

LCQ10: Pirated copies and parallel-imported copies of copyright works

Following is a written reply by the Secretary for Commerce and Economic Development, Mrs Rita Lau, to a question by the Hon Wong Ting-kwong in the Legislative Council today (March 18):

Question:

Under the Copyright Ordinance (Cap 528), it is a criminal offence to deal in, or to import, otherwise than for private and domestic use, any parallel-imported copyright work into Hong Kong if the work has been published anywhere in the world for 15 months or less. It has been reported that in recent months, optical discs of films which are suspected to be illegal parallel-imported copies from the Mainland, and also optical discs of films sold as parallel-imported copies which are in fact high-quality pirated copies, are prevalent in the market. In this connection, will the Government inform this Council:

(a) of the respective quantities and total values of optical discs of films seized by the Customs and Excise Department (C&ED) since the aforesaid provision came into operation in July 2007, which were pirated copies and illegal parallel-imported copies, and how these figures compare with those before the provision came into operation;

(b) of the quantity, total value and places of origin of the optical discs of films seized by C&ED last year, which were pirated copies sold as parallel-imported copies; and

(c) whether it has formulated measures to tackle the problem of illegal parallel-imported optical discs being prevalent in the market recently; if so, of the details; if not, the reasons for that?

Reply:

President,

The Copyright (Amendment) Ordinance 2007 (the Amendment Ordinance) introduces certain changes to the regulatory regime for parallel-imported copyright works. Firstly, the Amendment Ordinance liberalises some restrictions relating to parallel imports, including (a) exempting business end-users from civil and criminal liability for importing or possessing parallel-imported works under specified circumstances; and (b) shortening the criminal liability period for parallel imports from 18 months to 15. Secondly, it introduces certain measures (Note 1) to facilitate enforcement against illegal parallel imports. The

relevant provisions came into force in July 2007.

My reply to parts (a) to (c) of the question is as follows:

(a) The respective quantity and total value of optical discs of films seized by the Customs and Excise Department (C&ED) from 2006 to February 2009, which were pirated or illegal parallel-imported copies, are set out in annex.

The number of reports from copyright owners or their licensed distributors about parallel-imported copies of optical discs of films has increased after the enforcement facilitation provisions in the Amendment Ordinance came into force in July 2007. The quantity of such articles seized by C&ED in enforcement actions has also increased accordingly.

(b) & (c) Since C&ED handles all seized pirated optical discs collectively, there is no separate figure for pirated optical discs of films being sold as parallel-imported ones. Recently, we note that some shops are selling pirated goods by passing them off as parallel imports, including pirated optical discs of films from the Mainland or neighbouring areas of Hong Kong as parallel-imported copies. C&ED will work closely with the copyright owners, follow up on all complaints, and carry out intelligence-based enforcement actions (including interception of pirated optical discs at boundary control points to prevent them from being imported into Hong Kong) in combating commercial activities involving pirated or illegal parallel-imported optical discs.

Note 1: The following measures were introduced under the Amendment Ordinance to facilitate enforcement: (a) a presumption that any optical disc which does not bear a licensed manufacturer's code (all optical discs made in Hong Kong bear such a code), or any copy of copyright work containing a label or mark restricting sales of the copy to places outside Hong Kong or indicating that the copy was made outside Hong Kong, will be presumed to be an imported copy; and (b) a new provision allowing copyright owners to testify, by way of an affidavit, that the copy, if made in Hong Kong, would have infringed copyright. The provision mentioned in (b) helps overseas copyright owners adduce evidence on parallel-imported optical discs of films, and alleviates their burden of having to appear personally in the courts of Hong Kong.

Ends/Wednesday, March 18, 2009

The respective quantity and total value of pirated or illegal parallel-imported copies of optical discs of films seized by the C&ED from 2006 to February 2009

Year	Optical discs of films: Type and quantity seized		Total value (\$ million)
	Pirated optical discs of films (no. of discs)	Illegal parallel-imported optical discs of films (no. of discs)	
2006	591,264	— (Note 2)	14.6
2007 (January to June)	2,375,672 (Note3)	— (Note 2)	53.8
(July to December)	(1,673,672) (702,000)		(17.5)
2008	959,610	225	23.5
2009 (up to February)	77,279	886	1.9
Total	4,003,825	1,111	93.8

Note 2: Before the introduction of the Amendment Ordinance, the prosecution has to prove the following elements for parallel-imported copies of copyright works: (a) the copy is imported into Hong Kong from other places; and (b) the copy, if made in Hong Kong, would have infringed copyright. These requirements presented difficulties in laying evidence before the court. Reports of parallel imports in the past were few and far apart. Hence, the introduction of the facilitation measures in 2007, as set out in Note 1.

Note 3: The quantity of optical discs of films seized in 2007 was higher because C&ED cracked down in the first half of that year a criminal syndicate engaged in the storage and sale of pirated optical discs of films.