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Miss Polly Yeung
Clerk of the Bills Committee on Broadcasting (Amendment) Bill 2003
Hong Kong SAR Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong

**Re: Bills Committee on Broadcasting (Amendment) Bill 2003
Invitation for submissions**

Dear Miss Yeung:

Thank you for your above-referenced letter dated 21 July 2003. I am pleased to respond to your kind invitation to appear before the Bills Committee during its meeting on 10 September 2003 for oral presentation of the views set forth below.

INTRODUCTION

The Motion Picture Association (MPA) is a trade association representing seven international producers and distributors of theatrical motion pictures, home video entertainment, television programming, and digital representations of moving images and sounds. MPA member companies include:

Buena Vista International, Inc.
Columbia TriStar Film Distributors International, Inc.
Metro-Goldwyn-Mayer Studios Inc.
Paramount Pictures Corporation
Twentieth Century Fox International Corporation
Universal International Films, Inc.
Warner Bros. International Theatrical Distribution, Inc.

The MPA works to eliminate unfair and restrictive trade regulations, trade practices and non-tariff barriers, and to strengthen and enhance copyright protection in order to promote a healthy infrastructure to allow for free competition in the international marketplace. The MPA also maintains active anti-piracy programs in 68 territories throughout the world, including Hong Kong, for the protection of its member companies' works and the enforcement of their rights.

COMMENTS

MPA remains grateful for the continued interest and leadership shown by the Hong Kong SAR Government towards intellectual property rights protection. We have previously noted the administration's leadership on a number of important legislative undertakings, as well as the excellent cooperative relations between MPA's investigators and the Government's enforcement officers. This continued support from the Government has helped Hong Kong maintain its place among the top twenty-five markets for our member companies' products worldwide.

The Broadcast (Amendment) Bill 2003 reflects the Government's determination to maintain a vigilant effort to promote the effective enforcement of intellectual property rights by recognizing signal theft as a serious and unacceptable problem. MPA is thus appreciative of this initiative, which we supported during the Government's review in late 2001 on certain provisions of the Copyright Ordinance.

However, we believe that prior to the completion of this exercise the Bills Committee may benefit from further consideration, and possible clarification, of certain details of the proposed revisions. We are pleased to comment on these in further detail.

UNAUTHORIZED DECODERS (SECTIONS 6 AND 7)

We are pleased to note the Government's recognition of signal theft as a serious economic threat to the continued viability of the television industry.

There is no doubt about the endemic proliferation of unauthorized reception of television programming (i.e., signal theft) throughout the Asia-Pacific

region. The Cable & Satellite Broadcasting Association of Asia (CASBAA) have conservatively estimated that in spite of more than 76,000,000 officially known and authorized (i.e., paying) cable subscribers represented in its 14 regional territories, there are more than 25,000,000 unauthorized (i.e. non-paying) 'subscribers' in these same markets. The estimated annual losses to the cable industry, some of which represents lost royalties paid to MPA member companies, is in excess of USD 1.8 billion. CASBAA further estimates that annual losses to cable operators in Hong Kong from estimated 70,000 unauthorized 'subscribers' represents losses of almost USD 28 million annually. It goes without saying that the Government also suffers lost tax revenues as a result of this same black market activity.

We note that the proposed amendments to the Broadcasting Ordinance would introduce criminal sanctions against a person who, for the purpose of, or in connection with, a trade or business, possesses, uses, or authorizes possession or use of, an unauthorized decoder. We note further that the proposed definition of "unauthorized decoder" for the purposes of the amendment is identical to the one presently found in section 6(9) of the Ordinance, meaning a decoder by means of which encrypted television programmes or encrypted television programme services *provided under a licence* (Emphasis added) can be viewed in decoded form *without payment of a subscription where a subscription is required to be paid*. (Emphasis added)

As a practical matter, MPA member companies license their content to pay-TV operators throughout the Asia-Pacific region, who are allocated particular territories in which they are permitted to retransmit programs. The various pay-TV operators typically broadcast these signals by means of a satellite, in an encrypted format, to paid subscribers who are provided with decoders to permit the viewing of the protected signal. As a result, MPA member companies may authorize four different pay-TV operators to provide the same channel in four different regional territories.

Because the footprint of these various satellites typically covers Hong Kong, decoding each of these signals within Hong Kong is technically feasible. For example, a growing trend noted by the industry has been the importation into Hong Kong of decoders obtained in connection with legitimate subscriptions in other territories outside of Hong Kong. These decoders are typically sold to consumers on the basis of a one-time payment without the necessity of any further subscription fee.

One of MPA's concerns therefore arises from the statutory interpretation of the term "licence" under the Broadcasting Ordinance. We are given to understand that the this term has direct relevance to the notion of a "subscription," which is defined under the Ordinance to mean a fee payable by or on behalf of any person for the right to view a television programme service in Hong Kong.

In the case of the aforementioned decoders imported in from other territories, the foreign-territory originated signal thus enabled would not seem to have been "provided under a licence" for the purposes of the Ordinance, since the pay-TV distributors in these foreign territories are not licensed in Hong Kong. It is clear that signals authorized by the rights owner for viewing in Hong Kong would be protected from non-consensual viewing. It should reasonably follow that signals that have not been authorized by the rights owner for viewing in Hong Kong (but which are still subject to copyright protection) should be likewise protected under the Broadcasting Ordinance from unauthorized reception.

MPA is concerned about possible interpretations by the judiciary that might provide a loophole in the case of a decoder lawfully manufactured to facilitate the reception of encrypted signals in the Philippines, for example, but which is clandestinely imported into Hong Kong for further distribution in the course of business or trade. It would be ironic indeed if courts were to determine that a decoder as described above, considered by all parties to be illegal or unauthorized for the territory of Hong Kong, nonetheless falls outside of the statutory definition of an "unauthorized decoder."

We urge the Bills Committee to give further consideration to the existing definitions, and to consider the opportunity of further amending sections 6 and 7 of the Broadcasting Ordinance in order to provide further protection, possibly through reconsideration of one or more of the applicable definitions.

CIVIL REMEDY (SECTION 7B)

For the reasons set forth above concerning the extent of signal theft in Hong Kong, MPA further welcomes the introduction of civil remedies within the Broadcasting Ordinance against end users for the unauthorized reception of encrypted television programming as an effective means of further deterrence. However, we repeat here our same concerns regarding the interpretation of sections 6 and 7, *mutatis mutandis*.

We note further that various other concerned parties have likened the unauthorized reception, i.e., theft, of subscription television programmes to the theft of electricity and other utilities, wherein the avoidance of payment is treated as a criminal offence. We recall, for example, that the Law Reform Commission of Hong Kong went so far as to recommend in the early 1990's that the fraudulent reception of television programmes be categorized as a criminal offence.

We are therefore encouraged by remarks in the Committee's discussion paper referencing the possibility of imposing criminal liability on end users following the further digitization of the industry. MPA agrees that despite the innovation of exciting new delivery systems resulting from digital technology, the potential threat to rights owners is greatly magnified. Although we do not advocate the imposition of criminal penalties against domestic end users within the context of the proposed amendments to the Ordinance at this time, we agree it is difficult to predict the full impact of digitization and that further consideration may be warranted at a later time.

Another of MPA's concerns for the civil remedy section of the proposed amendments concerns standing. We believe the amendments might benefit from allowing television programme service providers (as that term is defined) in addition to licensees (as that term is defined) to pursue civil redress against signal theft.

PROVISIONS SUPPLEMENTARY TO SECTIONS 6 AND 7 (SECTION 7A)

MPA agrees that in order to achieve the objectives set forth in the proposed amendments and to provide meaningful vigilance against signal theft, the Telecommunications Authority should be further empowered in the manner contemplated in order to rationalize their authorities with the newly contemplated proscriptions. We are pleased to note in the Bills Committee's discussion paper that the Police and Customs have pledged the cooperation of their good offices during enforcement actions conducted by the TA, and believe this will go a long way towards helping to fight the problem.

CONCLUSION

We are pleased to have had the opportunity to share these comments with you and look forward to meeting with your colleagues on September 10th.

Very truly yours,

Frank S. Rittman
Regional Director, Asia-Pacific