

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 16 May 2003**

**Legal Service Division Report on
Broadcasting (Amendment) Bill 2003**

I. SUMMARY

1. **Object of the Bill**
 - (a) To introduce both civil remedies and criminal sanction against the use or possession of unauthorized decoders for commercial purposes; and
 - (b) to provide civil remedies against the use or possession of unauthorized decoders to view subscription television programmes.
2. **Comments**
 - (a) The Bill was introduced following a review and public consultation on the problem relating to unauthorized reception of subscription television programme services in late 2001.
 - (b) To strengthen control against unauthorized reception of subscription television programme services, the Bill proposes to:-
 - (i) introduce criminal sanction and civil remedies against possession or use of unauthorized decoders for the purpose of, or in connection with, trade or business; and
 - (ii) provide civil remedies against viewing of pay television programmes provided by a licensee by possessing or using an unauthorized decoder.
 - (c) The enforcement powers of the Telecommunications Authority in relation to unauthorized decoders are proposed to be strengthened.
3. **Public Consultation**

The public has been consulted on the policy proposals.
4. **Consultation with LegCo Panel**

The Panel on Commerce and Industry was consulted on the policy proposals on 4 February 2002.
5. **Conclusion**

A Bills Committee is recommended to be formed to study the Bill in detail.

II. REPORT

Object of the Bill

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

- (a) introduce both civil remedies and criminal sanction against the use or possession of unauthorized decoders for commercial purposes; and
- (b) provide civil remedies against the use or possession of unauthorized decoders to view subscription television programmes.

LegCo Brief Reference

2. ITBB(CR)9/19/1(03) Pt.19 dated 29 April 2003 issued by the Commerce, Industry and Technology Bureau.

Date of First Reading

3. 14 May 2003.

Background

4. At present, the control of unauthorized reception of licensed subscription television programme services in Hong Kong is effected through the control of the supply of unauthorized decoders. Under the Broadcasting Ordinance (Cap. 562) (the Ordinance), it is an 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. There is no provision in the Ordinance imposing civil or criminal liabilities on end-users of licensed subscription television programme services.

5. In late 2001, the Government conducted a review on certain provisions of the Copyright Ordinance (Cap. 528), in response to public concern about criminal liability introduced for end-users in possession of copyright infringing articles in business. The review covered, among others, the problem relating to unauthorized reception of subscription television programme services without payment of a subscription. The Government has consulted the public on this problem as part of the review process. Having regard to the findings of the review, including the views received during the public consultation, the Chief Executive in Council endorsed a package of proposals in March 2002 to tackle the problem of unauthorized reception of subscription television programme services.

Comments

6. The Bill seeks to implement the proposals endorsed by the Chief Executive in Council in March 2002 with a view to strengthening the existing control of unauthorized reception of subscription television programme services. These proposals are summarised as follows:-

- (a) Under the Bill, it is an offence for a person to possess or use an unauthorized decoder for the purpose of, or in connection with, trade or business. A person who commits the offence is liable on summary conviction, to a fine at level 6 (\$100,000) and to imprisonment for 2 years, and on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 5 years. This level of penalty is the same as that for the offence of manufacturing, trading and supplying unauthorized decoders in the course of trade and business currently provided under the Ordinance.
- (b) A licensee who sustains loss or damage from the use or possession of an unauthorized decoder by a commercial user may bring an action for damages, an injunction or other relief against the user.
- (c) Civil remedies will be available to a licensee against any person who possesses or uses an unauthorized decoder to view any pay television programme provided by the licensee.

7. To facilitate proof of the proposed new offence, the Bill provides that certain elements of the offence, for example, knowledge and possession of unauthorized decoders, be proved by rebuttable presumptions.

8. The Bill also seeks to strengthen the enforcement powers of the Telecommunications Authority (TA) by:-

- (a) empowering TA or any public officer authorized by him to arrest a person suspected of being guilty of an offence relating to unauthorized decoders; and
- (b) making it an offence to wilfully obstruct TA or any public officer authorized by TA in the exercise of his enforcement powers, punishable by a fine at level 4 (\$25,000) and imprisonment for 6 months.

9. If enacted, the Bill will come into operation on a day to be appointed by the Secretary for Commerce, Industry and Technology by notice published in the Gazette.

Public Consultation

10. According to paragraph 19 of the LegCo Brief, the policy proposals were the subject of public consultation included in the consultation document issued in October 2001 to review certain provisions of the Copyright Ordinance.

Consultation with LegCo Panel

11. On 4 February 2002, the Panel on Commerce and Industry was consulted on the Administration's policy proposals to combat the problem relating to unauthorized reception of subscription television programme services. Members of the Panel generally supported the gradual approach adopted by the Administration whereby pirated viewing of subscription television programmes by domestic viewers would be tackled by encouraging service providers to digitize their services before considering the imposition of criminal liability on domestic viewers. Some members, on the other hand, raised concern on the enforcement difficulties in combating unauthorized reception of subscription television programmes.

Conclusion

12. This Bill introduces important changes to the law on the control of unauthorized reception of licensed subscription television programme services in Hong Kong. Members are recommended to form a Bills Committee to study the Bill in detail.

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