

**FREEDOM OF IMPORTS TO HONG KONG**  
**CONSUMER CHOICE+REASONABLE PRICES**

**CB(1) 298/98-99(02)**

**THE PAST - *What HONG KONG was***

An open market offering a wide range of legitimate (genuine) products at competitive prices made available through a balance of local distributors and parallel importers.

A continuing fight against pirate traders and illegitimate products enlisting powerful existing laws and improved legislation to control 'copy' products.

**THE PROMISE - *What it was to be***

The same wide range of legitimate (genuine) products offered at reasonable prices, made available through the co-operation of rights owners, local distributors, licence holders and retailers and spelling the end of piracy.

“They [the licence holders] are the bridge between the rights owners and the public and have a responsibility to fulfil their obligation as such, that is, to bring the product to the attention of the widest public and then to supply the products where there is demand.”

Hon Mrs Selina CHOW LIANG Shuk-ye, JP, Legislative Council - 24 June 1997

**THE PRESENT - *What HONG KONG is***

A strangled market for genuine copyright products with artificially high prices, limited choice, outdated products, lower quality and piracy a big winner at least in part due to lack of available genuine products.

**WHO LOSES?**

The consumers, the retailers, the Hong Kong economy and our international standing as a free port. Price fixing and monopoly control in the hands of a few directly hurts the economic interests of many.

**WHO PROFITS?**

- (1) Foreign copyright owners and their distributors
- (2) Our regional competitors
- (3) The 'pirates' and their distributors

**WHO WANTED THE NEW LAWS?**

- (1) Foreign copyright owners and their distributors (to maximise their international market control)
- (2) Our regional competitors
- (3) Hong Kong Movie and Sound Studios (to protect them from their own low cost licensees in other Asian Countries who could then export cheap "genuine products" to Hong Kong)
- (4) The 'pirates'

**WHO DIDN'T WANT THE NEW LAWS?**

- (1) Consumers
- (2) Law Reform Commission
- (3) The Government (at first)
- (4) Retailers

## REVIEW ON FREEDOM OF IMPORTS TO HONG KONG

1. The current regulations outlawing parallel importing give foreign holders of foreign copyright an effective monopoly over the import of sound recordings, movies, software and books into Hong Kong. These foreign multinationals are using their muscle to keep out legitimate products in order to inflate their profit margins along with those of their exclusive licensees (sometimes owned by themselves). They are using the restrictions to exclude competitive imports and keep prices for products artificially high in Hong Kong, much as used to be the case in the New Zealand market:

“A small market such as New Zealand [or Hong Kong] can be easily exploited by a restricted line of supply. The result is excessive margins-and excess price for the customers” (See **Annexure I**)
2. The law evolved from a stated/claimed desire to stamp out piracy (by controls at point of import) but in effect it has only served to fuel the flames. Regulation of parallel imports has meant special niche titles in videos and sound recordings are now impossible for retailers to source. Supply of product through the licensees is slower and more expensive, imported book and magazine prices are inflated.
3. Assuming products are even available retailers first experience endless difficulties identifying the local distributor for each product they require causing further delays to the ordering process. Retailers correctly fear (and now see) that consumers fed up with waiting for products to appear on the shelves and the expense of purchasing what is available, turn to pirate products where easily available as an attractive alternative. (See **Annexure A**). This is perhaps made more obvious by a lack of general consumer spending making cheap product alternatives attractive.
4. Regulation of parallel imports has a less detrimental effect in large markets like the US and Canada because copyright holders retain the market incentive to make their products available. In a small city like Hong Kong it is not always worthwhile for distributors to make products available. Where consumers are unable to rent overseas movies from their local video shop for up to two years after the overseas release date is it any wonder they are taking advantage of their ability to buy the latest US release VCDs from pirate traders all over in Hong Kong for \$HK20 a film?
5. Logic says if you reduce the choice of CDs and videos in Hong Kong and raise prices piracy will boom. Pirate traders even allow the VCDs to be returned and exchanged or refunded within 7 days.
6. Genuine CDs are currently available to anyone with access to the Internet for lower prices than in the stores. The Director of Intellectual Property; Mr Stephen Selby has said

“If they [distributors] start hiking prices... they would find the public would take their business elsewhere.” (See **Annexure B**)

The pirate traders and overseas suppliers are showing him where and it is of no benefit to Hong Kong. (See **Annexure C and D**)

“But I worry that our preoccupation with parallel import has somewhat overtaken the very important attention we must pay to pirated goods, which remains a headache to Hong Kong, especially in the context of our role in world trade.”

Hon Mrs Selina CHOW LIANG Shuk-ye, JP, Legislative Council - 24 June 1997

7. With the exception of the foreign copyright owner and distributor everyone is losing; the consumers, the retailers and the HK economy. For tourists visiting the region the selection of CDs videos, books and magazines available is poor compared with the range available to them elsewhere and if the choice is there the prices are higher (Surveys will confirm this).
8. The natural response is to spend money elsewhere. The number of tourists visiting Hong Kong is decreasing and any law resulting in a reduction to the choice of goods available let alone inflating their price adversely effects our economy and causes jobs to be lost.
9. As was submitted to Legco prior to the passing of the Act: these are not simply issues of copyright law; they are of high economic, political and livelihood importance.
10. The ban on parallel imports ignores the trend in Asia towards deregulation and open trading and Hong Kong is now at a disadvantage against its competitors.
11. In 1994 the Consumers Association of Singapore supported the removal of remaining restrictions on parallel imports. The Association relied on a case study entitled: “The Economic and Legal Impacts of Parallel Imports in Singapore.” The Association accepted that it was in the National interest to encourage parallel imports (this also appears to be the position a China). It recognised that Singapore would lose its reputation as a shopper’s paradise if parallel imports were banned. Singapore importers are free to purchase goods from the cheapest commercially licensed source anywhere in the world and in doing so benefit the Singapore consumer and tourist visitor. Why are the needs of Hong Kong consumers being ignored?
12. International Federation of Phonographic Industry figures show the total number of units (mostly CDs) sold in Singapore rose from 7.2 million in 1994 to 7.6 million in 1995 following deregulation. CDs have become cheaper and piracy, once a major

problem, is now a minor one. If the 8 million annual tourists to Hong Kong bought one CD each, the result would be an additional \$800 million in retail sales alone.

13. Hong Kong should follow the lead set by the European Community, The Peoples' Republic of China and most of Asia in allowing unrestricted importation of parallel imports. These countries have recognised that if legitimate goods can be brought more cheaply overseas then there should be no barrier to their import.

14. Europe

In Europe the scope for restricting parallel imports is limited by the European Union Treaty. Parallel imports are only restricted when they originate from non-European Union member states. Once legitimate copies of copyright works are put on the market anywhere within the European Union the free movement of goods is allowed. This permits parallel importing of goods from one EU country to another without restriction and promotes a common market. In the UK an exclusive licensee cannot stop the parallel import into the country of goods placed on the market in any other country within the European community; anyone can compete for the business of 250 million consumers. Parallel imports are estimated to account for approximately 0.5% of total sales in the European community and the total value of parallel imported goods in the UK is approximately 0.1% of the GNP.

15. The UK

Hong Kong has apparently rushed through legislation and tried to at least in part copy the UK position on parallel imports but has overlooked at least two important aspects of the UK situation.

- (i) The protection afforded to free trade by the European Union Treaty, and
- (ii) The Monopolies and Mergers Commission which exists to prevent the abuse of dominant market positions and ensure consumer interests are protected.

All Western countries have laws to prevent such commercial abuse. Hong Kong has no such safeguards in place thus neglecting public interest and giving primacy to business interests alone. Market manipulation is now almost encouraged and no law exists stop it.

16. Japan

The Japanese government has constantly encouraged parallel importing. In 1972 the Fair Trade Commission declared that hindering parallel importing was an unfair business practice. In 1987 the Commission stipulated that distributors could not withhold "service" to Japan's "back door" imported goods. The Hong Kong Government is encouraging Japanese TV/Video makers to sell in Hong Kong to reduce piracy

17. Malaysia

A 1990 Amendment Act allows parallel of copyright works in Malaysia.

18. Australia

Instead of barring parallel imports the Australian government has adopted a policy which has tried to balance the interests of distributors, consumers and parallel importers. It has changed its policy towards the import of books; making it more flexible and favourable towards parallel importing. In July 1998 it lifted regulations on parallel imports of sound recordings and packaging.

The sound recording market was singled out after the Australian Price Surveillance Authority (a consumer watchdog) reported that sound recordings were more expensive in Australia than in other countries.

19. The USA

The US position on parallel imports is based on their role as true net exporters to the rest of the world. To protect their interests overseas they must condemn parallel importing. Hong Kong however should take the opposite stance. As a net importing region it should be promoting parallel importing. It should be noted that even in the US the Supreme Court recently had to allow exported goods from the US to be parallel imported back into the country.

20. New Zealand

In 1997 the New Zealand Institute of Economic Research (NZIER) was contracted to economically analyse the issue of parallel importing. Their report supported the deregulation of copyright parallel importing and the New Zealand legislators responded by removing the prohibition on parallel imports.

The New Zealand government officially noted a trend internationally favouring parallel imports. It stated access to products via the Internet facilitated the circumnavigation of the parallel import regulations and supported the trend. It made the observation that most Asian economies, including Japan, did not have parallel import restrictions. It recognised that Australia was decreasing its parallel import restrictions.

The government considered deregulation would benefit both consumers and businesses. The benefits to consumers would be lower prices, improved services and greater choice in products. (See **Annexure E**) In turn costs to businesses would be reduced and they would become more internationally competitive.

21. Hong Kong

The HK government has mistakenly been influenced by a perceived need to implement parallel import laws in conformity with Western countries with which it trades. However any comparison with Western countries is misguided and superficial, (See **Annexure F**) the trend is going the opposite way.

22. Western countries are changing their stance on parallel imports and where parallel import regulations remain they are watered down by laws and treaties designed to keep them in check and benefit consumers. The people of Hong Kong have been given no such protection. The Consumer Council can't control business conduct at this level.
23. The Hong Kong government's position on parallel imports ignores the world wide trend of allowing parallel imports and puts Hong Kong at a disadvantage against its competitors for consumer and tourist dollars. As a freeport\_Hong Kong should be promoting freetrade and parallel import restrictions create an artificial barrier to free trade. Local economic and trade conditions demand deregulation of parallel imports.
24. Any increase in choice of products available to the consumer will stimulate the stalled local economy. Restrictions should be lifted and the focus shifted to fight flourishing copyright piracy. Allowing parallel imports significantly decreases consumer temptation to obtain pirate copies of copyright works.
25. At recent talks with officials from Beijing and Hong Kong in the SAR, US Assistant Trade Representative Joe Papovich puzzled:

"Hong Kong has put in place some of the most modern copyright laws anywhere in the world...yet the prevalence of pirate products is higher than any other place in the world." (See **Annexure G**)

(Have our new laws brought this about?)

26. If legitimate goods are available at competitive prices the temptation to buy pirate copies is diminished if not almost totally removed. The emphasis is in the wrong place. We should be increasing the power to prevent the manufacture, import and sale of pirate works in Hong Kong and decreasing regulations on parallel imports, ensuring a wide range of legitimate copyright works available at competitive prices.
27. Historically there were only two valid reasons to restrict parallel imports:
  - (1) to protect local manufacture (mainly the film/music and TV industry), and
  - (2) to allow the copyright owner to maximise commercialisation of his work.

If a copyright owner wants to regulate the marketing of his product he can do so by making use of his contractual rights. Parallel import restrictions are superfluous to those rights. It has been argued distributors invest money in the marketing of

products but that is not justification for the restriction of competition. Copyright owners still benefit from deregulated parallel importing as goods must still be purchased from them. Increased competition between authorised licensees and parallel importers benefit the manufacturer because more goods are sold at more competitive prices. Increased competition in turn benefits the local Hong Kong economy through better market efficiency and creates employment.

28. The truth is copyright owners and their exclusive licensees are using the restrictions (law) to exclude competitive imports and keep local prices artificially high. Local suppliers are usually the sole source for a product and therefore dictate if and when a product will be available to the market and at what price. It is well within the capability of multinational companies to centralise and standardise global pricing structures to coordinate international prices should they wish to do so. These companies are taking advantage of the law to simply inflate their profit margins at the cost of the Hong Kong public: the price of a CD rose \$8.00 within days of the law being introduced.
29. Three months after the law was introduced retailer HMV reported a sales loss of 20-30% in magazines and books. A spokesperson for the store said they were forced to tell customers not to even bother requesting imported materials not already on the shelves. The time it took to locate the copyright owner, check if there was a local distributor, get permission to parallel import, and then bring in the product made the practice unfeasible. Where the product could be sourced from a local distributor it cost 20% more than before. Local distributors now charged more than the cost of the Hong Kong public parallel importing! **(See Annexure H)**
30. With a monopoly on the market local CD and video distributors are benefiting from spending less money on product duplication. Hong Kong has even become a dumping ground for poor quality CDs and videos. Regulation of parallel importing is forcing retailers to accept lower quality products. A good quality DVD parallel import from Canada costs 10-40% less (depending on the title) than the local DVD offered in Hong Kong but retailers and consumers must accept the local version which can be of inferior quality.
31. The legislation has bred a further threat to the video rental businesses. Distributors combined together via one 'agent' to further bleed rental businesses of their profits. They have 300 businesses requiring supply of their products and are now using their power to dictate unconscionable terms. They are imposing a revenue sharing scheme on the businesses they supply whereby the owner must install a computer on his business premises and send his rental records by modern daily to the Group. The business is provided with products at a reduced price but must pay the Group \$8 each time each product is rented out or 50% of the rental price; whichever is higher. **(See "Smells like a Cartel"; Annexure H)**

The owners of businesses are being forced to implement the scheme at the cost of their profits as there is no lawful alternative. The system now mandates a price for video rental in Hong Kong reducing price competition.

32. On the 7th of April 1997 Mr Jeffrey Hardee; Vice President of the Motion Picture Association; Asia Pacific Region, made a submission to the Bills Committee on the Copyright Bill. He claimed the arguments of parties supporting deregulation of parallel imports were farfetched. He said it was in the distributors interests to release titles and if they were not to be distributed the copyright owner would have no objection to parallel imports of their products.

He argued protection against parallel imports could not adversely effect consumer choice.

He stated that MPA member companies were forbidden from colluding on pricing by US anti trust laws. He later admitted that US anti trust laws did not apply in Hong Kong but said that it was MPA policy not to discuss pricing among MPA member companies. Members of the MPA went on to represent to the Committee that it was their practise to co-operate with retailers to ensure the availability of the full range of products to consumers.

33. At the meeting of the Bills Committee held on 30 May 1997 the Motion Picture Industry Association Chief Executive Mr Woody Tsung explained to the Committee that the MPIA, together with the MPA and the International Federation of Phonographic Industry, represented more than 90% of film and sound recordings. They stated that their comprehensive databases on exclusive licensees for their products would provide adequate information in an easily accessible and up to date format to allow importers to make reasonable inquiries to locate over 95% of works.

Mr Hardee confirmed it was the intention of the MPIA and the MPA to provide a referral service to assist retailers in finding out whether there was an exclusive licensee in HK for a particular title. He said that where there was no licensee retailers would be able to parallel import.

34. Twelve months after the legislation was enacted the practice of identifying distributors and obtaining products is frustrating, time consuming and ultimately expensive for retailers and consumers alike. No promised database exists.

For any business to run profitably it must have an up-to-date supply of products, in the formats its customers require, at a reasonable cost. When the MPIA was approached by one such business seeking the promised list of distributors of titles required to source its products they responded with the following:

“For practical reasons the MPIA will not be able to send you the requested information.”



The Committee were assured that the MPIA would offer a comprehensive, up to date and easily accessible database.

35. When the MPA are now requested, 12 months after the legislation came in, to supply information concerning distributors they also require requests to be on a title by title basis and take up to a fortnight to respond to a query.

If they do not represent the companies owning the titles required they will not identify the distributors. In any business profits are made when the product are most attractive. This period is the often the first month of release and if the distributors will not provide the product within the requested time period or provide retailers with the valid release date profits are lost.

Delay in identification of rights owners is another covert way to bar free and open product access.

36. Without the pressure of parallel imports local movie distributors are now delaying theatrical and video releases. This is giving pirates a larger window to sell their products before the legitimate product is released; if ever.

The MPIA emphasized to the Committee that non-availability of films would not be a problem. The MPIA claimed they always encouraged their members to respond favourably to retailers' requests for versions or formats of a title not already available from the licensees. Mr Hardee told the Committee that MPA member companies were committed to supplying a wide selection of videos in various formats and they too would be encouraged to respond favourably to Hong Kong retailers' requests for versions of videos not already available. He said:

"This would include, for example, the US laser disc version of a film. When there is no licensee retailers will be able to parallel import."

Practical experience shows this was an empty promise and distributors are apparently now totally outside the control of the MPIA or MPA.

This type of "format manipulation for profit" is exactly what was feared when the law was being considered. Where free import exists no such market manipulation is possible (**See Annexure J**).

37. When the Bill was debated retailers voiced massive concerns that distributors would adopt the type of attitude shown. The MPIA and the MPA representatives said these concerns were unfounded but have proven to be 100% on the side of the distributors and studios-not the public. This is to be expected as it is indirectly the studios who are their paymasters

38. HMV proposed a clause be included in the Bill listing the factors to which courts should have regard in determining cases in which retailers claimed sourcing through local distributors was unreasonable. Mr Hardee stated that such a clause was not necessary as the MPA would not deny access to a product and was ready to help with the supply of formats not available locally.
39. (i) Twelve months of history shows retailers' and consumer groups' fears as having strong foundations. The people of Hong Kong are the only ones losing while foreign multinationals laugh all the way to the bank.
- (ii) Hong Kong is rapidly losing ground as the 'real pirates' jump in and profit from the hole left in the supply chain which this legislation has now extended to many months if not forever.
- (iii) It is not known if any prosecutions have been mounted but as the refusal to sell/import requested products grows another aspect of Hong Kong as a shoppers paradise is lost forever.

“Post Script”

40. WHAT ABOUT REVENUE SHARING?

Where a distributor refuses to sell an item of copyright material (or delays sale date) but in making it available sets a price per copy or a percentage of each rental transaction to be paid over (based on minimum figures the distributor sets).

This is supply at an inflated price, market price fixing by default and a denial of a right to buy copyright items at any cost or a need to pay an impossibly high purchase price. Our legislation permits and encourages this activity at the threat of criminal sanction-a legislated monopoly on copyright. This is perhaps the strongest argument to de-criminalise any activity in relation to import of genuine products.

It permits maximum profit for what are often only revenue collection agents acting to collect the most possible money for overseas rights holders.

**Property: Sino Land gambles by cutting prices at Grand Dynasty View.** Page 3.

**Telecommunications Issues: Talk just keeps getting cheaper.** Page 3.

# HONG KONG

## Copyright Law Hasn't Cut Piracy, But Hurts Legal Sales, Critics Say

By KRISTI HEIM  
Staff Reporter

Hong Kong's new copyright law was supposed to clamp down on intellectual property poachers without hurting the selection available to consumers. In practice, the poachers are thriving, while some magazines, movies and music albums have all but disappeared.

The law, passed just four days before the handover, makes it a criminal offense to do parallel importing — directly importing a legal product without going through authorized local distributors. The law also gives customs officers greater powers to confiscate pirated goods and increases penalties for offenders. Violators face prison terms and HK\$50,000 fines.

But software producers and film makers, the people the law is designed to protect, say pirated copies of their products are still hitting the shelves, even before they are released in the local market, despite some recent raids on shops. Consumers, meanwhile, face higher prices and reduced selections from legitimate retailers, who say they now battle slower distribution channels for products.

Music retailers say titles on independent labels, which may not have a local distributor, have become difficult to buy. Japanese albums, in general, are hard to find. So are some overseas versions of international pop albums by artists like Mariah Carey, says Portia Chung, advertising and promotions manager at Tower Records Hong Kong Ltd., a division of U.S.-based Tower Records.

While retailers can get the locally manufactured versions of international pop albums here, they also used to import the original versions directly from overseas; some consumers don't like the

local versions because they may contain different songs. Local distributors might carry original versions, Ms. Chung says, but in small quantities and at a premium — a compact disk that cost HK\$110 before would now retail for about HK\$140.

"The difficulty we're facing now is price, and we're getting the albums we want a lot slower than before," she says. Retailers complain that they can't easily identify the local distributor for new foreign albums, which delays the ordering process.

"The worry we have is if people come in and they don't find what they want, they might stop coming," Ms. Chung says.

By law, retailers must buy all releases less than 18 months old from local suppliers. Older releases can be bought from overseas suppliers if retailers can't find a local distributor.

Since local distributors usually are the sole source of a product, they dictate when a title becomes available and at what price. Some products now cost more to buy wholesale, and HMV Hong Kong, a major retail chain, has had to pass those increases on to buyers, says the retailer's senior manager in Hong Kong, who asked not to be named.

The U.K.-based chain is working with suppliers to fine-tune delivery arrangements for the 100,000 titles it tries to offer, a process that may take many more months. The store still can't provide a full range in some areas, such as several types of ethnic music. HMV hasn't been able to stock recordings by the Japanese band BZ or any albums produced by the Japanese label Toys Factory.

"We're trying to play by the rules but we are seriously compromised," the HMV manager says.

HMV also has trouble getting magazines it once obtained through parallel

1995			1996			SEPTEMBER		
1,556	1,353	1,100						
1,447	1,392	1,168						
216,991	139,453	160,880						
256,138	326,387	761,377						
102,554	477,937	1,300,541						
590,854	1,071,365	2,323,088						

imports. Only about 60% of its previous titles are now available through local distributors, which charge more than overseas distributors. Magazine prices are as much as 20% as a result, he says.

At KPS Retail Stores Ltd., stocks aren't yet back to the level found earlier this year, and some less popular selections, such as foreign-language films that don't have subtitles, may never be replaced, says Christopher Britton, the chain's legal and business affairs director. Still, he says, the video rental firm is working with suppliers to improve the ordering system.

"Everyone is aware that at the end of the day we're competing with pirates to make products available," he says. "If we don't do it, the pirates are remarkably efficient at filling the niche."

While the new law may have cramped retailers' ability to offer all the products they once did, "it's sure hasn't wiped out

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# Copyright

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says Kevin Henshaw, president of Business Software Alliance, an anti-piracy business group here. "Pirates have even capitalized on the group's name. A shop in the computer arcade at 298 Hennessy Road in Wan-chai sells a pirated software CD-ROM titled 'Business Software Alliance' for HK\$30. The disk contains 50 programs, ranging from Microsoft Windows to Adobe PageMaker.

"It really is a slap in the face," Mr. Henshaw says. "There's a signal that (counterfeiters) don't seem to be frightened in any way."

Falling prices for counterfeit goods indicates rising supply, the alliance says. A few months ago, three counterfeit CD-ROMs sold for about HK\$100. Now, some Wan-chai shops are selling five disks for HK\$100.

The flood of pirated video compact disks, or VCDs, is cutting into sales and rentals of legal products and is hurting the film industry both here and overseas, says Woody Tsung, chief executive of the Hong Kong Motion Picture Industry Association.

Film makers had argued for a ban on parallel imports because some movies were showing up for rent in video stores while they were still showing in local cinemas. But people in the industry complain that almost all the movies playing in Hong Kong can be purchased on pirated VCDs some before they even appear on the big screen here.

So far, about the only people who seem to be satisfied with the results of the copyright legislation are distributors.

Distributors who invest the money to promote new products locally were being undercut by parallel importers, says Ray Hong, general manager of the local distributor, the local distributor for products from two big U.S. studios, Paramount and Universal. "If new prod-

ucts hit video stores before finishing their big screen run, distributors can't recoup their investments, he says.

Mr. Fong argues that the market will determine whether new prices are too high. "We want to see our products sell well," he says. "If I price it too high, nobody wants it."

The law isn't at fault for items that aren't stocked in stores, says Steven Selby, director of the Hong Kong government's Intellectual Property Department. Distributors said it was irrational to believe they wouldn't supply their products to any business that wanted them. The legislature and government has taken that at face value, he says.

The government is planning new legislation to help curb piracy by requiring all CD makers in Hong Kong to be licensed.

The long-term effect of the copyright law is hard to predict, but the signs aren't looking good for consumers, says Patrick Waring, an assistant professor of law at City University, who teaches a class on intellectual property law.

Cracking down on parallel imports might not harm a larger market, such as the U.S. or Australia, because copyright holders still have enough market incentive to make their products available, he says.

But in a small place like Hong Kong, it might not be worth their while. "Hong Kong, as a practical result, may fall down on (copyright holders) priority list, and access will be reduced," he says.

What's more, consumers may not even realize their loss. When an information market becomes limited, it's very hard for the consumer to know what he's missing, he says.

The new restrictions might actually encourage piracy, Dr. Waring says. Law-abiding businessmen are no longer going to offer parallel imports, so it would seem that their increase in market for pirated goods, he says. People might prefer the genuine items, but they would take what they can get.

## HONG KONG WEEK

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Monday July 21 1997

## Fears of distribution cartel forcing up CD prices dismissed

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GREN MANUEL

Fears that CD distributors could form a cartel to force up prices thanks to new copyright legislation have been dismissed by the Government.

Speaking about plans by two local distributors to raise prices just after the law had taken effect, the Director of Intellectual Property, Stephen Selby, said: 'I don't think one swallow makes a summer.' The Copyright Ordinance came into effect on June 27. It means record shops will have to buy all their CDs from local distributors instead of buying genuine CDs overseas and importing them directly.

These so-called 'parallel imports' exert price pressure on local distributors to charge prices similar to those in the United States or Britain.

Mr Selby said price pressure would still exist.

'Everybody can buy CDs outside Hong Kong . . . or order them over the Internet or from companies.

'If they started hiking prices, and I'm not convinced they are, they would find the public would take their business elsewhere.' He said parallel imports had been subject to criminal and civil sanctions in Hong Kong since 1912, but the old law was so unclear it had not generated cases.

He said the new law had provisions that would ensure distributors could not simply refuse to supply products to the local market indefinitely.

EMI, whose artists include Faye Wong Ching-man and Cass Phang Ling, has said it will increase wholesale prices by the equivalent of \$8 a CD.

Warner Music Hong Kong is considering following suit.

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B

Saturday July 12 1997

## Abandon backward legislation

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It was clear to many people that the copyright ordinances which came into force last month, would have a sharp impact on local consumers, but I doubt if many realised just how quickly we would feel it.

Shortly before the laws were passed, I ordered a CD - Earthquake Weather, by Joe Strummer - from the Windsor House branch of HMV.

It's a pretty obscure title, and not surprisingly, is unavailable locally. In the past, HMV would have simply shipped it over from one of its UK branches within a couple of weeks. The Hong Kong store would have got its sale, I would have got my music and everyone would be happy.

When I called HMV to inquire about the progress of my order, I was informed that under the new legislation, if HMV imports the CD, it would be breaking the law. As the CD never was and never will be a major seller along the lines of Wet Wet Wet or Michael Jackson, the official distributors in Hong Kong are unlikely to import it.

Whose interests are being served by this restrictive new legislation? Certainly not mine, nor those of local retailers.

If I want to buy this CD now, my only option will be to order it over the Internet, or travel to a more liberal economy, such as Singapore, where parallel imports are positively encouraged. Either way, the Hong Kong economy loses my custom.

While the law was still under discussion, a number of local celebrities, Jackie Chan most vocal amongst them, regularly complained that parallel imports were damaging their music and video sales. These claims were obvious nonsense. However restricted my choice of music may be, nothing could compel me to buy one of Jackie Chan's poor pop efforts. Instead, I will simply buy less music.

On the other hand, despite the past availability of foreign parallel imported videos, I have always enjoyed watching Mr Chan's movies and will continue to do so. Unless, of course, the local distribution cartels force up prices as they no doubt will.

The Provisional Legislature is currently revising a number of laws passed in the final days of our previous legislature. Perhaps it could add the copyright ordinances to its list of bills for reconsideration? No industry thrives on protectionism, jobs are not won by restricting the retail trade and backward, reactionary laws like this are not passed in the interests of Hong Kong consumers.

NEIL TAYLOR Causeway Bay

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C

Thursday July 24 1997

## Consumers losing out

[↑ Previous](#)   [↓ Next](#)

It is a sad time for all of Hong Kong's music lovers and consumers now that the record companies have won their fight against parallel imports.

Trying to find and purchase any non-Top 40 titles will only be possible by going overseas or by mail or through the Internet.

This will also affect anyone who wants to rent or buy videos of movies and TV shows that are never to be screened in

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### Hong Kong.

How can consumers benefit from this action? This is contrary to the spirit of free market consumerism and the laws of supply and demand. And, while we're on this topic, why have the prices of music compact discs gone up? Did it suddenly become more expensive to mass-produce them? Or is it simply because the record companies have become greedier? I doubt if the artists and performers have become greedier, charging more and thus ensuring that their work becomes more inaccessible to their fans. Isn't it obvious that more variety and more choice mean better returns for the record companies and the artists? CHEN QIZHONG Kowloon

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Tuesday August 5 1997

## Victory for greed at consumers' expense

[↑ Previous](#)   [↓ Next](#)

I read your article on parallel imports (South China Morning Post, July 30) with interest. The local distributors are confusing the issues of piracy and parallel imports although they are separate issues.

Piracy has nothing to do with parallel imports.

Other countries specifically allow parallel imports and suffer no piracy, to wit Singapore, Malaysia and the United States (for performance related material).

Lobbying by the Motion Picture Industry Association, and others, has, in my opinion, nothing to do with parallel imports and everything to do with greed. Cinema turnout has increased for Western movies (which are parallel imported) and decreased for local films (which are not parallel imported) so the idea that parallel imports affect the local film industry is misleading.

For example, Hung Cho-sing of the Hong Kong Motion Picture Industry Association said in the Post on September 16, last year that Twister had lost \$12 million in profits because of parallel importation when in fact it had not been released anywhere in the world at that time.

Maybe he meant pirate copies? Regarding CDs, Ricky Fung (letter, Post, August 1) who has a purely vested interest, made a number of flawed points. He states that a CD, 18 months after release, can be ordered directly by a retailer if the copyright holder offers unreasonable terms.

Please define unreasonable. Eighteen months is a long time.

He also states parallel CDs are more expensive. How? No one would buy them. Are KPS and HMV selling CDs over the market rate? I don't think so.

Lastly Mr Fung says that the copyright law fairly balances the needs of the record companies, distributors and retailers. What about the consumer? The consumer has seriously lost out. More importantly, the most free economy in the world has just effectively created one of the most impressive monopolies. Greed rules once again.

SCMP Archive Search - Search Result

Page 4 of 6

I have been led to believe by people involved in this issue that there is a strong connection between those who make pirate copies and those who own the film companies. I would love to know if this is true? PHIL INGRAM Causeway Bay

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## Importers contempt

I find it interesting and telling that after numerous letters from myself and other readers questioning and criticising the ridiculous parallel import laws now in force, there has not been a single reply.

The contempt distributors and retailers show for the public is made quite clear by the fact that they find no need to defend themselves. They have nothing to lose.

The choice of laser discs, for example, is considerably fewer than before. Some major releases such as *Star Wars Special Edition* have not appeared here at all.

Luckily I have discovered sources on the Internet where one can buy LDs and CDs at substantial discounts, even taking into account shipping costs. It is no longer necessary to give your money to the racketeers that control distribution in Hong Kong.

I would like to ask KPS why it charges nearly double the price of LDs. For example, *The Saint* was on sale the other day at KPS for \$590. That is more than US\$75. The same film at HMV cost little more than half that. Perhaps this is connected with KPS' complete silence on the parallel import issue. Has it now joined the ranks of those who would take the consumer for everything he or she has got?

PHIL INGRAM  
Causeway Bay

## Poor law

The letter headlined, "Pricey CDs" (*South China Morning Post*, October 13), attracted my attention. I completely agree with your correspondent.

I believe that the recent amendment in the law regarding parallel imports, in fact, is an infringement on people's freedom and a hindrance to people wanting to receive information.

Foreign publications like *I-D*, *The Face*, *New Musical Express*, and *Melody Maker* are no longer on the shelves of local stores. Nor can you find recordings from cult music labels any longer. This is an unhealthy situation that should not be tolerated in a cosmopolitan city (like Hong Kong) which has always adopted a *laissez-faire* policy.

Local distributors are benefiting at the expense of consumers.

VINICY CHAN  
Tuen Mun

## Absurd

Your article on the emergence of the piracy of digital video discs (*Sunday Morning Post*, May 3), indicates that the Motion Picture Industry Association considers parallel importing to be a form of copyright infringement akin to piracy.

The consumer public in Hong Kong should consider whether it accepts such a proposition, notwithstanding the fact that the legislature has already caved in due

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to lobbying pressure from the film industry. Imposing a ban on parallel importing, as we already know, is an anti-competitive practice.

The idea of allowing film studios and distributors to dictate the delay of film releases to markets outside the US is detrimental to the interests, and perhaps even to the rights, of consumers in the international market. The absurdity of the staggered release of movies is illustrated by the fact that Hong Kong residents who travel frequently are able to enjoy films on planes long before their official release in Hong Kong. Should this not also be banned if the proposition is taken to its logical conclusion?

"Parallel imports" is actually a misleading designation in that it connotes goods of the same quality, whereas many goods made for the local market by locally licensed distributors are patently not of the same quality. With many laser discs made for the local market, unlike their foreign counterparts, the viewer cannot jump to convenient

points in the film. Also, the local discs are afflicted with Chinese subtitles which cannot be removed from the image.

ALEX KAUNG  
Mid-Levels

## Higher price deplorable

I read with interest the letter from the Director of Legal and Business Affairs of KPS (*South China Morning Post*, May 1), decrying the negative impact that the ban on parallel imports has had on the local music and movie retail industry.

I wholeheartedly agree with the company's sentiments, as I find the reduced choice and increased price of CDs since the introduction of the ban deplorable.

A case in point. I went into HMV earlier this month. I wanted to buy the first three Elvis Costello albums, which were reissued with bonus material and at mid-price a while ago. I found all three in HMV and was happy to find the first two very reasonably priced at \$100. The third one, however, was a whopping \$190. The sole reason for this massive price increase was that the first two albums were UK imports, but the third had been provided by a local distributor in accordance with the ban on parallel imports.

Apart from the local distributors, everyone else loses – the consumer, the retailer and the Hong Kong economy.

Nowadays, I buy most of my CDs through the Internet, which has both a wider selection and cheaper prices.

The Hong Kong Government would obviously prefer me to continue contributing to foreign economies.

If it didn't, it would immediately reverse the disastrously anti-competitive ban on parallel imports.

NICHOLAS SAMPSON  
Pokfulam

## NEW ZEALAND

# US threatens action over law on parallel imports

ASSOCIATED PRESS in Wellington

New Zealand has introduced a law on parallel importing that has provoked condemnation from the United States, which claims it will cut the profits of US companies operating in the country.

The law is expected to bring consumers cheaper imports of many goods.

US Ambassador Josiah Beeman said the US might "take action within weeks" over an issue it regarded "very, very, very seriously".

Mr Beeman said New Zealand could be put on "trade watch", with US Trade Representative Charlene Barshefsky convening an immediate, special review of the action. "I suspect we will know the outcome of that very soon ... within weeks," Mr Beeman said.

The law means local licensed dealers for US companies' goods will no longer hold a monopoly.

Other businesses will be able to import the same goods, potentially cutting prices on everything from cars to clothing and compact discs.

"This issue is not for us a bilateral irritant, but rather a precedent-setting action by an OECD [Organisation for Economic Co-operation and Development] nation that could have an adverse impact on overall world trade," Mr Beeman said on Saturday, the day the law was passed.

Mr Beeman said the move would lead to lower foreign investment in New Zealand

and could result in higher unemployment.

He said he had not been consulted before the law was announced in the annual budget unveiled last Thursday.

Prime Minister Jenny Shipley told Mr Beeman that New Zealanders would "not be told how to run our country".

While the US was keen to protect its own trade interests, "that does not mean ... they can dictate to the rest of the world how we can manage our affairs", she said.

Wellington's *Dominion* newspaper yesterday reported that a possible backlash from Washington had been considered by officials before the new policy was introduced.

"They [the US] don't like it because it will reduce the profits of US companies, but we hope they will see this is not the end of the world," the paper quoted an unnamed senior spokesman for the Department of Foreign Affairs and Trade as saying.

"We fully expected a strong reaction, but I don't think [the law] is quite as dramatic a step as statements have suggested."

The decision had been taken because it would mean cheaper imports.

While New Zealand understood US concerns about piracy of such products as computer software, videos and CDs, the spokesman said the law had increased the fines for importing pirated goods.

Tuesday, July 28, 1998

## Parallel-import ban 'out of step'

DAVID SAUNDERS

Hong Kong's controversial legislation covering parallel imports was out of step with most other places in the world and was proving to be anti-competitive, a senior copyright consultant said yesterday.

At a seminar in Hong Kong, Robin Bridge, a consultant at Pinkerton Asia, said the victims of the new legislation were consumers who were no longer able to purchase a range of goods because licensed distributors were often not willing to supply a market that some considered too small to be commercially lucrative.

In the past, such a void had been filled with unlicensed distributors who supplied products such as sound recordings and video tapes cheaper than authorised outlets.

But following the Legislative Council's passing of the new Copyright Ordinance legislation just before the handover last year, parallel importing was made illegal with stiff penalties.

Mr Bridge, a retired solicitor, said the result was that

Hong Kong had some of the most severe laws covering parallel imports at a time when other countries were overturning or loosening their legislation.

Two weeks ago, the Australian Government ignored vociferous industry protests and passed laws lifting the ban on parallel importing of compact discs and brand named goods.

The move is expected to lead to a substantial reduction in prices.

Recently, the United States courts struck out restrictions on parallel imports, ruling that they were unconstitutional.

"Hong Kong's legislators look as if they have got egg on their faces," he said.

Representatives from luxury-goods companies present at the seminar argued that parallel imports severely undermined profit margins for authorised suppliers.

They also said these imports adversely affected their marketing arrangements and control over distribution.

Mr Bridge said pirated and counterfeit goods were a much bigger problem for distributors and manufacturers.

## HONG KONG/CHINA

# Official slams anti-piracy efforts

ANDREW CHETHAM

The Government needs to "try a lot harder" to stamp out the piracy of software and films in Hong Kong, a problem that is getting worse not better, according to United States Assistant Trade Representative Joe Papovich.

In a hard-hitting analysis of illegal copying in Hong Kong, Mr Papovich left no doubt that the US was unhappy about the situation.

"Hong Kong has put into place some of the most modern copyright laws anywhere in the world, yet the puzzle is, as far as I can tell, the preva-

lence of pirated products is higher than any other place in the world," he said during talks with officials and businessmen from Beijing and Hong Kong in the SAR.

Hong Kong was reaffirmed on a US Trade Department list in May because of ease with which consumers could buy pirated goods.

"I give the Government of Hong Kong credit for trying hard," Mr Papovich said, "but they are going to have to try harder."

Mr Papovich said he had seen estimates that there were as many as 100 pirated product lines in the SAR,

with 40 alone found in one location during a raid.

"The situation is worse today than it was one or two years ago," he said.

Another US speaker, General Counsel of the International Intellectual Property Alliance Steven Metalitz, praised Hong Kong's intellectual property laws as "models for the rest of the region", but he said the problem lay with enforcement.

"We need more consistent efforts and tougher sentencing," he said.

Replying to the comments, Eddie Poon, principal assistant secretary in the

Trade Department, said that during raids in the first six months of this year, 28 million pirated CDs had been seized and more than 50 production lines closed.

"These figures demonstrate the commitment on behalf of the Government to tackle the problem. Raids are held on a weekly basis."

Asked whether the financial turmoil in Asia had increased piracy across the region, Mr Metalitz said the early indications were that it had not.

But he warned that could take time to work its way through the system.

**RAW**  
MAGAZINE

**THE SOUND  
OF  
SILENCE**

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1997  
AUGUST

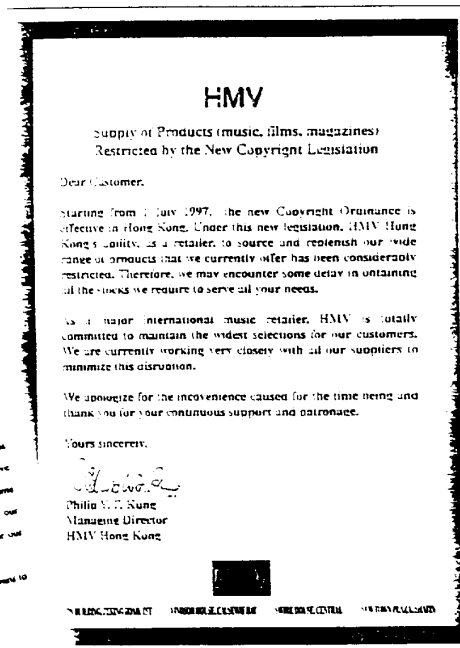
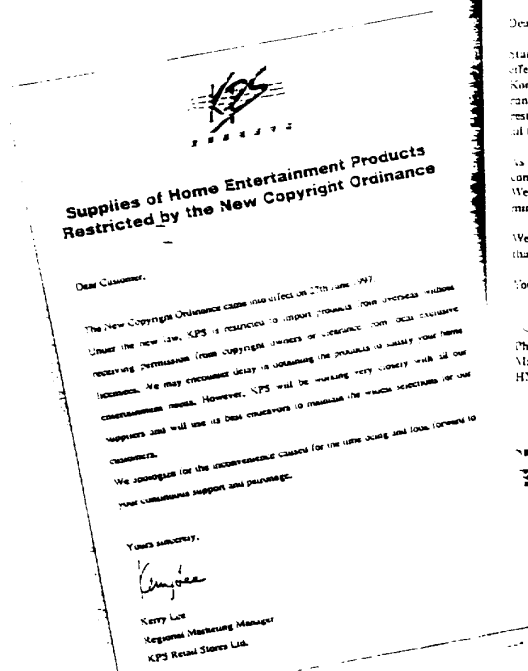
HK Magazine 26-8-97 +



# THE SOUND

**Our new copyright law is a hangnail on the proverbial free hand of the market. Plus, it's making it harder to get CDs and videos. Here's the full story.**

By Davena Mok



If you walked into HMV, KPS or Tower Records in early July, you were greeted with posters and leaflets warning that customers may not be able to find CDs, videos and magazines which had been available there just a few weeks earlier. The problem, the retailers said, was that a new copyright law considerably restricted their ability to source and replenish the items they used to have in stock.

Today, however, only three months later, you'll find no trace of these posters and the leaflets aren't being reprinted. And you won't hear any of the previous vocal opponents of the law talking about it—not even Garrie Roman, managing director of KPS, who fought the passage of the new Copyright Ordinance longer and louder than anyone else. In fact, if you try writing a story about it, you won't find a single person to go on record saying anything about how the law has affected their business or prevented them from offering customers the same stream of products they had before.

One reason for this is true confusion in the industry about just what the law means and how it will be implemented. Another reason, retailers will secretly tell you, is that they have been bullied into keeping quiet by the distributors who supply their products. "We have been told quite firmly that if we say anything bad to the press, it will be seen as an act of bad faith," one top executive at a large retail company commented.

# OF SILE

condition of anonymity (we'll call him Mr. Black). Apparently, it's hard to run a retail outlet without anything to sell.

This deafening silence certainly doesn't mean things are improving. In fact, quite the contrary. Customers shopping in major music retail outlets report shrinking sections of "New Releases." Some CDs are now more expensive. And calls to record labels reveal that their current catalogs do not even contain CDs that were widely for sale in Hong Kong only four months ago.

What's going on here? Why, in laissez-faire, free-market Hong Kong, is our access to entertainment products shrinking? And why, oh why, after waiting so many years for major international retailers like Tower and HMV to arrive on our shores, do we restrict their ability to give customers the best selection at the best price?

Even legal experts are puzzling over that one, though one solicitor who handles entertainment clients summed up Copyright Ordinance 1997, which went into effect June 27, this way: "It's a horrendous law."

## WHOSE SIDE ARE YOU ON?

Whether you agree with that opinion depends on which side of the business fence you happen to frequent. In a nutshell, the new law is good for companies that create copyrighted material—let's say an overseas record label—because it strengthens their ability to fight piracy. And the new law is very good for companies who hold the rights to sell such copyrighted material in Hong Kong—let's say the local office of the overseas record label—because it restricts the practice known as "parallel importing." As of June 27, a retailer such as HMV is only allowed to buy a particular CD from the one local distributor that holds the Hong Kong rights to that title. Before, Hong Kong retailers were free to shop literally around the world, find the best prices and selection they could, and import products "in parallel" with those on offer from local distributors.

It follows, then, that the new law is bad for retailers because it restricts the num-

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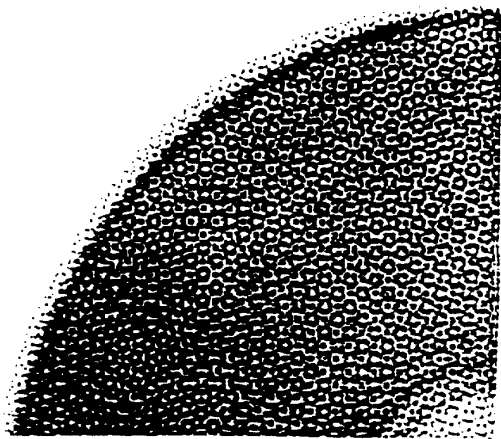
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TRIPLES



power to determine what makes it to a retailer's shelf and what price it will sell at. And it could ultimately be very bad for consumers since all indicators point to restricted selections, higher prices and longer waits.

It's important to note that piracy and parallel importing are two different things. Piracy is the illegal copying and sale of copyrighted material. Both sides of the industry are opposed to that. But parallel importing involves the legal purchase and importation of an authorized copy of a particular work from a market other than Hong Kong.

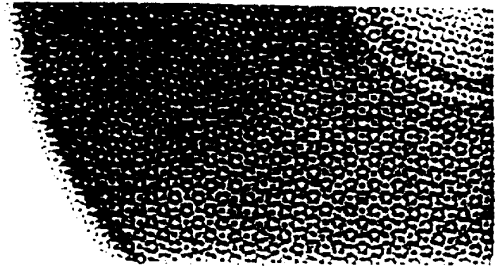
The SAR's Intellectual Property Department says the ordinance's ability to fight piracy will, in the long-term, enhance the quality of life. Acting Deputy Director Peter Cheung says for locals, the new law will encourage and protect creativity and talent, and for foreign investors, Hong Kong will be more attractive without its pirate haven stigma.

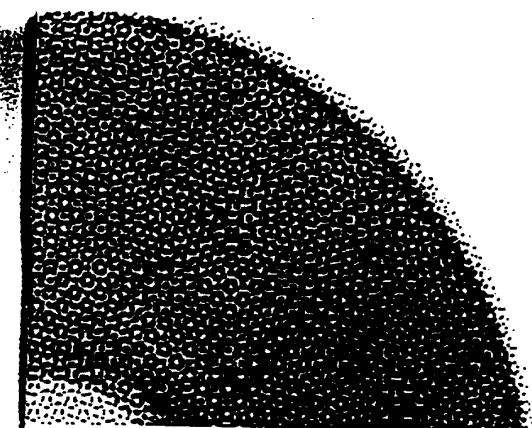
Industry groups say the ordinance's provisions against parallel imports protect against other evils. The International Federation of the Phonographic Industry (IFPI, Hong Kong Group) feels

parallel importing is unfair to local rights-holders. The new Copyright Ordinance does not expand the rights of copyright owners, but does extend copyright protection to their exclusive licensees in Hong Kong. Such licensees previously had no remedy against third party importers. The IFPI points out that overseas distributors who sold to local retailers were legally making money off popular CDs without having to fork out for production and promotion costs, which local exclusive licensees are obligated to do.

From a legal standpoint, the new ordinance deals with trade issues as much as copyright. Copyright owners have been given double protection—against illegal reproduction and the resale of a legal product, says John McLean, an entertainment lawyer and partner at law firm Haldanes. This has gone beyond what copyright laws should protect.

Not surprisingly, those sentiments are echoed by another local retailer who also would not go on record for fear of reprisals from distributors. He predicts that video rental stores in the future will stock all the same titles and charge the





same price. "All competition will be wiped out.... It's a monopoly market," he says.

#### A LESSON IN LAW-MAKING

The history and enforcement of copyright law in Hong Kong is a complicated and convoluted story, so put on your horsehair wig and bear with us for the short course. Until the new law was passed, Hong Kong's copyright regulations were based on the UK's 1956 Copyright Act. This law established criminal penalties for both piracy and parallel importing. However, in practice, courts had difficulty interpreting parallel importation as an infringement of copyright. And as for the legality of actually bringing parallel imports into Hong Kong, the Customs Department historically turned a blind eye. So, whatever the intent of the original law, the situation has been that Hong Kong operated as a free trade port and did not restrict parallel imports.

Why did a review of copyright law start in the first place? The Intellectual Property Department says it was time to modernize our legislation safeguarding copyright and intellectual property. But

the government's original plan was to beef up penalties for piracy, and in fact to *decriminalize* parallel importing.

This move was strongly opposed by local copyright-owners and distributors. led, some say, by the local film studios. The story goes that Hong Kong's movie industry shot itself in the foot by selling overseas rights to their films—particularly in China—for upfront, lump-sum fees. This action created a whole layer of legal distributors who were able to produce legitimate copies at a cheaper cost. Naturally, those copies found their way back to Hong Kong. Local film companies found themselves being undercut by lower-priced, legally imported products and could do nothing about it.

Whatever their role, it's clear film studios were upset about the government's proposal to decriminalize parallel importing. No less a lobbyist than Jackie Chan said he would move out of Hong Kong if the law was repealed. Under pressure from rights-holders, the government offered a compromise response, proposing that parallel importation become a criminal offense only for a period of one year from the first day of release or publication anywhere in the

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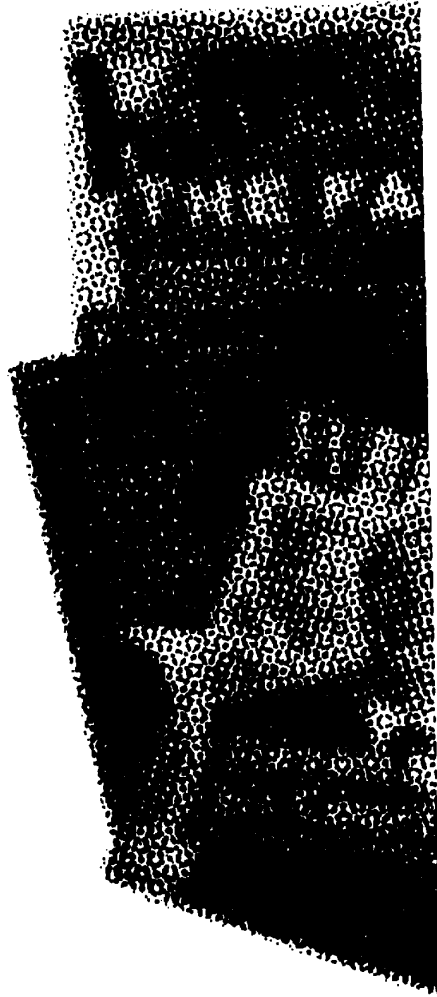
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## THE SOUND OF SILENCE



world. Thereafter, it would be prosecuted as a civil offense. Ultimately, this proposal was adopted, though the period of criminal liability increased from one year to 18 months.

What we wound up with was Copyright Ordinance 1997, levying fines up to \$50,000 for each "infringing copy" of a copyrighted item that was either pirated or brought into Hong Kong as a parallel import. Oh, and a maximum four-year jail sentence, as well. And, it appeared, the regulations against parallel imports would be strictly enforced this time.

Today, all imports of CDs, videos, magazines, books and computer software must be purchased through the sole local rights-holder. If a product does not have a local licensee, retailers can apply to import it from the overseas distributor, but only 18 months after its release date. And if there is a local licensee who for some reason chooses not to issue the product in Hong Kong, they must grant the retailer permission to import it.

### AS THE SELECTION SHRIVELS

Prior to the new ordinance, parallel imports meant locals could see a movie or read a book earlier and cheaper than if a local agent was used. "Hong Kong is a unique market: if a local supplier didn't have a specific CD, they would either sit on it for a while or not bother to order it because of the cost and hassle factor," says lawyer McLellan. "So it was easier for retailers to call up the overseas distributor and get a copy sent out straight away."

Now, consumers are simply waiting and missing out as retailers scout for and negotiate with local suppliers. While finding the licensed Hong Kong distributor for mainstream CD titles is no problem, tracking down who has local rights for independent or alternate labels could take up to six months. Although shelves are being slowly replenished, retailers say sales are suffering. An HMV spokesperson says that since the legislation came into effect, magazines and books were most prominently affected. "There was a 20 to 30 percent sales drop

in that area," she says.

Fans of obscure, special interest, independent or niche market music and movie titles will suffer the most. HMV shoppers will know that prior to the new ordinance, a request through its Customer Order Service could see the product in their hands within a week. But now, according to an HMV spokesperson, customers are basically told not to bother requesting imports. "It would take so much time to seek the copyright owner overseas, ask for their permission to import it, [or] check if any local distributor [carries it], and so on," she says. "The time to do that has been lengthened significantly and just a reply would take at least two months."

Additionally, only local movies are available on digital video disc at HMV. American and Japanese titles on DVD simply cannot be sourced from local suppliers for the time being.

But the IFPI is confident 95 percent of customers will ultimately be able to find what they want. Regional director Giouw Jui-chian firmly believes that any

current time delays are short-term. "Out of about 10,000 titles, only about 100 will be delayed," Giouw says. "But once all the local agents and exclusive licensees have been found, it will be much easier in the future."

The ability to watch a movie at home while it is still playing at the cinema has also been wiped out by the new law. It will now take at least six months after a film's release before it's available in stores. Peeved film distributors blamed the rampant video rental market (which sourced new releases from the US especially) for shrinking cinema audiences. They're much happier now because they can control the timing of a video release so movie enthusiasts are forced to go to the cinema.

### **SOMEONE HAS TO PAY**

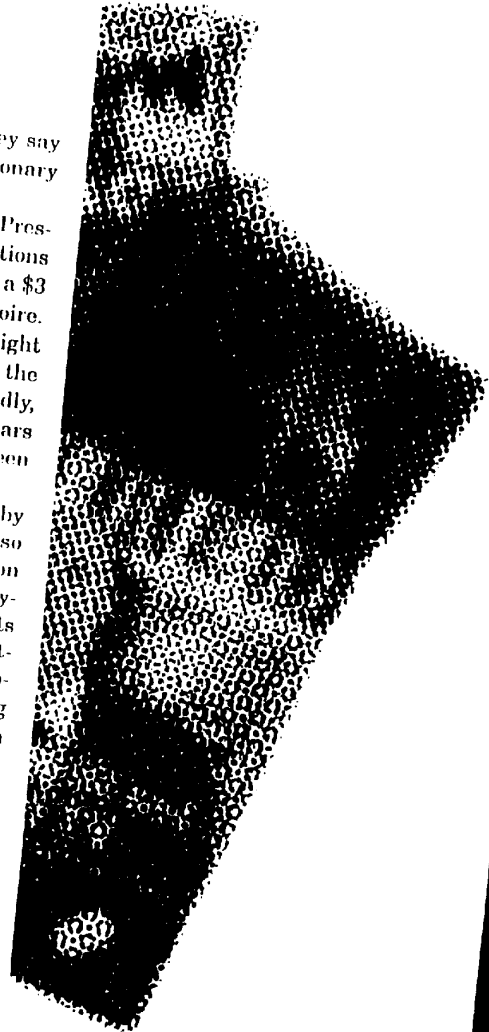
"With only one source, retailers can't try to find distributors who offer competitive prices," McLellan says. Sure enough, it only took two weeks after the law was passed for record companies to jack

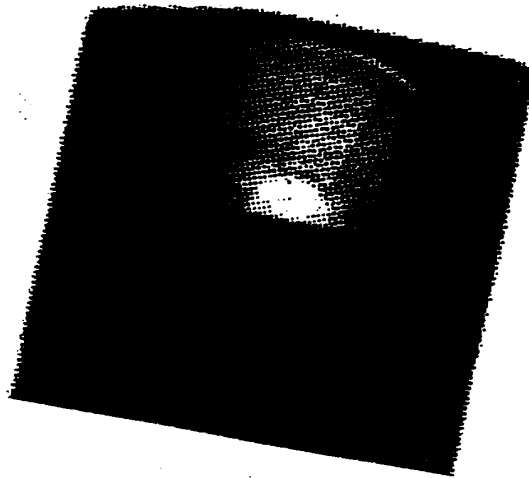
prices up. But, in their defense, they say price increases were simply inflationary and only applied to local titles.

Warner Music Hong Kong's Vice-President of Business Affairs and Operations Richard Ewbank confirms there was a \$3 increase, but only on the local repertoire. "This is nothing to do with the Copyright Ordinance," Ewbank says. "Firstly, the local titles aren't imports, and secondly, we haven't had a price rise in two years while inflation in Hong Kong has been around eight percent."

The same response was echoed by music giant Polygram, which also bumped local CDs up \$3, to \$118, on Sept. 1. Kenny Lau, the head of Polygram's domestic division, says imports were not included in the price adjustment because they do not have hefty production, recording and copyrighting charges. However, Lau's counterpart in the international division, Desmond Lee, could not confirm that imports will not see a price increase by the year's end.

EMI's local titles had the highest increase, with \$8 added to their price





tags. "It's all just a coincidence that the price changes occurred around the same time as the new ordinance being passed," EMI Deputy Managing Director Duncan Wong says. He says international titles or compilations pressed in Hong Kong will not join the add-\$8 list because their production costs will still be minimal without the recording fees.

The government IP department's Cheung also thinks the price issue is a coincidence of timing. "It's a free market," he says, unaware of the irony. "There's no price control. Isn't that the life of Hong Kong?" IFPI's Giouw doubts the matter will get out of hand, as he has faith in "the reality of supply and demand."

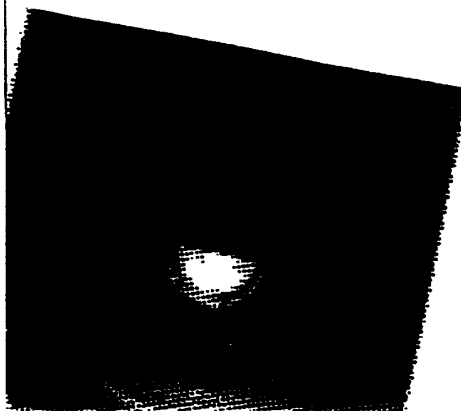
An HMV spokesperson says when imported magazines return to the shelves (all former titles are available from local suppliers), they will cost more. A whole 20 percent more. "We can't help it, the local agents are more expensive," she explains.

And there are other price concerns on the home entertainment front. Video rental companies are already crying foul at what they call the monopolization of the industry. "The formation of cartels would easily result in unquestionable price rises and a limited market," says one retailer we'll call Mr. Blue since he feared he would be put out of business if he gave his real name. The law is crazy—it's like we're treating parallel imports like pirated goods."

#### SMELLS LIKE A CARTEL

Some film rights-holders are taking advantage of their strengthened position by trying to get a piece of the lucrative market in video rentals. Whereas before a video shop could buy a title outright via parallel imports and then keep all rental profits, distributors now want to supply titles to them in exchange for a big cut of the take.

Golden Harvest, China Star, Wins



Entertainment) and ERA joined forces in July to form Carnival Home Entertainment Ltd., setting up a video and laser disc rental revenue-sharing scheme. "Rather than retailers paying around \$600 for a movie and getting all the profits, we are providing releases at nominal cost—as low as \$15 for a video or \$30 for a laser disc—but are sharing the profits 50/50," says Carnival and ERA's managing director Andrew Leung.

"It's a great scheme. Shops won't suffer—they can afford to have more copies, say 15 instead of four, to rent out. Everyone has been happy since the scheme was launched (six weeks ago)." The problem is, Carnival owns a large share of the Hong Kong market, with Warner, MGM/UA and Columbia TriStar under its belt, and can effectively do and say what it wants. Leung says Carnival supplies to more than 300 retailers, including KPS and Fotomax.

"The creation of Carnival is nothing to do with a monopoly and squeezing out other distributors and making more money off retailers," Leung claims. (In fact, Leung recoils at the use of the M-word. "Please don't use that word," he implores when the subject of monopolization is brought up again.) "You fail to see that it gives a better service to consumers...and retailers can now afford more copies of videos and laser discs." As for subsequent price increases by rental shops to combat the profit loss? "I have no objections to that," Leung says.

Leung reasons that if Carnival was a monopoly, it would charge at least \$700 a video. But retailers question why they can't choose whether to buy titles outright or participate in a revenue-sharing scheme, as is the practice in the US. Smaller rental shops and clubs fear that being forced to revenue-share will put them out of business. "Nearly all my customers are expats who want foreign films without Chinese subtitles or perhaps non-mainstream movies that distributors think Chinese people would not want to watch," says Mr. Blue. "But my market is so small that it's very hard for the agent to justify getting the few products I want. To supply my customers with what they want has become a criminal offence. It's ridiculous."

#### SEE, HEAR, SPEAK NO EVIL

Though for the moment Hong Kong consumers are being deprived of products that were previously available to them, it's too early to tell how much of the damage will be permanent. The mass audience will certainly be catered for, but those who have minority tastes (say, if you're into Angolan bossa nova), speak minority languages (like English), or

want minority formats (an un-subtitled laser disc), will probably not be as well served as they were in the past.

Just as troubling, perhaps, are the strong-arm tactics from distributors that some retailers are reporting. Besides pressuring retailers not to comment on the law (an allegation distributors we contacted officially denied), distributors are now saying retailers should absorb additional

costs—which will likely be passed on to consumers. "Some retailers are even being asked to foot the bill for extra air-freight costs. And they have to pay, even though they didn't before the legislation came into place," says one retailer.

If you're a conspiracy theorist, you might even wonder if someone could buy the rights to a title but not release it as a form of censorship. That's theoretically possible, but not likely, according to McLellan.

The Provisional Legislature has held briefings to try to understand the controversial law they have inherited, and there are moves to get the law reviewed. Until then—or until some cases go before the courts to test the limits of our new Copyright Ordinance—the business of show business in Hong Kong will be haunted by confusion and uncertainty. ●



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## Stand firm on US threats

**T**he United States was quick to vent its displeasure at New Zealand's removal of parallel importing restrictions. Four months later, its opposition has not relented and there is talk of retaliation. Assistant Trade Representative Donald Phillips says that New Zealand could be placed on a watch list for possible action. At worst, that could mean trade sanctions.

The Prime Minister's response, on first hearing of the American pique, was to order full steam ahead. If the stakes are raised, she must remain steadfast. In this, Mrs Shipley should be fortified, in the first instance, by a recognition that the Government's decision was right in principle. A small market such as New Zealand can be easily exploited by a restricted line of supply. The result is excessive margins — and excessive prices for the customer. In the second instance, and if the United

States attempts to flex its protective muscle, the Prime Minister has recourse to the World Trade Organisation.

The main American objection to parallel importing seems to be that it denies American manufacturers effective intellectual property rights. The WTO has drawn up internationally agreed rules for protecting such property and is keen to ensure that those rules permit maximum competition between the distributors of protected brands. Manufacturers may confer exclusive distribution rights, but these dealers should not be a vehicle for extracting excessive prices. If an item can be obtained in another country so much more cheaply that it is economic to import it here, the manufacturer would be hard-pressed to defend the price it is charging through its franchise.

For the sake of New Zealand consumers, the Government must stand firm.

# Parallel Importing



Chris Jones

As you are all aware the recent budget included the announcement by the Treasurer that the Government have amended the Copyright Act 1994, effectively revoking section 144.

On the face of it this means that anyone can now import 'branded' merchandise not just the license holder. So what does this mean for the Video Industry?

Well, firstly we need to acknowledge that at present we have largely a well organised, well serviced and professional supply network already in place in New Zealand. This network of distributors provide our industry with a range of support including things such as time codes, co-op advertising and merchandising material along with a number of the larger distributors who presently advertise their product on Television.

The issue must then be why would any one want to parallel import video product against this established network? The most obvious reasons would be:

1. To gain a price advantage

Well, anyone who has seriously 'done the numbers' and considered the other associated costs such as freight, exchange rates and of course the cost and issues related to rating any such product, will know that there would need to be significant income potential from any such activity to justify this action.

2. To gain product advantage

As a relatively new member of this industry one of the aspects of the video rental market that is unique and impressed me as a real advantage is the 'level playing field' we all operate on. Unlike most other markets no one retailer is going to steal a jump on another by

launching a new release before another. We all receive the movies at the same time, we all pay a similar price, leaving each retailer or group to forge their own 'point of difference' in the market to compete for the consumer dollar. Any activity that may put at risk the health of our industry must be avoided, after all, it is the industry that we all rely on for our income.

The NZVDA Executive recently met with the major distributors to discuss this critical issue and the message from them was clear, they all plan to (and now have) alter their release dates to be either before or simultaneous with Australia. This effectively removes the 'opportunity' for parallel importing and is a move strongly supported by the NZVDA.

In summary, we need to take a responsible and professional approach to this issue, it would be very easy to begin to destroy the market we all depend on for our incomes. This is not to say that the New Zealand distributors shouldn't be ensuring that their product is well supported and competitively priced internationally, this is the best way to ensure no parallel importing occurs.

I urge anyone considering parallel importing to also take careful legal advice relating to their existing supply contracts: we can be certain that the distributors will not easily give away hard fought revenues and market shares. As with all these new laws, someone will become a test case!

Finally, at the end of the day I urge you to 'stick to your knitting', we are retailers and we have a lot of work to do to grow our business against the increasing threat of other home entertainment options, particularly 'pay TV' sport. No one ever got rich buying something cheap, we already have a solid and well supported supplier network, let's leave it to them to fight this one.

Good selling

Chris Jones, C.E.O  
United Video Franchising Ltd



## NZVDA Working For You

Your elected Executive meet every two months to address issues of importance to the video industry. Summarised for your information, are some of the topics discussed at the last meeting.

**Debt Collection** - BayCorp made a superb presentation to the meeting on the company and the debt collections service available to members. The company offered to waive the tracing and debt loading fees for members under the scheme proposed. The importance of using the NZVDA membership and credit application form was stressed. Enclosed with this issue of Video Voice is material from BayCorp explaining the scheme.

**Membership subscriptions** - The Executive is pleased to be able to announce that membership subscriptions for the 1998/99 year have been held at the same low level set last year.

**White Paper** - Much time has been spent over the last six months in creating an industry 'White Paper', which details the state of the video industry. This will be an excellent tool for the Association to use in promotion to media and others who regularly enquire about the video retailing.

**Industry Promotion** - A proposal for the collection of industry statistics, was received by the meeting. This will proceed with the Association's auditor, Marley Loft, undertaking the work of data capture and analysis. The franchises and chains will provide the data, which will be used to map the growth of the industry and track the effect of advertising campaigns. All NZVDA members will benefit from this research.

**Shelf Release Dates** - Distributors have been requested to advise release dates more prominently in consignments as there had been an increase in the amount of product appearing on shelves before release date. Members are reminded to carefully check consignments for this detail.