

CB(1)467/03-04(01)25th Nov, 2003

Hong Kong Video Development Foundation Limited is a non-profit organization which was incorporated in March 2003 by 15 members which are the major video distributors (a list of which is attached hereto for your easy reference) in Hong Kong with the following key objectives:-

- a. To establish & foster relationship among members & to promote and cater for the welfare & interests of the members of the Foundation.
- b. To promote regulated video rental business.
- c. To strengthen & promote growth of the video industry and
- d. To protect local video industry from piracy & parallel imports.

As regard the Consultation Document for Review of Certain Provision of Copyright Ordinance published by the Commerce and Industry Bureau in the 2003 proposed amendment, we would like to make the following comments and observations:

1. The main objective of the original Copyright (Amendment) bill is the liberalisation of the parallel import of the computer program into Hong Kong. As the development and sale of the computer program has never been an established industry in Hong Kong, it appears that this is a welcoming move from the angles of the end users.
2. The essence of the liberalisation is to remove both the civil and criminal liability on importer and the subsequent dealings of the parallel imported copy of computer program. As the nature of the computer program dictates that it is unusual for the overseas computer program developer to assign or grant an exclusive right to a Hong Kong company, the provisions related to the parallel import prior to the 2001 amendment had never been a concern nor of any practical use to them any way.
3. While the amendment has removed the civil and criminal liability of the parallel import of the computer program, a new offence has been introduced against the corporate end users who use the pirated copy of the computer program.
4. Obviously, the proposed removal of criminal and civil liabilities of parallel importation of all copyright works would have a devastating effect on the local creative industry such as films, sound recordings, and television drama, producers and the corporate end users find it hard to comply as we are all dealing with a lot of copyright work or materials on a daily basis.

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5. A compromise is achieved under and by the Copyright (Suspension of Amendments) Ordinance 2001 by which the criminal liability of the corporate end users for using pirated copy be confined to 4 categories of works, namely, computer programs, movies, television dramas and musical recordings.
6. After making further amendments in June this year, it appears that the parallel import provisions as far as those related to and applicable to the computer programs have been removed.
7. The present proposed amendment proposes that the parallel import provisions related to the other copyright works such as films have been modified to allow the corporate end user for the use of parallel import copy in its own business.
8. It further proposes that the existing restrictions on parallel importation are to be maintained. However, a new set of activities which is categorised under the Commercial Dealings is introduced for all copyright works other than computer program.
9. We wish to point out that :
 - a. The proposed amendments will encourage the endusers to obtain copies of films from other countries which offer much lower prices or earlier availability than what local video distributor of the respective title for corporate use. This will be highly prejudicial to our video distribution industry and there is no effective remedy against them as both the civil and criminal liabilities have been removed.
 - b. Parallel Import opens door to pirate home video products
There is a real risk that if the use of parallel imported copy of home video products for business use are to be encouraged, we will find it difficult to combat against the counterfeit copy which is under the disguise of parallel import. It will well invite more counterfeit and pirate products under the disguise of imported goods, which simply defeats the purpose of the SAR Government to fight against piracy.
 - c. 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 media and formats. As a movie has different first release dates in different countries, opening of parallel importation would practically destroy such window system and allow no room of survival for local theatrical distributors/exhibitors, video distributors and TV operators which have over thousands of employees.

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- d. **Parallel Import cuts orders for replication plants**
Many of our member video distributors use reputable local production houses and replication plants for the authoring and replication of VCDs & DVDs. If the use of the parallel imported copy is to be encouraged, they will receive fewer orders and it will lead to the loss of investment incentive and loss of jobs for the videodisc replication industry & pre-production plants.
- e. **Parallel Import harms advertising industry**
Local 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.
- f. **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. This reflects the government's policy and attitude towards these creative industry.
10. **Our views**, as the distributors of foreign and local movies in Hong Kong, would be that there should **not be any change of law or amendments in respect of the parallel import provisions as related to other copyright works other than computer program**. There is indeed no need to do so, just re-instate and maintain the law related to parallel importation provisions as they were in 1997 version.
11. As regards **the corporate end users using the parallel imported copy for its business**, we would venture to suggest that any activities which are categorised as "for the purpose of trade or business" rather than "incidental to the business of the corporate end users" be criminalised or at least a civil remedy be made available to us in order to encourage Hong Kong businessmen to use the genuine products originated from Hong Kong.
12. We have no objection to the proposed criminal liability of **the corporate end users for using pirated copy** be confined to 4 categories of works, namely, computer programs, movies, television dramas and musical recordings.

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13. Last but not least, the proposed use of the words "to such an extent as to affect prejudicially the owner of copyright" under and in the criminal offences section would not be acceptable to Hong Kong citizens at large as this is a criminal offence which carries heavy penalty, every citizen is entitled to know the exact and precise nature of the criminal charges and that the copyright owners also needs to know as under what precise circumstance they are entitled to report to the relevant authority.

If we may be of any further assistance, please do not hesitate to contact Ms. Chu Fung Mui at 27878766.

For and on behalf of
Hong Kong Video Development Foundation Ltd.

Kung Tak Man
Chairman

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MEMBER:

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亞洲影帶出版有限公司 (Asia Video Publishing Co. Ltd.)	27505595	27505609
年代影視有限公司 (Era Home Entertainment Ltd.)	27875503	27874367
得利影視股份有限公司 (Deltamac (H.K.) Co. Ltd.)	27870678	23981744
世紀娛樂有限公司 (Century Entertainment Co. Ltd.)	23808939	23807782
城訊有限公司 (City Connection Ltd.)	27598283	27598236
安樂影視有限公司 (Edko Video Ltd.)	25288022	25295277
洲立影視有限公司 (Intercontinental Video Ltd.)	24188843	24816594
樂貿影視發行 (Joy Salcs Films & Video Distributors)	27186168	27186295
千勛企業有限公司 (Kam & Ronson Enterprise Co. Ltd.)	23611228	27083818
現代音像(國際)有限公司 (Modern Audio (International) Ltd.)	23594209	23886248
鐳射發行有限公司 (Panorama Distributions Company Ltd.)	23669633	23690856
太陽製作公司 (Sun Power Production Co.)	27717433	28510324
時碼媒體有限公司 (Time Smart Media Limtied)	27903200	27903220
寰宇國際控股有限公司 (Universe International Holdings Ltd.)	24372661	24372088
潤程娛樂有限公司 (Winson Entertainment Distribution Ltd.)	23881808	23770917

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