

Submission from the ERA Home Entertainment Limited

We are a home video distributor representing certain Hollywood labels including Columbia-Tristar, Universal, DreamWorks and Miramax. We have been in the business for over eleven years and are the single largest foreign home video distributor in Hong Kong.

In regard to the Consultation Document for Review of Certain Provision of Copyright Ordinance published by the Commerce and Industry Bureau in October 2001, we would like to express our views on Chapter 5 – Parallel Importation of Copyright Works other than Computer Software as follows:

We are of the opinion that:

- (a) The civil liability and criminal sanction against parallel importation of and subsequent dealing in all types of copyright work should not be removed, and there should be no exception.
- (b) The criminal sanction against parallel importation of and subsequent dealing in some types of copyright work should continue and the 18-month threshold should not be reduced.

Our reasons as specific to the video distribution industry can be summarized as below:

- (i) Parallel Import opens door to pirate home video products
If parallel importation of home video products is to be legalized, consumers will find it difficult to distinguish legitimate VCDs and DVDs from counterfeits as versions from different origins have different distributors, artwork and packaging. It will well invite more counterfeit and pirate products under the disguise of imported goods, which is in contradiction to the determination of the Government to fight against piracy.
- (ii) Parallel Import destroys the practice of “window system” of the movie industry
The movie industry employs a window system in releasing a movie in different formats. As a movie has different first release dates in different countries, opening of parallel importation would practically destroys such window system and allows no room of survival for local video distributors which have thousands of employees.

- (iii) Parallel Import cuts orders for replication plants
Our company, like other local video distributors uses local production houses and plants for the authoring and replication of VCDs. If parallel import is to be allowed, they will receive less orders and it will lead to the loss of investment incentive and loss of jobs for the video disc replication industry.

- (iv) Parallel Import does not follow government's censorship/classification procedures
Parallel imported video products are unlikely to be subject to government's censorship/classification procedures which shall in fact destroy the present entertainment censorship system.

- (v) Parallel Import harms advertising industry
If parallel importation is to be allowed, local home video distributors will be unwilling to spend money on advertisement, as they do not want to promote for parallel imported products as well. This will harm the advertising and related industries.

- (vi) Parallel Import does not necessarily improve cost or choice of home video products
Opening of parallel import may first seem to allow consumers a wider choice of video products with lower costs. But as the local distributors lose their market edge due to the unfair competition brought by opening of parallel import and start to retreat, the choice for consumers shall be limited with no guarantee of better prices.

- (vii) Opening of Parallel Import is not a global phenomenon
Statistics from IFPI shows that most of the countries in the world prohibit or regulate parallel importation of movie and music products. It is understood that all these countries promote free trade but regulate parallel importation as only in this way can they allow investors an appropriate trading environment to invest in and promote local music and movie industries.

We strongly believe that the existing laws are sufficient to protect consumers and there is no need to open parallel importation.

Peter Yau, Executive Director
Era Home Entertainment Limited