

Copyright (Parallel Importation of Films and Onus of Proof) Amendment Act 2003

Public Act 2003 No 111
Date of assent 30 October 2003

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Copyright (Parallel Importation of Films and Onus of Proof) Amendment Act 2003.
- (2) In this Act, the Copyright Act 1994 is called “the principal Act”.

**Part 1
Commencement and amendments to
principal Act**

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Meaning of issue to the public

- (1) Section 9(2) of the principal Act is amended by inserting, after the words “programs to the public”, the words “and rental subsequent to those works having been put into circulation”.
- (2) Section 9(3) of the principal Act is amended by adding the words “and rental subsequent to those works having been put into circulation”.

4 New section 35 substituted

The principal Act is amended by repealing section 35, and substituting the following section:

“35 Infringement by importation

- “(1) A person infringes copyright in a work if—
- “(a) that person imports into New Zealand an object that is an infringing copy of the work and,—
 - “(i) in the case of a work that is a sound recording, film, or computer program to which subsection (6) applies, that person knows or ought reasonably to know that the object is an infringing copy; or

- “(ii) in the case of other works, that person knows or has reason to believe that the object is an infringing copy; and
 - “(b) the object was imported into New Zealand without a copyright licence; and
 - “(c) the object was imported into New Zealand other than for that person’s private or domestic use.
- “(2) In civil proceedings for infringement of copyright under subsection (1), in the case of a work that is a sound recording, film, or computer program to which subsection (6) applies,—
- “(a) an object is presumed to be an infringing copy in the absence of evidence to the contrary; and
 - “(b) the Court must not require any person to disclose any information concerning the sources of supply of the object if it appears to the Court that it is unreasonable to do so.
- “(3) A person also infringes copyright in a film to which subsection (6) applies if that person—
- “(a) imports a copy of the film into New Zealand within 9 months of first being made available to the public; and
 - “(b) knows or has reason to believe that the film is imported into New Zealand within 9 months of first being made available to the public; and
 - “(c) is not the licensee of the copyright in New Zealand; and
 - “(d) imports the film into New Zealand other than for that person’s private and domestic use.
- “(4) For the purposes of subsection (3), a film is first made available to the public (as set out in section 23(2)) by any authorised act whether in New Zealand or elsewhere.
- “(5) Subsection (3) expires with the close of the period of 5 years beginning on the date of commencement of this Act.
- “(6) This subsection applies to the following sound recordings, films, and computer programs:
- “(a) a sound recording stored in a material form that is separate from any device or apparatus capable of playing sound recordings;
 - “(b) a film produced principally for cinematic release, or a copy of that film, or a copy of a substantial part of that film:

- “(c) a computer program stored in a material form that is separate from any device or apparatus capable of executing computer programs.”

Part 2

Consequential amendment to Trade Marks Act 2002

5 Consequential amendment to Trade Marks Act 2002

The Trade Marks Act 2002 is amended by inserting, after section 97, the following section:

“**97A Exhaustion of rights conferred by registered trade mark**

A registered trade mark is not infringed by the use of the trade mark (including use for the purpose of advertising) in relation to goods that have been put on the market anywhere in the world under that trade mark by the owner or with his or her express or implied consent.”

Legislative history

17 December 2002
1 April 2003
5 August 2003
21 October 2003

Introduction (Bill 14-1)
First reading and referral to Commerce Committee
Reported from Commerce Committee (Bill 14-2)
Second reading, committee of the whole House,
third reading
