

C021E

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--

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"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 on 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)--

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- (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.