

LEGISLATIVE COUNCIL BRIEF

BROADCASTING (AMENDMENT) BILL 2003

INTRODUCTION

A At the meeting of the Executive Council on 29 April 2003, the Council ADVISED and the Chief Executive ORDERED that the Broadcasting (Amendment) Bill 2003 (the Bill), at **Annex A**, should be introduced into the Legislative Council to introduce civil remedy against unauthorized reception of licensed subscription television programme services and to introduce both civil remedy and criminal sanction against the possession of unauthorized decoders for commercial purposes. The B existing provisions to be amended are set out at **Annex B**.

JUSTIFICATIONS

Background

2. The Government conducted a review in late 2001 on certain provisions of the Copyright Ordinance, in response to public concern about end-user criminal liability. The review covered, among others, the problem relating to unauthorized reception of subscription television programme services without payment of a subscription. We consulted the public as part of the review process.

3. Having regard to the findings of the review, including the views received during the public consultation, the Chief Executive in Council (CE in C) in March 2002 endorsed a package of proposals, inter alia, to introduce civil remedy against unauthorized reception of subscription television programme services without payment of a subscription and to introduce both civil remedy and criminal sanction against the possession of unauthorized decoders for commercial purposes.

Scope of amendments

4. At present, the control of unauthorized reception of licensed subscription television programme services in Hong Kong is effected by the Broadcasting Ordinance (BO) through the control of the supply, i.e., import, export, manufacture, sale or let for hire, of unauthorized decoders¹ in the course of trade or business. The Bill is intended to strengthen the existing control by providing for sanctions against unauthorized reception for domestic viewing and commercial use. Specifically, these sanctions include civil remedy against unauthorized reception of licensed subscription television programme services without payment of a subscription, and both civil remedy and criminal sanction against the possession of unauthorized decoders for commercial purposes (e.g. for the public display of the television programmes in pubs and restaurants). The legislative proposals contained in the Bill, if passed, will give effect to the CE in C's decision taken in March 2002 to tackle the problem of unauthorized reception of subscription television programme services².

5. The civil remedy to be applied in the case of unauthorized reception for domestic viewing or commercial purposes will enable a licensee who sustains loss or damage from the avoidance of payment of subscription by a domestic viewer or the offence committed by a commercial user to bring an action for damages, an injunction or other appropriate remedy, order or relief against the person.

6. On the other hand, the new criminal liability to be applied in the case of unauthorized reception for commercial purposes will be the same as the current one under section 6(2) for the manufacture, trading and supply of unauthorized decoders³ in the course of trade or business. This

¹ "Unauthorized decoder" means under section 6 of the Broadcasting Ordinance a decoder by means of which encrypted television programmes provided under a licence can be viewed in decoded form without payment of a subscription where a subscription is required to be paid.

² The legislative proposals are set out in the Legislative Council Brief – Review of Certain Provisions of the Copyright Ordinance issued on 15 March 2002.

³ An offender is liable –

- (a) on summary conviction, to a fine at level 6 (\$100,000) and to imprisonment for 2 years;
- (b) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 5 years.

will provide for parity of treatment of offences in respect of unauthorized decoders and those of unauthorized reception and should, in our view, be adequate for achieving a deterrent effect.

7. The proposed civil and criminal liabilities are in accordance with the decision of the CE in C, which took into account the severity of the offences, the possibility of digitization as a means to contain the problem, the outcome of public consultation, practical enforcement difficulties and privacy issues. In relation to these considerations, we do not propose to impose criminal liability on domestic viewers. A cautious approach of introducing civil remedy as the first step in tightening the control of unauthorized reception in domestic premises is more appropriate. We will review the situation when Hong Kong Cable Television Limited (HKCTV), the major pay television programme service licensee, has substantially digitized the reception of its service. Up to the end of March 2003, HKCTV's digitized service covered about 42% of its subscribers, against a requirement of complete digitization by May 2005.

Law enforcement

8. Currently, the Telecommunications Authority (TA) is empowered to enforce section 6(1) of the BO, in respect of the import, export, manufacture, sale, offer for sale or let for hire of an unauthorized decoder in the course of trade or business. However, the TA is not clearly empowered to enforce section 7(1) of the BO, which prohibits, in the course of trade or business, the import, export, manufacture, sale, offer for sale or let for hire of decoders⁴ for receiving subscription television programme services which are not licensed in Hong Kong. To rationalize the enforcement of the provisions against decoder-related offences, we propose that all the relevant existing (sections 6(1) and 7(1)) and new criminal provisions (paragraph 6 above) should be enforced by the TA.

⁴ Specifically for use by a Television Receive Only System, which means a system for receiving satellite television signals for use by a single specified premises and the received signals are not distributed to others.

We have secured the cooperation of the Police to provide cover during enforcement actions conducted by the TA. We also seek to provide a new arrest power for the TA and any public officers authorized by him in writing and a new offence criminalizing any person willfully obstructing any authorized public officers in the exercise of their duties. With these new powers, Customs officers will, for example, be able to enforce measures against unauthorized decoding devices trafficking at customs check points.

THE BILL

9. Clause 2 brings forward the definition of “unauthorized decoder” to section 2 of the principal Ordinance for general interpretation, instead of being in section 6(9) as currently provided.

10. Clause 3 introduces criminal liability 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. This is intended to deal with unauthorized reception for commercial purposes (paragraphs 4 and 6 above). The sanction will be the same as that for offence in respect of the import, export, manufacture, sale, or let for hire of unauthorized decoders, as provided under section 6(2) of the principal Ordinance (paragraph 6 above).

11. The clause also provides presumption of offence in respect of knowledge of, authorization for the use of, and possession of, unauthorized decoders. However, it also provides that the parties concerned may rely on evidence to the contrary for defence. Specific defence is also provided in respect of employers having exercised control or taken all practicable steps to prevent the commission of the offence.

12. Clause 4 applies the presumption and defence proposed in clause 3 to section 7 of the BO, which deals with the offence of importing, exporting, manufacturing, selling, offering for sale or letting for hire any decoders for use by a Television Receive Only System to receive a subscription broadcasting service which is not licensed in Hong Kong (paragraph 8 above).

13. Clause 5 in effect extends the enforcement powers of the TA to cover all decoder-related offences. It also creates a new arrest power and a new offence against any person who willfully obstructs the TA or any public officer authorized by him in the exercise of any power conferred upon him under this section. The sanction is a fine at level 4 (i.e. not exceeding \$25,000) and imprisonment for six months.

14. The clause introduces civil remedy against unauthorized reception for commercial purposes (i.e. the “possession or use” of unauthorized decoders for “the purpose of, or in connection with, a trade or business”). We have also incorporated the advice of the Department of Justice to provide the same remedy against the import, export, manufacture, sale, offer for sale or let for hire unauthorized decoders in the course of trade or business to ensure consistency in the application of the law.

15. The clause also provides that where a person is required to pay a subscription to view a television programme included within a television programme service and the person possesses or uses an unauthorized decoder to view, or enable another person to view, any such programme without payment of the subscription, then the licensee providing the television programme service may bring an action to recover any losses or damages or seek other appropriate remedies against the person.

LEGISLATIVE TIMETABLE

16. The legislative timetable will be -

Publication in the Gazette	2 May 2003
First Reading and commencement of Second Reading Debate	14 May 2003
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

17. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity, environmental, financial or civil service implications, or binding effect and has no significant sustainability implications. The OFTA, Police and Customs & Excise Department will undertake the enforcement actions arising from the new legislative amendments by their existing staff and hence there are no additional staffing implications.

18. As for economic implications, the Bill, when enacted, will deter users from resorting to unauthorized decoders to view subscription television programmes without payment in the process. Thus local pay TV operators, particularly HKCTV, will benefit from a better protection for their right to collect revenue for the subscription TV services they provide. This will encourage new investments in the pay TV industry, thereby conducive to its long term development.

PUBLIC CONSULTATION

19. The policy proposals were included in the consultation document issued in October 2001 to review certain provisions of the Copyright Ordinance. After CE in C's endorsement on the proposals, a Legislative Council Brief was issued. We have informed the Broadcasting Authority of the Bill.

PUBLICITY

20. We will issue a press release and brief the press on the Bill. The Bill will be posted at the Bureau's website. A spokesman will be available to answer media and public enquiries.

ENQUIRIES

21. For enquiries, please contact Mr. Eddie Cheung, Principal Assistant Secretary (A) for Commerce, Industry and Technology (Information Technology and Broadcasting), at 2189 2236.

Information Technology and Broadcasting Branch
Commerce, Industry and Technology Bureau

29 April 2003

BROADCASTING (AMENDMENT) BILL 2003

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A BILL

To

Amend the Broadcasting Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Broadcasting (Amendment) Ordinance 2003.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Commerce, Industry and Technology by notice published in the Gazette.

2. Interpretation

Section 2(1) of the Broadcasting Ordinance (Cap. 562) is amended by adding -

" "unauthorized decoder" (未經批准的解碼器) means a decoder by means of which encrypted television programmes or encrypted television programme services provided under a licence can be viewed in decoded form without payment of a subscription where a subscription is required to be paid;".

3. Unauthorized decoders

Section 6 is amended -

(a) by repealing subsection (1) and substituting -

"(1) A person shall not -

(a) in the course of trade or business, import, export, manufacture, sell, offer for sale or let for hire an unauthorized decoder; or

(b) for the purpose of, or in connection with, trade or business, possess or use, or authorize another person to possess or use an unauthorized decoder.";

(b) by repealing subsections (3) to (9) and substituting -

"(3) Where it is proved that a person has -

(a) in the course of trade or business, imported, exported, manufactured, sold, offered for sale or let for hire an unauthorized decoder; or

(b) for the purpose of, or in connection with, trade or business, possessed or used, or authorized another person to possess or use an unauthorized decoder,

then, unless there is evidence to the contrary, it shall be presumed that the person knew that the decoder was an unauthorized decoder.

(4) For the purposes of this section, where a company, other body corporate or a partnership has done any act referred to in subsection (1)(a)

or (b), any person who was a director of the company or body corporate, or a partner of the partnership at the time when the act was done shall, unless there is evidence to the contrary that he did not authorize the act to be done, be presumed also to have done the act.

(5) In proceedings under this section, it is presumed that, unless there is evidence to the contrary, unauthorized decoders on premises are in the possession of the licensee, tenant, lessee, occupier, person in charge and owner of the premises.

(6) Where an offence against subsection (1)(a) or (b) is committed by an employee in the course of his employment, the employer of such employee shall, without prejudice to the liability of any other person, also be guilty of that offence but shall not be liable to any term of imprisonment.

(7) Where a prosecution is brought against the employer referred to in subsection (6) by virtue of this section in respect of an offence committed by his employee, it shall be a defence -

(a) if the employer shows that he exercised such control over his employee as would ensure that his employee was not likely to act in

contravention of subsection (1)(a)
or (b); or

- (b) if the employer shows that he took all practicable steps to prevent the commission of the offence.

(8) In proceedings for an offence under this section, it is a defence for the person charged to prove that he was acting in accordance with the instructions given to him by his employer in the course of his employment and he had no reasonable grounds to believe that the decoder was an unauthorized decoder.

(9) Subsection (8) does not apply in the case of an employee who -

- (a) where the employer is a body corporate, is a director, manager, secretary or other similar officer of the body corporate or is a person purporting to act in any such capacity or, where the affairs of a body corporate are managed by its members, is a member with functions of management as if he were a director of the body corporate;
- (b) where the employer is a partnership, is concerned in the management of the partnership;

- (c) where the employer is a sole proprietorship, is concerned in the management of the proprietorship; or
- (d) in any other case, is concerned in the management of the employer's business."

4. Offence of providing decoders and reception equipment for television programme service on subscription basis without licence

Section 7 is amended by adding -

"(3A) Where it is proved that a person has in the course of trade or business, imported, exported, manufactured, sold, offered for sale or let for hire any decoder of the kind described in subsection (1), then, unless there is evidence to the contrary, it shall be presumed that the person knew that the decoder was a decoder of the kind described in subsection (1).

(3B) For the purposes of this section, where a company, other body corporate or a partnership has done any act referred to in subsection (1), any person who was a director of the company or body corporate, or a partner of the partnership at the time when the act was done shall, unless there is evidence to the contrary that he did not authorize the act to be done, be presumed also to have done the act.

(3C) In proceedings under this section, it is presumed that, unless there is evidence to the contrary, the decoder of the kind described in subsection (1) on premises is in the

possession of the licensee, tenant, lessee, occupier, person in charge and owner of the premises.

(3D) Where an offence against subsection (1) is committed by an employee in the course of his employment, the employer of such employee shall, without prejudice to the liability of any other person, also be guilty of that offence but shall not be liable to any term of imprisonment.

(3E) Where a prosecution is brought against the employer referred to in subsection (3D) by virtue of this section in respect of an offence committed by his employee, it shall be a defence -

- (a) if the employer shows that he exercised such control over his employee as would ensure that his employee was not likely to act in contravention of subsection (1); or
- (b) if the employer shows that he took all practicable steps to prevent the commission of the offence.

(3F) In proceedings for an offence under this section, it is a defence for the person charged to prove that he was acting in accordance with the instructions given to him by his employer in the course of his employment and he had no reasonable grounds to believe that the decoder was a decoder of the kind described in subsection (1).

(3G) Subsection (3F) does not apply in the case of an employee who -

- (a) where the employer is a body corporate, is a director, manager, secretary or other similar

officer of the body corporate or is a person purporting to act in any such capacity or, where the affairs of a body corporate are managed by its members, is a member with functions of management as if he were a director of the body corporate;

- (b) where the employer is a partnership, is concerned in the management of the partnership;
- (c) where the employer is a sole proprietorship, is concerned in the management of the proprietorship; or
- (d) in any other case, is concerned in the management of the employer's business."

5. Sections added

The following are added in Part III -

"7A. Provisions supplementary to sections 6 and 7

(1) Where the Telecommunications Authority or any public officer authorized in writing in that behalf by the Telecommunications Authority has reasonable grounds for believing that a person has committed or has attempted to commit an offence under section 6(1)(a) or (b) or 7(1), then he may -

- (a) require the person to produce for his inspection, at any place specified by him, any unauthorized decoder or decoder -
 - (i) imported, exported, manufactured, sold, offered for sale or let for hire

by the person in the course of trade or business; or

(ii) possessed or used, or authorized to be possessed or used, for the purpose of, or in connection with, trade or business;

(b) arrest any person whom he reasonably suspects of being guilty of an offence under section 6(1)(a) or (b) or 7(1);

(c) subject to subsection (2), enter and search any premises in which he reasonably believes that the person has committed or has attempted to commit an offence under section 6(1)(a) or (b) or 7(1), and require the production to him of any books or documents relating to any unauthorized decoder or decoder referred to in paragraph (a);

(d) seize, remove and detain -

(i) any unauthorized decoder or decoder referred to in paragraph (a);

(ii) anything that appears to him to be or to be likely to be, or to contain, evidence of an offence under section 6(1)(a) or (b) or 7(1).

(2) Domestic premises shall not be entered or searched under subsection (1)(c) except pursuant to a warrant issued under subsection (3).

(3) Where a magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that there is an unauthorized decoder or a decoder in any domestic premises possessed or used by a person whom he has reasonable grounds for believing has committed or has attempted to commit an offence under section 6(1)(a) or (b) or 7(1), then he may issue a warrant authorizing the Telecommunications Authority or any other public officer to enter and search the premises.

(4) The Telecommunications Authority or any public officer authorized in writing in that behalf, in the exercise of the powers under subsection (1) or pursuant to a warrant issued under subsection (3), may -

- (a) break open any outer or inner door of any place that he is empowered or authorized to enter and search;
- (b) remove by force any person or thing obstructing him or resisting any arrest, detention, search, inspection, seizure or removal that he is empowered to make or carry out;
- (c) detain any person found in any place that he is empowered or authorized to search until such place has been searched.

(5) A magistrate or court may, upon application by or on behalf of the Telecommunications Authority or by any public officer authorized in writing in that behalf by the Telecommunications Authority, order that any unauthorized decoder or decoder in respect of which there has been a contravention or attempted contravention of section 6(1)(a) or

(b) or 7(1) shall be forfeited to the Government, whether or not proceedings have been taken against any person in respect of the contravention or attempted contravention.

(6) Any person who wilfully obstructs the Telecommunications Authority or any public officer authorized in writing in that behalf by the Telecommunications Authority in the exercise of any power conferred upon him under this section shall be guilty of an offence and shall be liable on summary conviction to a fine at level 4 and to imprisonment for 6 months.

7B. Civil remedy

(1) A licensee sustaining loss or damage from a breach of section 6(1)(a) or (b) may bring an action for damages, an injunction or other appropriate remedy, order or relief against the person who is in breach.

(2) A licensee may bring an action under subsection (1) even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of a contravention of section 6(1)(a) or (b).

(3) A licensee may bring an action for damages, an injunction or other appropriate remedy, order or relief against any person who possesses or uses, or authorizes another person to possess or use an unauthorized decoder to view any television programme service which is intended or available for reception by the public, on payment, whether periodically or otherwise, of a subscription in Hong Kong."

Explanatory Memorandum

The purpose of this Bill is to amend the Broadcasting Ordinance (Cap. 562) -

- (a) to revise the definition of "unauthorized decoder";
- (b) to make it an offence to possess or use or authorize another person to possess or use an unauthorized decoder for commercial purposes;
- (c) to introduce presumptions to facilitate proof of offences;
- (d) to provide a defence to the employer and employee in proceedings for an offence under sections 6 and 7;
- (e) 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;
- (f) to provide civil remedy for any contravention to section 6 and viewing of any pay television programme provided by a licensee without paying a subscription.

The Existing Provisions

Chapter:	562	Title:	BROADCASTING ORDINANCE	Gazette Number:	48 of 2000
Section:	2	Heading:	Interpretation	Version Date:	07/07/2000

(1) In this Ordinance, unless the context otherwise requires-
"associate" (相聯者)-

- (a) subject to paragraph (b), in relation to-
 - (i) a voting controller holding voting control, means the same as it does in the definition of "associate" in Part 1 of Schedule 1;
 - (ii) a disqualified person, means the same as it does in relation to a voting controller holding voting control, with the modification that any reference in the definition mentioned in subparagraph (i) to a voting controller shall be construed as a reference to a disqualified person;
 - (iii) a licensee, means the same as it does in relation to a voting controller which is a corporation holding voting control, with the modification that any reference in the definition mentioned in subparagraph (i) to a voting controller which is a corporation shall be construed as a reference to a licensee;
 - (iv) a person who exercises control of a licensee, means the same as it does in relation to a voting controller holding voting control, with the modification that any reference in the definition mentioned in subparagraph (i) to a voting controller shall be construed as a reference to a person who exercises control of a licensee;
- (b) does not include a person who is not an associate in accordance with the provisions of a notice under subsection (2);

"Broadcasting Authority" (廣管局) means the Broadcasting Authority established under section 3 of the Broadcasting Authority Ordinance (Cap 391);

"broadcasting service" (廣播服務) means-

- (a) a domestic free television programme service;
- (b) a domestic pay television programme service;
- (c) a non-domestic television programme service; or
- (d) an other licensable television programme service;

"Chief Secretary" (司長) means the Chief Secretary for Administration;

"Code of Practice" (業務守則) means a Code of Practice approved under section 3;

"company" (公司) means the same as it does in the definition of "company" in section 2(1) of the Companies Ordinance (Cap 32);

"conditions" (條件), in relation to a licence, means the conditions specified in the licence, the conditions specified in this Ordinance which are applicable to the licence and the conditions specified in a notice under section 10(3) which are applicable to the licence;

"corporation" (法團) means a company or other body corporate;

"decoder" (解碼器) means an apparatus, component part of an apparatus, or other component in

electronic or tangible form, which is designed or adapted to enable (whether of its own or with any other apparatus) an encrypted television programme service to be decoded;

"disqualified person" (不符合持牌資格人士) means the same as it does in the definition of "disqualified person" in Part 1 of Schedule 1;

"domestic free television programme service" (本地免費電視節目服務) means a television programme service which-

- (a) is intended or available for reception by the public free of charge in Hong Kong;
- (b) is intended or available for reception by an audience of more than 5000 specified premises; and
- (c) primarily targets Hong Kong;

"domestic pay television programme service" (本地收費電視節目服務) means a television programme service which-

- (a) is intended or available for reception by the public, on payment, whether periodically or otherwise, of a subscription in Hong Kong;
- (b) is intended or available for reception by an audience of more than 5000 specified premises; and
- (c) primarily targets Hong Kong;

"domestic premises" (住宅) means any premises which are constructed or intended to be used for habitation;

"dominant position" (支配優勢) means dominant position construed in accordance with section 14;

"exercise control" (行使控制) means the same as it does in Part 1 of Schedule 1;

"function" (職能) includes a power and a duty;

"hotel room" (酒店房間) means accommodation within the meaning of section 2(1) of the Hotel Accommodation Tax Ordinance (Cap 348);

"influence" (影響、影響力) means the same as it does in the definition of "influence" in Part 1 of Schedule 1;

"let for hire" (出租) includes invite to let for hire;

"licence" (牌照) means a licence-

- (a) granted under section 8(1) to provide a domestic free television programme service or domestic pay television programme service; or
- (b) granted under section 8(2) to provide a non-domestic television programme service or an other licensable television programme service;

"licensee" (持牌人) means the holder of a licence;

"licensed service" (領牌服務) means a broadcasting service the subject of a licence;

"material" (材料) includes pictures (whether moving or not), words, music and other sounds, whether produced, spoken or made simultaneously or otherwise;

"newspaper" (報刊) means a paper or other publication or a supplement thereto available to the public which-

- (a) contains news, intelligence, occurrences or any remarks, observations or comments in relation to such news, intelligence or occurrences or to any other matter of public interest;
- (b) is published for sale or free distribution and periodically (whether half-yearly, quarterly, monthly, fortnightly, weekly, daily or otherwise), or in parts or numbers at intervals not exceeding 6 months; and
- (c) does not comprise exclusively any item or items specified in Schedule 2;

"non-domestic television programme service" (非本地電視節目服務) means a television programme service which-

- (a) is-

- (i) intended or available for reception by the public-
 - (A) free of charge in Hong Kong; or
 - (B) on payment, whether periodically or otherwise, of a subscription in Hong Kong; or
- (ii) neither intended nor available for reception by the public-
 - (A) free of charge in Hong Kong; or
 - (B) on payment, whether periodically or otherwise, of a subscription in Hong Kong; and
- (b) does not primarily target Hong Kong;

"offer for sale" (要約出售) includes invite to offer for sale;

"ordinarily resident in Hong Kong" (通常居於香港)-

- (a) in relation to an individual, means-
 - (i) residence in Hong Kong for not less than 180 days in any calendar year; or
 - (ii) residence in Hong Kong for not less than 300 days in any 2 consecutive calendar years;
- (b) in relation to a corporation, means a corporation which satisfies the following-
 - (i) if the number of directors who actively participate in its direction-
 - (A) is 2, each is an individual;
 - (B) is more than 2, each of a majority of them is an individual, for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) and has been so resident for at least one continuous period of not less than 7 years; and
 - (ii) the control and management of the corporation is bona fide exercised in Hong Kong;

"other licensable television programme service" (其他須領牌電視節目服務) means a television programme service which is intended or available for reception-

- (a) free of charge in Hong Kong or on payment, whether periodically or otherwise, of a subscription in Hong Kong; and
- (b) either-
 - (i) subject to subsection (12), by an audience of not more than 5000 specified premises; or
 - (ii) in hotel rooms;

"performance bond" (履約保證), in relation to a licensee, means a first demand performance bond or bank guarantee-

- (a) issued by a bank within the meaning of section 2(1) of the Banking Ordinance (Cap 155);
- (b) in favour of the Government; and
- (c) which complies with the provisions of the notice under subsection (3) applicable to the licensee,

to secure compliance by the licensee with any of its licence conditions;

"practicable" (切實可行) means reasonably practicable;

"prescribed Ordinance" (訂明條例) means-

- (a) this Ordinance;
- (b) the Telecommunications Ordinance (Cap 106); or
- (c) the Broadcasting Authority Ordinance (Cap 391);

"principal officer" (主要人員) means the same as it does in the definition of "principal officer" in Part 1 of Schedule 1;

"provide" (提供), in relation to a broadcasting service, includes establish and operate;

"public place" (公眾地方) means a place to which the public or a section of the public may or are permitted to have access from time to time, whether by payment or otherwise;

"representations" (申述) means representations in writing;

"restriction" (限制) includes restraint;

"specified" (指明), in relation to a form, means specified under section 41;

"specified premises" (指明處所) means any domestic premises, or hotel room, in Hong Kong;

"subscription" (收看費) means a fee payable by or on behalf of any person for the right to view a television programme service in Hong Kong;

"subsidiary" (附屬公司) has the same meaning as in the Companies Ordinance (Cap 32);

"telecommunications" (電訊) means the same as it does in the definition of "telecommunications" in section 2(1) of the Telecommunications Ordinance (Cap 106);

"Telecommunications Authority" (電訊局長) means the Telecommunications Authority appointed under section 5 of the Telecommunications Ordinance (Cap 106);

"television programme" (電視節目) means moving visual representational images (that is, images comprised within sequences of visual images capable of being seen as moving images), or a combination of sounds and such images, that are intended to inform, enlighten or entertain, but does not include visual images that consist predominantly of alphanumeric text, data, graphs, charts, diagrams or video games;

"television programme service" (電視節目服務)-

(a) subject to paragraph (b)-

(i) means the provision of a service that includes television programmes for transmission by telecommunications-

(A) that are readily accessible to, or made available to, the general public in or outside Hong Kong; or

(B) to persons, in 2 or more specified premises, simultaneously or on demand, whether on a point-to-point or a point-to-multipoint basis, or any combination thereof, having equipment appropriate for receiving that service; and

(ii) includes a service, or a service belonging to a class of services, which is a television programme service in accordance with the provisions of a notice under subsection (5)(a);

(b) does not include the provision of a service that-

(i) consists only of a television programme that is made solely for performance or display in a public place;

(ii) consists only of a television programme that is intended wholly or mainly for the purposes of the trade, business, employment or profession of the recipient (but excluding a television programme delivered to hotel rooms);

(iii) consists only of a service that is specified in Schedule 3; or

(iv) is a service, or a service belonging to a class of services, which is not a television programme service in accordance with the provisions of a notice under subsection (5)(b);

"television programme service locking device" (鎖碼裝置) means a device which enables a person to whom a television programme service is or is to be provided to control access to the service;

"voting control" (表決控制權) and "voting controller" (表決控權人) mean the same as they do in the definitions of "voting control" and "voting controller" respectively in Part 1 of Schedule 1;

"voting share" (有表決權股份), in relation to a corporation, means a share which entitles the registered owner of the share to vote at meetings of the shareholders of the corporation.

(2) The Broadcasting Authority may, by notice in the Gazette, declare that persons specified in the notice are not associates if the Broadcasting Authority specifies in the notice that it is satisfied that-

(a) the persons do not act together in any relevant dealing relating to a licensee or disqualified person; and

- (b) each person is not in a position to exert influence over the business dealings of the other person in relation to that licensee or disqualified person.
- (3) The Chief Executive in Council or the Broadcasting Authority, as the case may require, may, by notice in writing, specify the form and the amount of a first performance bond or bank guarantee mentioned in the definition of "performance bond" in subsection (1).
- (4) For the purposes of this Ordinance-
 - (a) transmission on a point-to-point basis means that each transmission (of which there may be more than one at the same time, but independent of and separate from one another) is between one point and only one other point;
 - (b) transmission on a point-to-multipoint basis means that a transmission is between one point and 2 or more other points;
 - (c) a television programme does not cease to be so merely because it is an interactive programme, that is, a programme which is designed so that the viewer can participate in or influence its contents and method of presentation (if it is otherwise a television programme).
- (5) The Chief Executive in Council may, by notice in the Gazette-
 - (a) declare a service, or a class of services, specified in the notice to be a television programme service, or a class of television programme services, as the case may be;
 - (b) declare a service, or a class of services, specified in the notice not to be a television programme service, or a class of television programme services, as the case may be.
- (6) Any reference in this Ordinance to the performance of a function shall be construed as including the exercise of a power or the performance of a duty, as the case may require.
- (7) Where, in relation to a corporation, 2 or more persons have a joint interest, then for the purposes of this Ordinance each of those persons shall be regarded as having the entire interest to the exclusion of the other persons.
- (8) For the purposes of this Ordinance-
 - (a) Schedules 1 and 4, unless otherwise stated, shall have effect to and in relation to a domestic free television programme service, domestic free television programme service licence and domestic free television programme service licensee;
 - (b) Schedules 1 and 5, unless otherwise stated, shall have effect to and in relation to a domestic pay television programme service, domestic pay television programme service licence and domestic pay television programme service licensee;
 - (c) Schedule 6, unless otherwise stated, shall have effect to and in relation to a non-domestic television programme service, non-domestic television programme service licence and non-domestic television programme service licensee;
 - (d) Schedule 7, unless otherwise stated, shall have effect to and in relation to an other licensable television programme service, other licensable television programme service licence and other licensable television programme service licensee.
- (9) For the avoidance of doubt, it is hereby declared that-
 - (a) a television programme service includes any advertisements comprised within the service;
 - (b) a notice under subsection (2) or (3) is not subsidiary legislation;
 - (c) a notice under subsection (5) is subsidiary legislation;
 - (d) where a condition specified in a licence makes any reference to an approval by or of the Broadcasting Authority or the Telecommunications Authority (or words to the like effect), then that approval may be given subject to such conditions as the Broadcasting Authority or the Telecommunications Authority, as the case may be, thinks fit;
 - (e) a provision of this Ordinance which requires information or a document to be disclosed or otherwise given to the Broadcasting Authority or any other person does not operate to require a person to disclose or otherwise give any information or document which the person could not be compelled to disclose or otherwise give in evidence in civil

proceedings before the Court of First Instance.

(10) Subsection (9)(e) shall not apply to the disclosure by a solicitor of the name and address of a client of the solicitor.

(11) In exercising their powers under this Ordinance, the Broadcasting Authority and the Telecommunications Authority shall-

(a) when forming an opinion or making a determination, direction or decision under this Ordinance, only do so on reasonable grounds and having regard to relevant considerations;

(b) when forming an opinion or making a determination, direction or decision under this Ordinance, provide reasons in writing for it.

(12) The Broadcasting Authority may, by notice in writing served on the licensee, or the person seeking to be a licensee, concerned, waive the requirement specified in paragraph (b)(i) of the definition of "other licensable television programme service" if the Broadcasting Authority is satisfied that the other licensable television programme service concerned is only intended or available for reception by a single housing estate.

(13) In this Ordinance-

(a) a reference to "telecommunications" includes "telecommunication";

(b) a reference to "Telecommunications" includes "Telecommunication".

Chapter:	562	Title:	BROADCASTING ORDINANCE	Gazette Number:	48 of 2000
Section:	6	Heading:	Unauthorized decoders	Version Date:	07/07/2000

(1) A person shall not, in the course of trade or business, import, export, manufacture, sell, offer for sale or let for hire an unauthorized decoder.

(2) A person who contravenes subsection (1) commits an offence and is liable-

(a) on summary conviction, to a fine at level 6 and to imprisonment for 2 years;

(b) on conviction on indictment, to a fine of \$1000000 and to imprisonment for 5 years.

(3) Where it is proved that a person has, in the course of trade or business, imported, exported, manufactured, sold, offered for sale or let for hire an unauthorized decoder, then, unless there is evidence to the contrary, it shall be presumed that the person knew that the decoder was an unauthorized decoder.

(4) Where the Telecommunications Authority or any public officer authorized in writing in that behalf by the Telecommunications Authority has reasonable grounds for believing that a person, in the course of trade or business, imports, exports, manufactures, sells, offers for sale or lets for hire unauthorized decoders, then he may-

(a) require the person to produce for his inspection, at any place specified by him, any decoder imported, exported, manufactured, sold, offered for sale or let for hire by the person in the course of trade or business;

(b) enter and inspect any premises at, to or from which he reasonably believes that the person imports, exports, manufactures, sells, offers for sale or lets for hire in the course of trade or business unauthorized decoders, and require the production to him of any books or documents relating to the decoders;

(c) seize, remove and detain any unauthorized decoders.

(5) Domestic premises shall not be entered or searched under subsection (4) except pursuant to a

warrant under subsection (6).

(6) Where a magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that there is an unauthorized decoder in any domestic premises used by a person whom he has reasonable grounds for believing has committed an offence under this section, then he may issue a warrant authorizing the Telecommunications Authority or any other public officer to enter and search the premises.

(7) The Telecommunications Authority or any public officer authorized in writing in that behalf, in the exercise of the powers under subsection (4) or pursuant to a warrant issued under subsection (6), may-

- (a) break open any outer or inner door of any place that he is empowered or authorized to enter and search;
- (b) remove by force any person or thing obstructing him or resisting any arrest, detention, search, inspection, seizure or removal that he is empowered to make or carry out;
- (c) detain any person found in any place that he is empowered or authorized to search until such place has been searched.

(8) A magistrate or court may, upon application by or on behalf of the Telecommunications Authority or by any public officer authorized in writing in that behalf by the Telecommunications Authority, order that any unauthorized decoder in respect of which there has been a contravention or attempted contravention of this section shall be forfeited to the Government, whether or not proceedings have been taken against any person in respect of the contravention or attempted contravention.

(9) In this section, "unauthorized decoder" (未經批准的解碼器) means a decoder by means of which encrypted television programmes provided under a licence can be viewed in decoded form without payment of a subscription where a subscription is required to be paid.

Chapter:	562	Title:	BROADCASTING ORDINANCE	Gazette Number:	48 of 2000
Section:	7	Heading:	Office of providing decoders and reception equipment for television programme service on subscription basis without licence	Version Date:	07/07/2000

(1) Subject to subsection (2), a person shall not, in the course of trade or business, import, export, manufacture, sell, offer for sale or let for hire any decoder for use by a Television Receive Only System to receive a broadcasting service which is not licensed on a subscription basis.

(2) Subsection (1) shall not apply in relation to-

- (a) an encrypted broadcasting service which is licensed other than on a subscription basis; or
- (b) a decoder, or a decoder belonging to a class of decoders, which is not a decoder for the purposes of subsection (1) in accordance with the provisions of a notice under subsection (4).

(3) A person who contravenes subsection (1) commits an offence and is liable-

- (a) on summary conviction, to a fine at level 6 and to imprisonment for 2 years;
- (b) on conviction on indictment, to a fine of \$1000000 and to imprisonment for 5 years.

(4) The Telecommunications Authority may, by notice in the Gazette, declare a decoder, or a class of decoders, specified in the notice not to be a decoder, or a class of decoders, as the case may be, for the

purposes of subsection (1).

(5) In this section, "Television Receive Only System" (單一接收電視系統) means a system for receiving satellite television signals for use by a single specified premises and the received signals are not distributed to others.

(6) For the avoidance of doubt, it is hereby declared that a notice under subsection (4) is subsidiary legislation.