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13 January 2004

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

(Attn: Miss Polly Yeung)

Dear Miss Yeung,

**Broadcasting (Amendment) Bill 2003**

I refer to the Hong Kong Cable Television Limited (HKCTV)'s letter of 5 January to the Committee and would like to provide Members with the following information.

*Effectiveness of digitization in containing pirated viewing*

Although digitization is not the panacea to the problem of pirated viewing, it will make pirated viewing very difficult and costly as pay TV service providers may change the encryption digital key from time to time and hackers will require considerable resources to decode the digital key. Users would be discouraged to buy the illicit devices as they would be rendered useless as a result of a change of the digital key.

We will consider providing for criminal sanctions against domestic pirated viewing if the problem is still rampant after HKCTV has completed digitizing its service. We consider that this gradual approach would be more acceptable to the community. Ever since HKCTV started digitization in January 2002, it has on different occasions suggested, as reported in the press, that digitization has been effective in containing the problem of pirated viewing, including an unequivocal statement in its 2003 Interim Report. We are aware of press reports that another local pay TV operator is confident that anti-piracy measures will make unauthorized access to its service in the digital form very difficult.

In the various operations against unauthorized decoders mounted by Office of the Telecommunications Authority, we found that unauthorized decoders available in the black market at present are mainly those for enabling access to the analogue television service of HKCTV. Of around 1,000 unauthorized decoders seized in the operations in 2003, only two of them were devices attempting to decode the digital service of HKCTV. As explained in the second paragraph above, they will become useless after HKCTV has changed the digital key.

We would like to reiterate that industry associations like Cable and Satellite Broadcasting Association of Asia and Motion Picture Association support the Government's gradual approach. The Administration's position remains that introducing criminal sanctions against domestic end-users prematurely at this stage is not appropriate. We have not ruled out the possibility of introducing criminal sanctions as the last resort when piracy is rampant after HKCTV has completed digitization.

#### *Operators' efforts to employ protective measures*

We adopt a private-public partnership approach to the problem of piracy. While the Government will provide an appropriate legal framework against piracy, the industry has a key role to play in combating piracy. Operators need to build up their technical capability to guard against infringement and protect their services. This is in line with the approach adopted by other jurisdictions. For example, as quoted in our previous submissions to the Committee, the Recommendation R(91)14 of

the European Council suggests that providers of encrypted TV services have the responsibility to use the best available encryption technology.

*Options of criminal sanctions to combat pirated viewing*

The first step in the process of formulating legislative proposals to enhance existing measures against pirated viewing is to determine if introducing criminal liability against end-users is appropriate. If criminal liability is justified, we will then determine the appropriate level of punishment ranging from imprisonment to fine. To determine if we should introduce end-user criminal liability, the Administration consulted the public on the issue in late 2001. According to the outcome of the public consultation, while there is general support for imposing criminal sanctions against pirated viewing for commercial purposes, the views as to the introduction of criminal sanctions against domestic pirated viewing are diverse. However, there is general acceptance about imposing civil liability on domestic end-users. We have taken into account the public views in formulating our legislative proposal.

*Facilitation of digitization*

Telecommunications and broadcasting services providers use the In-Building Coaxial Cable Distribution System (IBCCDS) frequency channels to deliver their services to apartment units in a high-rise building. IBCCDS frequency channels are limited and the government's policy is to ensure that the capacity within an IBCCDS is used efficiently and on a non-discriminatory basis. When assigning additional IBCCDS frequency channels to HKCTV to facilitate its digital migration project, the Administration needs to ensure spectrum efficiency and fair allocation of the frequency channels to all competing telecommunications and broadcasting service providers. At present, HKCTV is the only pay TV operator in Hong Kong providing a service in analogue form. The Administration is committed to facilitating HKCTV's digitization process as long as it is appropriate and fair to all parties concerned.

In conclusion, we maintain that both the operators and the Government have a role to play in combating piracy. We maintain that our gradual approach to tackle pirated viewing is most appropriate and acceptable to the community.

Yours sincerely,

(Eddie Cheung)  
for Secretary for Commerce, Industry and Technology

c.c. Hong Kong Cable Television Limited  
(Attn: Mr Eric Lo, Executive Director – Cable Subscription Services)  
- By Fax