ASIA TELEVISION LIMITED
GALAXY SATELLITE BROADCASTING LIMITED
HONG KONG CABLE TELEVISION LIMITED
TELEVISION BROADCASTS LIMITED
TV PLUS (HK) CORP. LIMITED
YES TELEVISION (HONG KONG) LIMITED

CB(1)2344/02-03(01)

May 15, 2003

The Hon. Mrs. Rita Fan
Legislative Council
Room 109, Legislative Council Building,
8 Jackson Road,
Central,
Hong Kong

Dear Mrs. Fan

Broadcasting (Amendment) Bill 2003

The Government is introducing the Broadcasting (Amendment) Bill 2003 into the Legislative Council to tighten the control of unauthorized reception of subscription television services. The Bill proposes to differentiate a commercial fraudster from a domestic fraudster. The former is liable for both civil remedy and criminal sanction for possession of illegal decoders whereas the latter is liable for merely civil remedy for unauthorized reception of subscription television services. No criminal sanction will be imposed on the latter. The Government says it will consider criminal sanction when civil remedy and digitization of television services are not adequate to address the piracy problem. The Government also claims that the said differentiation and gradual solution are justified by the enforcement difficulties and privacy concerns.

We are of the view that the Government proposal is *neither* adequate *nor* accurate -

- Analogous to abstraction of electricity or fraudulent use of a public phone with intent to avoid payment, unauthorized reception of subscription television services is by nature a misdemeanour of theft or dishonest appropriation of property. We cannot think of other cases of theft which have criminal liability only if they are committed at commercial premises but not at domestic premises. The differentiation is simply inconceivable and illogical.

- Enforcement difficulties and privacy concerns are not the excuse to exonerate the knowing swindlers from stealing the subscription television services at homes. Many subsisting offences require the law enforcement agency to carry out investigations at domestic premises. Two notable examples are the search for stolen goods (s.28 Theft Ordinance) and possession or use of an unlicensed cordless telephone (s.8(1)(b) Telecommunications Ordinance). We are sure that the Government has had measures in place to address the enforcement difficulties and privacy concerns in such cases. There is no logic in the argument that these measures cannot be applied to signal theft at domestic premises. There is also no logic in the argument that civil proceedings for investigation and entry (e.g. by way of an Anton Piller order) is less intrusive into privacy than criminal investigation and entry into domestic premises.

- Being fraudulent and dishonest behaviour knowingly committed by the wrongdoer, signal theft needs to be sanctioned instantly and forcefully as other cases of fraud. It is not logical to approach the problem in a "gradual" way as proposed by the Government.

Imposing criminal liability on both commercial and domestic end-users for unauthorized reception of subscription television services is a practice commonly adopted by the developed economies (including US, UK, France and Canada) to protect the property rights of the television operators, the interests of the lawful subscribers and revenues of the Government Treasury. As early as 1993, the Law Reform Commission of Hong Kong specifically recommended criminalizing fraudulent reception of subscription television programmes. The latest proposal of the Government is clearly a step backward and tantamount to an open invitation for signal theft at homes where most unauthorized decoders are used. We wish to appeal to Honourable Members to plug the glaring loophole by requiring the Government to:

1. introduce both criminal sanction and civil remedy against unauthorized reception of subscription television programme services without payment of a subscription; and

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2. introduce both criminal sanction and civil remedy against the possession of unauthorized decoders for domestic uses or commercial purposes.

Yours sincerely,

Asia Television Limited

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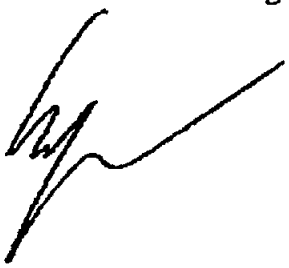
Title: Senior Vice President

Television Broadcasts Limited

Name: Stephen Chan
Title: Assistant General Manager – Television Broadcasting

Galaxy Satellite Broadcasting Limited



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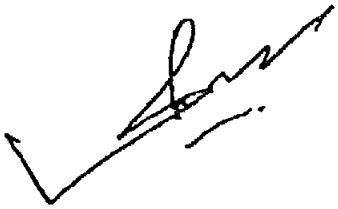

Name: Garmen Chan
Title: Vice President, External Affairs

Yes Television (Hong Kong) Limited

Name: Lanny Albina Huang
Title: President

c.c. Secretary for Commerce, Industry and Technology
Permanent Secretary for Commerce, Industry and Technology (Information Technology and Broadcasting)
Chairman of the Broadcasting Authority
Director-General of the Office of the Telecommunications Authority