

*Views of members of  
the Concern Group of Music Copyright Ordinance*

音樂版稅關注小組成員意見

## Letterhead of The Federation of Hong Kong Hotel Owners Limited

Our Ref: 172/01/ML

December 27, 2001

By Fax & Post

To: Ms Laura Tsoi  
Commerce & Industry Bureau  
Level 29, One Pacific Place  
88 Queensway, Hong Kong

Fax: 2869 4420

Dear Ms Tsoi,

### **Consultation on Review of Certain Provisions of Copyright Ordinance**

The Commerce & Industry Bureau issued a consultation document as captioned in October. The Federation was invited to give opinions through the Concern Group of Music Copyright Ordinance. The Federation made comments on chapters 4 & 7 as follows:

#### Chapter 4: Permitted Acts Related to Free Public Showing or Playing of Broadcast or Cable Programme

##### **Double Charge**

This provision is one of the main areas that we want to be reviewed. Hotel rooms are not public but like a domestic setting where our room charges are **not equal** to admission fee for a concert. Room charges also do not reflect anything on TV, radio or other means of broadcast. Hence hotel rooms should be exempted from paying any royalties.

Moreover, we have argued for that free of charge of broadcast or cable programme, or else it is **double charge**. Since copyright-holders are paid by network operators, and they should be aware of that their copyright works would be playing to the public **free of charge** in the spirit of broadcasting.

##### **Our views are:**

- (a) Whether the statutory exemption should be extended to cover all underlying copyright works included in the broadcast or cable programme (exemption means an audience who **has not paid for admission** to the place where the broadcast or programme is shown or played, does not infringe any copyright);
  - Our Opinion: Yes! Support. Because TV, radio and cable TV are common "furniture" in HK family. Facilities like these in hotel rooms model on a domestic setting. Exemption should cover hotel rooms just like domestic residents need not to pay copyright royalties.
- (b) Whether the exemption should be extended to cover all public places where the broadcast or cable programme is shown or played except where goods or services are supplied at prices which are **substantially attributable** to the facilities afforded for seeing or hearing the broadcast or programme.

- Our Opinion: Yes! Support. Hotel lobbies, shopping arcade etc. are public areas. People are free to enter these areas for window shopping or enjoying a break. Background music in hotel food outlets are nothing substantial to our revenue, while food and staff services are the actual costs reflecting in bills. Therefore music does not incur any commercial income.

E.g. Background music is free for broadcasting or playing in Japan.

(c) Define the meaning of "paid for admission to the place".

- Our Opinion: "Paid for admission to the place" means a place is used for a particular commercial function in which to earn admission fee is the primary objective, i.e. commercial music concert, its tickets selling is a primary source for income. Meanwhile hotel function rooms leased out for commercial functions, licensing bodies should collect royalties directly from activity organiser, who is the one to collect and benefit from admission fee, but not venue provider.

## Chapter 7 Licensing Bodies

### **Licensing Bodies**

Licensing bodies like the Composers and Authors Society of HK Ltd. (CASH) and the International Federation of the Phonographic Industry (IFPI) are more or less **monopoly** in collecting music copyright royalties in HK. They should be better regulated.

How to monitor these licensing bodies in order to protect **consumers' right** is the crust of issue. For years' efforts, the Federation urged to Administration to launch a registration system for those licensing bodies and only those registered are required to publish their scale of charges. This is meant to increase transparency of the societies but a voluntary system is not much in force to help increase transparency. Hence **we insist** for a **compulsory registration** system.

E.g. societies in Japan are compulsory to register by Government. Their royalty charges also have to be approved by Government.

**Copyright Tribunal:** we have pointed out that the composition of membership is biased to the licensing bodies. Although the membership revised after the first term, still we think it is not fair enough for copyright users to bring their cases to Tribunal. Hence we propose an **arbitration system**; i.e. each party appoints its own arbitrator and agrees upon a third arbitrator to settle their disputes. That is both parties in disputes have a say in appointing a third party.

### **Our views are:**

- (a) whether the Copyright tribunal should be replaced with an arbitration system to adjudicate disputes between copyright users and licensing bodies; and

- Our Opinion: Yes! Support. Government should generate a large pool of third party arbitrators so that there are sufficient members for selection.

Moreover, to set up an arbitration-system is in line with the law reform committee's recommendations. A simple and less expensive dispute settlement method is preferred rather than going through lengthy and expensive legal process. The cost and effectiveness are the main concern. However, the Federation acknowledges that it is a new system to settle disputes in Hong Kong and it may take time to educate the population.

E.g. Arbitration system has been used in the U.S.A.

- (b) Whether licensing bodies should be mandated to be registered and publish their scales of royalty charges.
- Our Opinion: Yes! Support. Licensing bodies should be compulsorily registered and there should be a system for punishment e.g. fine or suspension of license, when malpractice arises. The scale of royalty charges should also be published at least three months in advance of effective date.

We hope the opinions above are well received by the Bureau. If there is any area needs clarification, please feel free to contact the undersigned.

Thank you very much for your attention.

Yours faithfully,

Michael LI  
Executive Director

**Letterhead of HONG KONG HOTELS ASSOCIATION**  
(Incorporated with Limited Liability)

**Office of the  
Executive Director**

Reference: EXD234/COR/12/01

**ORIGINAL BY MAIL  
& COPY BY FAX**

28th December, 2001

Ms. Laura Tsoi  
Commerce & Industry Bureau  
Government of the Hong Kong  
Special Administrative Region  
Level 29, One Pacific Place  
88 Queensway  
Hong Kong

Dear Ms. Tsoi,

**Re: Review of Copyright Ordinance**  
**Submission by Hong Kong Hotels Association**

Hong Kong Hotels Association, on behalf of its 79 member hotels, would like to make the following submission to Government regarding the proposed review of its existing Copyright Ordinance provisions relating to Music Copyright. For immediate reference, we enclose a copy of our original submission in 1996/97.

1. Our position is that music copyright should be restricted to performances of a public nature and when specific admission fees are payable by entrants to gain access to any such performances. However, when the purpose of visit to an establishment is primarily for the listening pleasure of copyrighted music and the operator of the establishment derives income from customers primarily from providing that music, music copyright then becomes an acceptable expense for the operator and we support that payment. The key words are 'primarily for' and 'commercial income'.
2. The general use of musical works, sound recordings and films, broadcasts and cable programs without the pre-condition of paid admission should therefore fall out of the provisions of the Ordinance. This is particularly the case when they are used as background music without any direct relationship to generating income as a result.
3. Under paragraph 78 of the previous draft Copyright Bill, it was provided that residents and inmates of hotels are excluded from the definition of 'having paid for admission'. The same paragraph was however, subsequently removed from the Ordinance when it was enacted and its reinstatement is called for to recognize the domestic setting of hotel rooms which is for the private dwelling of visiting guests to the hotel.

4. With respect to Licensing Bodies and Music Copyright Fee Tariffs levied by Licensing Bodies, the Ordinance should provide a legal mechanism and framework for Licensing Bodies to come under proper authorization and scrutiny of Government. In other words, control and regulation is necessary and Music Copyright Fee Tariffs levied by Licensing Bodies should be based on 'public interest' and 'what is reasonable in Hong Kong'. It would be in order for the Copyright Tribunal to decide what constitutes 'public interest' and 'what is reasonable in Hong Kong'.
5. In protecting intellectual property rights and making Hong Kong as compatible with prevailing international copyright standards and norms, and to maintain a fair balance among competing interests, the hotel industry is not against any of these objectives. The hotel industry is however gravely concerned about the lack of adequate control and regulation of Licensing Bodies and Music Copyright Fee Tariffs at the Government administrative level. It would also be wrong to give this responsibility to the Copyright Tribunal, which is not equipped with either the authority or legal power to exercise such responsibility.
6. Setting Music Copyright Fee Tariffs at will and allowing such tariffs to be universally applied to business operators without regard to the different levels of usage and income opportunity is an unfair practice and there is hardly any recourse to take when challenging such demands for payment. The existing limited recourse system involves lengthy and costly procedures and there is no established benchmark to follow when reviewing such cases.
7. Arbitration is desirable only when there is no clear control and regulation framework in place. Arbitration is also always a compromising solution affecting the fundamental underlying principles behind legislation and it can fail to provide consistency and fairness at times. We prefer to see control and regulation exercised at source by Government and not lengthy arbitration, which can be time consuming and costly to all parties.
8. In the final analysis, 'public interest' is served by providing maximum freedom of usage of music copyright at minimum cost for 'background music'. Music copyright holders should encourage greater usage of their music work in public places. By earning that goodwill, they would have promoted their music work to in turn allow them to focus their attention on public performances and music franchise holders such as TV stations etc., which is where the real revenue is.

We look forward to the pleasure of elaborating our views further at an informal discussion on 7th January, 2002.

Yours sincerely,

JAMES LU  
Executive Director

JL/jw

Att.

c.c. Ms. Maria Ng, Office of the Director of Intellectual Property  
Mr. Michael Li, Convenor, Concern Group of Music Copyright Ordinance



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**HONG KONG RETAIL MANAGEMENT ASSOCIATION**  
**香港零售管理協會**

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27 December 2001

Ms Laura Tsai  
Commerce and Industry Bureau  
Level 29 One Pacific Place  
88 Queensway  
Hong Kong

*(By fax: 2869 4420 & mail)*

Dear Ms Tsai

**REVIEW OF CERTAIN PROVISIONS OF COPYRIGHT ORDINANCE  
CONSULTATION DOCUMENT**

Thank you for your letter dated 31 October 2001 inviting our Association to comment on the captioned document.

Please find below our comments as follows:

- The Hong Kong Retail Management Association (HKRMA) supports in general the Government's recommendations as outlined in the captioned paper as we believe this will be favourable to the retail trade (i.e. the two main areas covering parallel imports and the playing of broadcasts in public).
- As a member of the Concern Group of Music Copyright Ordinance, we support the comments made by the Group and in particular, we stress here again the need for the Government to review the lack of accountability of CASH and IFPI for more effective monitoring of these licensing bodies as well as to put in place a clear and transparent system for fee collection and music copyright royalty charges.
- On 4.9(a), the HKRMA agrees that the statutory exemption in paragraph 4.2 should be extended to cover all underlying works included in the broadcast or cable programme.
- On 4.9(b), we agree that the exemption should be extended to cover all public places where the broadcast or cable programme is shown or played except where the goods and services are supplied at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast or programme (i.e. no royalties should be



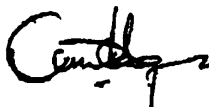
charged in public places and any stores/retail outlets where the music is ancillary and not used to generate commercial income).

- On 5.8, we agree that liberalising parallel imports will increase competition and the availability of products in the market, resulting in more choice and lower prices for the consumer.
- On 5.14(a), we believe that civil and criminal sanctions against the parallel importation and subsequent dealing of copyright work should be removed (without exception).
- On 5.14(b), we believe that the criminal sanctions against the parallel importing and subsequent dealing of copyright works should be removed.
- On 4.14(c), we believe that the civil liability and criminal sanctions imposed on end-users of parallel imported copies of copyright works should be removed.

I hope the above comments will be useful in assisting the Government's review on the subject.

In the meantime, should you have any queries, please do not hesitate to contact the undersigned at 2866 8311.

Yours sincerely,



Anita Bogaman (Miss)  
Executive Director

c.c. Mrs Selina Chow, Legislative Councillor, Wholesale & Retail.  
Ms Connie Szeto, Clerk to Panel, Legco Panel on Commerce and Industry.  
Mr Michael Li, Convenor, Concern Group of Music Copyright Ordinance.

Ref: GEN/036/01  
28 December 2001

**By Post & Fax: 2869 4420**

Ms Laura Tsoi  
Assistant Secretary for Commerce and Industry  
Level 29, One Pacific Place  
88 Queensway  
Hong Kong

Dear Ms Tsoi

**Comments on the Consultation Document - Review of Certain Provisions of Copyright Ordinance**

First of all, may I take this opportunity to introduce the Association of Better Business and Tourism Services (BBTS). BBTS is a membership organisation with the vision to foster an environment that stimulates better business and tourism services in Hong Kong. Our mission is committed to looking after the interests and to improving the standards and prosperity of Hong Kong's retail and tourism-related sectors. Currently, BBTS has a total of about 700 members from the *retail, restaurants and tourism-related services* establishments. For more information about us, please visit our newly launched website at [www.bbtshk.com](http://www.bbtshk.com).

On behalf of more than 200 members who are restaurant and shopping mall operators, we are enthusiastic to comment on the captioned topic with special emphasis on **Chapter 4** - Permitted Acts related to Free Public Showing or Playing of Broadcast or Cable Programme; and **Chapter 7** - Licensing Bodies.

In response to the questions raised in the captioned Consultation Document on Chapters 4 and 7, we would like to express our views as follow:

**Chapter 4**

- a. BBTS supports that the statutory exemption in paragraph 4.2 should be extended to cover all underlying copyright works included in the broadcast or cable programme. The argument that a higher level of protection should be given to the copyright holders to encourage Intellectual creation is not substantiated since copyright holders are already paid royalties by network operators, and they should be well aware that their copyright works would be played to the public in the spirit of broadcasting and therefore should not expect to receive further royalty from such audience.

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Page 2  
28 December 2001  
Ms Laura Tsoi  
Assistant Secretary for Commerce and Industry

- b. We also support that the exemption should be extended to cover all public places where the broadcast or cable programme is shown or played except where the goods or services are supplied at prices which are substantially attributed to the facilities afforded for seeing or hearing the broadcast or programme. The examples quoted in the consultation document are very unique and relevant in understanding that the existing condition for exemption - that the audience has not paid for admission to the place where the broadcast or cable programme is to be seen or heard - is too restrictive. If such an extension is not to be made, examples such as the showing of a television broadcast to customers in a restaurant, the provision of a television set in a hotel room for the use of guests or the playing of a radio programme in a taxi carrying passengers which now do not warrant any form of royalty will be required to pay the royalty.

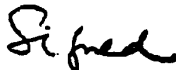
**Chapter 7**

- a. We do not have strong view as to whether the Copyright Tribunal should be replaced with an arbitration system to adjudicate disputes between copyright users and licensing bodies so long as the system is cost effective and can resolve the disputes in an efficient manner.
- b. We support that copyright licensing bodies should be mandated to be registered and to publish their scales of royalty charges. It is extremely important that a clear and transparent fee schedules should be made publicly available.

Should you have any further questions relating to our comments, our Ms Victoria Luck, Executive Manager is most happy to discuss with you.

Thank you for your kind attention.

Yours sincerely,



Vincent Fang  
Chairman

Betty Yuen

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maureenfung@shkp.com.hk; samsonchu@shkp.com.hk; kfchan@shkp.com.hk  
主题: Copyright Ordinance on Music Broadcast in Shopping Mall

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doc.1.doc

Dear Laura,

Our group, Sun Hung Kai Properties, currently operates and manages 77 shopping malls and arcades of different sizes all over Hong Kong. On behalf of our group, I would like to submit our opinion on your Consultation Document on Review of Certain Provisions of Copyright Ordinance as per attached. Should you have any further queries, please feel free to contact me direct, I may also be reached by phone 28265310. Thank you for your kind attention and best regards to you.

(See attached file: doc.1.doc)

LT HO,  
Deputy General Manager,  
Marketing of Retail Leasing

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#### Chapter 4

We support the statutory exemption in para. 4.2 be extended to cover all underlying Copyright Works (e.g. the music and lyrics of a song) included in the broadcast or cable programme, and such exemption be extended to cover all public places where the broadcast or cable programme is shown or played and where no admission fee is charged, or where goods or services are supplied at prices which are not substantially attributable to the facilities afforded or seeing or hearing the broadcast or programme. ②

#### Chapter 7

We support the adoption of an arbitration system in place of the current Tribunal as the composition of the Tribunal membership is considered biased to the copyright licensing bodies. Under the proposed arbitration system, each party appoints its own arbitrator and agrees upon a third arbitrator to settle their disputes. Both parties in disputes will have a say in appointing a third party. Hence a better chance to reach a mutually acceptable settlement rather than being subjected to adjudication imposed by the Tribunal.

*Sun Hung Kai Properties .*



# ASEAN RESOURCES HOLDINGS LIMITED

(Incorporated in Bermuda with limited liability)  
Registered Office : Clarendon House, Church Street, Hamilton, HM11, Bermuda.

3

Our Ref. GTN/L240/01

21<sup>st</sup> December 2001

The Commerce and Industry Bureau  
Level 29, Once Pacific Place  
88 Queensway  
Hong Kong

Attn: Ms. Laura Tsui  
Assistant Secretary for Commerce & Industry

Dear Madam,

**Re : Copyright Ordinance**

We refer to the public consultation on Copyright Ordinance. As the beneficial owner of the Commercial Podium at Elizabeth House and a substantial beneficial shareholder of Hotel Nikko and JW Marriott Hotel, we are pleased to submit herewith our views on the captioned Ordinance as follows :-

**Chapter 4**

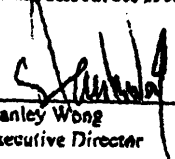
We support the statutory exemption in para. 4.2 be extended to cover all underlying Copyright Works (e.g. the music and lyrics of a song) included in the broadcast or cable programme, and such exemption be extended to cover all public places where the broadcast or cable programme is shown or played and where no admission fee is charged, or where goods or services are supplied at prices which are not substantially attributable to the facilities afforded or seeing or hearing the broadcast or programme.

**Chapter 7**

We support the adoption of an arbitration system in place of the current Tribunal as the composition of the Tribunal membership is considered biased to the copyright licensing bodies. Under the proposed arbitration system, each party appoints its own arbitrator and agrees upon a third arbitrator to settle their disputes. Both parties in disputes will have a say in appointing a third party. Hence a better chance to reach a mutually acceptable settlement rather than being subjected to adjudication imposed by the Tribunal.

We also support that copyright licensing bodies should be mandated to be registered and to publish their scales of royalty charges. Should malpractice arise, the offending body may be subject to suspension from collecting royalties, or even to de-registration as sanction against abuse of rights.

Yours faithfully,  
For and on behalf of  
Asean Resources Holdings Ltd.

  
Stanley Wong  
Executive Director

39/F, New World Tower I, 18 Queen's Road Central, Hong Kong  
香港中環皇后大道中十八號新界皇大風第一座二十一樓

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552 537 8968

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P.02

## Hutchison Whampoa Property

The property group of  
Hutchison Whampoa Limited  
REF: HWPL/2001/12445



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21<sup>st</sup> December, 2001

Miss Laura Tsoi,  
Assistant Secretary for Commerce and Industry  
Commerce and Industry Bureau  
Level 29, One Pacific Place  
88 Queensway  
Hong Kong

Dear Miss Tsoi,

Re: Government's Consultation Document on the review of  
certain provisions of the Copyright Ordinance

We refer to Government's Consultation Document on the review of certain provisions of the Copyright Ordinance and we are pleased to submit the view of our Group on the issues raised in Chapter 4 and 7 of the said Document as follows:-

(A) Chapter 4

- i) Statutory exemption should be extended to cover all underlying copyright works included in the broadcast or cable programme.
- ii) Exemption should be extended to cover all public places where the broadcast or cable programme is shown or played except where goods or services are supplied at prices which are SUBSTANTIALLY attributable to the facilities afforded for seeing or hearing the broadcast or programme.

(B) Chapter 7

- (i) In order to keep the mind at ease of those people who had alleged that the Copyright Tribunal is biased towards copyright owners, Government may consider replacing the existing Copyright Tribunal with an arbitration system to adjudicate disputes between copyright users and licensing bodies.
- (ii) Government may consider enacting legislation to the effect that Licensing Bodies should be mandated to be registered and publish their scales of royalty charges.

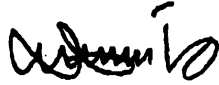
.../2-



We trust that our view presented hereof will be duly considered by Government for incorporation into the Copyright Ordinance.

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Yours faithfully,  
For and on behalf of  
HUTCHISON WHAMPOA PROPERTIES LIMITED



Patrick T. L. Leung  
General Manager - Hong Kong  
Development & Marketing

whp/wham/whci-443



Betty Yuen

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寄件者: 代理 K C Leung  
收件者: laura\_tsoi@clb.gov.hk  
主旨: Re : Consultation Document on Review of Certain Provisions of Copyright Ordinance

Dear Ms. Tsoi,

(6)

**Consultation Document on Review of Certain Provisions of Copyright Ordinance**

The Wharf Group manages a portfolio of over 3.5 million square feet of retail properties in Hong Kong.

On behalf of our Group, I would like to respond to the above consultation document with our views expressed in the attached position paper.

Should you have any further queries, please feel free to contact me either by phone 2118-8330, by fax 2118-8663 or by e-mail [kcleung@wharfholdings.com](mailto:kcleung@wharfholdings.com).

Thank you for your attention.

**K. C. Leung**  
Wharf Estates Management Company Limited  
Director & General Manager



Position Paper on  
Copyright Or...



**Position Paper**  
**in response to Consultation Document on**  
**Review of Certain Provisions of Copyright Ordinance**

***Chapter 4***

We support the statutory exemption in para. 4.2 be extended to cover all underlying Copyright Works (e.g. the music and lyrics of a song) included in the broadcast or cable programme, and such exemption be extended to cover all public places where the broadcast or cable programme is shown or played and where no admission fee is charged, or where goods or services are supplied at prices which are not substantially attributable to the facilities afforded or seeing or hearing the broadcast or programme.

***Chapter 7***

We support the adoption of an arbitration system in place of the current Tribunal as the composition of the Tribunal membership is considered biased to the copyright licensing bodies. Under the proposed arbitration system, each party appoints its own arbitrator and agrees upon a third arbitrator to settle their disputes. Both parties in disputes will have a say in appointing a third party. Hence a better chance to reach a mutually acceptable settlement rather than being subjected to adjudication imposed by the Tribunal.

We also support that copyright licensing bodies should be mandated to be registered and to publish their scales of royalty charges. Should malpractice arise, the offending body may be subject to suspension from collecting royalties, or even to de-registration as sanction against abuse of rights.

Dec. 27, 2001

Ms. Laura Tsoi,  
Assistant Secretary for Commerce and Industry,  
Commerce and Industry Bureau,  
Level 29, One Pacific Place,  
88 Queensway,  
Hong Kong.

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Post-it® Fax Note	7871	Date	27/12/01	Page	1
To	Ms. K. C. Lam	From	Li Ping Yid		
Co./Dept.	W-IPRF ESTABL	Co.	SAINT'S ALP (INTL) CO., LTD		
Phone #		Phone #			
Fax #	2118 8663	Fax #			

Dear Sirs,

Re: Consultation Document: Review of Certain Provisions of Copyright Ordinance

We refer to the captioned and please find herewith our position for captioned consultation document as follows:

**Chapter 4**

We support the statutory exemption in para. 4.2 be extended to cover all underlying Copyright Works (e.g. the music and lyrics of a song) included in the broadcast or cable programme, and such exemption be extended to cover all public places where the broadcast or cable programme is shown or played and where no admission fee is charged, or where goods or services are supplied at prices which are not substantially attributable to the facilities afforded or seeing or hearing the broadcast or programme.

**Chapter 7**

We support the adoption of an arbitration system in place of the current Tribunal as the composition of the Tribunal membership is considered biased to the copyright licensing bodies. Under the proposed arbitration system, each party appoints its own arbitrator and agrees upon a third arbitrator to settle their disputes. Both parties in disputes will have a say in appointing a third party. Hence a better chance to reach a mutually acceptable settlement rather than being subjected to adjudication imposed by the Tribunal.

We also support that copyright licensing bodies should be mandated to be registered and to publish their scales of royalty charges. Should malpractice arise, the offending body may be subject to suspension from collecting royalties, or even to de-registration as sanction against abuse of rights.

Yours faithfully,



Lawrence Chan  
Director & General Manager

cc: Mr. K. C. Leung, Wharf Estates Management Company Ltd  
Facsimile: 2118-8663

山頂協會  
The Peak Association

27 December 2001

By Facsimile and by Mail  
2869-4420

Ms Laura Tsoi  
Assistant Secretary for Commerce and Industry  
The Government of Hong Kong SAR  
Level 29, One Pacific Place  
88 Queensway  
Hong Kong

(9)  
L.T.

Dear Ms Tsoi

RE: Consultation Document - Review of Certain Provisions of Copyright Ordinance

I would like to take this opportunity to introduce The Peak Association Limited. The Peak Association is a membership organisation, which represents the interests of businesses located at Hong Kong's Victoria Peak. Our members include but are not limited to restaurant, retail and shopping mall operators. The purpose of the association is twofold, it is a (1) Marketing and Communication Vehicle and (2) Representative Body to advocate the business interests and views of Peak businesses - involving environment, transportation, security, urban planning etc. The ultimate goal is to stimulate business as well as to look after the interests and improve the business environment on The Peak.

On behalf of The Peak Association, I would like to comment on the captioned topic with special emphasis on Chapter 4 - Permitted Acts related to Free Public Showing or Playing of Broadcast or Cable Programme; and Chapter 7 - Licensing Bodies.

In response to the questions raised in the captioned Consultation Document on Chapters 4 and 7, we would like to express our views as follow:

Chapter 4

- a. The Association supports that the statutory exemption in paragraph 4.2 should be extended to cover all underlying copyright works included in the broadcast or cable programme. It would be unfair and inconsistent if the copyright holders of the music and lyrics of the song may demand the payment of royalty from shopping mall and showroom operators whereas the radio broadcaster and performers cannot do so. The argument that a higher level of protection should be given to the copyright holders to encourage intellectual creation is not substantiated because those copyright holders had already received their royalty when they licensed their work to the radio and television network operators and should not expect to receive further royalty.

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P.O. Box Number 803 General Post Office, Hong Kong.  
TELEPHONE 2111 9538 FACSIMILE 2104 2664

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+ 852 2592 7630

P. 01

Ms Laura Tao  
Assistant Secretary for Commerce and Industry  
27 December 2001  
Page 2

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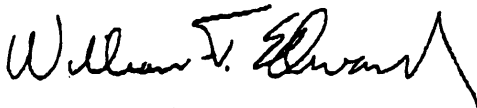
- b. The Association also supports that the exemption should be extended to cover all public places where the broadcast or cable programme is shown or played except where the goods or services are supplied at prices which are substantially attributed to the facilities afforded for seeing or hearing the broadcast or programme. The examples quoted in the consultation document are very unique and relevant in understanding that the existing condition for exemption - that the audience has not paid for admission to the place where the broadcast or cable programme is to be seen or heard - is too restrictive. If such an extension is not to be made, examples such as the showing of a television broadcast to customers in a restaurant, the provision of a television set in a hotel room for the use of guests or the playing of a radio programme in a taxi carrying passengers which now do not warrant any form of royalty will be required to pay the royalty.

Chapter 7

- a. The Association does not have strong views as to whether the Copyright Tribunal should be replaced with an arbitration system to adjudicate disputes between copyright users and licensing bodies so long as the system is cost effective and can resolve the disputes in an efficient manner.
- b. The Association supports that copyright licensing bodies should be mandated to be registered and to publish their scales of royalty charges. It is extremely important that a clear and transparent fee schedules should be made publicly available.

The Association would encourage further discussion or dialogue on the subject and render our comment if deemed appropriate. Should you have any further questions relating to our comments please contact me via my direct line 3105-0328.

Yours sincerely  
For and on behalf of  
The Peak Association



William F. Edward  
Chairman