

Consumer Council
Submission to LegCo Bills Committee on Broadcasting (Amendment) Bill 2003
Unauthorized Reception of Licensed Subscription Television Programme Services

1. The Council welcomes the opportunity to provide its comments in relation to the provisions regarding unauthorized reception of licensed subscription television programme services in the above Bill.
2. In December 2001 the Council submitted to Government, in response to a consultation paper on the above issue, that it was concerned with practical problems that may arise from imposing end-user criminal liability, and the lack of balance in providing protection to relevant parties
3. The Council is pleased to note therefore, that the Government has decided not to impose criminal penalties for unauthorized reception for domestic viewing. The Council notes in paragraph 7 of the Brief to LegCo on the Bill, that the Government will take a cautious approach of introducing a civil remedy as the first step in tightening the control of unauthorized reception in domestic premises.
4. However, the Council would like to set out for Member's information, the Council's reasons why criminal liability should not be imposed for end users, just in case the opposite view is being canvassed again.
5. The Council noted at the time that in circumstances of reception for private and domestic purposes, it may not be easy to attribute liability to a person culpable out of a whole family that is watching a subscription service, i.e., whether the acquirer, the owner of the premises or the viewer should be liable. There would also be the possibility that a family acquires a reception device from a door-to-door promoter without realizing the illicit nature of the device and under a misrepresentation of the device by the promoter. On the other hand, the device might be unwittingly taken over from a previous occupier of premises.
6. The Council noted therefore that it is arguable whether the problem was so severe as to justify criminal sanction against consumers with the possibility of intrusive entry into premises to facilitate investigation of a suspected violation, when:
 - a) there are existing remedies to protect business, i.e., service providers and copyright owners under the Broadcasting and Copyright Ordinances; yet
 - b) consumers have only scant protection against misleading and deceptive business conduct.
7. In regard to consumer protection legislation, the Council issued a study in May 2001 on 'Regulating Deceptive, Misleading and Unfair Practices in Consumer Transactions' in which it called for the strengthening of consumer protection laws that address such behaviour. The Government has subsequently responded by stating its belief that existing measures are adequate and it does not propose to act on the Council's recommendations.

8. At the time of making its submission on the suggestion that criminal liability should be imposed for unauthorised reception by consumers, the Council was of the view that the problem with unauthorized reception may well be overcome by service providers employing digital transmission and advanced encryption technology rather than resorting to imposing end-user criminal liability. The Council considered that increasing action through imposing existing sanctions against the possession of an unauthorized decoder for commercial purposes would also help in curbing the problem of unauthorized reception.

9. The Council trusts that when, as indicated in paragraph 7 of the Brief to LegCo, the Government reviews the situation in view of substantial digitisation of the major pay television programme service licensee, it will also reconsider whether the level of protection that exists for consumers against deceptive, misleading and unfair practices by businesses is adequate, in order to introduce some balance in protective measures for consumers.

Consumer Council
10 September 2003