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

5th February, 2001

Members of LegCo Panel on Security
The Legislative Council
Hong Kong

Dear Honorable LegCo Panel members,

The International Federation of the Phonographic Industry Hong Kong Group (IFPI HKG) welcomes the work of the HKSAR Government in tackling computer-related crime under a cross department approach. Since the Inter departmental Working Group Report on Computer Related Crime may be used as a policy paper for reference by the relevant departments, we wish to address one issue important to music business. It relates to one area of infringement of music copyright on a massive scale that had received relatively little attention but have become highly critical recently.

It is all about end users making and circulating un-authorised copies. The topic is explained under the attached Annex A.

IFPI (HKG) would also like to take this opportunity to thank the Working Group in exploring many areas of fighting Computer Related Crime, which to the music industry is all about on the one hand survival and on the other hand making e-commerce viable. We shall be producing a detailed submission by the IFPI counsel to the Security Bureau before the end of February 2001. Meanwhile, I would like to focus your attention to just a few points under the said report.

1.   We support the recommendation in a 6 month record keeping by ISPs with sufficient details for enforcement purpose.

2.   We support to formalise take down procedures with no dilution of remedies under the existing laws in Hong Kong.

3.   We propose that the IP sector including IFPI to be included in the private sector consultation and exchange in the fight against Computer Related Crime.

and more importantly, we strongly recommend in relation to our attached Annex A that:

4.   any publication, lending, distribution and making available of hacking tools and software to circumvent copy control and rights management implemented by copyright holders such as watermark <u>in access and duplication</u> whether for gain or not be outlawed.

5.   the making, importation, distribution and selling of device for unauthorised circumvention in access, copying and rights management be outlawed.

We would be pleased to answer any query that may arise.

Thank you for your kind attention.

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

Ricky Fung
CEO

Annex A

A submission by the International Federation of the Phonographic Industry (Hong Kong Group) Limited to Members of the Legislative Council on the subject of Record Industry expectation on new legislative initiatives against circumvention in access and copy control.

The record industry recognised the problem of un-authorised copying of sound recordings in the '70s when musi-cassette was successfully introduced into the market. The problem of digital devices like CD and MiniDisc (MD) provided further incentive not to buy the original recording when a perfect copy could be made. However, this form of duplication is still restricted to making copies from a physical carrier.

Due to advancement in computer and communication technology in recent years, the tools and means of copying sound recordings faster, better, easier and cheaper to store appeared. First and foremost, the Internet provides a massive source of sound recordings in the format of illegal MP3 files. The barrier of having access to a physical copy (CD) was broken. The barrier of first knowing a friend who is willing to lend a copy was broken. The barrier having to pay, even for a pirated copy was broken. The introduction of MP3 protable device (MP3 Walkman) further advanced user demand in MP3 files. When illegal MP3 files could be downloaded for free from the Internet, the users don't even bother to compress the files themselves.

The appearance of peer to peer file-sharing software on the Internet such as Napster, Gnutella, Free Net plus Chinese equivalents like Kuro and Ezpeer provided an added dimension to massive infringement. The downloaders suddenly become providers of infringing files on a global scale. No national boundaries, no language barrier to stop this massive infringing act, all conducted by users that do not have to know each other. The traditional model of music piracy, which is based on a pirate making illegal copies for sale is no longer the whole story. Co-operative end-user piracy due to advancement of computers, communication and consumer electronics is going to be a major threat to music copyright.

The recording industry must need new tools to fight piracy on a computer-related front and to harness the opportunity of e-commerce.

An early attempt by the record industry in discouraging digital cloning of sound recordings was the Serial Copy Management System (SCMS), with the introduction of the Audio Compact Disc (CD). This met with wide spread support by consumer electronic manufacturers in incorporating SCMS control in digital recording products. In short, a digital copy of a sound recording cannot be cloned further by the use of consumer digital devices.

Arguably SCMS is of limited value when analogue copying is permitted, it had played an important part in discouraging serial copying digitally. Its value is significantly increased nowadays when more countries gradually embrace digital broadcast. Although the music industry is all for users' enjoyment of music through digital means, it is against un-authorised user re-distribution or the making available of such recordings on the Internet whether for gain or not. Meanwhile technology advancement produced newer, faster, bigger and cheaper devices at a rapid pace. It made massive re-distribution in any medium including the Internet easier. However, the cost of making, marketing and promotion of music recordings has not gone down. In fact, the stakes for the record companies may even be higher due to globalise competition.

The popular MP3 files introduced yet another problem. Its native file format could not contain any copyright management information. The record industry needs once again new tools to conduct e-commerce whenever compressed files are needed. It is the very reason that the recording industry was hesitant to support raw MP3 for e-commerce.

The Secured Digital Music Initiative (SDMI) was formally recognised by the 5 global business sectors in 1998, i.e.

> The music industry
> Consumer Electronics industry
> Telecommunication business/ISP
> Computer software business
> Computer Hardware business.

To date, SDMI (further information available from www.sdmi.org) has over 180 members that consists of nearly all industry leaders in their respective sectors.

SDMI was formed to promote systems and to adopt standards jointly and individually developed by member companies to further digital music commerce. Music files conforming to SDMI standards will have copy protection, access protection as well as rights management information built in that survive any conversion, filtering, compression and expansion.

One such method is the use of watermarking which is undergoing vigorous development. To prevent large-scale harm to the industry, it is important that any publication, lending, distribution and making available of methods and device to circumvent watermarking or other copyright management functions in access and duplication for gain or not be outlawed.

We also propose that importation, making, distribution and selling of such circumvention device be outlawed.

International Federation of the Phonographic Industry
        (Hong Kong Group) Limited

5th February, 2001