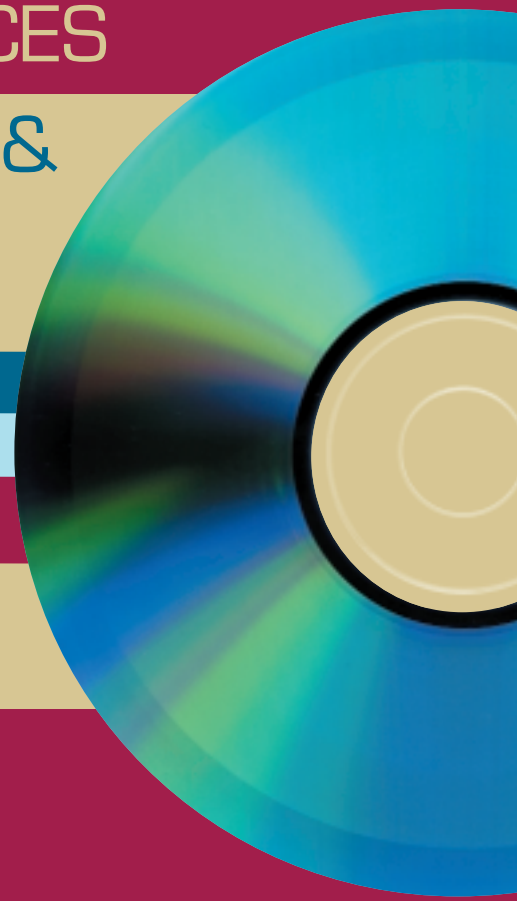




representing the
recording industry
worldwide

GOOD BUSINESS PRACTICES

for optical disc mastering & manufacturing plants



THE PIRACY PROBLEM

Representing 75% of all music sales globally, the audio CD remains the dominant carrier for music. This format, with its excellent sound quality and durability, has until recently represented a win-win situation: a win for the music industry, a win for customers, and a win for optical disc manufacturers who have set up plants around the world to satisfy continuing demand.

But there is a sting in the tail. The success of the CD and, subsequently, DVD has resulted in an explosion in optical disc plants, bringing with it excess manufacturing capacity, which is now about *double* that of legitimate demand. Improvements in technology and increased availability of second-hand machinery have only exacerbated this problem. Tighter profit margins facing the manufacturing sector have, inevitably, raised the stakes, and optical disc piracy – frequently linked to large-scale international organised crime – has proved to be an attractive business. The global pirate music market totalled 1.9 billion units in 2001, of which 500 million were pressed discs. That's about 1.4 million illegal discs per day, which is an enormous number, particularly given the simultaneous rise in CD-R piracy. The value of this global pirate market is estimated at US\$4.3 billion in 2001 (at pirate prices). The damage in lost sales to the music industry is even greater.

The size of the piracy problem is well publicised and well known. However, what is not always appreciated is the potential liability of optical disc plants, if they master or replicate unauthorised stampers or optical discs.

This potential liability is founded on the law of copyright and related rights. To ensure that there are proper incentives for companies to invest in producing and marketing sound recordings, international treaties and national laws grant producers of sound recordings various rights in their recordings. These rights include the exclusive right to commercially copy the recordings and to distribute/import/export such copies. (Depending on the country you live in, these rights may be called copyrights, or "related" or "neighbouring" rights.)

It is these rights that enable law enforcement bodies to take criminal action against those who replicate or distribute music without the permission of the record companies that invest in producing it. They also allow record producers to take civil actions to recover compensation for damages suffered as a result of music piracy.

But it is not just the rights of the producers of music that optical disc plants need to consider. Before music discs may be manufactured, it is necessary to obtain the authorisation of the holder of the rights in the composition (usually administered by an authors' collecting society), as well as the holder of the rights in the sound recording (usually a record company).

For more details on this, see the joint IFPI/BIEM Publication "Copyright For Replicators – How To Protect Your Business".

The result of this is that an optical disc plant and its management can incur liability for substantial damages and/or face criminal prosecution if it manufactures and delivers orders for music discs without ensuring that it has a "mechanical licence" from a collecting society **AND** that the customer has the right to reproduce the sound recording(s) concerned. *Optical disc plants copy and sometimes distribute sound recordings – if the producer has not authorised that copying or distribution, the plant will generally be equally responsible in law with the customer that placed the order. This applies both to stampers and optical discs.*

THE MUSIC INDUSTRY'S RESPONSE

The entire music industry – composers, artists, authors and producers alike – faces huge losses as a result of optical disc piracy. The industry's response has been to take action against any plant found to be manufacturing pirate product without undertaking the necessary checking procedures. The results of this policy are self-evident: civil suits and criminal investigations have been taken against CD plants in America, Europe, the Middle East and Asia, and this has led to civil judgments and settlements totalling in excess of US\$180 million against optical disc manufacturers in the last 5 years.

So what can plants do to avoid music piracy? With potential damages running into tens of millions of dollars, it is in the interest of every optical disc manufacturer to work with the recording industry. A central part of the music industry's response is to help plants that are concerned about piracy to avoid getting involved in it. This is why, in addition to Piracy Awareness Seminars, organised for manufacturers by the local recording industry associations over the last few years, we have developed these **Voluntary Guidelines**. Drawing on years of experience of fighting piracy, the practical advice of plant managers and the insight of those who got caught, these guidelines boil down to the simple principle of **"Know Your Customer, Know The Product You Replicate And Master"**.

GUIDELINES

It is essential for legitimate optical disc plants to be able to identify and refuse orders for pirate product. These guidelines are intended to set out the procedures that a plant should be implementing to enable it to achieve this goal.

Note that these guidelines should be followed whether plants are manufacturing pre-recorded optical discs or recordable media, such as CD-R or DVD-R.

In this document the term "pirate" refers to a sound recording that has been reproduced for commercial gain without the authorisation of the original rights owner(s). "Pirate" recordings include:

Bootleg: Unauthorised recordings of live performances/broadcasts.

Counterfeit: Recordings which are copied or distributed without authority, and which are packaged to resemble the original as closely as possible.

Pirate: Recordings which are copied or distributed without authority, and which are usually packaged differently to the original. They are often compilations made up of recordings by several different artists.

GUIDELINES continued

IFPI recommends that all plants, as a minimum, implement the following measures:

1. Notify Your Customers

Preferably using written documentation, you should inform all customers and brokers that your plant observes anti-piracy good business practices.

- ### 2. Implement the SID (Source Identification) Code
- It is recommended that all plants employ SID mastering (LBR) and mould codes for both pre-recorded optical discs and recordable media (ie CD-Rs and DVD-Rs). The SID Code programme enhances the security of optical disc manufacturing at both the mastering and replication stages.

When SID Codes are employed, every disc produced in a given plant carries a distinct code identifying that plant. Philips Consumer Electronics, as a licensor of optical disc technology, allocates both types of SID Codes and any plant wanting to adopt the SID Code programme can apply to Philips for code allocation(s). Further details can be found on their website www.licensing.philips.com

If you are recording content onto recordable optical discs, you should ensure that your recording equipment is programmed to apply its unique RID (Recorder Identification) Code onto each disc, as specified in the Philips Orange Book Standard for recordable discs.

3. IFPI CD Piracy Awareness Seminars

Schedule IFPI Piracy Awareness Seminars for all appropriate plant personnel. Plant management should request that customers and brokers doing business with their plant attend. Please contact the IFPI National Group/Regional Office in your country or region to arrange such seminars. The details of IFPI National Groups and Regional Offices can be found at www.ifpi.org (see "National Associations"). If there is no IFPI National Group/Regional Office in your country or region you should contact the IFPI Secretariat in London.

4. Compliance Officer

Designate a qualified plant employee as the Compliance Officer. This person will be responsible for in-house training of plant personnel, reviewing all orders for sound recording piracy concerns and conducting necessary customer background checks.

5. Customer/Broker Identification

Ensure that you obtain reliable identification and background information from your customers. This must include complete addresses and phone numbers (no post office boxes or "points of contact"). *Brokers must provide this information in respect of their clients.* You must always know who is the ultimate customer for any order.

6. Content Details

For every order, you must obtain from your customer or broker a complete artist and track listing. You need to know what you are manufacturing! You must obtain these details whether you are producing masters/stampers or optical discs.

You should also examine artwork and any inlay cards to check that it is consistent with the details provided by your customer.

7. Consider The Piracy Indicators

Always look for the indicators that are common to orders for pirate product. These are listed over the page. Orders submitted for replication that contain any of those indicators should be carefully scrutinised. If in doubt, contact the IFPI National Group/Regional Office in your territory or region, or, if there is none, IFPI Secretariat.

8. Check The Rights Owner

Unless you are **absolutely certain** of the ownership of the recordings being replicated, you must carry out your own checks to find out. Ownership can be checked by using on-line databases such as:

www.allmusic.com
www.amazon.com
www.cdnow.com
www.billboard.com
www.bmg.com
www.emicap.com
www.usasonymusic.com
www.wmg.com
www.umusic.com
www.mpa.org
www.recordresearch.com
www.songfile.com

9. Are You Certain?

Unless you are **absolutely certain** that the rights owner has authorised the mastering or replication of product submitted by your customer, you must:

9.1 Listen to or otherwise reliably verify the content to confirm that it is indeed the product described in the order. By listening to the sound recording, or using a fingerprinting/identification system (such as the Gracenote CDDB service; details at www.gracenote.com, but note this is a public database), an appropriately trained employee or consultant can determine the identity of the artist and sound recording;

9.2 Require that your customer produce verifiable ownership/licensing documentation (including the name of the rights owner) to prove that it has the right to place the order. You should use reasonable judgement about what constitutes verifiable ownership/licensing information; however, offers of indemnity and simple declarations of ownership should not be accepted as reliable substitutes.

When you are examining licensing documentation, you should expect to see a licence from the rights owner to your customer. This could be a direct licence, or a licence via third parties. Alternatively, you might see a letter from the rights owner (on its formal letterhead) confirming that your customer has been authorised by it. If you have undertaken all reasonable enquiries, but are still not certain, contact your local IFPI National Group, IFPI Regional Office or IFPI Secretariat as appropriate.

10. Keeping Records

Ensure that records of each order are preserved for a minimum of 4 years. If the limitation period for bringing civil claims in your country is longer than 4 years, you should keep records for that time; this will enable you to pursue customers that place orders for pirate product. At the least you should keep, for each order:

- Customer details;
- Production records;
- Delivery records;
- Invoices;
- Track listings;
- Ownership/licensing documentation provided by the customer;
- Samples of discs/stampers;
- Samples of label films/artwork/inlay cards.

11. Internal Disciplinary Procedures:

Establish and implement a corporate administrative policy to discipline sales representatives or employees who disregard in-house anti-piracy policies and procedures.

When processing any order, if your suspicions are raised you should contact your local IFPI National Group, IFPI Regional Office or IFPI Secretariat. If an order has already been manufactured, provide IFPI with appropriate sample(s). Always satisfy yourself that the order is authorised **before** delivery to your customer.

PIRATE PRODUCT INDICATORS

- Requests that the SID Code(s), or any standard plant identification marks, be omitted
- Cash purchases
- Orders for compilations of music in mp3 or other data file format
- Submission of commercially pressed discs as input data
- Entire albums or compilation discs containing tracks of major artists appearing on 'unknown labels'
- Misspellings on the disc, or packaging, such as the artist's name or song title
- Incorrect or misleading information on discs or inserts, such as requests to indicate that the product was made in a foreign country
- Orders to be shipped on spindles and/or with unorthodox delivery/shipping arrangements
- Orders placed for discs only without accompanying packaging, insert cards or liner notes
- No artist listing or graphics on the disc
- No printing or album title on the disc
- The artist listed on the disc artwork is different from the artist performing on the disc
- Live concert recordings of popular artists on 'unknown' labels
- Studio out takes (incomplete mixes/recordings)
- Recordings marked as 'Promotional Copy' and/or 'Not For Sale' and/or 'For D.J. Use Only'
- Catalogue number on disc differs from that on inlay card
- Use of well known trademarks by 'unknown' companies
- Disc labelling failing to display proper copyright notices
- Claims that recordings are "cover versions" of popular artists

OTHER IFPI PUBLICATIONS



FOR FURTHER INFORMATION, PLEASE CONTACT:

IFPI Secretariat
54 Regent Street
London W1B 5RE
Tel: + 44 (0)20 7878 7900
Fax: + 44 (0)20 7878 6832
E-mail: cdplant@ifpi.org
Web: www.ifpi.org



IFPI Secretariat
54 Regent Street
London W1B 5RE
Tel: + 44 (0)20 7878 7900
Fax: + 44 (0)20 7878 6832
E-mail: cdplant@ifpi.org
Web: www.ifpi.org