

Consumer Council

Submission in Response to Consultation Paper Proposal to Liberalize Parallel Importation of Computer Software Under the Copyright Ordinance

1. The Consumer Council welcomes the invitation for comments on the Government's proposal to amend the Copyright Ordinance to remove the criminal and civil liabilities relating to parallel importation of computer software.

Claimed Benefits of Liberalization

2. It is noted in the Consultation Paper, that liberalizing the market for these products:
 - (a) recognises the fact that online purchases generally through the Internet are breaking down regulatory barriers that exist in domestic markets;
 - (b) will increase competition and availability of products in the market, resulting in more choices and lower prices for the consumer, including small and medium enterprises; and
 - (c) will ease the financial burden in replacing pirated computer software with legitimate products.

Council's Views

3. The Council agrees, in general, with the above observations and therefore is in agreement with the Government's proposal to remove the criminal and civil liabilities relating to parallel importation of computer software.
4. Nevertheless, in indicating its support for the proposals, the Council would also raise a query as to the adequacy of consumer safeguards to protect consumers from misleading and deceptive practices in the marketplace, where infringing articles, such as pirated software, may be sold.
5. The question as to what is an infringing article is a complex question of law, and it can be difficult for consumers to both understand what is illegal copying, and to detect that there has been illegal copying. Accordingly, the Consumer Council stresses the need for adequate safeguards to protect consumers against the actions of unscrupulous suppliers of pirated software who may take advantage of the complexities that arise, and confusion that could ensue in the minds of consumers, to misrepresent pirated product as genuine product.
6. Last year, the Council released a report - 'Regulating Deceptive, Misleading and Unfair Practices in Consumer Transactions' that examined the levels of

safeguards currently existing to protect consumers. (The report is available from the Council's website - www.consumer.org.hk).

7. As a long term measure, the Council has recommended that the Government should consolidate the various consumer protection laws with necessary amendments and new provisions into a piece of comprehensive trade practices legislation.

8. The Council trusts that its support for the liberalization of the restrictions on parallel importation of software will be met with a close examination of the consumer safeguards that are necessary to ensure that consumers do not become victims of unscrupulous marketing practices that may arise from the new environment.

Consumer Council
24 August 2002