

# National Film Corporation Act 47 of 1971

The general objects of the NFC (Section 4 and its sub-sections in the Act) make it abundantly clear that the NFC was never intended to enjoy a monopoly status or exclusivity in any or all of the ten areas of operation referred to, including import export, distribution and supply of films, Section 5 (d) which confers on the NFC the discretion to exercise exclusive rights must be read in conjunction with Section 57 (1) which fully supports and endorses continued private sector participation in the film industry even after NFC Act 47 of 1971 became law.

The claim to having mandatory monopoly status under the Act for the import and distribution of foreign films is erroneous, as can be seen from the provisions of Section 5 it refers to the Powers of the NFC and has 15 sub sections from (a) to

sure that its third party suppliers hold full exhibition rights covering Sri Lanka for films supplied by them. Failure to ensure this results in bringing the government itself into disrepute. When the NFC resorts to dealing in pirated copy right material, it is the Government that is seen to be contravening international intellectual Property Laws to which Sri Lanka is a Signatory.

Furthermore, films procured from companies affiliated to the MPEAA provide the NFC with the added bonus of extended credit facilities and long term interest free loans, this has in no small measure assisted the national film industry and supplemented the NFC's limited working capital for many years now.

The MPEAA whilst welcoming Sri Lanka's open economy policy has expressed concern that this concept was not being extended to cover the film industry; on the contrary revised terms and conditions for the importation of English language films have been introduced by the NFC, which violate the concept of open economy and are suggestive of a deliberate policy of prohibitive tariffs and trade barriers intended to drive the private sector exhibitor and supplier out of business, paving the way for the "monopoly status" that the NFC wants.

(o). The relevant sub section is (d). It is necessary to draw attention to the legal distinction between the words 'may' and 'shall' in this context. Section 5 (d) must be read along with Section 6, which has a direct bearing on them.

Section 5 and 5 (d) read thus. "The Corporation shall have such powers, rights and functions as may reasonably be necessary to carry out its objects and in particular may

(d) exercise the exclusive right to import, sell, hire, supply and distribute films.

The wording of the relevant sections of the Act establishes beyond doubt that there was never an intention to confer a mandatory monopoly status on the NFC either in respect of the import of foreign films or in respect of any of the other 15 powers specified in Section 5(a) to (o).

The very next section – Section 6 – uses the mandatory "shall" instead of the discretionary "may" to require the NFC's compliance "with the general policy of the Government with respect to the film industry" in the exercise of its powers and carrying out of its objects. This cannot be viewed in isolation from the Government's overall policy of promoting free enterprise and its support for an "open economy".

Section 57 (1) of the NFC Act stipulates that as from a specified date "no person shall import into Ceylon, or sell, supply or distribute within Ceylon any film, photographic equipment or any material, equipment or accessory necessary for the production or exhibition of films..." and ends significantly, with the operative words "without the written authority of the Chairman". Section 57(1) is superfluous if the legislature intended that the effect of Section 5 (d) was to confer a mandatory monopoly status. The Special Import Licence No. 1 of 1977 permitted the importation and distribution of films other than exposed films without the authority of the Chairman, NFC. The NFC's contention that it gave up its monopolistic status in this field is therefore a fallacy. In any case, this field of activity is totally unrelated to the exhibition of films. However, it needs to be

mentioned that the NFC's involvement in these activities alongside the private sector would no doubt have passed on the benefits of competition to the ultimate consumer – local producers and exhibitors. The NFC's reluctance to compete only confirms its unwillingness to engage in free market enterprise and its marked preference for monopolistic scenarios.

The very working of Section 57 (1), which was an integral part of the original 1971 Act, leaves no doubt whatsoever that the Act was not introduced to make the NFC the sole importer of foreign films but was designed instead to prohibit the inflow of foreign films carte blanche and without the knowledge and authority of the NFC – which is precisely what is now happening in the illegal and uncensored pirate video-film business in Sri Lanka.