

**Submissions to the Bills Committee on the
Copyright (Amendment) Bill 2006**

| Parallel Importation | | | |
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| <p>— <i>Shorten the period of criminal liability for parallel importation from 18 months to nine months</i></p> <p>— <i>Removal of civil and criminal liability for business end-use (except for commercial dealing purposes or public showing of movies, TV dramas and musical recordings by entities other than educational establishments and libraries)</i></p> | | | |
| | Organizations / Individuals | Views / Concerns | Administration's Response |
| 1.1 | <p><u>Educational bodies</u></p> <ul style="list-style-type: none"> • Joint University Librarians Advisory Committee • HUCOM Task Force on Copyright in Education • Concern Group of the Education Sector on Copyright Law • Hong Kong Subsidized Secondary Schools Council <p><u>Trade organizations</u></p> <ul style="list-style-type: none"> • Chinese Manufacturers' Association (CMA) • Federation of Hong Kong Industry (FHKI) • Hong Kong General Chamber of Commerce (HKGCC) <p><u>Consumer Council</u></p> <p><u>The Institute of Electrical and Electronics Engineers (HK Joint Chapter) CAS/COM (IEEE)</u></p> | <p>The educational bodies support the proposed removal of civil and criminal liability associated with the importation and possession of parallel imported items of copyright works for educational and library use.</p> <p>CMA, FHKI, HKGCC, the Consumer Council, IEEE and PMIHK support further liberalization of parallel importation of copyright works. They demand complete decriminalization or shortening of the 18-month period after public release during which parallel importation attracts criminal liability ("the criminal sanction period") for the following reasons –</p> <p>(a) the primary aim of the Copyright Ordinance should be on combating copyright piracy and parallel imported copyright works are genuine goods and royalties have already been paid for these items. Trading of parallel imported copyright works does not infringe the copyright of the copyright owners;</p> | <p>We understand that there are demands from users for further liberalization of parallel importation. In considering the liberalization proposals, we need to take into account the interests of copyright owners.</p> |

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| | <p><u>Project Management Institute Hong Kong Chapter (PMIHK)</u></p> | <p>(b) the 18-month criminal sanction period only serves to protect the interests of exclusive licensees which is beyond the scope of copyright protection;</p> <p>(c) Hong Kong is the freest economy in the world and should promote free flow of goods. Liberalization of parallel importation would provide more choices to consumers and small and medium enterprises; and</p> <p>(d) Liberalization of parallel importation is in line with the Government's policy to liberalize parallel importation of other commodities.</p> <p>FHKI further suggests that the existing civil liability associated with the use, possession and trading of parallel imported copyright works should also be removed. HKGCC supports shortening the criminal sanction period to 12 months but have no objection to the proposed 9 months. IEEE supports complete decriminalization of parallel import and considers that the remaining 9 months of criminal sanction period is imposing restriction to free trade.</p> | |

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| 1.2 | <p><u>Publication industry</u></p> <ul style="list-style-type: none"> • Aristo Educational Press Ltd. • The Anglo-Chinese Textbook Publishers Organisation • Chung Tai Educational Press • The Commercial Press (HK) Ltd • Educational Booksellers' Association, Ltd • Excellence Publication Co Ltd • Greenwood Press • Hon Wing Book Co. Ltd. • Hung Fung Book Co. Ltd. • Hong Kong Educational Publishers Association • Hong Kong and International Publishers' Alliance (HKIPA) • HK Publishing Federation Ltd • Jing Kung Education Press • Pilot Publishers Services Ltd. • Pilot Publishing Company Ltd. • Religious Education Resource Centre • Tai Chung Publisher Limited • Hong Kong Reprographic Rights Licensing Society • Springer | <p>All object to any shortening of the 18-month criminal sanction period because it would weaken the protection for copyright owners and stifle the development of Hong Kong's creative industry.</p> <p>HKCAF objects to the shorting of the criminal sanction period on the following grounds –</p> <p>(a) the proposed shortening of the criminal sanction period from 18 months to 9 months contradicts with the Government's policy to encourage investment in the cultural and creative industries and to safeguard proper returns;</p> <p>(b) restriction in parallel importation could eradicate or minimize the impact brought by the introduction of cheaper products from foreign countries, thus creating a suitable economic environment to foster and protect creative industry development and to ensure proper returns;</p> | <p>We note copyright owners' grave concern about the proposed shortening of the criminal sanction period from 18 months to 9 months and will maintain dialogue with them on this proposal.</p> <p>We believe that our current proposal to remove all criminal and civil liability pertaining to parallel importation by business end-users (except for commercial dealing purposes and for public showing and playing of movies, TV dramas and sound recordings) has struck a reasonable balance between the interests of copyright owners and users of copyright works.</p> |

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| | <ul style="list-style-type: none"> • Hong Kong Educational Publishing Co. • Witman Publishing Co. (HK) Ltd. <p><u>Comic book industry</u></p> <ul style="list-style-type: none"> • Hong Kong Comics and Animation Federation Ltd. (HKCAF) | <p>(c) without proper returns, investment will not be forthcoming, and there will be unemployment; and</p> <p>(d) parallel imports will heavily erode into the local market, causing over 1000 valuable talents in the cultural and creative industries, over 1000 workers in the publishing industries and over 3000 retailers and distributors to lose their jobs.</p> <p>HKCAF also objects to liberalizing parallel imports for business end-use for fear that it would enable comic book tea house to source parallel imported items for on-the-spot reference under the name of “business end-use”.</p> | |
| 1.3 | <p><u>Film industry</u></p> <ul style="list-style-type: none"> • Film Industry Response Group • Federation of Hong Kong Filmmakers • Hong Kong Video Development Foundation (HKVDF) [April 2006, 6 June 2006] | <p>The film industry strongly object to any shortening of the 18-month criminal sanction period for the following reasons –</p> <p>(a) the window of time that parallel import protection provides for the motion picture industry is unique to the creative industries. The reason for such a window is to allow a motion picture to be released</p> | <p>We note copyright owners' grave concern about the proposed shortening of the criminal sanction period from 18 months to 9 months and will maintain dialogue with them on this proposal.</p> |

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| | <ul style="list-style-type: none"> • Movie Producers and Distributors Association of Hong Kong Ltd. (MPDA) • Motion Picture Association | <p>in different media (including theatrical, home video, television) at different times in a particular sequence so that each release can achieve its maximum creative and economic potential. This encourages growth, stability and development of Hong Kong's film industry;</p> <p>(b) effective protection against unauthorized parallel imports also benefits the local economy by encouraging the growth of businesses related to the distribution of motion pictures, such as local advertising companies and promotional merchandise suppliers, local video duplicators, dubbing studios, and packaging, which in turn encourage further investment, provide employment opportunities and generate tax revenues;</p> <p>(c) forcing investors/producers to compete with cheaper imported parallel imports of their works will destroy any incentive for further investment and creation of films in Hong Kong, resulting unemployment of filmmakers and related industries such as cinema;</p> | |

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| | | <p>(d) any shortening of the 18-month criminal sanction period will discourage distributors from acquiring licensing rights to distribute local and overseas movies as parallel importers may free-ride on the exclusive licensees' marketing efforts, which in turn will affect the financing of further production of the local film and affect the choice of consumers;</p> <p>(e) a lack of control over parallel importation encourages piracy activities as pirated copies often disguise themselves as parallel imports;</p> <p>(f) lack of parallel import protection would reduce box office revenue and parallel imports could jeopardize the potential theatrical release of films and thereby reducing customers' choice of seeing movies in cinemas; and</p> <p>(g) trades of parallel imports do not provide consumers with product support such as warranties which authorized distributors generally provide.</p> | |

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| | | <p>HKVDF further requests an extension in the criminal sanction period from 18 months to 24 months and claims that this will enable the sales of their works through the digital channel to compete with parallel import on price and services. This would in turn provide a market solution against imported counterfeit copies and online piracy.</p> <p>HKVDF supplements in its submission dated 6 June 2006 that it is irrelevant to consider whether a copy was legitimately made outside Hong Kong as long as its making was an infringement of the copyright of an owner in Hong Kong in respect of the work. Hence, any purported liberalization of parallel importation will amount to protection of reproduction right of the copyright owner of a work in a country which exports parallel imported copies of that work to Hong Kong. It also submits that the exclusive licensee who has the exclusive right of the reproduction ought to have the same copyright protection in the same manner as the copyright owner in Hong Kong. Therefore, it is misconceived to consider parallel import issues as merely</p> | |

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| | | <p>disputes between exclusive licensees in different jurisdictions.</p> <p>The Federation of HK Filmmakers suggests that, if the Government is determined to shorten the criminal sanction period, movie should be excluded from the scope of liberalisation.</p> <p>MPDA agrees to removing criminal liability pertaining to business end-user (except for commercial dealing) but suggests retaining the related civil liability.</p> | |
| 1.4 | <p><u>Music industry</u></p> <ul style="list-style-type: none"> • International Federation of the Phonographic Industry (IFPI) (Worldwide) • IFPI (Hong Kong Group) [30 April 2006, 5 June 2006] | <p>The music industry strongly object to the proposed shortening of the criminal sanction period from 18 months to 9 months because –</p> <p>(a) the existing 18-month criminal sanction period serves the content creator/investor/provider well who could focus resources in promoting and advertising products to the public rather than spending the resources in civil litigation against parallel importation which is time consuming and expensive;</p> | <p>Please see our response at item 1.3 above.</p> |

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| | | <p>(b) the existing criminal sanction period barely manages to enable the content creator/provider to recoup its investment on the copyright works and prevent the free riding on the efforts and expenditure in promoting the copyright works in Hong Kong by parallel importers. If this period is shortened, parallel importers would free ride on the investment of exclusive distributors in the sound recording industry which in turn would make the local creative industry suffer; and</p> <p>(c) increased parallel importation will increase the possibility of more infringing copies entering the local market, resulting in additional loss to licensed distributors.</p> <p>IFPI (Hong Kong Group) further suggests that the criminal sanction period should be extended from 18 months to 24 months.</p> <p>IFPI (Hong Kong Group) expresses in its submission dated 5 June 2006 views similar to HKVDF, i.e. pirated copies and parallel imported copies should be treated the same as infringing copies by Hong Kong's</p> | |

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| | <p>copyright law and attract criminal sanctions, because Hong Kong's copyright law serves to protect Hong Kong copyright owners and not owners in other countries.</p> <p>IFPI (Hong Kong Group) also strongly objects that educational establishments may be permitted to use parallel imported copies of copyright works for the purpose of giving or receiving instructions because –</p> <p>(a) this would only benefit owners of other countries not protected by Hong Kong's copyright law;</p> <p>(b) this would conflict with Hong Kong copyright owners' normal exploitation of their works and unreasonably prejudice their legitimate interests in the works including their exclusive reproduction and distribution rights;</p> <p>(c) educational establishments would have difficulties in differentiating between a parallel imported copy and a pirated copy disguised as a parallel imported copy; and</p> | <p>Under the existing law, importation and possession for use of parallel imports of copyright works by educational establishments and libraries attract civil and even criminal liability. We propose to remove these liabilities to provide more choice and flexibility for these institutions to source materials for education and library uses. The relaxation would enable some educational institutions to source copyright contents not available in the local versions to meet teaching needs. IFPI's suggestion would not allow these institutions to source the required materials as long as there is a copyright owner/ exclusive licensee for a local version in Hong Kong. We remain of the view that our existing proposal in the Bill is reasonable and appropriate for meeting the needs of the education and library sectors.</p> |

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| | | <p>(d) there are already “safe harbour” provisions for importation of parallel importation, i.e. sections 36 and 118(6).</p> <p>It suggests that the education sector's concerns can be addressed by drawing up guidelines which require teachers/librarians, when acquiring parallel imported copies of a copyright work, to make enquiries with copyright owners' organizations to ascertain whether there is any copyright owner/exclusive licensee of the work concerned in Hong Kong. Educational establishments would be allowed to import the parallel imported copies if no reply is received within a certain period of time.</p> | |
| 1.5 | <p><u>Broadcasters</u></p> <ul style="list-style-type: none"> • Television Broadcasting Ltd. (TVB) | <p>TVB opines that the 18-month criminal sanction period should be maintained. The proposed shortening of this period will create difficulties for copyright owners to grant exclusive licence to distributors. The company indicates that it may release its TV programmes in video format before or simultaneously as they are telecast in the local market. Allowing importation of parallel</p> | <p>Please see our response at item 1.3 above. We do not consider it necessary to include “or in manner conflict with a normal exploitation of the work by the copyright owner” into the definition of “deal in” in the proposed section 35B(6) as the proposed liberalization will not apply to commercial dealing activities (including selling, letting for hire, offering or exposing for sale or hire, or distributing for</p> |

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| | | <p>imported copies when the programmes are still telecast in Hong Kong would adversely affect the company's ability to exploit their works, which in turn would affect copyright owners' initiatives to produce and create new works. Moreover, the company considers that the Government should also protect authorized dealers and retailers and the related industry in Hong Kong which represent an important business sector.</p> <p>TVB suggests to include "or in manner conflict with a normal exploitation of the work by the copyright owner" into the definition of "deal in" in the proposed section 35B(6).</p> | <p>profit or reward) which should already be adequate for protecting the interests of copyright owners in exploiting their works.</p> |
| 1.6 | <u>International Intellectual Property Alliance (IIPA)</u> | <p>IIPA considers that the existing criminal sanction period for parallel importation should retain as the proposed shortening of the period to nine months would undermine the further development of Hong Kong's creative industries. The influx of cheaper parallel imported copies from Chinese markets into Hong Kong would affect the viability of Hong Kong's creative industries.</p> | <p>Please see our response at item 1.3 above.</p> |

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| 1.7 | <u>The Law Society of Hong Kong</u> | <p>Comments that the references to “lawfully made” in the proposed section 35B(1) are undefined and could cover copies lawfully made overseas by someone who is neither the copyright owner nor authorized by the copyright owner which are actually infringing copies. It suggests amending the definition to read as follows –</p> <p>“ ‘lawfully made’ in relation to a work means made whether in Hong Kong or elsewhere either by the owner; or a person expressly or impliedly authorized by the owner, of copyright in the work in question”</p> <p>It also comments that the shortening of the criminal sanction period to 9 months seems arbitrary and will presumably have an adverse effect on authorized local distributors.</p> | <p>“Lawfully made” must mean made with the authorization of the copyright owners at the relevant jurisdiction. In addition, section 198(3) of the Copyright Ordinance provides that “lawfully made”, in relation to a work, does not include a copy that was made in a country, territory or area where there is no law protecting copyright in the work or where the copyright in the work has expired. As far as we are aware, the term “lawfully made” has not given rise to any practical difficulties.</p> <p>Please see our response at item 1.3 above.</p> |