

# **Broadcasting (Amendment) Bill 2003**

Communications and Technology Branch  
Commerce Industry and Technology Bureau  
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# Current Legislation

## Broadcasting Ordinance

- It is 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; the maximum penalty is a fine of \$1 million and five years' imprisonment (section 6)
- It is a criminal offence for a person to import, export, manufacture, sell, offer for sale, or let for hire a decoder for use by a Television Review Only System to receive a broadcasting service not licensed on a subscription basis (section 7)

## Copyright Ordinance

- A service provider has the same rights and remedies against a person who makes, imports, exports, sells or lets for hire a decoder for receiving its subscription television programmes without authorization, as a copyright owner has in respect of an infringement of copyright (section 257)

# Public Consultation

- The Government issued a consultation paper on the review of certain provisions of Copyright Ordinance in October 2001
- Chapter 6 of the consultation paper is about unauthorized reception of subscription television programmes :
  - (a) whether criminal sanction against fraudulent reception of subscription television programmes should be introduced;
  - (b) whether civil remedy against fraudulent reception of subscription television programmes should be introduced; and
  - (c) whether criminal sanction and civil remedy against the possession of an unauthorized decoder for commercial purposes should be introduced

# Results of Consultation

- We received 50 submissions on chapter 6. The views of the public are summarized as follows :
  - unauthorized reception of subscription television is a theft
  - deterrent effect of existing legislation not sufficient. Reputation of Hong Kong will be jeopardized if control is not stepped up
  - unauthorized reception of subscription television does not justify criminal sanction
  - enforcement action against domestic endusers could be intrusive. Enforcement action should target the dealers who sell the illicit devices
  - digitization may reduce the problem
  - operators should enhance encryption technology to make it difficult to produce circumvention devices
  - action against unauthorized reception for commercial purposes is more acceptable to the public than action against domestic endusers

# Considerations

- The adequacy of digitization to reduce unauthorized reception
- The community's acceptance of making unauthorized reception a criminal offence
- The impact of unauthorized reception on the development of subscription television market

# Proposed Measures

*a gradual, balanced and generally accepted approach*

- The possession or use of unauthorized decoders for viewing licensed subscription television programmes without payment of a subscription is liable to civil action
- The possession or use of unauthorized decoders for commercial purposes is liable to civil action and criminal sanction
- Operators are encouraged to digitize their services as soon as possible
- If unauthorized reception of subscription television is still prevalent after the completion of digitization, the Government will take prompt action to make unauthorized reception a criminal offence

# The Bill – Major proposals

- To provide for civil remedy for any contravention of section 6 and viewing of any pay television programme provided by a licensee without paying a subscription (Clause 5)
- To make it an offence to possess or use or authorize another person to possess or use an unauthorized decoder for commercial purposes (Clause 3)
- To provide for a defence to the employer and employee in proceedings for an offence under sections 6 and 7 (Clauses 3 and 4)
- To make it an offence to wilfully obstruct the Telecommunications Authority or any public officer in the exercise of any power conferred upon him under the new section 7A (Clause 5)

The End