



30 January 2004

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

Dear Miss Yeung,

**Broadcasting (Amendment) Bill 2003**

We refer to your letter of 7 January and would like to provide the information requested in accordance with your paragraph numbering.

- (a) Since the other pay TV services are still new to the Hong Kong market, their pirated viewing problem at this juncture may not be as severe as that of HKCTV. However, as far as we understand, the parent company of TV Plus has been suffering from serious pirated viewing problem in Taiwan despite its adoption of digital transmission technology for many years.
- (b) Undeniably, analogue television service is more vulnerable to pirated viewing than digital television service. Nonetheless, it is the experience of HKCTV and its overseas counterparts that in the absence of effective dissuasive and proportionate sanctions, digitization alone cannot contain the pirated viewing problem. For instance, although HKCTV has been carrying out its digital migration as speedily as possible and changing its digital key every couple of days, it notices that:
- there are still widespread sales of unauthorized digital decoders at Apliu Street. Only in November and December 2003, OFTA seized a large number of unauthorized decoders at Apliu Street. Of those forwarded to HKCTV for testing, 23 devices were intended for decoding our digital service. This contrasts with the Administration's information in its letter to the Bills Committee of 13 January 2004 that there were only 2 digital unauthorized devices seized in the year of 2003.



- there are still widespread promotions and communications on sale, installation and use of unauthorized digital decoders in the community. Recent flyer distributed in estates and "intelligence" exchanged on the Internet are attached for Members' reference.
- unauthorized digital decoders are offered at an increasingly attractive price. The retail price in early 2003 was over HK\$3000 per decoder. It has now dropped to HK\$1200. In addition, a smart card clone is available as cheap as HK\$150.
- lately, certain unauthorized digital decoders have been programmed with an "auto-roll" function which is intended for circumventing HKCTV's periodic changes of its digital key.

The above have arisen notwithstanding the digitisation of our encryption systems because the demand for unauthorized decoders remains strong. Illegal manufacturers have therefore every incentive to circumvent our encryption systems no matter how advanced they may be. To contain the problem, digitization alone is not enough. There must exist effective dissuasive and proportionate sanctions against both the demand and the supply for unauthorized decoders.

- (c) Migration from analogue transmission to digital transmission needs to be carried out building-by-building and is also dependent on the delivery of set top boxes. Thus it takes time to complete the process for the whole territory. Despite that and the hiccups in obtaining additional IBCCDS frequencies for the digital migration in the first year, HKCTV has moved forward on its own initiatives the completion of the digital migration by nine months to the 3<sup>rd</sup> quarter of 2004.
- (d) Since we have been carrying out our digital migration with all speed, there is not much that the Government may do at this juncture to expedite the process. Nonetheless, there remains a lot that the Government may do in curbing pay TV piracy. For instance, the following shortcomings should be addressed immediately.
- The law enforcers have not given adequate attention to the problem. The law against the supply of unauthorized decoders was promulgated as early

as July 2000. Yet, no enforcement action was taken until January 2001 and only 14 operations were mounted in the following 33 months resulting in the seizure of only 2400 unauthorized decoders<sup>1</sup>. Though there have been seemingly more enforcement actions in the recent months, there remains a concern that such increase was prompted by the desire of getting the above bill passed without significant modification, and the enforcement actions will die down after passage of the bill. Worse still, despite the fact that most (if not all) unauthorized decoders sold in Hong Kong are imported from mainland China, no smuggler has ever been arrested at the border for so many years since the law has existed.

- The Administration has not given the Legco Members full background information for scrutinizing the bill. For instance:
  - the Administration repeatedly advocates that the European Union (EU) legal instruments require sanctions to be imposed only on *commercial* activities favouring unauthorized reception, not on unauthorized reception per se. However, it fails to point out to the Legco Members that it is the policy of the EU to introduce only a *minimum level* of legal protection against piracy and to grant Member States flexibility to extend the scope of prohibitions to cater to their own needs. The real intent of the EU requirements has been expressly provided, for example, in paragraph 35 of the Explanatory Report to the European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access (ETS No.:178)<sup>2</sup> which states that:

"...given that the offences which appear in the Convention are a minimum, Parties are free to go beyond the list of unlawful activities mentioned in Article 4 and may decide that other types of access to a protected service without authorization of the service provider, for example **the use of an illicit device for private purposes, should be considered unlawful and subject to penal,**

<sup>1</sup> Source: Information paper dated 21 October 2003 from the Commerce, Industry and Technology Bureau (CB(1)131/03-04(01))

<sup>2</sup> Available on <http://conventions.coe.int/Treaty/EN>

**administrative or other sanctions."** (emphasis added)

- while the Administration repeatedly quoted the Cable and Satellite Broadcasting Association of Asia and Motion Picture Association as the industry associations supporting the Government's gradual approach, it has played down the support for imposing criminal liability upon illicit domestic end-users from many organizations within and without the industry, including:

- ◆ all the local free and pay TV licensees
- ◆ Hong Kong Kowloon & New Territories Motion Picture Industry Association Ltd.
- ◆ Composers and Authors Society of Hong Kong
- ◆ Nagravision SA
- ◆ Association Européenne pour la Protection des Oeuvres et services Cryptés (AEPOC)
- ◆ The Law Society of Hong Kong
- ◆ The Vocational Training Council

HKCTV agrees that a private-public partnership approach is necessary for curbing pay TV piracy. While the private sector has been making substantial investments and efforts on the technological protection of its property, the provision and implementation of an adequate legal protection by the Administration remains to be seen.

Yours sincerely,



Eric Lo

Executive Director - Cable Subscription Services

Encl.

A Picked up at  
Lai King Estate  
Kwai Chung, on 14/1/04

# 數碼光纖上樓機，包睇晒 66 個台

## 包清包靚，不用安裝，忠誠可靠，永久使用

1. 中央4臺	19. ESPN美國體育臺(足球)	37. 自選82臺(成人臺)	55. DIAETIORT
2. 香港體育臺(足球)	20. 電影1臺	38. 自選83臺(成人臺)	56. 衛視資訊臺
3. 香港有線新聞1臺	21. 九龍交通臺	39. 自選84臺(成人臺)	57. ARIRANG
4. TCM/CM卡通臺	22. 娛樂臺	40. 自選85臺(成人臺)	58. Cicket Live
5. BBC英國新聞臺	23. 18跑馬臺	41. 自選86臺(成人臺)	59. NHK Woad TV
6. AXN美國動作臺	24. CNBC亞洲商業	42. Zee TV印度臺	60. MCC
7. 鳳凰衛生臺	25. 天氣臺	43. Zee cinemax電影臺	61. 西甲足球臺
8. 旅游經營臺	26. 探索2臺ADVENTVREONE	44. Zee news印度新聞臺	62. 翡翠臺
9. 陽光衛視	27. BLOOMBCNG 彭博	45. Zee music印度音樂臺	63. 亞洲臺
10. CNN. 美國新聞臺	28. 東森電視	46. Channel A	64. 明珠臺
11. MTV音樂臺	29. CAN新加坡	47. HBO美國電影臺	65. 亞洲英文臺
12. 電影3臺	30. 中央9臺	48. Cinemax美國電影臺	
13. 兒童臺/電影2臺	31. NHK日本臺	49. CAT Preview(成人臺)	
14. 新聞二臺	32. 阿裏郎韓國臺	50. Cosmopian	
15. 預告臺	33. TVS法國臺	51. Playboy花花公子(成人臺)	
16. 探索臺DISCOVERY	34. DW德國臺	52. Channel Blue(成人臺)	
17. 國家地理臺	35. TVE西班牙	53. Pavadise TV(成人臺)	
18. 衛視體育臺(足球)	36. Star maies 衛視電影臺	54. Future TV(成人臺)	

328. 深水埗鴨寮街 191 號地下

電話 9875 8432

包安裝, 半年包睇

保證所有台一定全部睇晒

價錢公道 售後服務良好

安坐家中, 一個電話即有

師傅上門安裝, 絕無任何

附加費用, 滿意後才收費

請即電

9875 8432



# Excerpts from news group

**From:** ben **To:** talk.cabletv  
**Subject:** digital decoder

Jan 5, 2004

部 digital decoder 今日睇唔到，點攞？ 係咪一路等？ 等到張卡自動轉key？

**From:** 金當縮糞呵啖唉士啊司@爸爸鼠尾長行夜 **To:** talk.cabletv  
**Subject:** [基佬] 於今日下午三點幾轉左大 Code

Jan 5, 2004

連我張自升都死埋，番而白板卡無樹，真比佢地玩死

@.@

**From:** 洪榮攻 **To:** talk.cabletv  
**Subject:** 乜野係白板卡??

Jan 5, 2004

白板卡又係點架？同自升卡有乜唔同？

# Excerpts from news group

**From:** 雪人 **To:** talk.cabletv  
**Subject:** Re: [基佬] 於今日下午三點幾轉左大 Code

Jan 5, 2004

我張自升完仲睇到嗎

**From:** pp5866 **To:** talk.cabletv  
**Subject:** Re: [基佬] 於今日下午三點幾轉左大 Code

Jan 5, 2004

雪人:

I update myself but cannot see. any good suggestion. i am using XSAT cable tv888

(latest model)



# Excerpts from news group

**From:** Leo Ma **To:** talk.cabletv  
**Subject:** Re: 新版卡

8 Jan 2004

亞鼠兄, 記住第一時間通知我呀. 原早原好, 星期日都得. 唔該晒

**From:** 金當縮糞呵啖唉士啊司@爸爸鼠尾長行夜 **To:** talk.cabletv  
**Subject:** 新版卡

9 Jan 2004

預計新版卡會於下星期一攞掂, 依家只係等緊新既工程卡號到, OK

@.@