

Extract from

The Law Reform Commission of Hong Kong

Report on Reform of the Law Relating to Copyright (Topic 22)

The case for and against restricting parallel imports

18.13 The arguments advanced for continuing the present restriction on parallel imports include the following:

- (i) the restriction allows the copyright owner to maximise the return on his creative investment in the work;
- (ii) the parallel importer unfairly receives the benefit of the licensee's advertising, etc, to which he has contributed nothing;
- (iii) a manufacturer may legitimately choose to price his product lower in a developing market to encourage sales, perhaps at an initial loss to himself. The parallel importer takes unfair advantage of that strategy by buying in the low cost centre and selling in the higher cost centre;
- (iv) restriction on parallel imports conforms with widespread international practice;
- (v) parallel imports cut profit margins and therefore discourage licensees from providing less profitable specialised interest recordings, etc;
- (vi) where films are concerned, parallel importers are under no time restriction on the introduction of laser or video versions may therefore precede a film's release on the cinema circuit, with a consequent loss in revenue to cinema owners and the danger of reduced cinema choice in the future;
- (vii) if licensees are to be able to devote adequate investment to local manufacture and marketing, restriction of parallel imports is essential; and
- (viii) copyright is not supranational. It exists only by virtue of the domestic laws of each jurisdiction. It is unreasonable to suggest that because a copyright owner has authorised the commercial exploitation of his copyright work in country A, he should be regarded as having abandoned his rights under the laws of country B.

18.14 The arguments for lifting the current restriction on parallel imports include the following:

- (i) the restriction on parallel imports distorts the market and restricts free trade. If a product can be produced more cheaply in country A than country B, free trade principles dictate that the market should be allowed to encourage the shift of production from country B to country A;
- (ii) the restriction artificially reduces consumer choice. A prime example is the exclusion of US editions of books from Hong Kong;
- (iii) allowing parallel imports would prevent over-inflated pricing by Hong Kong distributors by injecting competition into the market;
- (iv) the present restriction allows manufacturers to sell older models in Hong Kong and to delay introduction of the latest stock;
- (v) an author can control importation of his works by contractual means and a restriction on parallel imports is therefore superfluous; and
- (vi) once copies of a work have been made with the authorisation of the copyright owner and placed on the market, wherever that may be, the right of distribution should be considered exhausted and not subject to a further right to control the importation of such copies.