



IFPI FORMAL SUBMISSION

TO

AUSTRALIAN PARLIAMENT
HOUSE OF REPRESENTATIVES STANDING COMMITTEE

ON

LEGAL AND CONSTITUTIONAL AFFAIRS

TERMS OF REFERENCE:
INQUIRY INTO COPYRIGHT ENFORCEMENT

June 1999

I am Iain Grant. I am currently employed as the Director of Anti-Piracy in the International Federation of the Phonographic Industry. In this capacity, I am the Head of Enforcement for the IFPI worldwide. I have served in this post since August 1997. Prior to appointment to the IFPI, I served in the Royal Hong Kong Police Force for twenty-three years. During my service with the Royal Hong Kong Police I gained considerable experience in investigating violent, serious and organised crime. I served as the Chief Superintendent in charge of the Narcotics Bureau, Hong Kong, during the three years immediately preceding my retirement.

The International Federation of the Phonographic Industry

IFPI, the International Federation of the Phonographic Industry, represents some 1,300 members in over 70 countries around the world, ranging from the 5 major multinational record companies (BMG, EMI, Sony, Universal Music and Warner Music) to small independent companies all over the world. IFPI members account for approximately 80%-90% of worldwide record sales. National Groups representing the local recording industry are officially recognised by IFPI in 40 countries, and the RIAA (Recording Industry Association of America) and FLAPF (Federacion Latinoamericana de Productores de Fonogramas) are also affiliated to IFPI.

IFPI's secretariat is located in London and is responsible for central co-ordination and research. The Brussels-based European office deals with EU/EFTA issues. IFPI has other regional offices in Warsaw, Moscow, Sofia, Hong Kong, China (3 offices), Seoul, and Singapore.

One of IFPI's principal functions is to carry out and co-ordinate the fight against piracy of recorded music.

The Potential of the Recording Industry

The recording industry, if protected from the predations of criminals, has tremendous potential. This may be illustrated by reference to the European recording industry.

The recording industry in Europe has shown its potential as one of the exemplary growth industries of the future. In an era marked by low growth, recession and the decline of Europe's traditional industries, music retail sales in Europe alone have grown in real terms by almost twice real GDP growth over the last five years. Unit sales have grown by 27% in the last five years and by 52% over the last decade. Compact disc manufacturing capacity has increased by 65% in the last five years.

Europe's unsubsidised recording industry has seen direct and indirect employment grow to 600,000 in the last five years.

The European recording industry is now a very serious economic force. European-owned record companies (including two of the five biggest record companies in the world: EMI and BMG) and European artists now account for between 40-45% of all sales of sound recordings world-wide, grossing ECU 15 billion of the ECU 34 billion world music retail market.

The Impact of Compact Disc Piracy

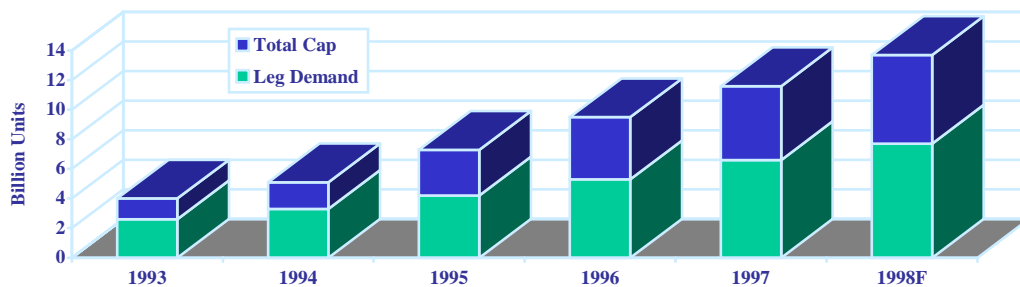
Pirate cassettes were usually manufactured and sold in the same country, more often than not in the same region of the same country. Cassette pirates were usually minor criminals operating locally, and on a very small scale.

CD piracy presents completely different problems. The chain of supply of pirate CDs almost always involves several countries. Thus we have discs manufactured in China, being shipped to Latin America through Western European airports. CD piracy is an international problem, which requires an international response.

The advent of digital technology and the convergence of formats for manufacturing and distribution of all types of creative works has exacerbated the traditional piracy problem, while the growth of the Internet has created the most efficient, cost-effective form of copyright piracy we have ever encountered.

Optical disc piracy in particular has grown substantially in each of the last 7 years.

Legitimate Demand v Capacity



The most significant reason for this is the explosion in CD manufacturing capacity around the world. CD manufacturing equipment has progressively become cheaper, more simple to operate and capable of producing greater quantities in shorter periods of time. Suppliers of CD replication equipment and the raw materials to manufacture CDs, who are primarily based in the EU or in the United States of America, have aggressively marketed their machinery to customers, particularly in Asia and Central and Eastern Europe, without regard to the likelihood of it being used for piracy.

An Overview of Global Piracy

- **Western Europe**

Investigation has established that major mastering facilities in Western Europe have supplied many infringing stampers to client CD plants in Western Europe and the Ukraine. The provision of mastering services has been crucial to the success of the rogue plants in flooding European markets with pirate music discs.

There have been successful raids against infringing compact disc manufacturers throughout Western Europe. This includes several plants in Germany, a plant in Wales and a plant in Norway. Raids in Naples, Italy, have disrupted several Mafia families who were engaged in recording and distributing substantial numbers of CDRs every month. Investigations with a

National Crime Unit into a major syndicate distributing in excess of 100,000 compact discs each month are progressing well. These and similar investigations have clearly demonstrated the extent of infringing and that it is conducted as organised crime. There has been a proportional increase in communication with Law Enforcement Agencies and their appreciation of the threat of intellectual property crime.

- **Eastern Europe**

The success of the political and enforcement strategy in Bulgaria is clearly illustrated by the fact that there is now no significant manufacture of illegal infringing discs in the country. Inevitably, the activity has been displaced to other territories in which the regimes are more disposed to allowing plants to operate unhindered.

Poland has suffered greatly from the import of infringing discs from neighbouring CIS territories.

The Baltic States remain a major threat to established markets either as sources of manufacturing or principal transit routes of discs into the neighbouring countries.

Convincing the local Governments and Enforcement Agencies to use their limited resources to tackle IP crime remains a major challenge.

Eastern Europe will remain a challenging theatre of operations. Whilst many discs undoubtedly enter from CIS countries and the Baltic States, there remains suspicion that Eastern European plants are engaged in illegal activities.

- **Russia & the CIS**

Anti-piracy in the former Soviet Union remains a highly dangerous task. The risks involved have also to be weighed against the economic consequences of even major success against the pirates.

- **Latin America**

The seizure of over 13 million infringing compact discs since October 1998 is clear evidence of the extent of piracy in Latin America. The investigations have uncovered the biggest international distribution network for infringing discs that has been encountered and has identified the principals behind the activity.

The vast majority of discs appear to have been manufactured in South East Asia and these manufacturing sources are being aggressively pursued.

There is no doubt that these efforts have had a major impact on the syndicate involved. However, other criminal syndicates will take over the mantle and identify alternative routes and methods of importation. Additionally, other groups will undoubtedly seek to fill the supply vacuum by burning infringing CD-Rs locally.

- **South East Asia**

Plants have manufactured discs for Latin America; discs were imported from Taiwan, Thailand, Malaysia, Korea, Hong Kong, Macao and Singapore. There are several major investigations ongoing in Malaysia, Thailand and Singapore. It must be appreciated that there are very grave difficulties in operating effectively in many countries in this Region; these include endemic corruption and the involvement of organised crime. Staff are threatened and intimidated even whilst in the presence of Law Enforcement Officers.

An Organised Crime Activity

There can be no doubt that music piracy is an organised crime in many territories. Equally, there is no doubt that many governments and law enforcement agencies have failed to appreciate the potential of intellectual property crime to these organised crime groups.

In an effort to highlight and remedy this situation, IFPI have prepared a discussion paper on the phenomenon. This is attached at Annexure 'A' of this submission.

The industry welcomes the statement the Foreign Ministers of the G8 Group of major industrialised Democracies of May 1998:

“We recognise that intellectual property related crime is a major and growing problem which should be of concern to all.

We agree on the importance of effective action against such crime in our own countries.

We agree to explore opportunities for better cooperation and exchange of information between governments and intellectual property rights holders so as to facilitate more effective enforcement of intellectual property rights.”

We further welcome the recognition by the Heads of State and Governments of the G8 Summit in May 1998 that:

“Building partnerships with industry will help guarantee that the most up to date crimes are being tackled by the most up to date methods.”

Conclusion and Recommendations

Few jurisdictions currently have the legislation to effectively tackle intellectual property crime in the twenty-first century.

This compounds the difficulties faced by the industry and may explain the reluctance of all agencies to tackle this major source of criminal profit.

IFPI strongly support the submission of the Australian Music Industry to the Standing Committee.

IFPI's primary general recommendations are the introduction of effective measures which:

- Prevent CD piracy by providing effective regulation of the means of optical disc production.
- Recognise piracy and counterfeiting as a serious crime and give law enforcement agencies and professional organisations fighting piracy and counterfeiting the necessary powers to investigate and deal with this crime.
- Provide reasonable presumptions as to the subsistence and ownership of copyrights and neighbouring rights to enable criminal prosecutions and civil litigation to be pursued expeditiously.
- Provide mandatory deterrent penalties commensurate with the huge profits that can be made from piracy or counterfeiting.
- Ensure that convicted criminals are denied the proceeds of their crime and that infringers adequately compensate those whose rights they have infringed.

IFPI/9 June, 1999

PIRACY IN THE MUSIC INDUSTRY AND ORGANISED CRIME

INTRODUCTION

1. This paper examines the concept of organised crime, the relevance of this to piracy of music industry intellectual property rights and the need for concerted and joint action by the industry, governments and law enforcement.

ORGANISED CRIME

2. The following definition of organised crime is drawn from the UK National Criminal Intelligence Service, Organised Crime Report 1996:

"Organised crime constitutes any enterprise, or group of persons, engaged in continuing illegal activities which has as its primary purpose the generation of profits, irrespective of national boundaries".

3. The music industry adopts this definition for the purpose of examining organised crime involvement in music piracy.

4. The characteristics typical of organised crime groups, and their activities, are listed at **Appendix 'A'**. The characteristics may be present in any group, or activity, to a greater or lesser degree. The presence, or absence, of these characteristics will allow a qualitative analysis to be conducted as to the level of threat posed by an organised crime group and organised crime activities.

5. An appreciation, and common understanding, of organised crime will enhance cooperation between the music industry, governments and law enforcement. This will promote the effective use of limited resources against organised crime groups, which if unchecked, have the potential to undermine state institutions.

ORGANISED CRIME AND MUSIC PIRACY

6. **There is absolutely no doubt that in many situations the theft of intellectual property amounts to organised crime.** The nature and context of the activity must be examined.

7. The manufacture and distribution of illegal music carriers is, in many instances: an "enterprise... engaged in continuing illegal activities which has as its primary purpose the generation of profits."

8. Violence, intimidation, and, or corruption are encountered, and in a number of countries international and domestic intellectual property right legislation is repeatedly and flagrantly breached. This is illustrated at **Appendix 'B'** by reference to some recent incidents.

9. Hence, the manufacture and traffic of illegal music products, both domestically and internationally, is often an organised crime activity. Groups engaging in such activities may be hierarchical criminal organisations, such as Triads and La Cosa Nostra. Groups may be

less formalised and associating for the duration of a particular enterprise. There will also, often, be instances in which members of hierarchical criminal organisations engage in entrepreneurial activity, with persons outside the organisation, and in which the hierarchical structure may not be of immediate importance.

THE MUSIC INDUSTRY AND LAW ENFORCEMENT: A CHALLENGE

10. Governments, judicial systems, and law enforcement agencies seek to define, identify and tackle organised crime as it is recognised that it has the potential to destroy the fabric of a society. Any organised crime group or activity must be accorded a high priority and proportionately greater resources assigned to meeting that threat.

11. There is a bureaucratic inertia, to a greater or lesser degree, within governments, judicial systems and enforcement agencies. Given the range of their responsibilities and the limit of their resources it is inevitable that the public guardians do not always identify and pro-actively tackle organised crime activities. Thus it may be argued that there is a responsibility upon those industries prone to organised crime influence and activity to alert and educate the public guardians. The music industry is a case in point.

12. The music industry now recognises that the advent of the compact disc has radically altered the nature of music piracy. There is massive manufacture and international traffic of illegal compact discs. The profit margin on the discs is very substantial; production costs may be a little as US\$0.90, whilst retail value may be around US\$15.00. In 1997 over US\$5 billion of legitimate sales were lost through piracy, whilst globally 1 in 3 recordings was a pirate copy. CD manufacturing capacity already massively exceeds legitimate demand but capacity continues to expand rapidly.

13. The potential market for, and profit from, music piracy is enormous and growing, however, the criminal sanctions for breach of copyright legislation bear no relation to the profit potential and are of little deterrent value. The huge profits made are inevitably used to entrench the position of the pirates; to secure manufacturing and distribution networks through violence, intimidation and corruption and to pervert state institutions. Profits are then frequently reinvested in other less savoury criminal enterprises such as drug trafficking and prostitution.

14. For this reason recourse to more weighty criminal charges e.g. Racketeering, conspiracy or fraud should be considered as this approach has been successfully employed in a number of jurisdictions against organised crime.

15. The challenge to all intellectual property industries is to educate relevant agencies as to the potential of piracy. In certain jurisdictions music piracy is already an organised crime activity and the activity is not confined to domestic markets, it is international. In those jurisdictions in which music piracy is not yet clearly an organised crime activity, the potential profits will surely attract hierarchical and entrepreneurial criminal organisations.

A STRATEGY

16. In October 1997, the IFPI Main Board gave provisional approval to a new music industry anti-piracy enforcement strategy. The objective of the strategy is to establish a fully resourced anti-piracy organisational structure capable of a truly global response to the problem. This initiative is laudable and far sighted. However, if the initiative is to succeed, law enforcement agencies world-wide must recognise the criminal potential of international music piracy and increase the resource dedicated to combat it.

17. Law enforcement response has to be proportionate and cost-effective. It cannot be so unless the problem is recognised and fully appreciated. The role of IFPI and national offices must be to assist law enforcement agencies in appreciation of the problem on a national and international basis.

18. Responsible governments and law enforcement agencies must confront these issues:-

(a) their responsibility to develop strategic intelligence upon intellectual property crimes;

(b) to assess whether such criminal activity constitutes organised crime in their territory or contributes to organised crime activity elsewhere in the world;

(c) to ensure that the resources deployed to combat piracy are proportionate to the existing, and the potential, problem.

19. The role of the industry is to provide governments and law enforcement agencies with an overview of the current and potential problem and to encourage them to confront the issues. There is an industry responsibility to support enforcement through developing strategic and tactical intelligence and, where appropriate, initiating civil actions.

CONCLUSION

20. The music industry has identified that within the areas of piracy organised crime exists. However, it is to be stressed that not all audio piracy falls within the definition as involvement by criminals is varied and diverse.

21. Both the industry and law enforcement agencies have a common interest in combating music piracy, in particular those areas that are organised crime. The objective should therefore be to build partnerships with enforcement agencies at all levels. Development of this will depend upon recognition of mutual professionalism and commitment.

22. The international music industry is determined to protect itself from the depredations of organised crime; and to meet its wider social responsibility of cooperating with the authorities to eliminate opportunities for organised crime to profit and flourish. We are committed to investing substantial resources to this objective. We believe that all responsible governments and law enforcement agencies, both international and national, will wish to cooperate in eliminating organised crime from our industry and our societies.

CHARACTERISTICS OF ORGANISED CRIME GROUPS AND THEIR ACTIVITIES

- Collaboration by a minimum of three people.
- Criminal activity which has, or is intended to be, continued over a prolonged period.
- Commission of serious criminal offences, or offences which, taken as a whole, are of considerable importance.
- Motivated by the pursuit of profit or power.
- Operations are international, national, or regional.
- Uses violence or intimidation.
- Uses commercial or other business like structures.
- Engages in money laundering.
- Exerts influence upon politics, the media, public administration, judicial authorities or the economy.

PRÉCIS OF RECENT EXAMPLES INDICATING 'ORGANISED' INVOLVEMENT

Belgium/Holland

- On 20 January 1997 as a result of information received the Police in Holland placed two suspects under surveillance. They went to a meeting and collected a consignment of CD's. Upon being stopped by the police they were found to be in possession of a pistol and ammunition with one of the bullets being in the chamber ready for firing. They also had a quantity of drugs for distribution.

The authorities allowed the shipment to continue as a 'controlled delivery' and it was followed to Turnhout in Belgium and placed in a warehouse. These premises were already under surveillance by the police as part of an ongoing investigation into drug trafficking. They had been aware of the CD movement whilst watching the suspects but had believed the product legal.

The owner of the warehouse has also hired a vehicle that was detained in Holland a few weeks previously. On that occasion there were 55,000 pirate compilations of a different title that also appeared in the market every month.

- On 30 May 1997, a consignment of 94,000 pirate compilations were seized at Heathrow airport in the UK. The CD's were titled 'Hit Explosion' which is illegal repertoire that is distributed monthly in The Netherlands.

Germany

- In January 1997, the German authorities seized 650,000 illegal CD's as a result of a protracted investigation involving the Secret Service. This involvement had commenced as a result of the circulation of Neo-Nazi material which included CD's. A quantity of the units seized were found to be such material and the offenders were identified as members of extremist groups.

Hong Kong

- In April 1998, the Hong Kong Internal Commission Against Corruption (ICAC) carried out a series of raids on 5 CD plants in Fanling, in the north of Hong Kong. More than US \$83 million worth of equipment was seized including 41 CD manufacturing lines, a DVD manufacturing line, and two laser beam recorder disc mastering machines, each worth several million dollars. In addition, 8 million illegal CDs were seized. There were 12 arrests made, including the arrest of the head of the Hong Kong Customs and Excise Intelligence, Investigation and Prosecution Bureau. This represents the world's biggest ever seizure of either illegal CDs or manufacturing equipment and shows massive investment in this criminal activity, and corruption at very high levels.

Ireland

- Irish journalist Veronica Guerin was shot dead in consequence of her expose of drugs trafficking in the Republic. A raid on a warehouse owned by an associate of the suspect, led to a seizure of video and audio duplicating equipment and quantities of pirate material.
- A senior RUC officer has confirmed the involvement of paramilitary organisations on both sides of the sectarian divide as being involved in music piracy. Furthermore, the Irish police have now established an anti-counterfeiting liaison unit due to their concerns about this type of criminal activity.

Israel

- On 1 October 1997, an explosive device was placed on the door of ALIS, the anti-piracy organisation. This second threat to the employees was believed to be the work of pirates described as being 'organised and ruthless and a direct threat to the security of Israel'.

Italy

- According to information provided by the General Attorney of Naples, 100 Camorra gangs are active in that area. They deal in drugs, arms, extortion and counterfeiting. Recent intelligence and interviews with Police 'supergrass' has confirmed that various 'Clans' are investing the money obtained from the distribution of drugs and cigarettes in the counterfeiting of CDs. A considerable amount of capital has been used on purchasing industrial CD-R burners with a capacity of more than 2000 units per day. The connection with Eastern mafias is allowing the 'clans' to import large quantities of counterfeit CDs from countries such as Bulgaria.
- A recent seizure at the port of Brindisi revealed a car with the mudguards and spare tyre area adapted for the smuggling of CDs. The inlay cards were hidden in the car door padding. The drivers' instructions were to leave the car over night at a filling station where it would be 'cleaned' ready for another journey. The similarities with drug trafficking are evident.
- In May 1997, following an investigation by the Anti-Mafia Public Prosecutors office, Naples, the activities of a Camorra gang headed by Enrico Frattasio were uncovered. The 'family' gang based in Forcella, Naples have been active in music piracy for a number of years. It is estimated that the group produced and distributed over 50,000 music cassettes and 10,000 compact discs each week raising 80 million lira on each occasion. This group were also involved in the normal aspects of crime associated with such a gang.

Japan

- A member of the religious and terrorist group 'AUME' was also found to be involved in the importing and selling of illegal CDs and video cassettes.

Latvia

- On 10 October 1997, a car belonging to a record company exploded in the centre of Riga. One of the two bombers was injured in the attack and lost two legs (the bomb went off whilst being planted).

- The explosion was understood to be a warning to the company as they have one of their distribution networks at the central market in Riga, an area 'governed' by the Russian-Latvian organised crime. The record company had become a significant competitor to the pirates and one of the Directors had recently spoken publicly about the piracy problem in the area.

Russia/Bulgaria

- Senior Police officials and other confidential sources have confirmed that elements of Russian and Bulgarian mafia groups are involved in the control and organisation of large scale replication and distribution of pirated music. This is evidenced in part by large seizures of pirate product and the widening internationalisation of their activities.
- For example, in August 1997, separate consignments of pirate CDs originating in Singapore, Bulgaria, Romania and the Czech Republic were intercepted by Finnish Customs en route to a common consignee in Helsinki. Further enquiries established that the final destination was a Moscow syndicate who were connected to a previous illegal shipment from Bulgaria which had been discovered by Russian customs hidden in a secret compartment on a cross border train. The subsequent investigation is being handled by the Moscow Police Organised Crime Group.

South Africa

- In February 1997, the South African Police vehicle theft unit arrested members of a Bulgarian multi-million Rand car theft syndicate. Together with 14 luxury cars, they recovered a substantial quantity of counterfeit CD's. It was also established that the same group was involved in arms-smuggling.