

立法會
Legislative Council

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**Background brief on
Broadcasting (Amendment) Bill 2003**

Purpose

This paper gives a summary of views expressed by members of the Panel on Commerce and Industry when they reviewed with the Administration certain statutory provisions in relation to the control of unauthorized reception of subscription television programme services.

Background

2. In April 2001, the Government implemented the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 that introduced criminal liability for end-users copyright piracy which covered, among others, the problem relating to the unauthorized reception of subscription television programmes without payment. It triggered a heated debate in the community and the public generally felt that the scope of the said Ordinance was too wide. In June 2001, with the approval of the Legislative Council, the Government suspended the implementation of the Ordinance insofar as it applied to certain provisions in the Copyright Ordinance (Cap. 528) and subject to certain exceptions. In response to public concerns about end-user criminal liability, the Administration conducted a review in late 2001, which included a two-month public consultation, on certain provisions of the Copyright Ordinance.

3. Having regard to the findings of the review, including the results of the public consultation, the Chief Executive in Council endorsed a package of proposals in March 2002 to tackle, inter alia, the problem of unauthorized reception of subscription television programme services by way of proposed amendments to the Broadcasting Ordinance (Cap. 562).

Major proposals in the Bill

4. The Bill seeks to amend the Broadcasting Ordinance to introduce civil remedy against unauthorized reception of licensed subscription television programme services and to introduce both civil and criminal sanction against the possession of unauthorized decoders for commercial purposes. It also seeks to strengthen the enforcement powers of the Telecommunications Authority to cover all decoder-related offences and confers on him a new arrest power.

Consultation

5. The policy proposals of the Bill were included in the consultation document issued in October 2001 to review certain provisions of the Copyright Ordinance. The Administration has advised that the Broadcasting Authority has been informed of the Bill.

Discussion at Panel

6. The Panel held a special meeting on 10 January 2002 to receive the views of deputations on the Consultation Document on "Review of Certain Provisions of Copyright Ordinance". Some organizations had given views on the proposed sanctions to deal with the unauthorized reception of subscription television programmes.

7. The film industry urged the Administration to combat fraudulent reception of subscription television programmes and protect the copyright owners' interest. The Hong Kong Cable Television Limited considered introducing criminal liability for end-users of pirated viewing a more effective deterrent measure than civil remedy. It pointed out that the problem of pirated viewing not only reduced the Profits Tax payable to the Government, but also discouraged operators' investment. The Consumer Council however recommended that the problem of pirated viewing should be rectified through social education and technological advancement and the Council was opposed to criminalizing unauthorized reception of subscription television programmes.

8. At the Panel meeting on 4 February 2002, members noted that in drawing up the current proposals, the Administration had considered a number of factors, including the implications of pirated viewing on the development of the local subscription television market, the effectiveness of digitization in addressing the problem of unauthorized reception of subscription television programmes, the responsibilities of service operators in protecting their own rights and the possible disturbance caused to the public by the control measures.

9. Members were generally in support of the Administration's gradual approach in combating the fraudulent reception of subscription television programmes by domestic viewers. They saw merits in first introducing civil remedy against domestic pirated viewing while encouraging the operators to digitize their service, and then to introduce criminal sanction against end users if it proved that domestic pirated viewing was still prevalent after digitization. However, a member advocated the introduction of criminal liability against domestic pirated viewing to protect the interest of the licensed operators.

10. Some members raised concerns on the enforcement difficulties in combating pirated viewing of subscription television programmes. For example, members of the public were solicited openly through handbills for the installation of unauthorized decoders for pirated viewing. It was also difficult to judge whether a decoder brought into Hong Kong was for commercial purposes and/or would be used to receive unauthorized subscription television programmes.

11. As regards policy responsibility for combating fraudulent reception of subscription television programmes, the Administration confirmed that the Communications and Technology Branch (formerly the Information Technology and Broadcasting Branch) of the Commerce, Industry and Technology Bureau had been entrusted with the policy responsibility.

12. The relevant extracts of the minutes of the Panel meetings held on 10 January 2002 (deputations' view relating to unauthorized reception of subscription television programmes) and 4 February 2002 are at **Appendix I and II**.

**Extract minutes of the Panel on Commerce and Industry meeting on
10 January 2002**

**Deputations' view relating to unauthorized reception of subscription
television programmes**

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7. Motion Picture Association International (MPAI)
(LC Paper No. CB(1) 683/01-02(05))

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(b) Regarding unauthorized reception of subscription television programmes, the failure of the Administration in making fraudulent reception of subscription television programmes a criminal offence or introducing civil remedies would eventually undermine the protection given to the copyright owners and harm their interests.

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10. Hong Kong, Kowloon & New Territories Motion Picture Industry Association Limited (MPIA)
(No written submission had been provided.)

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(f) Criminal sanction should be introduced against unauthorized reception of subscription television programmes by fraudulent means.

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25. The Hong Kong Cable Television Limited (HK Cable)
(LC Paper No. CB(1) 743/01-02(05))

(a) HK Cable supported the proposal that criminal sanction should apply to fraudulent reception of subscription television programmes. As there were loopholes in the existing legislation, many unauthorized decoders were still available for sale in the market. The fines for the sale of unauthorized decoders were too low to achieve a deterrent effect. Even with enhanced

enforcement actions, the problem of pirated viewing of subscription television programmes might not be solved completely. The existing civil remedy was also inadequate to tackle pirated viewing.

- (b) Fraudulent reception of subscription television programmes did not merely concern individuals' interests. It would impact the revenue of HK Cable directly. The profits tax payable to the Government by the company would also be reduced indirectly.
- (c) Pirated viewing would discourage the operators of cable television programmes from investing in Hong Kong. In the long run, there would be fewer programmes available for audience's choice.

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32. Consumer Council (CC)
(LC Paper No. CB(1) 743/01-02(01))

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- (c) CC opposed to criminalizing unauthorized reception of subscription television programmes and recommended that the problem should be rectified through social education and technological advancement.

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**Extract minutes of the Panel on Commerce and Industry meeting on
4 February 2002**

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IV. Review of certain provisions of the Copyright Ordinance

(LC Paper No. CB(1) 953/01-02(03))

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Unauthorized reception of subscription television programmes

8. On fraudulent reception of subscription television programmes, the Director of Intellectual Property (DIT) advised that the Administration considered such acts improper and proposed to tighten regulation in this respect. In drawing up the relevant proposal, the Administration had considered many factors, including the implications of pirated viewing on the development of the local subscription television market, the effectiveness of digitization in addressing the problem, the operators' responsibilities to protect their own rights, and the disturbance of the relevant measures caused to the public. He pointed out that the provision and sale of unauthorized decoders for the reception of subscription television programmes were already governed by the Broadcasting Ordinance (Cap. 562) and Copyright Ordinance. Under the Broadcasting Ordinance, it was a criminal offence for a person to import, export, manufacture, sell, offer for sale, or let for hire an unauthorized decoder in the course of trade or business. Moreover, under the Copyright Ordinance, a service provider had the same rights and remedies against a person who made, imported, exported, sold or let for hire a decoder for receiving its subscription television programmes without authorization, as a copyright owner had in respect of an infringement of copyright. In view of the current situation and the submissions received during the consultation period, the Administration proposed a gradual approach in adopting the following measures to combat fraudulent reception of subscription television programmes:

- (a) to introduce criminal sanction and civil remedy against the possession of unauthorized decoders for commercial purposes;
- (b) to introduce civil remedy against fraudulent reception of subscription television programmes; and
- (c) to encourage service operators to digitize their services as soon as possible. If it proved that fraudulent reception of subscription television programmes was still prevalent after digitization, the Government would take prompt action to introduce criminal sanction against end-users.

9. Mr CHAN Kam-lam expressed concern about the possession of unauthorized decoders for commercial purposes and enquired whether any measures were in place to prohibit the importation of such decoders. In response, the Principal Assistant Secretary for Information Technology and Broadcasting (PAS(ITB)) advised that the smuggling of unauthorized decoders for commercial purposes was a criminal offence under the Broadcasting Ordinance. The Customs and Excise Department would take enforcement actions accordingly to prevent such decoders from being brought into Hong Kong. Based on the information available, there had not been any cases of large scale importation of unauthorized decoders so far.

10. Mr CHAN Kam-lam considered the above measures ineffective in tackling pirated viewing of subscription television programmes. It was rather difficult for an enforcement officer to judge whether a decoder was brought into Hong Kong for commercial purposes, which gave rise to grey areas in enforcing the law. While appreciating Mr CHAN's concern, PAS(ITB) believed that the digitization of subscription television services would bring the fraudulent reception of subscription television programmes with unauthorized decoders under control.

11. Given that members of the public were solicited openly through handbills for the installation of unauthorized decoders to facilitate pirated viewing of subscription television programmes, Mr SIN Chung-kai expressed his concern and enquired whether any regulatory measures were in place. PAS(ITB) advised that the issue raised by Mr SIN was already governed by the Broadcasting Ordinance. Upon reports from the public, enforcement officers would deal with them in accordance with the law.

12. Mr SIN Chung-kai pointed out that the pirated use of telex system was a criminal offence under the Theft Ordinance (Cap. 210). Mr SIN opined that the Administration should consider invoking the Ordinance to combat pirated viewing of subscription television programmes. The Assistant Director of Telecommunications advised that in view of the different definitions of subscription television and telex system, the control measures concerned could not be adopted directly. PAS(ITB) emphasized that a gradual approach was more desirable in encouraging operators to digitize their services so as to tackle the problem of pirated viewing of subscription television programmes. If digitization could not provide a solution, criminal sanction would be introduced promptly.

13. Responding to Mr MA Fung-kwok's enquiry, PAS(ITB) said that the combat against pirated viewing of subscription television programmes was not a pretext to force the subscription television operators to digitize their services. In fact, individual operators had already initiated their own digitization plans. According to overseas experience, digitization had made pirated viewing very difficult.

14. Referring to Mr MA Fung-kwok's comments on paragraph 28 of the paper, the Deputy Secretary for Commerce and Industry (DSCI) clarified that based on the views received during the consultation period, the public generally supported the introduction of criminal sanction against those receiving subscription television programmes fraudulently for commercial purposes (e.g. for public display at pubs). As to whether pirated viewing of subscription television programmes for personal or domestic purposes should also be made a criminal offence, the public had divergent views and called for thorough examination of the issue. PAS(ITB) supplemented that among the submissions received from the public, except for some individuals, many organizations such as political parties, professional bodies and trade associations considered that the proposal to introduce criminal sanction against endusers for pirated viewing of subscription television programmes should be dealt with carefully.

15. Mr Abraham SHEK opined that fraudulent reception of subscription television programmes, whether for commercial or personal/domestic purposes, should all be regarded as infringing acts. He further remarked that the operators concerned should have their revenue protected as they were required to pay licence fees. DSCI reiterated that in determining whether criminal sanction should be imposed to combat pirated viewing, the Administration had considered a number of factors, which included the severity of the infringing acts; whether it was too harsh to hold the endusers criminally liable, the enforcement arrangements upon the introduction of criminal sanction and the feasibility of tackling pirated viewing by digitization. According to overseas experience, those jurisdictions which had imposed criminal sanction on end-users for pirated viewing of subscription television programmes encountered enforcement difficulties and failed to stop pirated viewing. In view of the reservation expressed by the public on imposing criminal liability on end-users, the Administration considered it more appropriate to tackle the problem by digitization first.

16. On pirated viewing of subscription television programmes, Ms Audrey EU opined that prudence should be exercised when determining whether such acts should be criminalized. She supported a gradual approach whereby the problem would be tackled by digitization first. Criminalization of such acts should only be explored when this approach was proved to be ineffective.

17. Responding to Mr MA Fung-kwok's enquiry on whether the Commerce and Industry Bureau or the ITBB should be responsible for the legislative amendments relating to fraudulent reception of subscription television programmes, DIP pointed out that fraudulent reception of subscription television programmes was not an infringing act under the Copyright Ordinance. The Hong Kong Bar Association also considered such acts were outside the scope of copyright and should not be governed by the Copyright Ordinance.

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