

**Legislative Council Panel on Trade and Industry
Parallel Importation of Copyright Articles**

Introduction

This paper outlines the present legislative regime governing parallel importation of copyright articles into Hong Kong.

Copyright Articles and Parallel Imports

2. Copyright is a property right which authors have in relation to the works which they create (these works refer to literary, dramatic, musical and artistic works, also including sounding recordings, films, broadcasts, typefaces and computer programmes). It is a right to stop others from copying or exploiting these works without the authors' permission, and subsists for a limited number of years. The law protects, amongst other things, the economic interests of the authors as well as their licensees who have invested in the acquisition of the rights to import, reproduce or distribute such works.

3. Where works or products legitimately manufactured and sold in one place with the consent of the rights owners are imported into another without the authorisation of the rights owner or that of the relevant exclusive licensee, they are called parallel imports.

4. There is no international consensus on the treatment of parallel importation. Each economy therefore creates a regime that best suits its local circumstances.

Copyright Ordinance

5. For the Hong Kong Special Administrative Region, the parallel importation of copyright articles is governed by the Copyright Ordinance. On the one hand, copyright owners and their exclusive licensees have rights over their works or products. On the other, consumers require an orderly and sufficient supply of products. The underlying objective of the law is to strike a balance of interests among copyright owners, exclusive licensees, distributors and consumers.

6. The provisions of the Copyright Ordinance governing parallel importation are extracted at the Annex. The key provisions are summarised below.

7. The Ordinance provides for criminal as well as civil remedies against the parallel importation of copyright articles within 18 months of the first publication or release of the articles anywhere in the world. The maximum penalty for such an offence is a fine of \$50,000 per infringing copy and imprisonment of 4 years. Thereafter, parallel importation of such goods will only be subject to civil remedies.

8. The above arrangement was decided by the previous Legislative Council, after extensive debate and taking into consideration the views of the parties concerned. It takes into account the argument that the economic exploitation of a copyright work is usually most critical within the period immediately after the work is first published or released in the market.

9. Abuse of positions by exclusive licensees in the market could affect the availability of goods to retailers and consumers. To guard against such potential abuse of power, the Copyright Ordinance stipulates that it shall be a defence for a person who imports a work without the licence of the copyright owner or exclusive licensee if the latter has acted unconscionably, e.g. by withholding supply on unreasonable grounds, or by agreeing to supply but on unreasonable terms. This defence is available for civil actions brought against importers after the expiry of the initial 18-month period when a work is first released anywhere in the world.

10. At the same time, the Copyright Ordinance gives recognition to well-established trade practices with genuine commercial motives, such as the “windows system” for the sequential release of video products, (i.e. the showing of a film first in a cinema, followed by in-flight movies, on cable television, for rental and eventually on free television). The Ordinance provides that the court shall have regard to established practices of the particular trade for the purpose of the orderly distribution of the work in the market, before determining whether a copyright owner or an exclusive licensee has acted unconscionably.

Identification of Exclusive Licensees

11. Legitimate importers and retailers would need to be able to ascertain whether there is an exclusive licensee for a particular copyright article. During the deliberations of the Copyright Bill in early 1997, the rights owners claimed that they already had, or were developing, comprehensive databases on exclusive licensees for their works. For example, the Motion Picture Association and the International Federation of Phonographic Industries, which represent many film production houses and a significant segment of the world market of commercially recorded music respectively, advised that they maintained extensive databases on the exclusive licence arrangements for works within their repertoire. They expressed their willingness to provide such information on enquiry, and to refer the enquirer to the concerned exclusive licensee upon request. The Hong Kong,

Kowloon and New Territories Motion Picture Industry Association, which represents local film interests and local exclusive licensees of other foreign films, also indicated that it was developing a similar database for easy verification by prospective importers or retailers.

Advice Sought

12. Members are invited to note this paper.

Trade and Industry Bureau
September 1998