



4th October, 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: Copyright (Amendment) Bills 2001

The Hong Kong Record Industry is greatly concerned on any development in adopting the current proposal in using an economic test to exempt music contents to the effect of open parallel importation under computer programme and multi-media package. We would like to make the following submission for the members of LegCo to consider for the meeting on the 8th October 2002 and the future.

The essence of my presentation at Panel Meeting on 16th September 2002 is simply that the proposed **Liberalization of Parallel Importation of Computer Software Copyright (Amendment) Bill 2001** shall not in any way include or embody other copyright works such as film or sound recordings in the computer programme either in the form of associated works or in the game format.

In conceptual term, one must remember that the proposed import of the computer programme incorporating any of the sound recordings or films may only be classified as a collective work. This is not the joint work as some people may perceive.

Furthermore, the business model of the games industry has changed gradually from selling the physical goods to those downloaded on-line. This same observation will also be true for other computer programme. This is a totally different model and concept from selling the physical goods on line (e.g. Amazon.com) to digital transmission of the contents of the computer programme or game to the server on-line.

We are currently conducting a research on multi-media software incorporating music and film, our initial study indicates these owners of game and education software packages also commissioned the making of the included sound recordings. Due to the Internet model, we believe any sound recordings, which these owners did not commissioned, should have been properly licensed for global exploitation.

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Therefore any proposal of permitting the parallel import of UN-licensed sound recordings under games and computer software package is addressing a very narrow exception, but to the expense of the future of an entire industry which depends on the making of popular sound recordings and music videos, in multi-media business.

In arguing for not having the proposed exemption in the form of pre-dominant economic value test by the record industry, we understand the view of the Administration is that computer software vendor may prevent the parallel import by will in selecting not to license the sound recording for Hong Kong.

This argument does not hold water. BSA has made submission to LegCo indicating their concern is on the business of local official agents and that their members adopt worldwide pricing policy. We noticed that IDSA, the Interactive Digital Software Association has yet to make any response to the proposed Bill on parallel import. Even if the games and computer programme package owners want to limit the product to different geographical regions, they may simply do so by way of registration processes and other computer technology. As such the technology in authorising the use of computer programme software is now widely adopted.

The Administration may argue further that since the record industry does not have much music in the current game and computer programme software, what impact the law will have on the music industry.

This is a simple view that while multi-media software has largely been developed by the computer industry, it is the contents of which is the determining force for its success. The films and music industry will work or collaborate with the winner multi-media software to develop a new business model. In fact the contents worth much more than the programme or software itself.

The proposed legislation will suffocate any potential development of the local content providers to develop business model based on the most advanced multimedia platform or technology. The present proposed amendment will not serve the legislative intention nor constructive to the development of business model in the form of multi-media business by local industry. The computer programme industry appears to be indifferent to any such an amendment. This is a loss/ loss situation for every player in the fields.

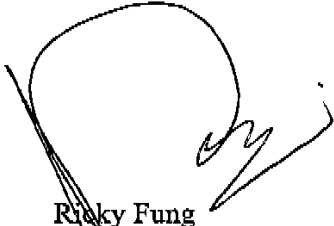
We urge the Bills panel members to reconsider carefully the impact of the current draft. We propose that the licensing regime of the music and film industry should be maintained.

We are grateful for this opportunity to be heard.

If we may be of any further assistance, please let us know

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



Ricky Fung
CEO

c.c. IFPI (Hong Kong Group) -Committee