offing, what different and better ways there might be for a process or transaction.

The lawyer, in asking the question, risks the question reflecting adversely on their ability, but the very asking of it reflects favourably on the lawyer's willingness to learn, and to enhance service to the client.

Electronic legal practice - The Web

The *Foundation Law* Internet project has given these examples of changes that might occur in legal practice as a result of the way in which the Web makes legal information available:

- *Barristers.* Public legal information is largely legislation and judgments, the very basis of a barrister's practice. It is the Bar that has been signing up to *Foundation Law* in disproportionate numbers. They of course are the ones who really want to be able to sit at their desks and bring up on their screens the latest amendments and the latest cases; depending on their word processing skills they can then cut and paste text from a case into an advice.
- *Practice libraries.* It seems that the availability of the text of legislation and judgments on the Internet is sufficient for many practitioners who have decided to do without subscriptions to particular services, and so to reduce the costs of their library. For many lawyers there will still be the need to buy the value that commercial publishing houses add to legislation and judgments, and the commercial publishers will be able to sell access to their products with member subscriptions to password protected Web sites. But for public legal information, private practitioners are finding the opportunity for savings.
- *Other resources.* The Web delivers to users all that is on it, and it's hard to know where to begin. The favourable responses we have had to the packaging of *Foundation Law*, which delivers customised software with references to other legal information sites on the Web, indicates at this early stage that lawyers are looking around. Through the Web sites they can ask the questions referred to above when describing First Class Law, and get answers from the jurisdiction of their choice.
- *Introduction to Technology.* More a transient phenomenon than a substantive change, the awareness of the possibilities of the Internet has begun to turn lawyers to technology. Many of the *Foundation Law* subscribers are coming to computers, or to Windows programs and modems for the first time, lured by the Internet and its promise. The push from recent law graduates, who have learnt their legal search skills on-line and on the Web, is adding to the impetus for wholesale practice change.

A possible future

Network technologies offer prospects for very different forms of legal services. The point is made simply by referring to the proliferation of do-it-yourself legal kits and guides, and the slow but persistent trend to legal procedures that are comprehensible to non-lawyers. Think of that phenomenon, and add to it the power of information technology.

There are already expert legal systems available. Law subjects have been taught by computer with the lecturer becoming a supervisor, tribunal application forms can be completed by responding to a guided tour through the application on screen. The development of a legal expert system that substitutes for the intuition and experience of a professional person is Holy Grail, but complex diagnostic systems have been developed for general medical practitioners and are feasible for lawyers in specialised areas of practice.

Video conferencing can bring a client to a lawyer 'virtually'; the Internet can convey a question to a million people, any of whom may offer an answer within minutes; expert systems can substitute for a real physical presence; property and company searches can be done from the desk, as can the filing of documents.

It's not all good, it's not all bad, but for lawyers it's all very, very different.

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VOD: Broadcasting or Telecoms?

Grantly Brown outlines developments in the provision of Video on Demand (VOD) in Hong Kong, including an analysis of the recent decision on the regulatory status of VOD in Hong Kong.

Introduction

Few services better illustrate the difficulties of maintaining a rigid regulatory dichotomy between broadcasting and telecommunications than video on demand ('VOD'). VOD also demonstrates how technological developments tend to leave legislators flat-footed and reveal legislative ambiguities that some parties are very willing to exploit and that other parties are just as anxious to cure to shore up existing franchises.

The appropriate regulation of VOD has been an issue of smouldering discord between cable operators and PTTs for some time now in such places as the United Kingdom and the USA. In Hong Kong this year, the dispute became a conflagration as Wharf Cable, fearful that Hong Kong Telecom's ('HKT') proposed VOD service would erode its fledgling cable network's business, took the Hong Kong Government to Court. Wharf claimed that the VOD service was really a subscription television service which infringed Wharf's monopoly to provide these services in Hong Kong for a period of at least 3 years. The case was the culmination of a very public 12 month campaign by Wharf to pressure the Government into delaying HKT's VOD service.

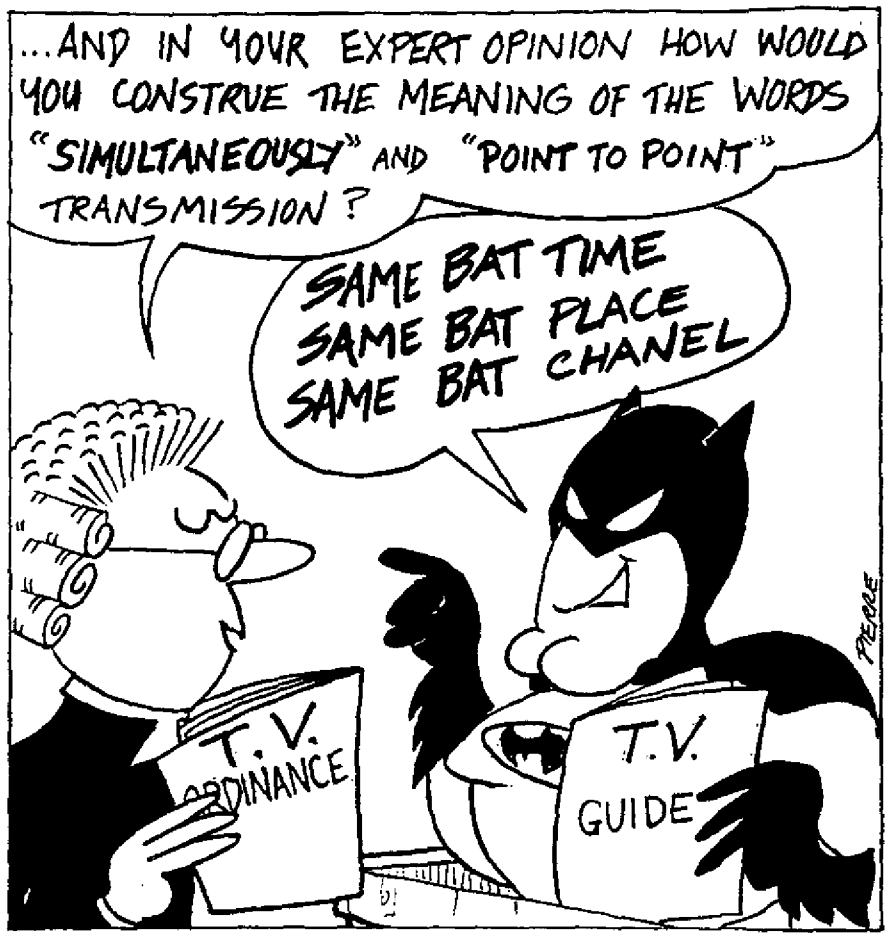
Background

HKT first commenced technical trials of its VOD service in 1994. This was a limited trial of ADSL technology to 400 households of HKT employees. At this point, HKT still enjoyed the exclusive right to provide 'public telephonic traffic' in Hong Kong under the *Telephone Ordinance* 1951. This right did not originally extend to non-telephonic service. However, as many new types of services started to become common offerings of PTTs around the world in the 1970s, it was decided to exempt HKT from the obligation of having to continually apply for licences for any non-telephonic services that utilised, in whole or in part, its public switched network. While a VOD service was clearly beyond the ken of regulators twenty years ago, the service equally clearly satisfied the language of the exemption, notwithstanding Wharf Cable's protestations.

In 1995, HKT undertook a full commercial trial of its proposed VOD service. By this time, the regulatory landscape had changed. HKT's domestic monopoly on the provision of fixed telephony within Hong Kong expired on 30th June 1995, the *Telephone Ordinance* was gutted and four new fixed telecommunications network services ('FTNS') licences were issued under the Telecommunications Ordinance, including one to HKT. These licences authorise each of the new FTNS licencees to provide 'all telecommunications services between fixed points in Hong Kong capable of being provided utilising the Network' other than certain specified services including, significantly, 'a service subject to licensing under any other legslation'.

The Court case

This neatly brings us to the subject of the recent litigation, which did not concern the *Telecommunication Ordinance*, but rather the *Television Ordinance* ('TV Ordinance'). Basically, Wharf claimed that HKT's proposed VOD service was a subscription television service as defined in the TV Ordinance and, as it would therefore require a licence under the TV Ordinance, it fell outside the scope of the services FTNS licencees were permitted to provide under the *Telecommunication Ordinance*. Further, as the TV Ordinance established an exclusivity period of at least three years in which only Wharf could provide subscription television services, HKT's (or any other of the FTNS licensees') provision of a VOD service would infringe its monopoly.



Subscription television broadcasting is defined in the TV Ordinance to mean:

'the transmission...of television programmes that are made available to two or more residential or commercial premises simultaneously or to the general public on payment of a subscription...but does not include any transmission that is specified in Schedule 1.'

Schedule 1 of the Ordinance (borrowing language from Australian and British regulatory regimes) excludes at para 2 the:

'transmission of television programmes that [are] made available only to persons making a request for the programmes on a point-to-point basis'.

For Whart to succeed in the case it had to establish both that:

- VOD falls within the definition of subscription television services; and that
- VOD falls outside the scope of the exception specified in the schedule.

The case before the Supreme Court went over 17 days in February and March, 1996 and involved the Court examining several thousand pages of affidavits, many technical publications and hearing many days of testimony from expert witnesses.

Simultaneous Transmission

In resolving the issue of whether VOD fell within the definition of subscription television services in the TV Ordinance the central issue became the concept of simultaneous transmissions. Here J. Sears relied heavily on the evidence of a Mr Hadfield, a Senior Manager of HKT responsible for developing its interactive multimedia services ('IMS') network. Mr Hadfield said:

'Pay television, as a distributive service, is very similar to the free-to-air broadcasting services available to consumers in Hong Kong. In the case of free-to-air or pay television..., the broadcaster transmits a constant stream of programming down stream to the users' reception equipment. The content

and format of the television channels that are transmitted in this way have been determined wholly by the broadcaster. The user is a passive receiver of television programmes and must work to the programming timetable of the broadcaster by either watching or recording the programme at a pre-determined time...'

'VOD, on the other hand, is an interactive service as it is only provided on the request of the user. For example, a user may decide that he or she wishes to watch a particular feature length movie at 6.00pm. The user will then dial-up a media server in the IMS network and will be able to review a menu of movies. Having made a final choice the user will select the desired movie through his or her set-top box remote control. The movie will then begin to play on the television screen and the user may 'pause' or 'rewind' the film using the remote control...The transmission of that movie to the user and the user's control of its play functions will occur independently of any other transmission over the IMS network.'

Justice Sears found that:

'There is no doubt that there is a fundamental difference between television (whether free or not) and VOD. In the former, the television programmes are transmitted simultaneously. House A cannot get different programmes from House B....Both in standard and cable television the transmission of programmes is occurring at fixed, pre-determined times. In VOD the transmission is not pre-determined - it only occurs when the customer requests his programme and it is transmitted to him.'

Accordingly, J. Sears concluded that VOD was not transmitted simultaneously and therefore did not fall within the definition of subscription television services in the TV Ordinance and hence require a TV Ordinance licence. Athough this permitted him to dismiss Wharf's case he went on to consider the proper construction of the exclusion at Schedule 1: that the 'transmission of television programmes that are made available only to persons making a request for the programmes on a point-to-point basis' falls outside the definition of subscription television services for the purposes of the TV Ordinance. The critical issue was the meaning of the words 'on a point-to-point basis'.

Point-to-point

Wharf submitted that the words 'point-to-point' only captured transmissions on a line which is dedicated and unswitched. Wharf relied on the expert evidence of Dr Troughton, a former Managing Director of British Telecom Enterprises and CEO of New Zealand Telecom, whose evidence was:

'a point-to-point connection is one that, once installed, transmits signals only between two fixed locations. Any routing or multiplexing is set up when it is installed, then not changed for the days, months, or years for which the customer requires it. There is no switch. The link is private in that the signals transmitted along it cannot be switched through the public exchange so as to be received by anybody else.

Transmission of video programmes via a VOD system is not on a point-to-point basis because the connection between the viewer and the media server is not formed for a fixed and pre-determined period; it is only formed for as long as a programme is being supplied.'

Justice Sears, however, preferred the analysis of another expert witness, Mr Huggins, called by HKT. Mr Huggins said that:

'Transmission on a point-to-point basis is not a description of the communications circuit, nor of the physical technological connection. It is simply a description of a transmission between only two points. It describes the number of points involved in (a) the transmission of information on the one hand and (b) the receipt of information on the other.

The term 'point-to-point', therefore, means transmission from one single point to one other single point, as distinct from one point to more than one point ('point-to-multi-point'). The technical configuration...of circuitry involved and the method by which the message is transmitted is irrelevant.

And, in particular, 'switching' is irrelevant. A point-to-point transmission may be either switched or unswitched.'

Justice Sears concluded in his judgment:

'I, therefore, find as a fact that the meaning to be given to the words 'on a point-to-point basis' is from one point to another point in contradistinction to one point to multipoint. I do not accept the evidence from Wharf that it means an unswitched transmission. I am sure the meaning of para two [of the Schedule 1] is not dependent on the technology of the network.'

Interestingly, J. Sears did observe in the course of his judgment that 'VOD is an important and far-reaching service' which the Government should regulate.

The Government's VOD Proposals

Notwithstanding the money the Government was spending on lawyers in February defending its view that VOD was not a broadcast service, while the case raged it released for public comment its proposals for the regulation of VOD as a species of television broadcasting.

Briefly the proposal paper stated that:

- the Government supported the introduction of VOD services to Hong Kong as part of its 'policy objective of providing Hong Kong with the widest possible choice of programmes of high quality at reasonable cost';
- the Government has a policy of ensuring that television programmes transmitted to the general public in Hong Kong should meet the basic standards of public taste and decency and that VOD should be regulated in a manner consistent with subscription television services with a similar potential impact;
- similar obligations imposed on, and restrictions applying to, the free-to-air broadcasters and Wharf Cable should be imposed on and apply to VOD operators as the Government had a 'long-standing policy in respect of television broadcasters to provide a level playing field';
- cross media and foreign ownership and control restrictions applying to licencees under the TV Ordinance would also apply to VOD service providers.

The paper also observes that:

'the increasing sophistication of multi-media services may make it difficult to draw the line between television programmes and other on-line

screen-based services. Consistent with our policy objective of facilitating freedom of access to information, we are proposing to define 'television programmes' that are subject to broadcasting regulation as essentially the type of programmes that are being broadcast currently by off-air and pay TV broadcasters. The definition will also make it clear that other on-line information services such as those currently available on the Internet are excluded from the proposed regulations.'

This might strike some as hopelessly vague but by adopting this approach the Hong Kong Government is at least in good company. A similar approach is adopted in the US *Communications Act.*

Pay TV Market Review

The Government followed up its February statement with the release of its review of the pay TV market in March 1996. This review arose out of an announcement made in July 1995 by the Secretary for Recreation and Culture to the Legislative Council that a review would be carried out in early 1996 to decide how best to deregulate the pay TV market with minimal impact on both existing and potential broadcasters.

The Government's report states it was based on an analysis conducted by outside consultants who advised VOD services would compete with Wharf and could significantly increase Wharf's current losses. Accordingly, the Government considered that complete deregulation was not in the interests of Hong Kong as 'severe competition' may force some competitors from the market. 'This', the Government stated,'could damage business confidence in Hong Kong at a sensitive time' - Hong Kong reverts to Chinese rule on 1 July 1997. Severe competition was also considered by the Government to be inconsistent with its policy of providing 'a healthy and fair operating environment for all broadcasting operators, in addition to promoting customer choice and industry competition'.

Accordingly, the paper recommended not one but two VOD service providers be licensed. The paper also recommended an extension of Wharf's monopoly in the provision of subscription television services for a further two years to mid-1998.

The Hong Kong Government, therefore, without any apparent discomfort, was happy to claim on the one hand that Wharf must be insulated from competition, and accordingly, no new pay TV licences will be granted, but on the other hand that VOD - which the government admits will compete with Wharf - should be allowed. Further, the Government proposed there should be not just one VOD service, as that would allow the selected operator to monopolise what would be, by the Government's own admission a competition market, there should be two operators. However, there shouldn't be more than two because that would be too competitive!

At the end of the day this wholly sorry course of events became somewhat academic for, just as the Government's policy deliberations overtook legal proceedings, commercial events overtook the Government. On 5 March 1995 HKT announced that, notwithstanding the fact that its trials demonstrated VOD was commercially viable, it was delaying the full roll out of its VOD network for a year or more to 'incorporate better technology'.

The Government's reports and HKT's announcement may have doused the flames of the dispute, but the embers are certainly still smouldering.

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'Interconnection from the New Entrant's Perspective'

Mei Poh Lee gives an account of New T&T's regulatory and commercial interconnection battles, as a new carrier in Hong Kong's telecommunications market, and provides comment on strategic issues and the role of the regulator.

Introduction

In October 1995 New T&T launched its first commercial services, with 'Revolution' as its theme. With the Chief Secretary of Hong Kong, Mrs. Anson Chan, and the Telecommunications Authority of Hong Kong ('the Authority'), Mr. Alex Arena, as the witnesses at our launch ceremony, we pledged to rewrite the history of telecommunications in Hong Kong. For indeed a revolution had occurred in the annals of the industry: the people in Hong Kong were about to be pleasantly surprised with the ability to choose between fixed network operators!

Our initial advertising campaign in October 1995 centred around the Beatles inspirational song 'Revolution', in answer to the incumbent operators advertising theme of 'Imagine', which used, as its signature tune, the song 'Imagine' by John Lennon. As a person who was not conscious during the Beatles' era, this vicarious involvement in Beatlemania was a high point in my life. Those were heady days indeed.

On a more serious note, I would like to state that this paper is aimed at giving you an insight into the practical issues and problems faced by a new operator in the Hong Kong environment, drawn from New T&Ts experience thus far. My aim is not to expound theories to you, even if we would have liked some theories to have been applied in practice over the past 30 months or so. Clearly, because of constraints placed by obligations of confidentiality, we cannot disclose particulars of any confidential interconnection discussions here. I am sure that even without those particulars