

Bills Committee on Copyright (Amendment) Bill 2001
Summary of Submissions from Organizations / Parties
(as at 13 September 2002)

	Views	Organizations
General comments	<p>Support the Bill to remove civil and criminal liabilities related to parallel importation of and subsequent dealings in computer software under the Copyright Ordinance (Cap. 528) mainly on the following reasons:</p> <p>(a) To balance the interests of copyright owners and the rights of the end users;</p> <p>(b) To increase competition and the availability of products in the market, resulting in more choices and lower prices for consumers and business corporations;</p> <p>(c) To facilitate free flow of goods and go in line with the free market philosophy;</p> <p>(d) To be in line with the growing popularity of purchases through the Internet and the development of e-commerce; and</p> <p>(e) To help alleviate the financial burden on computer software licensing compliance, especially for small and medium enterprises.</p>	<ul style="list-style-type: none"> • The Hong Kong Academy for Performing Arts (HKAPA) • The Federation of Hong Kong Industries (FHKI) • The Open University of Hong Kong (OUHK) • The Institute of Electrical and Electronics Engineers Hong Kong Section Computer Chapter (IEEE-HKSCC) • The Equal Opportunities Commission (EOC) • The Hong Kong Society of Accountants (HKSA) • Vocational Training Council (VTC) • Consumer Council (CC) • The Institution of Electrical Engineers Hong Kong (IEEHK) • The Chinese Manufacturers' Association of Hong Kong (CMAHK) • The Hong Kong Blind Union (HKBU) • The Hong Kong Bar Association (HKBA) • The Chinese General Chamber of Commerce (CGCC) • A Eastern District Council member • Asian Patent Attorneys Association (APAA) • Hong Kong Retail Management Association (HKRMA) • Hong Kong Information Technology Federation (HKITF) • Hong Kong Small and Medium Enterprises Association

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General comments	Support the Bill in principle but stress the need to exempt movies and music recordings from liberalization	<ul style="list-style-type: none"> • Motion Picture Association (MPA) • The International Federation of the Phonographic Industry (IFPI) • Movie Producers and Distributors Association (MPDA) • Hong Kong, Kowloon and New Territories Motion Picture Industry Association Ltd. (MPIA)
	<p>Neutral to the Bill. Major views are:</p> <p>(a) Liberalization of parallel imports of computer software may not result in lower prices as vendors generally apply universal pricing for products around the world.</p> <p>(b) Liberalization will affect the business of local distributors which provide after sale support services.</p> <p>(c) Liberalization may increase the availability of counterfeit / infringing products making combat of copyright piracy more difficult.</p>	<ul style="list-style-type: none"> • Business Software Alliance (BSA)
	<p>Against liberalization of parallel importation of copyright works. Reasons are:</p> <p>(a) Consumers and the Administration will find it difficult to distinguish parallel imported products from counterfeits.</p> <p>(b) Opening parallel imports is not a global phenomenon. Most</p>	<ul style="list-style-type: none"> • ERA Home Entertainment Ltd. (ERA)

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	<p>countries prohibit or regulate parallel importation of movie and music products.</p> <p>(c) Allowing parallel imports does not necessarily lower cost of products or increase choice for consumers.</p>	
Specific comments	<p><u>Parallel importation of other copyright works</u></p> <p>The Bill should be extended to cover other types of copyright works including music and films.</p> <p>Libraries can acquire foreign copyright works, especially those less known works not imported by local sole agents, more quickly from overseas distributors for teaching or study purposes.</p> <p>Do not support liberalization of parallel importation of other types of copyright works, in particular movies and music recordings, for concern about disrupting the business practice and the "window system" in the motion picture industry, and adversely affect the profitability of the film and music distribution industry and other related trades.</p> <p>Parallel imported films or videos will not be subject to government entertainment censorship system.</p>	<ul style="list-style-type: none"> • HKAPA • HKSA • HKBA • APAA • HKITF • HKAPA • MPA • ERA • ERA

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	<p><u>Incorporation of other copyright works in computer software</u></p> <p>Parallel importation of computer software which contain other copyright works should only be allowed with the consent of the copyright owners concerned and be in compliance with the international practices and obligations on fair dealings.</p> <p>Concern that parallel importation of computer software which contains a copy of film or part of film may jeopardize the interests of the overseas copyright owner of the film.</p> <p><u>Geographic restrictions on use of computer software</u></p> <p>The new section 118A is a fair provision to lawful users as it permits users to make backup copy of or to adapt computer program despite any term of end-user licence agreement prohibiting or restricting its use in Hong Kong.</p> <p>The new section 118A is over-inclusive and may affect the end-user criminal liabilities arising from licensing conditions other than those on geographical restrictions. It may decriminalize acts which were offences under the existing law against copyright infringement for computer software and undercut the level of protection available to copyright</p>	<ul style="list-style-type: none"> • IFPI • MPIA • OUHK • BSA • APAA • The Law Society of Hong Kong (LSHK)

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	<p>owners. Section 118A should be clarified so that it only applies to territorial restriction or prohibition but not other restrictions relating to the use of the program in general.</p> <p>Support the new section 118A. The Bills Committee should carefully consider whether civil liability arising from the violation of geographic restrictions in end-user licence should be removed.</p> <p><u>Repackaging of movie products to circumvent exclusion of such products from the liberalization</u></p> <p>Concern that the new section 35A(3)(a) may be abused as unscrupulous merchants may break down a movie into several parts each having a duration of less than 20 minutes, so as to circumvent the exclusion provision.</p> <p>Taking into account the development of digital multimedia and the trend of production of shorter film for release over the Internet, the "20 minutes" rule may jeopardize the future prospect of Hong Kong film industry. The proposed film duration is arbitrary. The duration should be curtailed to "10 minutes in aggregate" with "no more than 1 minute of film content from each film".</p>	<ul style="list-style-type: none"> • CGCC • MPDA • MPIA • IFPI • MPIA

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	<p>The "20 minutes" rule of a film under section 35A(3)(a) is arbitrary. Reference can be made to the "economic value" of the film as an objective test for the exemption.</p> <p>Doubt why documentary or comedy is excluded from "feature film".</p> <p><u>Consumer protection against counterfeit / pirated computer software</u></p> <p>Concern about the adequacy of safeguards to protect consumers from being misled by unscrupulous suppliers to take pirated computer software as genuine products. The Administration should consolidate various consumer protection laws into a piece of comprehensive trade practice legislation.</p> <p><u>Transitional arrangements</u></p> <p>Support the new section 199A to remove outstanding criminal liability relating to parallel importation of computer software. Regarding civil liability, consideration should be given to provide flexibility for dealing with any infringing acts committed before the commencement of the new legislation.</p>	<ul style="list-style-type: none"> • APAA • LSHK • CC • CGCC

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	<p><u>Drafting comments</u></p> <p>The concept of "lawfully made" in the new section 35A(1) is ambiguous. The provision should be reviewed.</p> <p>Section 35A does not cover the situation where a copy is "lawfully made" by the owner of copyright overseas who is different from the owner of copyright in Hong Kong.</p> <p>The new section 118A(1) only applies to the meaning of "lawful user" under section 60(2) of the Copyright Ordinance and does not apply to the meaning of "lawfully made" under sections 35A and 35(4).</p>	<ul style="list-style-type: none"> • LSHK