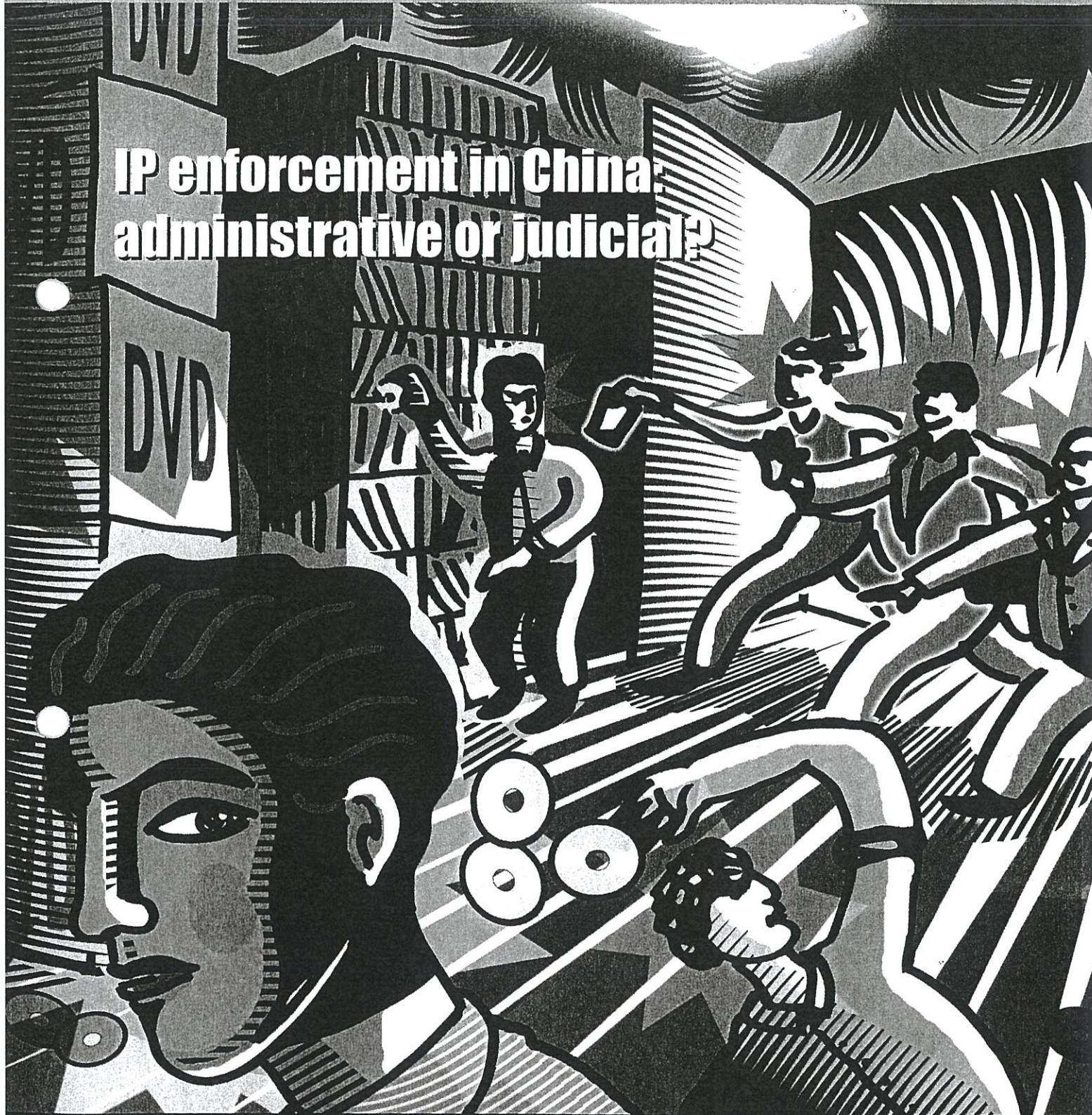


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Price fixing the next frontier in combating piracy?



The Malaysian government recently signalled a new approach to the problem of copyright piracy by making optical media goods price controlled items, despite widespread criticism from the entertainment industry. Karen Abraham of *Shearn Delamore* explores this novel approach.

Malaysia's battle with the serious problem of widespread production and export of unauthorised copies of copyrighted materials in optical disc formats – CD, VCD, DVD and CD-ROM – continues as the Malaysian government recently decided to overcome the problem by making VCDs, CD and DVDs price controlled items under the Price Control Act 1946 (PCA). This decision was made following requests from consumer bodies and also due to the reluctance of the industry concerned to heed the government's call for price reductions. Pursuant to the government's decision to make optical discs and computer software price-controlled items under the Price Control Act 1946, the government has since proceeded to implement a ceiling price on the sale of music and movie discs.

The ceiling price for locally-produced VCDs has been fixed at RM14 (US\$3.68). Local artiste music CDs on the

other hand, have been fixed at a maximum of RM21 (US\$5.56) whilst foreign-artist music CDs would carry a maximum price of RM29 (US\$7.63). Imported CDs and VCDs have so far been exempted from these price control regulations. In addition, computer software, music cassettes and digital video discs (DVDs) have also not been included under the list of price-controlled items.

This proposal has been met with a huge outcry by many of the players in the industry, many of whom are concerned that the price controls on this CD-based content would have a detrimental impact on their businesses here in Malaysia.

The government's stand on this matter stems from the need to protect consumers. The government is also of the view that copyright owners should do their part to reduce prices of optical discs in an effort to make their products more affordable to the public to complement the efforts of the Ministry of Domestic Trade & Consumer Affairs which

has been carrying out extensive nationwide raids against retailers of pirated optical disc products in an attempt to counter piracy. Under the PCA, the Price Controller will fix maximum prices for the sale of any goods or of any quantity of any goods either by declaring the maximum price or charge or by prescribing the manner in which the maximum price or change shall be ascertained.

With the proposed measures to include optical discs as price-controlled goods, the government hopes to set affordable prices and at the same time give an equal opportunity to consumers to obtain basic information before any decision to purchase is made. The reduction in prices vis-à-vis the reductions in the production of illegal optical discs may then in turn lead to greater demand on part of consumers for genuine optical discs, as opposed to pirated optical discs.

The proposed measure to include optical discs as price-controlled items may also mean that optical discs would be within a greater reach of the population. Manufacturers would then be able to benefit from greater economies of scale. This is because if the demand for genuine optical discs increases, the manufacturers would benefit from greater discounts when purchasing more machinery to produce the optical discs, more effective use of premises and more intensive use of labour. This will enable fixed costs of production to be reduced. Therefore the proposed measure to include optical discs as price-controlled items may encourage and provide an impetus for costs of production of genuine optical discs to be lowered. All this in return may also lead to greater growth in the local industry.

On the other hand, foreign players in the industry have been deeply concerned about the move to implement price controls on optical discs as they are of the view that the market forces should be permitted on its own to determine prices of these optical discs. Players are concerned that they may be deprived from recovering the returns from the investment of their technology in this country. This creates a less conducive environment for the social and economic welfare of these players in the industry and may reduce their confidence in the industry here. They may therefore accord less recognition to the importance of the Malaysian market as their revenues drop significantly. Players may therefore direct their attention and investment to other nations where optical discs are not subjected to price-controls.

Price control could also have an adverse impact on

the local industry as the industry may be forced to cut production costs for local acts, from studio time and the quality of session musicians to the actual physical CD quality itself. This may therefore affect the development of local artistes.

In addition, the PCA was intended to control prices of essential goods such as meat, vegetables and rice. Within the true spirit and intention of the PCA, optical discs or digital products can hardly be considered essential goods. The proposal to impose price controls has raised concerns amongst the industry players because making optical discs cheaper does not necessarily guarantee sales. Consumers may buy these products more for the content, rather than the price. This may be evident in the case of music CDs, where CDs have been hugely popular over the past decade compared to cassettes despite the huge difference in price. This may be due to CDs being of superior and lasting quality, compared to cassettes.

Furthermore, concerns have been raised regarding Malaysia's moral duty as a signatory to TRIPS to curb piracy at all costs rather than seek to counter piracy by impinging on the rights of the players in the industry. Article 13 of TRIPS provides that: 'Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder'. By implementing these price controls, Malaysia has sparked a debate as to whether it is in breach of its obligations under TRIPS.

Needless to say, distributors and retailers of optical discs may also find it an 'administrative inconvenience' as they have to endure additional paperwork in applying for the necessary licences to trade under the PCA.

It can be seen that the affected industries are strongly against the proposal by the government to impose price controls. It will be interesting to see how the government will attempt to strike a balance to ensure that the rights of both the players in the industries and those of the consumers will be taken care of.

The government intends to conduct a review of the new price control measures next year and has indicated that if the price control mechanism manages to revitalise the industry, these ceiling prices will be lifted. The new prices are expected to take effect from January 1 2004. ■

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