

CB(1) 683/01-02(14)



百視達香港有限公司

BLOCKBUSTER HONG KONG LIMITED

香港新界新界新界
Suite 806, New Kowloon Plaza, 38 Tai Kok Tsui Road, Kowloon, HK
Tel: (852) 2391 3111 Fax: (852) 2787 1412

Your Ref. : CB1/PL/CI
Our Ref. : JC/AI/P112011

20th December, 2001

Hon. Kenneth TING Woo-shou, JP
Chairman
LegCo Panel on Commerce and Industry

Dear Hon. Mr TING.

**LegCo Panel on Commerce and Industry
Review of Certain Provisions of Copyright Ordinance**

Thank you for the opportunity for Blockbuster Hong Kong Limited (BBHK) to present our views on the Consultation Document on Review of Certain Provisions of Copyright Ordinance published by the Government on 1st November, 2001.

We believe that liberalizing parallel importation will highly benefit consumers. Therefore, the civil liability and criminal sanction against parallel importation of and subsequent dealing in films, particularly in the form of DVD, should be removed. In the following attachment, we will provide you with some background information and specific examples to support our position.

Looking forward to meeting you and presenting these benefits from liberalizing parallel importation on the special meeting on 10th January, 2002.

Yours sincerely,

A handwritten signature in black ink, appearing to be "Jenny Cheung".

Jenny Cheung
Managing Director
Blockbuster Hong Kong Limited

Encl.

Submission of Blockbuster Hong Kong Ltd.
Regarding the Consultation Document on Review of
Certain Provisions of Copyright Ordinance

By Jenny Cheung, Managing Director

Blockbuster Hong Kong Ltd.

20 December 2001

Blockbuster Hong Kong Ltd. (BBHK) appreciates this opportunity to submit to the Panel on Commerce and Industry its views on the Consultation Document on Review of Certain Provisions of Copyright Ordinance published by the Government on 1 November 2001.

BBHK believes that the civil liability and criminal sanction against parallel importation of and subsequent dealing in films, particularly in the form of DVD, should be removed, without exception. We provide you with some background information and then specific examples to support our position.

BACKGROUND INFORMATION

DVD product is released according to 6 worldwide zones. For example, Hong Kong is Zone 3 and the United States is Zone 1. Generally, DVDs become available in the Zone 3 format anywhere from 1 to 6 months after the release in other zones, such as Zone 1. In some cases, DVD titles are never made available in Zone 3.

Parallel importing involves the importation of product from one of the other Zones into, in this instance, Zone 3. Under the current copyright law, parallel importing videos is prohibited except in certain limited situations (for example, where the product is older than 18 months from its first publication).

For years now, BBHK has been experiencing difficulty in obtaining major new releases and other popular titles on DVD for rental and retail. As a result, the consumer's choice for movies on DVD

is severely limited. If a consumer cannot get the movie it wants on DVD, that consumer will look for alternative ways to get the product, whether through INTERNET or by buying pirated copies. It is indeed harmful to the interests of copyright owners if consumers are forced to obtain pirated products and it renders it more difficult to combat piracy.

BBHK has also determined that its major competitors routinely sell and rent parallel imported copies of Zone 1 product. For example, in August of 2000, BBHK compiled a list of Zone 1 DVD titles available at a competitor's stores. There were 154 titles on the list, none of which were yet available in Zone 3 format. BBHK is at a severe competitive disadvantage. BBHK has made several requests of the copyright holders to take action to make the playing field level, but the copyright holders have refused to enforce their rights against parallel importation. As the copyright holders themselves have made no attempt to enforce their rights and restrict parallel imports, and because companies that refuse to break the current law are put at a competitive disadvantage because of the copyright holders' inaction, there is further reason to eliminate the current restrictions on parallel importing.

It is in the interest of the market to enjoy a "free hand" in the acquisition of products and satisfaction of consumers' needs. We urge the Hong Kong SAR Government to remove the restrictions on parallel importation of films, just as it is removing the restrictions in the case of software.

1. Parallel imports expand consumer choice

- **Number of titles.** The number of titles available in Zone 3 is much less the number of titles available in other zones. There were 15,000 Non-Zone 3 DVD titles compared to 2,600 Zone 3 DVD titles as of November, 2001. Only 17.3% of the Non-Zone 3 titles were available.
- **Time availability.** The time gap between the release of the same title in Zone 3 and Non-Zone 3 can range from 1 to 6 months.

| <u>Titles</u> | <u>Zone 1 Release</u> | <u>Zone 3 Release</u> | <u>Time Gap</u> (no. of months) |
|---------------------|-----------------------|-----------------------|------------------------------------|
| Antitrust | May 5, 2001 | Nov. 15, 2001 | 6 |
| Forrest Gump | Aug. 28, 2001 | Nov. 16, 2001 | 3 |
| Enemy at the Gates | Aug. 14, 2001 | Nov. 16, 2001 | 3 |
| Mexican | Aug. 7, 2001 | Nov. 16, 2001 | 3 |
| Along Came A Spider | Sept. 25, 01 | Nov. 24, 01 | 2 |
| Planet of the Apes | Nov. 20, 2001 | Not yet available | |

- These time gap and selection restrictions affect consumer choice and encourage the DVD piracy.
- DVD piracy is expected to worsen as DVD players become more affordable and popular, and the consumers cannot get the product when they want it or even get it all.

2. All DVD players available locally can support parallel import DVD

- DVD players in Hong Kong are multi-zone compatible. In other words, they can play product from other zones. Such multi-zone compatible DVD players include those manufactured by Sony, Toshiba, Pioneer, Philips, Kenwood, BBK & Shinco. They are easily available for purchase at any electrical appliance retailers including Fortress, Broadway, and Tai Lin.

3. Against global technology and e-business trend

- **INTERNET.** With the globalization trend through INTERNET and e-tailing, the consumers will also buy copies of parallel import work through INTERNET to satisfy their need for titles. For example, a consumer in Hong Kong can pick up any Zone 1 DVD or music titles from e-tailers like Amazon.com. This clearly nullifies any parallel import sanction and underscores the strong need to have the titles available locally to satisfy consumer demand.

- **Technology inhibited.** The limited selection of titles due to the parallel import restrictions prohibited a faster growth in DVD. Hong Kong has been an early adopter in technology. The small selection of DVD titles in Hong Kong has slowed down DVD hardware penetration. Since the introduction of DVD in late 1996 to the local market, the estimated DVD hardware penetration as of September 2001 is only 52% (over the 5-year period). DVD hardware penetration is moving slower than laser disc penetration which took only 3 years to reach a market penetration over 50% in the early 1990s. It is important to note that parallel importation of titles was much more liberalized in the early 1990s.

4. Fallacy of parallel imports impact on local movie industry

- There is **little, if any**, conflict with local film industry, as there are no parallel imports of Chinese language movies. The locally produced titles have always been first released in Hong Kong prior to release to other markets.

5. Spirit of the Laissez-Faire Policy

- Local industry issues should be resolved by market forces and commercial operations, rather than government legislations.

Conclusion

Liberalizing parallel importation will benefit consumers. Consumers will be given more choice and have access to movies sooner. Further, the competitive disadvantages caused by the copyright holders refusal to prohibit parallel importing will be eliminated. This will allow for greater competition within the DVD sale and rental markets, which can only benefit consumers.

The legal position on parallel imports in Hong Kong at the moment is inconsistent. We are aware that a significant change has been brought to the new Trade Marks Ordinance by introducing the doctrine of international exhaustion of rights. Under the circumstances, it is illogical for the government to allow parallel imports under the trade mark law but impose restriction under the copyright law.

We are of the view that both civil liability and criminal sanction against parallel importation of and subsequently dealing in all times of copyright works should be removed and the current 18 months threshold provided in the Copyright Ordinance should also be removed. Furthermore, no liability should be imposed on end users of parallel imports.