



30th January, 2004

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

Dear Chairman the Hon Sin Chung-kai,

Re: IFPI Hong Kong Group Submission in respect of Copyright Amendment Bill 2003

Please kindly find the three submissions made by our organisation on behalf of the records industry in Hong Kong to Commerce and Industry Bureau dated 5th January, 14th January and 24th January 2004 respectively. In summary, the submissions focussed our concerns as follows:

1. Corporate End User liability in non-Commercial Dealings (i.e. copy is not imported for sale, let for hire or distribute for reward etc.). We wish to draw your special attention that it is imperative to differentiate the internal / **private use within corporations (i.e. only the employees are accessible to the imported copy)** and making available or allow access of the imported copy to the use by **public other than the employees of the corporation (“public community use”)**. The removal of any liability on the part of corporate end user to use the imported copies for public community use will have a devastating impact on the investment of the local content based industry, such as music and movie. See Karaoke as an example- the window of commercial exploitation using Karaoke lounge as sponsor and of market study of the local music trend. In short, the sub culture of music industry will also be removed.
2. The current draft creates grey area that allows swapping (not sharing but swapping) of imported physical copy of a work might be extended to the copy of work obtained online from overseas. The online right is different from the distribution right. This adds to the confusion as whether the current Amendment which intends to address physical goods problem will have a very serious consequence on the development of creative industry such as films and music. It will have very damaging implications to the copyright industry if it is perceived that the amendment might be extended to the online environment. This means that in order to protect the right, all contents industry will refrain from making their works online whereby it will slow down the development of information technology in Hong Kong.

If it is the view of the administrative branch that **the present amendment deals with the imported physical copy only and does not cover on-line distribution**. We need a

“ For the avoidance of doubt” provision to clarify that it is so.

If the administrative is minded to extend the amendments to cover on-line distribution. The whole content industry and other creative industries which may develop online models must be consulted. We need to review of the whole 118.

3. The music industry takes a very strong view that there is no need to include the words “for profit or reward” in section 118(1) (e) iv, **as these words must be covered under the wording “for the purpose of or in the course of any trade or business” in the same section.** We have made recommendations to remove “For profit and reward ” which will be in line with the UK legislation on the same section.
4. We are somewhat perplexed, confused and frustrated to see that bits and pieces of exemptions might extend to digital rights (albeit unintentional) under the present Amendment. This had to be the result of the approach of amending section by section of our Copyright Ordinance and amendments without regard to or giving any consideration or thought on the digital convergence which is already happening globally. The industry urge the Government to either commence immediately to consult the industry in the drafting of the new Bill on Digital Agenda, or as stated in paragraph 2 above to clarify beyond doubt some of the sections that articles means physical copy only.
5. **Last but not least, this is a policy matter.** By way of observation, Hong Kong has resolved to transform to a knowledge-based economy, this only means that Hong Kong shall facilitate and foster the growth of the local creative industry. Our vision is to build Hong Kong as a highly productive centre for making and exporting the IP product and services as created by local talents. A lot of investment has been made on the neighboring right of the copyright works, namely, sound recordings, cinematograph films, television drama, typographical format etc. These are commonly known as entrepreneurial copyrights.

The present Bill as it stands now will drive the local talents out of the business and Hong Kong will NOT be a centre of creation of IP products and services.

The net result is that Hong Kong will become a consumer centre for overseas IP products and services. No more local films, music programs or content creations for both local and overseas market. Any amendment will reflect the administrative policy on the local creative industry and we urge the committee to review the whole Bill with careful consideration as it is now up to you to shape the future of the Hong Kong creative industry, a creative center or a consumer market for IP products and services.

This being our initial response to reply from the Administration during Bills committee meeting 28th January, 2004.

We would be pleased to answer any query from the above.



Thanking you for your kind attention.

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

A handwritten signature in black ink, appearing to read 'Ricky Fung'.

Ricky Fung
Chief Executive Officer

c.c. IFPI HKG Committee
IFPI Asian Regional Office