



錄音製品播放版權(東南亞)有限公司

**Phonographic Performance (South East Asia) Ltd.**

Unit 3705 Hopewell Centre, 183 Queen's Road East, Wanchai, Hong Kong, Tel: (852) 2866 6862 Fax: (852) 2866 6869  
香港灣仔皇后大道東183號合和中心3705室

Our Ref: PT/2551/01/L  
27 December 2001

Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Attn: Ms Connie Szeto, Clerk to Panel

Dear Ms Szeto,

Re: Comments on The Review of Certain Provisions of Copyright Ordinance

Referring to the recent consultation on the review of certain provisions of Copyright Ordinance, PP(SEA)L would like to submit our comments as per attached. Though we are not on the attendant list of the meeting on 10 January 2002, we would appreciate if the Legislative Council will take into consideration of our comments on Chapter 4 and 7. One of our Director, Mr Ricky Fung will attend the meeting on 10 January, he will be pleased to explain further on this topics on our behalf if the LegCo members have any related questions.

Thank you for your kind attention.

Yours faithfully,

A handwritten signature in black ink, appearing to be "Pat Tsang", written over a horizontal line.

Pat Tsang  
General Manager

CC: Mr Ricky Fung - PP(SEA)L  
Encl.

Submission to the Intellectual Property Department  
The Government of the Hong Kong Special Administrative Region

COMMENTS ON THE REVIEW OF CERTAIN PROVISIONS OF  
COPYRIGHT ORDINANCE

1. Introduction

Phonographic Performance (South East Asia) Limited [ PP(SEA)L ] was established in 1984 to administer the collection of public performance royalties and issue licenses to the public on behalf of members of IFPI. PP(SEA)L was subsequently taken over by IFPI Hong Kong Group Limited in 1998. The individual members of IFPI Hong Kong Group Limited have given authorization to PP(SEA)L to issue license for the public performance and broadcasting of their sound recordings, music videos and/or karaoke videos in Hong Kong. Sound recordings and other related audio-visual recordings released by members of IFPI HKG covers more than 90% of the market.

- . The Copyright Ordinance acts as a balance between the rights of the owners to exploit their works and the public interest for the users to have access to those works. As such, Copyright system allows a more effective means of enforcing copyright by the creation of the collecting organization for the granting of licenses for use of the copyright and for the collection and distribution of royalties on behalf of the copyright owners.

PP(SEA)L performs valuable, indeed essential, services and an administrative option for enforcing the copyright on behalf of the copyright owners of sound recordings and music/karaoke videos. The licensing arrangement or terms of the license as administered by PP(SEA)L can be subject to review by the Copyright Tribunal upon application by a collecting organization and by a licensee or potential licensee.

PP(SEA)L also plays an advocacy role for the producers or the copyright owners of sound recordings and music/karaoke videos, representing their interests in public debate and lobby for relevant changes to copyright law. Therefore, we are pleased to provide our comments of the relevant provisions of the Copyright Ordinance which are under review.

## 2. Chapter 4- Permitted Acts related to Free Public Showing or Playing of Broadcast or Cable Programme

### 1. Paragraph 4.9(a) of the Consultation Document

**PP(SEA)L takes the view that the statutory exemption should not be extended and in fact should be removed for sound recordings and music videos.** There is no reason why producers of sound recordings and music videos should be treated differently from other copyright owners under the present provisions.

It is obvious that most commercial premises are “not paid for admission to the place”, such as shopping mall and supermarket, etc. They provide goods or services to make profit but playing the sound recordings or music/karaoke videos in the premises from whatever sources will generate added value to their businesses. The recorded music in broadcast is also important and has commercial value to their businesses.

There is little relevance between the source of the recorded music to the commercial establishments and the consumers. Whether it is from a CD or from a broadcast or cable programme, the enjoyment of the recorded music and the value to the establishment is the same. The rights of recorded music should be respected and an exemption that depends on the source of recorded music is unfair.

Further the developments in new technologies means that CD quality broadcasts and cable programmes can be relayed over the Internet, via cable or satellites where hundreds of channels can be transmitted by stations covering all types of music. There are already numerous stations in existence that offer such services. The exemption which absolves business establishments using such broadcast or cable programmes from the need to obtain license from the producers of the sound recordings and music/karaoke videos in the law is archaic and affect the normal exploitation of commercial interests of copyright owners.

A WTO panel found similar exemptions introduced in the US 1988 “Fairness in Music Licensing Act” to be in contravention of the TRIPS Agreement in a

dispute settlement case ( DS 160 of 1999) brought by the European Commission.

We therefore consider that the statutory exemption should be removed so that all underlying copyright works such as sound recordings and music/karaoke videos included in the broadcast or cable programme will be treated equally.

## 2. Paragraph 4.9(b) of the Consultation Document

Based on the same reasons mentioned at the above 4.9(a), **PP(SEA)L holds the view that the statutory provision should not be extended in such manner as it will be detrimental to the rights holders interests and will be against the international standards set out in TRIPS Agreement and the WPPT.**

Most commercial establishments nowadays do not charge specifically for the entertainment of seeing or hearing the broadcast or programme, or using the recorded music. This may generally apply to venues such as restaurants and bars, they charge for the food and beverage and not for the entertainment facilities. PP(SEA)L 's concern is that these establishments are using recorded music extensively and such recorded music is an essential element for the promotion and enhancement of their businesses.

## 3. Chapter 7 – Licensing Bodies

### 1. Copyright Tribunal

Some users have complaint that the Copyright Tribunal proceedings are too costly, making it more favourable to the collecting bodies and that simplified dispute resolution procedure to be introduced or an alternative means of dispute resolution such as arbitration may be introduced. **An arbitration system may not offer lower cost and higher efficiency to the users. It is prudent to maintain the existing well-established system of Copyright Tribunal to resolve such disputes.**

## 2. Compulsory registration of licensing bodies

**Regarding the registration of licensing bodies, PP(SEA)L agrees that the current system of voluntary registration should be maintained.** To address the lack of information about licensing bodies, the Government may organize education campaigns together with the licensing bodies in order to raise awareness of the general public about the activities of such bodies and their activities and fee structure.

PP(SEA)L supports the voluntary registration system, and we consider that Government's legislation or licensing regulations should facilitate licensing bodies to conduct the licensing activities in an efficient manner. Under the present registration system, to increase the transparency the licensing bodies should be required to provide to the Government and the public with clear information and conditions for an efficient administration of rights. In fact, PP(SEA)L has already made available to the public of the tariff rates at the office and the website. We will continue to maintain high transparency of the organization to ensure the public is well informed of the licensing scheme.

Respectfully submitted by  
Phonographic Performance (South East Asia) Ltd.