

Submission to the Trade and Industry Panel, Legislative Council

International Federation of the Phonographic Industry - Hong Kong Group

The submission is prepared by International Federation of the Phonographic Industry (Hong Kong Group), thereby referred to as IFPI-HKG, on behalf of its members to the Legislative Council Panel on Trade and Industry, thereby referred to as the Panel.

1. IFPI-HKG was invited by the Panel to participate in a meeting on 10 October 1998 and, much to our dismay, members of the Panel were misinformed on certain facts regarding the market situation since the Copyright Ordinance came into effect in June 1997. We would like to take this opportunity to present to the Panel on what IFPI-HKG and its members have done in responding to market changes brought on by the new law. More importantly, we would like to clarify a few issues that, we think, were being misrepresented in the Panel Meeting.

Responses by the Record Industry

2. As mentioned in the meeting, *members of IFPI-HKG have improved and simplified their ordering systems* to make sure that the widest range of selection of products can reach consumers readily in reasonable prices. For example, two of our major members have made their international product database available for order by retailers since June 1997. Another IFPI-HKG member has developed an on-line ordering system for its world wide stock. The new system has reported an 80% fulfillment rate of orders received.

3. Meanwhile, *members of IFPI-HKG have also widened their supplying catalogues*. According to our survey, most companies have reported a significantly increase, ranging from a high of 280% to an average of 60%, in titles available through their catalogues.

4. As a recognized trade body, ***IFPI-HKG has a readily accessible database that our staffers can use to answer enquiries sent by retailers and importers.*** For the first four months after the Copyright Ordinance was passed, we received 14 such enquiries on around 5,000 titles from retailers within the first four months after the law was passed (see the following table for breakdown). Our staffers were able to reply all enquiries within reasonable time and delays were often caused by incomplete information provided by retail chains.

Figures on Parallel Imports Enquiries received by IFPI-HKG

<u>Name of Retailers</u>	<u>No. of Enquiries</u>
KPS	12
HMV	2*
Shinseido	1

* there had been no enquiry until HMV re-commenced in September 1998

Reality of the Market Situation

5. Opponents to the protection against parallel imports have made several allegations in the last Panel Meeting that the existing laws are not working. In evaluating the present market situation, especially whether it matches the picture printed by some retailers, we urge members of the Panel to closely examine the following factors.

6. ***Whether copyright owners and exclusive licensees have kept prices artificially high. Contrary to what some reports have claimed, there is no evidence that there has been an across-the-board increase of wholesale prices on music; prices have actually dropped since June 1997.*** Major members (BMG, Capital Artist, PolyGram, Sony, Warner Music) have confirmed to IFPI-HKG that there has been no price increase with the exception of EMI, which has increased price for just one line of products as a matter of price adjustment normal to our industry.

According to our survey, wholesale market price has dropped in average around 7.6%. As demonstrated in Australia and New Zealand, where restrictions on parallel imports were recently scrapped, retail prices of CDs have not decreased significantly as opponents of protection had claimed. Meanwhile, prices in Hong Kong are still very similar to most developed economies where living standard is very close to ours. This fact is well demonstrated by a recent survey conducted by the Consumer Council. (see Annex 1) There is again no conclusive proof that parallel import is linked to lower price.

7. *Whether selection of goods have been limited. As mentioned earlier, the availability of titles through catalogues of IFPI-HKG's members has also been improved since the Copyright Ordinance came in effect.*

8. *Whether the protection against parallel imports has led to a surge of piracy. The existing laws ensure that retailers, and eventually consumers, can obtain genuine products from authorized licensees and copyright owners. It also ensures that honest retailers will be not held liable for copyright infringement by selling dubious products.*

The reasons are as follows:

- Piracy only focuses on hits and popular items that are in any case available through our members. Copyright pirates observe market trends in ways that are not unlike copyright owners and licensees; they do not steal from items that have limited demands.
- Pirated and illicit products can enter into the local market more easily through the guise of parallel imports.

Therefore, there is no evidence pointing to the unsubstantiated allegation that parallel imports can lead to a surge of piracy. The experiences of the Australian Government can attest to that. The number of copyright infringing cases has surged since the restriction on parallel imports was scrapped. The association representing local industry has issued on average 20 warning letters to retailers each month, comparing to 2 before the law was passed. Meanwhile, this allegation cannot be substantiated because of the very nature of piracy.

The Economic Reality

9. *The true is, the music industry, retailers included, is facing an extremely difficult time bought on by the economic downturn.* According to our survey, total wholesales of our members in the first six months this year, comparing to the same period last year, have dropped around 30% in Hong Kong dollar term. *Another factor that contributed to the lost of sales for the last 15 months was rampant piracy* caused by excessive optical disc production capacity in Hong Kong and nearby countries. According to figures provided by Hong Kong Customs, at least 1.25 million of pirated music CDs and VCDs were seized from January to September 1998. It can reasonably be concluded that the drop in retail sales cannot be blamed on the protection against parallel imports.

The Existing Laws

10. ***The existing laws have provided a fair level playing ground for all businesses.*** The protection against parallel imports, as stipulated by the Copyright Ordinance, is the result of a long debate in the LegCo only slightly more than a year ago. Except the Hong Kong economy, most of the factors affecting the decision to adopt the protection have not changed.

The Copyright Ordinance does not just put the burden on importers to check whether a copy is infringing or not; it also imposes legal duties on copyright owners, exclusive licensees and/or trade bodies. In order to prevent the abuse of power, the Copyright Ordinance has detailed provisions regarding unconscionable acts committed by copyright owners or exclusive licensees. ***Conclusively, the Copyright Ordinance has effectively prevented any parties involved from using abusive power against another***

Protecting the Local Copyright Industry

11. ***It is important not to lose sight on the very reason why protection against parallel import is necessary - it is to protect the actively exporting local industries from losing the incentive to continue their investment in creating new products.*** The emerging world trend of economic development has become inseparable with the copyright industries such as ours. The growth of those industries will be seriously hampered if the very foundation that protects their right to fairly explore commercial potential of their products cannot be maintained. As a world class economy, we must set our priority right and protect the industries that contribute more to maintain our competitive edge.

While there are no strong evidences suggesting that consumer choices have been limited and prices have surged, we do not see why the legitimacy of protection against parallel imports has to be challenged again if our fundamental commitment to encourage the growth of value-add copyright industries has not been changed. Instead of resorting to change the existing laws, we believe that exceptional cases should best be handled by commercial means

Conclusion

12. *We strongly urge members of the Panel not to get sidetracked by unsubstantiated allegation that the existing law on parallel imports is a main cause of piracy, and that copyright owners and exclusive licensees are abusing the protection against parallel imports. We also urge members of the Panel to take into account the particular nature of our economy and the local record industry, instead of relying on the unsubstantiated argument that the world trend is to remove restriction on parallel import, which is definitely not the case in exporters of copyright products such as the European Union and the United States.*

ANNEX 1

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