



INTERNATIONAL
FEDERATION OF
THE PHONOGRAPHIC
INDUSTRY
[HONG KONG GROUP]
LIMITED

26th August, 2002

The Hon Sin Chung-kai
Chairman of the Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear The Hon Sin Chung-kai,

**Re : Liberalisation of Parallel Importation of Computer Software Copyright
(Amendment) Bill 2001**

We wish to thank the Bills Committee in providing the recording industry this opportunity to make this submission.

We noted that the proposed Bill attempts to address and to provide mechanisms to avoid the spill over of the proposed liberalization on parallel importation of computer software to musical sound recording and musical visual recording from the records industry.

While we agree, in principle, to allow parallel import of computer software, we would like to take this opportunity to reiterate the main issues of the concern of the record industry as follows :-

1. Any proposal to liberalise the parallel importation of computer programs **must not provide any loophole or grey areas** for the current provisions in the Copyright Ordinance in relation to the parallel importation of musical sound recordings and musical visual recordings.
2. Therefore any proposal for allowing the parallel importation of computer software may only be **in exceptional situations** be allowed to incorporate other copyright works which are not owned by or licensed to the copyright owner of the computer software such as certain music sound or visual recordings into Hong Kong.
3. As you may be aware, any musical sound and/or musical visual recordings may only be published after clearing all the rights underlying the works such as synchronisation, mechanical reproduction, fixation right of the performers, moral right of the author etc. Any exemption to allow incorporation of the copyright works of the third party in the computer software must comply with the international obligations on the fair dealings or permitted use exemptions and in particulars :
 - a. Article 13 of TRIPS agreement
 - b. Article 10 of the 1996 WIPO Copyright Treaty



- c. Article 16 of the WIPO Performances and Phonograms Treaty (WPPT) and
- d. Article 9 (2) of the Berne Convention.

All these International Treaties and Agreements provide that every member must confine limitations or exceptions to exclusive rights

- a. **to certain special cases which**
 - b. **do not conflict with a normal exploitation of the work and**
 - c. **do not unreasonably prejudice the legitimate interests of the rights holder.**
4. It is imperative to note that computer software industry is different from other industries such as films and records. No doubt, this is highly prejudicial and unjustifiable to allow the copyright owners of computer software to incorporate **any unlicensed or unauthorised works of other parties** into the computer software and such an act is basically a commercial activity motivated by commercial consideration. Any purported exemption will **hardly** be justified as a **special case** for exemption.
5. This is important as Hong Kong is now moving to the digital age and the copyright owners would sell or exploit their works on-line or by other digital means and any exemption or allowance granted to the computer software owner to incorporate those unlicensed or unauthorised copyright works in the computer software would **obviously conflict** with the normal exploitation of the works and cause **unreasonably prejudice** to the legitimate interests to the copyright owners.
6. In short, as usually the case, unless and until the copyright owners of the computer software have secured the licence or right for incorporation of any copyright works such as feature films or musical sound recordings or musical visual recordings, those unauthorised or unlicensed copyright works, which have incorporated in the parallel import of computer software, shall be deemed to be, for all intents and purposes, be infringing copy of those copyright works if no such licence or right has ever been granted to the copyright owner of the computer software.
7. In the premises, the current draft in the amendment Bill is not clear as to how to safeguard against the parallel importation of musical sound recording and musical visual recordings through multimedia packaging and computer software packaging of such recordings.
8. Even without the above exemptions, the liberalisation of parallel import of computer software will not be prejudice as it mainly deals with the copyright works subsisted in computer software and owned by the copyright owner of the computer software in question. Any inclusion of works of third party may be dealt with in accordance with the current Copyright Ordinance and in particular, the provisions



relating to the proposed parallel importation of copies of copyright work into Hong Kong.

Our concern is a simple and narrow one. Any exemption for permitted use or fair use of the copyright work must comply the international obligations as imposed on the part of Hong Kong.

Your kind consideration of our concern will be highly appreciated.

If we may be of any further assistance on this subject matter, please do not hesitate to contact us.

Yours truly,
For and on behalf of International Federation of the
Phonographic Industry (Hong Kong Group) Ltd



Ricky Fung
Chief Executive Officer

c.c. IFPI (HKG) Committee
IFPI Asian Regional Office