

Joint Submission to the Panel by:

Business Software Alliance
Hong Kong Optical Disc Manufacturers Association
Interactive Digital Software Association
International Federation of the Phonographic Industry - Hong Kong Group
Motion Picture Association
Motion Picture Industry Association
Software Publishers Association

**To the Trade and Industry Panel
Legislative Council, Hong Kong Special Administrative Region**

**For the Trade and Industry Panel Meeting,
15 February, 2000**

INTRODUCTION

1. This paper is jointly submitted by the above listed copyright associations for the Trade and Industry Panel (TIP) Meeting to be held on 15 February, 2000. In order to facilitate the discussion in the Meeting, this submission is divided into three parts, all relating to the copyright-industries' views on the current piracy situations in Hong Kong.

I. Organized and Serious Crimes Ordinance (OSCO)

2. We would like to take this opportunity to express our gratitude to the TIP, supportive members of the Legislative Council as well as the Hong Kong SAR Government for the passing of the Order to amend the OSCO to include copyright offenses in Schedule I of the Ordinance. It represents the commitment of the Government and the Legislative Council in our fight against rampant copyright piracy. Undoubtedly Hong Kong is setting an excellent example for other countries/areas that are also seriously affected by copyright piracy.
3. In previous meetings with members of the TIP and the Hong Kong Optical Disc Technology and Manufacturing Association (HKODMTA), which was opposing the OSCO amendment and advocating a grace period or exemption to be granted to optical disc manufacturers, issues surrounding the setting up of a "copyright registry" or "copyright clearance house" either by the Government or an independent body had been arisen and debated.
4. We want to stress that a responsible manufacturer must implement in its plant a reliable copyright-checking system. They must refuse any order that appear dubious to prevent any copyright infringement. Meanwhile, as stated in previous

meetings with the TIP, there are ample resources available to manufacturers to check whether their clients do indeed have the authorization to produce certain titles. Therefore, optical discs manufacturers with an effective copyright-checking system and assistance from copyright owners can avoid being used by pirates to produce illicit products.

5. In order to protect our own rights and establish a mutually-beneficial business environment, the above listed copyright associations are keen to cooperate with optical disc manufacturers. Besides encouraging manufacturers to establish an in-house copyright verification system to minimize the risk of producing infringing optical discs by mistake or as a result of ignorance, the following associations, which represent a large portion of producers and distributors of copyright works, are capable of checking dubious orders received by optical disc plants:-

Game Software - Interactive Digital Software Association

Motion Pictures - Motion Picture Association
- Motion Picture Industry Association

Software - Business Software Alliance

Sound Recordings - International Federation of the Phonographic Industry

The above associations are reputable trade bodies that represent a large portion of both local and foreign producers in their respective industries. These associations, either themselves or directly through their members, are capable of providing (and are indeed already providing) information related to the authenticity of an alleged copyright authorization submitted to a local optical disc manufacturer.

6. Meanwhile, in order to further cooperate with the local optical disc manufacturing sector, the above associations have drafted the "Guidelines for Anti-Piracy Compliance" (attached for your reference) for manufacturers' reference. The "Guidelines" are designed to protect intellectual property rights in the replication of optical discs. By adhering and implementing those guidelines, optical disc manufacturers should be able to minimize the risk of processing unauthorised orders. Furthermore, all participating copyright associations have included in the "Guidelines" their standard forms and procedures for copyright inquiries from manufacturers.

II. OTHER LEGISLATION

7. Besides the amendment to the OSCO, the copyright-based industries are very grateful of two other legislative amendments introduced recently - namely the making of unauthorized possession of video equipment in public entertainment

premises an offense under the Prevention of Copyright Piracy Ordinance and the clarification in the Copyright Ordinance that it is an offense to possess a pirated article not for the purpose of private or domestic use. We strongly support the adoption of these to proposed amendments because of their importance to the health of the copyright-based industries in Hong Kong.

8. However, we believe that there is still room for further improvement in the legislative front. A number of suggestions were put forward by the copyright-based industries to facilitate enforcement, especially on optical disc piracy, during the consultation period of the paper "Possible Additional Measures to Combat Intellectual Property" (referred hereafter as "the Consultation Paper") early last year. In order to push our legislative agenda further, the copyright-based industries would like the Government to immediately consider the two following legislative amendments:

Allow Random Sample of Suspected Optical Discs to be Conclusive Evidence

9. According to statistics released by the Customs and Excise Department (C&E), the number of pirated products seized in the last 2 to 3 years was astonishing. Such massive quantity of seizure has put enormous pressure on both enforcement officers, copyright owners and their representatives in their follow-up works, in particularly in the identification of rightful owners of the intellectual property rights involved. One of the proposals made in the Consultation Paper is to allow a random sampling of suspected infringing goods to be conclusive evidence in a criminal case.
10. At present, Customs have to process each seized item to facilitate subsequent identification by the rights owners. This is a resource intensive exercise especially for pirated optical discs, given the large number of seizures. We agree with the proposal that where a sample of seized copies (say 10 percent) proves to be infringing, it should be *prima facie* evidence that the remaining category of seized inventory is also infringing. It could then be provided that if the defense demands that the balance of the evidence to be proven, and it is subsequently proven, then the accused must meet the costs involved. This would reduce the resource commitment for examining all the seized discs and would speed up prosecution.

Applying Closure Orders to Premises Used for Piracy Activities

11. The copyright-based industries are grateful of the continuing and vigorous enforcement actions taken by C&E officers against pirate retail outlets, which have effectively driven many of the pirates out of business from the second half of 1999. However, despite those anti-piracy efforts, we have noticed in our own surveys that many pirate outlets are still operating in notorious shopping arcades. For example, we counted in December last year that 24 such outlets were still operating in the Golden Computer Arcade.

12. In order to root out the problem of pirate outlets operating in major shopping arcades with high traffic-flow, we urge the relevant the Government to seriously reconsider the option of closing down premises used for piracy or counterfeiting activities. Several amendment proposals were already made in the report on Consultation Paper and there has been much public support for closing down such premises either after repeated convictions or the more severe option of an immediate closure order after a first conviction. Considering the *modus operandi* of pirates and counterfeiters, we believe that closure order, if applied properly, will further assist the Government in driving pirate retail outlets out of those "blackspots", which have been tarnishing Hong Kong's reputation for years.

III. ENFORCEMENT

13. The copyright-based industries are again grateful of the achievement of C&E officers in combating copyright piracy at all levels, especially the recent commitment made by the Commissioner of C&E to extend the operations of the special anti-piracy task force for another six months after its inception since June. We commend the Government's determination to root out retail piracy, but we also believe that not only the current level of piracy enforcement must continue, it should be further strengthened to cover more specific forms of piracy. We urge the C&E as well as other Government Bureaus and Departments to pay immediate attention to the following trends of development:

Counterfeit VCDs/DVDs

14. The Copyright-based industries have noted in their recent surveys that a portion of pirate outlets have switched to selling counterfeit optical discs - especially music(karaoke, music video, etc)/movie VCDs and DVDs. The alarming trend is that the number of counterfeit DVDs has been in a steady rise in the last few months. According to our surveys, more than 41 outlets, out of a total of 182 pirate stores, were found selling pirated and counterfeit DVDs in December last year. We also discover that more stores are now selling both legitimate and infringing products. The number of "mixed" stores counted by the copyright-based industry in December last year was 72, again out of a total of 182.
15. The copyright-based industries urge the C&E enforcement officers to be more alert of stores that are selling counterfeit optical discs, especially DVDs that contain either movies, music or computer/game software. The used to be "genuine only" stores are carrying infringing optical discs also. Officers should widen their "enforcement net" to include areas and shopping arcades that they may have paid less attention to the past.

Internet Piracy

16. For Internet piracy, we are referring to (a) web sites, mail lists, etc. that are offering for/soliciting sale of finished pirated products (mostly optical discs) to be delivered by mail and (b) web sites, ftp sites, etc. that are making available unauthorized copyright products (such as sound recordings in compressed MP3 format, computer software, etc.) for other users to download. As many producers of copyright products are rapidly moving their businesses to the Internet and new technology has made it possible to deliver their products through the online environment, Internet piracy has become an immediate concern of the copyright-based industries.
17. The copyright-based industries anticipate that copyright piracy in the online environment will also quickly become a major enforcement concern of the C&E. We urge the Government to immediately review current anti-Internet piracy enforcement capacity, including whether there are sufficient skilled officers and equipment. Meanwhile, we urge the Government to conduct a thorough study on existing legislation, especially the Copyright Ordinance, to determine whether the laws have provided sufficient protection to copyright owners in the online environment and criminal sanctions against Internet pirates.
18. The copyright-based industries are extremely willing to cooperate with the Government in all necessary ways to make sure that the increasing number of illegally activities in the online environment would not sabotage Hong Kong's competitiveness in the global economy.

CONCLUSION

The copyright-based industries are grateful of all the legal changes implemented by the Government to improve Hong Kong's copyright law regime as well as vigorous enforcement actions taken by C&E officers. Although there are signs that retail piracy, especially optical disc piracy, is transforming to underground operations, we must not lose sight of new forms of piracy or else they will grow like an epidemic in no time.

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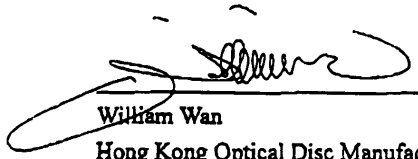
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HONG KONG **Introduction**
COPYRIGHT
ALLIANCE

COMPLIANCE
GUIDELINES FOR
OPTICAL DISC
MANUFACTURES
FOR THE PREVENTION OF
COPYRIGHT INFRINGEMENT

Hong Kong Copyright Alliance

Hong Kong Copyright Alliance (**HKCA**) is a forum open to all trade associations and companies from the copyright-based and copyright-related industries. At present HKCA consists of participants from the computer software, game software, movie and music sectors as well as optical disc manufacturing, music publishing, retail and theater sectors.

The following leading copyright associations are permanent participants of HKCA:

Business Software Alliance (**BSA**), Hong Kong Optical Disc Manufacturers Association (**HKODMA**), Interactive Digital Software Association (**IDSA**), International Federation of the Phonographic Industry (**IFPI**), Motion Picture Association (**MPA**) and Motion Picture Industry Association (**MPIA**)

HKCA provides an open and lively environment for participants of the Alliance to discuss issues that are important to the overall betterment of the whole copyright and copyright-related industry, thereby increasing our contribution to Hong Kong's cultural life, development of new technology and economic competitiveness. HKCA, representing a large portion of local and foreign producers, distributors and retailers of copyright products, has also gained widespread support from cross-industry and government bodies for its anti-piracy initiatives.

This version was released on Jan 2000.
Please contact one of the associations
listed in Annex I for update.

Compliance Guideline

HKCA, which also includes participants from the optical disc manufacturing sector, is keen to cooperate with and assist manufacturers to confirm the legitimacy of their manufacturing orders and thereby minimise the possibility of inadvertently or innocently committing a copyright offence.

Optical disc, including CD, VCD, CD-ROM and DVD, has for the last few years become the major format for copyright products. This format, with its large capacity and durability, has revolutionized the ways copyright products are sold and distributed in the market place. The phenomenal growth of optical disc as a format also represents huge market growth for copyright-based industries and creates a vibrant optical disc manufacturing sector. As technologies improve, customers benefit enormously from the ever-improving quality of copyright products.

However, the success of optical disc has led to an explosion in manufacturing plants - which in turn has created a manufacturing capacity that far exceeds legitimate demand. As profit margins from legitimate orders continue to fall because of competition, optical disc piracy - with all its sinister links to international organized crime - a lucrative business, becomes a big temptation to manufacturers with excess manufacturing capability.

The Hong Kong Copyright Ordinance and related legislation such as the Prevention of Copyright Piracy Ordinance are among some of the most well-drafted copyright laws in the

sectors finely balanced. As the Hong Kong Customs and Excise Department is taking stringent enforcement actions against the manufacturing of infringing optical discs, manufacturers of illicit products could face imprisonment, huge fines as well as civil liabilities. It is therefore in the best interests of optical disc manufacturers to work closely with the copyright-based industries to take steps to minimize their exposure.

In order to further cooperation between optical discs manufacturers and the copyright-based industries, HKCA has volunteered to develop these **Compliance Guidelines** for reference by the manufacturers.

The Guidelines

These Compliance Guidelines are designed to prevent copyright infringement in the replication of optical discs. By adhering and implementing these Guidelines, optical disc manufacturers should be able to minimize the risk of processing illegitimate orders.

As each copyright-based sector has its own business structures and procedures in managing copyright of its products, these Guidelines are divided into three parts:

- **General Guidelines**
- **Guidelines for Computer and Game Software**
- **Guidelines for Motion Pictures and Sound Recordings**

world today, with the interests of all

In order to facilitate communication between manufacturers and speed up the copyright inquiry process, all relevant trade associations listed in **Annex I** have developed their own standard inquiry procedures and

Copyright Inquiry forms, which are enclosed in **Annex II**. Manufacturers are encouraged to use those forms when making a copyright inquiry.

General Guidelines

The following guidelines are presented as steps to be taken by optical disc manufactures to minimize the risk of manufacturing copyright infringing products. In addition to compliance with the provision of the Prevention of Copyright Piracy Ordinance (such as obtaining the appropriate license and Manufacturer Code from the Hong Kong Customs and Excise Department), optical discs manufacturers are recommended to implement procedures that follow the recommendations and pointers made below in their management structures:

1. Management should appoint qualified personnel to be responsible for establishing and managing properly a copyright verification system within the company.
2. Management should appoint qualified personnel to act as the point of contact with the copyright-based industries and their representing associations (see **Annex I** for the list of associations and their contacts). Tasks of the qualified personnel include organizing all in-house training for plant personnel, reviewing all

and background information about themselves, and for brokers and sales representatives to provide the same information regarding their principals or employers.

4. Manufacturers should request customers, brokers and sales representatives, who are not copyright owners to provide verified licensing documents, proof of copyright ownership, proof of copyright and trademark authorization. Back-ground information including complete addresses and phone numbers should be double-checked. No post office boxes and "dead" phone/fax numbers should be accepted.
5. Management should request customers, brokers and sales representatives to provide written documentation unless the optical disc manufacturer is absolutely certain that the order is legitimate (for example, in the case of an additional order that follows a properly documented and verified order). Every order should be reviewed to determine its legitimacy.
6. When documents provided by customers, brokers and sales representatives are in languages that the manufacturer does not understand, manufacturer should request those written documents or

orders for piracy concerns, and conducting necessary customer, broker and sales representative background checks.

3. Management should request customers placing orders with the optical disc manufacturer to provide complete identification

their contents to be translated.

7. Management should not accept from customers', brokers' or sales representatives' offers of indemnity and simple declarations of ownership as

reliable substitutes for proper documentation.

8. Management should only accept traceable means of payment. The ordering party should be required to pay by means that are traceable, such as wire transfer or a cheque bearing an account number. Management should avoid accepting cash as payment from new and "unknown" customers.
9. Management should establish and maintain procedure to control all documents, which can be in the form of any type of media, hard copy or electronic.
10. All documents to be issued by the manufacturer regarding copyright verification should be approved by authorized personnel. Any further changes should also be approved by the same authorized personnel. Conduct routine reviews of all orders to determine their legitimacy.
11. In order to comply with the Prevention of Copyright Piracy Ordinance, a master list of documents shall be maintained to prevent use of invalid and/or obsolete documents. Documents should be made available at designated locations.
12. Documentation procedures should be established and maintained to

identification, segregation and disposal.

13. Management should establish and implement a corporate administrative policy to address customers, brokers and sales representatives (and their employees) who disregard in-house copyright verification systems and anti-piracy procedures. Optical disc manufacturers should report persistent and serious non-compliance cases to the relevant copyright association.

As a general recommendation, optical disc manufacturers should ensure that they have qualified personnel to handle all aspects of copyright verification and to implement proper procedures for maintaining documentation. Optical disc manufacturers should at all time use reasonable judgement about what constitutes verifiable ownership/licensing information. They are also encouraged to maintain regular contact with all the relevant copyright associations.

Instances of suspicion include cash purchases, orders for "raw" discs on a spindle and/or without accompanying packaging, insert cards or liner notes, no printing on discs, unorthodox delivery/shipping arrangements, etc.

Guidelines for Computer Game Software

The following recommendations and

ensure the orders that do not conform to an established copyright verification system will not be filled anytime in the future. This control should provide for

pointers are specific for orders of computer and game software stored in CD-ROM and DVD-ROM format:

14. Management should request description of contents stored in CD-ROM and/or DVD-ROM to be manufactured.

Such description should include the listing of number, names and types of all files to be contained on the master, CD-ROM and/or DVD-ROM, including trade names in compressed or uncompressed form.

15. Where the description or file review identifies executable software or multimedia programs belonging to companies/persons other than the customer, manufacturers should obtain and maintain copies of documents granting a license to or otherwise confirming the copyright owner's authorization of the ordering party to produce a master or replicate CD-ROMs and/or DVD-ROMs containing the copyright owner's programs and trademarks. Such documents should be on the copyright owner's letterhead or otherwise identifiable as having been created by the copyright owner.
16. Management should request written instructions on how to read directories and open files. This should allow the manufacturer to decrypt, decompress, determine file listings of, and execute on a PC all executable files contained in the source media being supplied. Such passwords or instructions should allow the manufacturer to compare files on the source media against the list provided by the customer.

to lists of known executable files, by use of commercially available audit software or other automated means, or from information contained in start-up screens that appear upon manually opening "exe" and "com" files.

18. Management should examine artwork to be replicated on CD-ROMs/DVD-ROMs and their packaging. Management should look for indication of the use of trade names that must be supported by appropriate authorisation.
19. Management is strongly urged to visit the websites of publishers of computer software and games (see below in **Annex I**) to review the most up to date list of their products. If there is any question whatsoever of the validity of a particular order, they should contact the designated representative of the relevant publisher (see below in **Annex I**) for verification of the legality of the order. Software publishers will make every effort to confirm or reject the order within three business days of the receipt of the verification request.

Guidelines for Motion Pictures/Sound Recordings

The following recommendations and pointers are specific for orders of motion pictures and sound recordings stored in CD,

17. Management should identify the software and multimedia programs and their copyright owners by manual comparison VCD (including other commercially available formats such as China-VCD, Super-VCD, etc), DVD-Video:

20. Management should request valid track, artist and title listings from customers, brokers and sales representatives, as well as copyright owner information.
21. Management should perform an audio or video (whichever applies) evaluation of product and verify through documentation, except where the optical disc manufacturer is certain that the reproduction has been authorised and that the recordings are what they have been described to be. Manufacturers should immediately contact the relevant trade association whenever they cannot properly identify the contents, especially when customers have claimed that the sound recordings are "cover versions".
22. Management should review artwork for copyright information. Manufacturers should immediately contact the relevant trade association whenever they have doubts regarding logos and trademarks to be printed on the optical discs, inlay and other printed materials.
23. Management should contact relevant trade associations immediately for further confirmation if any of the following are discovered:
 - a. Misspellings on the optical
 - b. Names of the titles are different from the officially released and/or translated titles.
 - c. Use of well-known trademarks (to be printed on optical discs, packaging, etc) by "unknown" customers, brokers and sales representatives.
 - d. Optical disc labeling failing to display proper copyright notices.
 - e. For audio/audio-visual products, when an album or compilation contains tracks of major artists appearing on "unknown" label.
24. For overseas orders (such as China), management should require customers, brokers and sales representatives to provide documentary proof that such overseas manufacturing orders are properly authorized by relevant government departments. Management should also seek contact with the copyright owner directly or through relevant trade associations to obtain further verification.

disc or packaging (such as
song and movie titles, names
of artists, etc).

Disclaimer

HKCA and its participants have made every effort to formulate the above guidelines to assist manufacturers in reducing the likelihood of committing copyright offenses. However, these guidelines cannot guarantee that optical discs manufacturers can avoid all criminal and civil liabilities under Hong Kong laws. Similarly, implementation of the above guidelines will not exempt manufacturers from such criminal and civil liabilities. The guidelines are good "practices" recommended by HKCA and its participants. Their compliance does not represent any legal "immunity" granted by participants of HKCA. Manufacturers must exercise their judgment and cooperate closely with the copyright-based industries to best ensure the success of both industries.

Annex

The following copyright associations accept copyright inquiries from optical disc manufacturers. Manufacturers should contact them directly for further information on their inquiry procedures and other background information (their members, etc.).

Computer/Game Software

Business Software Alliance (BSA) [name of contact person(s), address(es), phone/fax number(s), email address(es), web site(s)]

Interactive Digital Software Association (IDSA) [name of contact person(s), address(es), phone/fax number(s), email address(es), web site(s)]

Motion Pictures

Motion Picture Association (MPA) [name of contact person(s), address(es), phone/fax number(s), email address(es), web site(s)]

Motion Picture Industry Association (MPIA) [name of contact person(s), address(es), phone/fax number(s), email address(es), web site(s)]

Sound Recordings

International Federation of the Phonographic Industry (IFPI)