

Consumer Council

**Submission to the LegCo Bills Committee on Copyright (Amendment) Bill 2001
and Copyright (Amendment) Bill 2003.**

Introduction

1. The Council appreciates the opportunity to provide comments on the above Bills. In general, the Council supports the Government's initiatives in the proposed amendments to
 - a) make permanent the arrangements under the Suspension Ordinance';
 - b) remove the phrase 'in connection with' from the expression 'for the purpose of, in the course of or in connection with, any trade or business' where it appears in the Copyright Ordinance;
 - c) provide for a new defence against criminal liability for employees possessing infringing copies of works;
 - d) review the enforcement procedure in relation to illicit reproduction of books by copy shops; and
 - e) remove the criminal and civil liability for parallel importation of copyrighted works.
2. However, there are a number of issues the Council would like to raise for Members' consideration.

Removal of civil liabilities

3. The Council welcomes the removal of civil liabilities of consumers of parallel imported copyright works by the new proposed section 30(2), section 31(3), section 31(4) and section 31(5). However, civil liabilities of businesses engaging in parallel importation are not removed (except those relating to computer program and associated work if the Copyright (Amendment) Bill 2001 is passed). Their civil liabilities as relates to importation are still found in the combined effect of section 35(3) and the original section 30 (or the new proposed section 30(1)). Their civil liabilities as relates to other dealings (e.g. exhibiting) are still found in the combined effect of section 35(3) and section 31.

Parallel importation generally

4. As a general concern with regard to the removal of criminal and civil liability for parallel importation of copyrighted works, the Council queries the decision to maintain existing restrictions on parallel importation of copyright works for commercial dealings, other than for computer software.
5. The Council has in the past supported Government initiatives that have been made in relation to allowing for the parallel importation of goods in view of the benefits that arise from providing consumers with wider choices and cheaper prices. The Council submission of 26 February 2000 to the LegCo Bills Committee on the Trade Marks Bill refers.
6. The successful implementation of that liberalisation program shows the benefits that arise for the wider economy, by reducing the costs of doing business, and without increasing any detriment to the owners of intellectual property.

7. For example, with regard to Australia, where parallel imports of sound recordings were liberalized in 1998, Professor Allan Fels, the Chairman of the Australian Competition and Consumer Commission, at a meeting in Rome on 23 May 2001 at the Conference on Competition, Trade & Development, speaking on Intellectual Property, Competition & Trade Policy Implications of Parallel Import Restrictions, made the following observations:

"Retailers report that advertising and promotional spending is continuing and the indent services provided by producers has improved. Very little has been heard about damage to artists' incomes from parallel imports. While the industry predicted rampant piracy, the available reports are that the incidence of piracy is low, and arises mainly from Australian sources. In fact a report published by International Federation of Phonographic Industry in September 2000, Recording Industry in Numbers 2000, reports that in Australia the incidence of piracy in 1999 decreased from the levels reported in 1998."

8. The Council therefore urges the Government to continue with its program of liberalization to ensure that Hong Kong's reputation of being amongst the freest, if not the freest economy in the world, is maintained.

Presumption of profit or financial reward

9. Under the new section 118(4) and (5), there is a new presumption of profit or financial reward applying to criminal charges under the new section 118(1)(d)(iii) and (e)(ii) regarding transportation and storage an infringing copy and possession for transporting or storing an infringing copy. We support effective enforcement and prosecution against dealers in fake products. However, the said charges will equally apply to a commercial parallel importer unless the importation has been done 18 months after first publication (see section 35(4)). As the culpability of dealing with fake products is different from that of dealing with parallel imports, we ask the Government to consider removal of the said presumption against commercial parallel importer.

Clause 3 of the Bill

10. There seems to be a clerical error in clause 3 of the Bill under which a new section 31(5) is introduced providing that "(t)he copyright in a work is not infringed for the purposes of subsection (1)(~~c~~) by reason of the distributing of an infringing copy ..." The reference should be made to subsection (1)(~~d~~) instead.

Consumer Council
4 July 2003