestic pirated viewing.</p>	The Administration to provide the information as per paragraph 3(b) and 3(c) of the minutes.
003452 - 004107	Mr. MA Fung-kwok Chairman The Administration	<p>(a) Alternative measures to combat the rampant domestic pirated viewing.</p> <p>(b) Sanction against the possession of unauthorized decoders in domestic premises.</p> <p>(c) Practical difficulty in proving an offence in relation to the use or possession of unauthorized decoders in domestic premises.</p>	
004108 - 004747	Mrs Selina CHOW The Administration Chairman	<p>(a) The need to protect the privacy of domestic households against any enforcement actions that might be intrusive.</p> <p>(b) Feasibility of confiscation of unauthorized decoders upon their being brought into Hong Kong or at the points of sale.</p> <p>(c) Views of the public and the industry during consultation on criminalizing domestic pirated viewing.</p> <p>(d) Operators' responsibility to improve encryption technology.</p>	The Administration to provide the information as per paragraph 3(c)(i) of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
004748 - 011141	Ms Audrey EU Chairman The Administration Mr CHAN Kowk- keung Mrs Selina CHOW	(a) Concerns about enforcement difficulty, if any. (b) Adequacy of enforcement actions taken against the supply of unauthorized decoders under existing section 6(1) of BO.	The Administration to provide the information as per paragraph 3(c)(ii) of the minutes.
011142 - 011459	Mrs Selina CHOW Chairman The Administration	Members agreed to examine the Bill clause-by-clause after further deliberations on the policy objectives of the Bill.	
011500 - 011730	Chairman Mrs Selina CHOW	(a) In general, whether a person bringing into Hong Kong an unauthorized decoder should be subject to sanction irrespective of the purpose or use of the decoder. (b) Whether the scope of the offence under proposed section 6(1)(b) was too wide.	The Administration to provide the information as per paragraphs 3(d)(i) and 3(d)(iii) of the minutes.
011731 - 011907	Mr. CHAN Kwok- keung Mrs Selina CHOW	Operators' responsibility to improve encryption technology.	
011908 - 012026	Chairman The Administration Members	Date of next meeting.	