



5 January 2004

Ms Debbie Yau
Clerk to Bills Committee
Legislative Council
3/F., Citibank Tower
3 Garden Road
Hong Kong

Dear Ms. Yau,

Broadcasting (Amendment) Bill 2003

The Administration has been arguing against the measures (fine and confiscation) recently proposed by Members to the Bills Committee and the industry for deterring people from buying and possessing unauthorized decoders. We would like to refute certain points raised by the Administration.

1. The Administration argued that digitization should be capable of containing the problem and specifically referred to a statement made in the 2003 interim report of i-CABLE Communications Limited to back up the aforesaid¹. The i-CABLE statement was correct at the time of publication because it took time for illegal manufacturers to “digitize” their analogue production lines and hence digital encryption would be relatively more effective at the early stage of deployment. However, such efficiency is at stake once the manufacturers have digitized their production lines and products capable of deciphering our digital encryption system have begun to surface in the market. Anyhow, we firmly believe that the effectiveness of digitization in containing the problem should be proven not by a statement of one player, but the experiences, which are generally disappointing, gained by a large number of Western players which have digitized their services since many years ago. In any case, it is not regular for the Administration to selectively use a player’s words to deprive all members of the industry of the legal protection they deserve.
2. The Administration repeatedly advocated² that the Pay TV licensees are expected to regularly change their smart cards as their overseas counterparts did to stop piracy, suggesting that such a cat-and-mouse game is a norm. It is disappointing that the Administration would make such an irresponsible remark, which is tantamount to an encouragement of creating endless business opportunities for the illegal peddlers.

¹ Paragraphs 8 and 15 of CB(1)650/03-04(01) - “Administration Response to the Chairman’s request at the Meeting on 26 November 2003”.

² See for example CB(1)306/03-04(01) - letter dated 10 November 2003 from the Administration to the Bills Committee.



Reflected by the experience of DirecTV in 1990s, card swap is not a simple job as it involves many logistic and co-ordination problems and inevitably causes inconvenience to the lawful subscribers. If HKC were now required to swap its smart card for all the 650,000 subscribers, to ensure security for the new card, the subscribers would need either to collect the new card by themselves or to make an appointment with HKC for delivery of the new card by hand. Such task needs to be completed within a short period of time for HKC cannot effect the new encryption until the last subscriber has the new card in hand. The logistic complications and time pressure to the operators, and the inconvenience to the lawful subscribers are imaginable. Why do the lawful operators and subscribers deserve such ordeals repeatedly?

3. The Administration has been using the outcome of the public consultation in late 2001 as a shield against introduction of the anti-piracy measures lately proposed by the Members and the industry. However, the latest proposed measures were not included in the consultation document. The logic to reject the proposed measures on the basis of the said public consultation is inconceivable.
4. The Administration claimed that it had encouraged and assisted HKCTV to digitize the transmission of its service by assigning it additional IBCCDS frequency³. We would like to clarify that the allocation of additional frequency is just temporary and is not without costs. In addition, HKC has come across considerable administrative obstacles when applying for use of such frequency in the first year of its digital migration.

It is the avowed policy of the Administration to provide a conducive business environment for the creative industry, which includes Pay TV. This cannot be achieved without a proper legislation in place to protect the service integrity of the Pay TV licence holders. In the absence of this pre-requisite, there is no point for the licence holders to pay tens of millions each year for their licences. This is particularly so when the players may operate as ‘broadband TV’ without a licence under the existing regulatory regime. HKC is not holding the Administration to ransom but the aforesaid is a likelihood that should not be neglected if the players were left to fight its own war.

Yours sincerely,

Eric Lo

Executive Director - Cable Subscription Services

³ Ditto