

5th September 2002

The Hon. Sin Chung-kai
Chairman of the Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear The Hon. Sin Chung-kai,

Re: Copyright (Amendment) Bill 2001

Thank you for inviting us to make submission regarding the above captioned bill.

We understand that the proposed bill intends to liberalize parallel importation of computer software and we welcome the government's initiative to restrict the impact of the proposed bill so that it would not jeopardize the existing protection against parallel import of film and television drama.

However, we are concerned with the proposal to allow parallel importation of computer software that contains a copy of a film or part of a film. A copyright owner depends on territorial licensing to exploit the full returns of his works. In face of the global digital multimedia trend, copyright owner will usually grant the exclusive licensees of each territory the rights to convert his works into digital format for maximizing returns in that particular territory. In the case of computer software, even though copyright owner of computer software has obtained license from an exclusive licensee of an overseas territory to include a copy of a film or part of a film into the computer software, the license is restricted to the overseas territory only. If parallel importation of that computer software were allowed, it will be against the interest of copyright owner of the film since he would in effect lose control over local market. Furthermore, under the existing Copyright Ordinance, it is already difficult for law enforcement bodies to differentiate fake parallel imports from genuine parallel imports, it is highly likely that the proposed amendment would provide a loophole to pirates to package pirated copyright content such as film or music into fake parallel imports of computer software; and thus further undermine the effectiveness of law enforcement.

On the other hand, the proposed bill has proposed the use of the "20 minutes" rule to define whether exemption would be given to computer software that contains film or music content. We understand that this proposal is intended to protect copyright owner of film or television drama. However, it is our view that there are at least three inadequacies in the proposal:

1. It is rather easy to edit a 1-hour per episode television drama into two discs with 20 minutes of content each after cutting out the ad, opening and end credits. And since most television drama takes 10 or more VCD to contain the complete series, the consumers would not mind if the parallel import version packaged in computer software format takes twice as many VCD.
2. In films, it is not unusual to see a feature film that has three stories completely independent of each other but with a common theme being released in one full length feature film. For example, a recent release called "Three" ("三更") starring Leon Lai. In this case, the "20 minutes" rule will not be able to achieve the goal of protecting copyright owner since the exemption allows parallel importation of computer software to include in one or two discs, perfectly acceptable level for consumers, the part of the film for example "Three" that starring Leon Lai. Furthermore, we must recognize that in the global trend of digital multimedia, there are increasing investments into the production of shorter films or TV episodes intended for releasing over the Internet. Thus, the proposed bill may jeopardize the future prospect for Hong Kong film industry to develop Internet films or TV drama.
3. The proposed bill concludes that the "20 minutes" rule is a safeguard measure to ensure liberalization of parallel imports of computer software for educational and recreational purposes while protecting the interest of copyright owner. But it did not provide any evidence for the need to set it at 20 minutes. It is our view that the "20 minutes" duration is unnecessarily too long especially when there is no limit on the duration of film content from any number of films. As a result, it could be 20 minutes in aggregate from 10 films or just 20 minutes of content from just one film. In reality, we find no evidence for supporting 20 minutes duration. Most of the computer software with film content is only incorporating film clips not more than 1 minute long. This is also true for recreational software such as Cinemania. The most popular forms of educational software in Hong Kong are those for children. They are mainly interactive games without any film content. Those with film content such as the Disney's "Learning ABC" series are not interactive and they are sold as VCD to consumers.

In conclusion, it is our view that the proposed bill needs further consideration and we recommend the following:

1. Parallel importation of computer software which incorporates film, TV drama or music content should remain to be infringing articles under the existing Copyright Ordinance unless the license to use the film, TV drama, or music content obtained by the copyright owner of the computer software explicitly stated the license cover Hong Kong territory and is granted by the copyright owners of the film, TV drama or music.

2. To ensure the success of the goal of protecting the interest of copyright owner and liberalization of parallel imports of computer software, the proposed “20 minutes” duration should be amended to “10 minutes in aggregate” with “no more than 1 minute of film content from each film.”

Your kind consideration of our concern and recommendation will be greatly appreciated.

Yours sincerely,
For and on behalf of
Hong Kong Kowloon and New Territories
Motion Picture Industry Association Ltd.

Woody Tsung
Chief Executive

c.c. MPIA Board of Directors