

Hon. Kenneth TING Woo-shou
Chairman
LegCo Panel on Commerce and Industry
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Re: Review of Certain Provisions of Copyright Ordinance

Dear Chairman Ting:

Columbia TriStar Film Distributors International, Inc. (CTFDI), a Sony Pictures Entertainment company, commends the Hong Kong SAR Government for its leadership and interest in protecting intellectual property rights. Hong Kong's position as a regional hub of cinematic production is well acknowledged, and this administration's support of the intellectual property rights will ensure the continued success and vitality of Hong Kong's creative industries.

However, CTFDI and its affiliates are concerned that some current proposals to amend the Copyright Ordinance would adversely affect the Hong Kong audiovisual entertainment market and its related industries. Thus, CTFDI and its affiliates welcome the opportunity to provide the following commentary on the Consultation Document on Review of Certain Provisions of the Copyright Ordinance.

Chapter 5 – Parallel Importation of Copyright Works other than Computer Software

CTFDI and its affiliates strongly oppose the removal of sanctions for the parallel importation of, and subsequent dealing in, all copyrighted works other than computer software. Current provisions strike an appropriate balance of protection for copyright owners, licensees and consumers. This balance should not be altered.

Copyright owners should be free to maximize the economic benefits of their works in international markets. This is most often accomplished through the licensing and distribution of works in different markets at different times. As copyright is a territorial right, the exercise of rights in one territory should not exhaust the copyright holder's ability to control distribution in another territory. Without protection from parallel imports, copyright owners, licensees, consumers and local businesses are disadvantaged in territories flooded by parallel imports. In a recent survey by the Motion Picture Association, 68% of the countries surveyed worldwide provided some form of copyright protection in their national laws. It is evident that a majority of countries support protection against parallel imports, contrary to the intimations of the consultation paper.

Throughout the world, an audiovisual work is released in a series of media, and in a staged process known as “windows.” The process begins with the theatrical release of a work, which is followed by a hold back period, called a window, before the work is subsequently released in another medium. A typical sequence of windows may proceed as follows: theatrical exhibition, non-theatrical exhibition, home video (videocassette, VCD, DVD), pay-per-view, pay television, free television. The windows system is beneficial in the growth of local businesses: theatres, video outlets, pay TV operations and broadcasters. Local businesses associated with the audiovisual industry rely on revenue from each segment of the windows sequence. The unique market factors associated with the audiovisual industry including use of the windows sequence warrant protection against parallel imports.

Parallel imports introduced into the market can reduce the appeal of a particular work to CTFDI’s distribution in the market as well as to local businesses such as movie theatres, home entertainment rental stores, pay-per-view and pay television licensees and free television broadcasters. This has the potential to cause injury to CTFDI’s local operations which, in turn, will have an adverse effect on the employees of CTFDI in the market and to the revenues of local businesses which license movies from CTFDI.

Because the home video window for a particular movie will likely occur in the United States and Canada prior to the movie’s theatrical release in other countries, parallel imported videos, VCDs and DVDs could have a dramatic impact on the revenues to be generated in the local market. As one example, theatre owners in a market will have little incentive to license a newly released motion picture for exhibition if that same movie can be purchased or rented as a VCD or DVD during its theatrical window in that same market. A theatre owner who exhibits a movie that is also available in other media during the theatrical window will likely sell fewer tickets. This will not only impact the particular exhibitor’s revenues, it will also affect CTFDI’s ability to distribute motion pictures in that market.

Parallel imported copies or works undermine all segments of the windows sequence, from theatrical to home video and eventually broadcast. Ultimately, it is the consumers who are harmed as CTFDI and its affiliates may be forced to remove less profitable works from their catalogues, or not license works at all, making them unavailable to the Hong Kong consumer.

Parallel import protection is also a significant tool in the enforcement of copyright in Hong Kong. As digital technologies allow video pirates to manufacture illicit products on an increasingly larger scale, lack of parallel import protection increases the risk of importation of large numbers of unauthorized copies of audiovisual works. The absence of restrictions on parallel imports would also increase the difficulty for local authorities attempting to distinguish pirate copies

from legitimate product. In turn, retailers may unknowingly sell inferior pirate goods believing they are selling legitimate products to consumers.

Conclusion

CTFDI and its affiliates appreciate the opportunity to submit comments to the Committee on its Consultation Document on Review of Certain Provisions of the Copyright Ordinance. CTFDI and its affiliates encourage the Committee to refrain from any alteration in the parallel importation provisions, or amend the Copyright Ordinance in a manner that would adversely affect the strong and vibrant Hong Kong audiovisual industry.

Sincerely,

Mark Zucker
Senior Executive Vice President
Columbia TriStar Film Distributors International, Inc.