



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

24th December, 2001

Ms Connie Szeto
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Szeto,

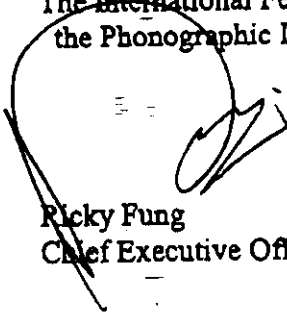
Re: LegCo Panel on Commerce and Industry
Review of Certain Provision of Copyright Ordinance

Reference is made to your letter dated 23rd November, 2001 in respect of the presentation to the Panel on the 10th January, 2002.

The consultation paper has seven chapters discussing a range of topics. Given the time allowed, we would like to focus on Chapter 5 titled "Parallel Importation of Copyright Works Other Than Computer Software". However, I shall be pleased to discuss on other topics related to the Consultation Paper as of when they arise at the meeting.

I thank you for your kind attention to this matter.

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



Ricky Fung
Chief Executive Officer

Submission by the International Federation of the Phonographic Industry (Hong Kong Group) Limited to the LegCo Panel on Commerce and Industry for presentation on the 10th of January, 2002 on the “Review of Certain Provision of Copyright Ordinance”

The International Federation of the Phonographic Industry (Hong Kong Group) Limited has a membership of 55, represent over 90% of recording companies in Hong Kong. On behalf of our members, I would like to submit our views on the captioned subject.

Given the limited time for presentation, we would like to single out Chapter 5 under that heading of “Parallel Importation of Copyright Works other than Computer Software” for comments on this occasion and make our full submission to Commercial and Industrial Bureau in accordance with the procedures under the said Consultation Paper.

Chapter 5 – Parallel Importation of Copyright Works other than Computer Software

Our response to the question raised under Chapter 5 is:

- 5.14(a) The current protection accorded by the Copyright Ordinance against parallel importation by way of civil and criminal liability should be maintained.
- 5.14(b) The 18-month threshold for criminal sanction should be maintained.
- 5.14(c) The civil liability and criminal sanction imposed on end-users of parallel imported copies of sound recordings in the business environment should be maintained.

Is there the need for review of parallel importation provisions for music and film?

In general, we understand that this round of consultation stemmed from the Intellectual Property (Miscellaneous Amendments) Ordinance 2000, and its Suspension Ordinance. We also understand that the legislative amendments in the open parallel importation of computer software invariably give rise to whether other copyrights should be reviewed. Our opinion is that it is a step un-necessary for music and films as usually the arguments for open parallel importation are:

1. Increased availability; and
2. Lower Price products
3. Timely basis.

Increased Availability argument

The Copyright Ordinance (Cap 528) was enacted after a long period of

consultation and consideration and the issue was hotly debated during the drafting of the copyright bill which finally included the criminalization of parallel import for those works which were imported into Hong Kong at any time within 18 months beginning on the first day of publication of the work in Hong Kong or elsewhere. This is a very important provision which serves to protect the investment made by local records and films industry for an obvious reason that there exist a vibrant local film and record industry in Hong Kong. The local copyright industry could continue to invest and operate was largely based on this decision by the Government. At the same time, mechanisms to balance the interest between copyright holders and the consumer were built-in. After the four years in operation, foreign repertoire records have been allowed to be imported in quantities by any importer upon making relevant enquiries as stipulated in section 36 of the Copyright Ordinance. Our organization has been acting as a gateway for enquiries to the potential importers. For example during years 1999 and 2000, our members had received enquiries on 13297 releases and did not object to importation over 80% of these titles. **The current law does not hamper the flow of titles.**

The Lower Price argument

On price levels, here is the statistics extracted from IFPI worldwide annual publication on various markets.

Industry average US\$	Hong Kong	Singapore	Malaysia	Taiwan
Year				
1997	11.29	12.00	6.10	9.01
1998	11.23	11.11	8.79	9.16
1999	9.99	9.78	9.44	9.20
2000	9.64	9.48	8.77	10.37

Figures taken from Annual World Sales published by IFPI worldwide

The price table suggests that Hong Kong prices were on the decline un-affected by the parallel import restrictions. Compared to other South East Asian countries, one can even draw conclusion that **open parallel import does not necessary mean lower prices for the consumer**, such as in the case of Singapore.

The Timely Basis argument

When the enquiries for availability usually allows ten days for our members' response, it is reasonable to assume **the public is getting timely music products from the importers as well.**

There is no reason to re-open the discussion on parallel importation for music and film copyrights.

To further support our opinion that current protection for music and films against parallel importation should be maintained, we list our points below:

- Parallel importation is unfair competition from the parallel importers free-riding on the promotional, marketing and distribution activities and expenses of the local music industry.
- It encourages the expansion of large chain store outlets at the expense of the smaller homegrown retail outlets.
- In May 2001, the Australian Senate and Legal Constitutional Legislation Committee inquiring into the Provisions of the Copyright Amendment (Parallel Importation) Bill 2001 *rejected* the Australian Competition and Consumer Commission's (ACCA) claim that allowing parallel import has led to lower prices in Australia. In May 1993, the Monopolies and Mergers Commission of the United Kingdom also stated that they did not believe that removal of parallel import provisions in the UK law will lead to a decrease in prices of CDs and in fact could be damaging because of the increased risk of piracy.
- There is a real link between allowing parallel imports and increase in piracy levels. In Australia, the recording industry reported increasing piracy levels after the prohibition against parallel importation of sound recordings was lifted. The problem will be more serious in Hong Kong which is closely linked to mainland China, where piracy levels are about 90% of the market. With a liberalisation of the parallel import provisions, the Customs and Excise Department of Hong Kong will encounter great difficulties in identifying genuine and counterfeit products and in enforcing the copyright law in Hong Kong.
- Allowing parallel importation will serve as a disincentive to invest in Hong Kong's local record industry. The Hong Kong record industry provides Hong Kong and Chinese communities elsewhere with a wide range of local repertoire. At present, according to our registry, the Hong Kong repertoire is a huge catalogue consists of over 120,000 sound recordings and during the last three years, there had been an addition of no less than 1,000 albums produced by our members in the market. This represents a substantial amount of investments undertaken by the Hong Kong record companies to develop and nurture local talent. The risks involved are high as only a small portion of new releases are successful (fewer than 10% of the recordings are successful). If products (which are normally those that achieved success and then licensed for distribution overseas) are allowed to be imported into Hong Kong from neighbouring countries, it would undermine the investment undertaken in developing and maintaining a thriving local record industry.
- Although there is no international treaty which sets an international standard in relation to parallel importation of copyright works, a majority of the countries (see Table 1 annexed) with modern copyright laws prohibit parallel importation. Moreover, it is clear that most of the countries which have successful local record industries, for example the USA, Canada, the UK, France, Germany, Spain, Sweden, Italy, Austria, Netherlands, Brazil, Taiwan and India prohibit the parallel importation of copyright works.
- The record industry is made up of a core industry and a partial core sector. The core industry including the local Karaoke Entertainment

industry which thrives on local music has an employment of over 8600 (See table 2 annexed). As the law also impacts on the movie industry, when their figures are added to ours, it is one significant contribution to local employment that is jeopardized by any negative amendments.

Singapore, impact of open parallel importation on their local repertoire

The near non-existence of a local music industry in Singapore attests the argument of open importation hurting local copyright industry. Singapore used to have a local music industry with famous recording artists like 潘秀瓊, and Tracy Huang 黃露儀. Singapore turned to open importation in the '80s. Their talents including singers and composers had to find base in record markets in foreign places like Taiwan and Hong Kong ever since.

Further to the above, we also would like to point out that the nature of the **computer software business and music business is very different** in the following ways:

- Computer software owners adopts global pricing and copyright ownership. Music is by nature cultural linked and territorially licensed, hence pricing varies and is dependent on local economy. When open parallel importation for software may not impact computer software copyright owners as much because of the aforesaid reasons, the same will have devastating effects when extended to music and film business in Hong Kong.
- Local music repertoire has a market share of 55% in a HK\$932 million home market music sales in the year 2000. The same cannot be said for local computer software in market penetration. The effect on local repertoire by any change in law would affect local music (and film) business the most.

It will be a wrong presumption that the business of computer software and music/film, though both copyright, operate similarly. The opening of parallel importation on computer software and on music/film copyrights will impact the industries, the economy and the users differently in Hong Kong.

In summary, we do not agree the opening of parallel importation of computer software should be extended to music and film. We urge the Panel to carefully consider our views and not to upset or disturb the balance provided by the current laws for our film and music industry.

ANNEX

Table One – Parallel Import Restrictions on Music by Country

Country Name	Countries where parallel imports can be prevented	Countries where parallel imports cannot be prevented	Countries where doubts exist as to the scope of the distribution right	Domestic Repertoire Sales
Austria	✓			
Australia		✓		29%
Belarus	✓			
Belgium	✓			
Belize	✓			
*Brazil				75%
Bulgaria	✓			
Burkina Faso	✓			
*Canada	✓			12%
China			✓ ²	47%
Croatia	✓			
Czech Republic	✓			
Denmark	✓			
Ecuador	✓			
El Salvador	✓			
Estonia	✓			
Finland	✓			
*France	✓			50%
*Germany	✓			37%
Greece	✓			
Guatemala	✓			
Honduras	✓			
Hong Kong	✓			55%
Hungary	✓			
Iceland	✓			
*India	✓			> = 90%
Ireland	✓			
Italy	✓			36%
Japan		✓	¹	73%

² Mainland China' restriction on import of music products far exceed any parallel import restrictions.

¹ Due partly to language and release policies, only a small percentage of Japanese products were sold overseas and the products were under price control to avoid parallel imports.

Kazakhstan	✓			
Kenya	✓			
South Korea			✓	63%
Kyrgyzstan	✓			
Latvia	✓			
Lithuania	✓			
Luxembourg	✓			
Malaysia		✓		16%
Malta	✓			
Moldova	✓			
Netherlands	✓			
New Zealand		✓		6%
Nicaragua	✓			
Norway	✓			
Panama			✓	
Papua New Guinea	✓			
Paraguay	✓			
Poland	✓			
Portugal	✓			
Romania	✓			
Russian Federation	✓			
Samoa	✓			
Singapore		✓		non-existent
Slovakia	✓			
Slovenia	✓			
South Africa	✓			
*Spain	✓			38%
Sudan	✓			
Sweden	✓			
Switzerland			✓	
Thailand				77%
Taiwan	✓			67%
Tajikistan	✓			
Trinidad and Tobago	✓			
Turkey	✓			
Ukraine	✓			
*United Kingdom	✓			52%
*US	✓			92%
Uzbekistan	✓			
Venezuela	✓			
贊比亞 Zambia	✓			

* = Top Ten Music Markets Worldwide

Table 2

Hong Kong Recording Industry Statistics

Year 2000-2001

EMPLOYMENT

	<u>Companies</u>	<u>Employees</u>
Record Company	60	600
Music Publishing Companies (Members of MPA)	22	73
Recording Artists/Performers		200
Local Composers		2000
Producer/Musician (excluding composers)		150
Professional Recording Studios	10	38
Industry Associations (IFPI, CASH, MPA)	3	90
Concert Promoters/Production/Sound/Stage/Dancers		500
Artist Management		30
Record/VCD Wholesalers and Retailers	300	1000
Record Industry Core Group Employment, total		4681
		<hr/>
Karaoke Establishments	80	4000
Total Record Industry Employment		<u>8681</u>

Excluding: Partial Core Group Employment that consists of TV, Radio, Press, CD plants & Advertising

Source

IFPI (Hong Kong Group) Ltd.

CASH

Karaoke Requirement Concern Group

Music Publisher Association of Hong Kong Ltd.,

members

Hong Kong Record Merchant Association Ltd.