

錄音製品播放版權(東南亞)有限公司

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Clerk to the Bills Committee on
Copyright (Amendment) Bill 2006
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong

By email slchan@legco.gov.hk
and by fax 2121 0420

Dear Sirs,

Re: Section 81A of the proposed Copyright (Amendment) Bill 2006 (the "Amendment Bill")

We thank the Council's letter dated 12th April 2006 addressed to IFPI (Hong Kong Group) Limited for inviting the recording industry to submit their views and comments on the Amendment Bill.

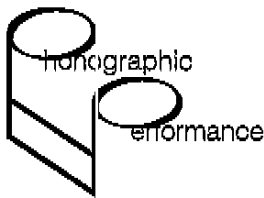
We are the wholly owned subsidiary of IFPI (Hong Kong Group) Limited and are a public performance collecting society licensing, among other things, broadcast and public performance of musical visual/sound recordings on behalf of the majority of the recording companies in Hong Kong and abroad.

We are somewhat perplexed as to why this issue would be brought up again. We fully support the views as expressed by IFPI (Hong Kong Group) Limited¹ to the Bills Committee of 30th April 2006.

However, we would like to add and point out that the former section 72² of the U.K. Copyright Designs and Patents Act 1988, the equivalent section 81 of the Hong Kong Copyright Ordinance, has been substantially amended under and by virtue of The Copyright and Related Rights Regulations 2003 (2002/2498) implementing the European Directive 2001/29/EC on the "harmonization of certain aspects of copyright

¹ Paragraphs 60-65 of the submission of IFPI (Hong Kong Group) Limited dated 30th April 2006 refer.

² Regulation 21 of the U.K. Copyright and Related Rights Regulations 2003 (2002/2498)



and related rights in the information society". The Copyright and Related Rights Regulations 2003 came into effect on 31st October 2003.

The amended section 72 has narrowed the scope of free public showing and playing of broadcasts so that any commercial use of broadcast to provide a musical ambience or musical entertainment will require licence from the owners (the author of which are not the broadcasters) of the musical sound recordings. In a practical term, section 72 has been amended to cut down its provisions drastically with the aim of making the permitted act in compliance of the 3-step test as far as concern sound recordings.

Section 72 divides sound recordings into two categories, namely excepted sound recordings³ and all other sound recordings. Virtually, all musical sound recordings which are commercially released to the public will fall within the definition of the excepted sound recordings⁴. The non-excepted sound recordings include the author of the broadcasts such as traffic information, weather conditions and forecast, news reporting other talk shows etc.

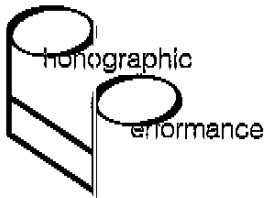
Then playing of the excepted sound recordings in the public will only be permitted if such playing of excepted sound recordings forms part of the activities of an organization that is not established or conducted for profit or is necessary for the purpose of demonstrating or repairing broadcast reception equipment⁵. For sound recordings of music that are not produced by the broadcaster, all other activities will now no longer fall within the scope of section 72.

The overall effect of section 72 is that all public places such as café, bar, boutique shop, public transport etc will need one or more licences to have a television or radio broadcasts playing for the benefit of its employees and customers unless the broadcasts do not include any copyright literary, dramatic or musical works or any commercially released musical sound recordings (excepted sound recordings).

³ Section 72 (1) (b) of the Copyright, Designs and Patents Act 1988 refers.

⁴ Section 72 (1 A) of the Copyright, Designs and Patents Act 1988.

⁵ Section 72 (1B) of the Copyright, Designs and Patents Act 1988.



However, the proposed section 81A has widened the scope of the permitted act without due respect to the copyright literary dramatic and musical works and the commercially released musical sound recordings.

We therefore propose that section 81 be amended to narrow the scope of permitted act similar to that of U.K section 72 of the Copyright, Designs and Patents Act 1988 (as amended).

The public information aspect of the sound broadcast such as news reporting, weather broadcast, traffic condition, talk show etc. may be exempted under the proposed section 81A. However, **all commercially released musical sound recordings must be excluded from** the operation of the proposed **section 81A** and be outside the scope of the exception as proposed therein.

We invite the Bills Committee to consider to bring the relevant law to meet with the international norms and in compliance with the Berne Convention⁶, TRIPS Agreement⁷, WIPO Internet Treaties⁸ and other international treaties.

Yours faithfully,
On behalf of Phonographic Performance (South East Asia) Ltd



Patricia Tsang
General Manager

C.C. IFPI (Hong Kong Group) Ltd

⁶ Article 11 *bis* of the Berne Convention provides that authors of literary and artistic works shall have the broadcasting and related rights. There are 3 exclusive rights (i) to authorizing the broadcasting of their works, (ii) rebroadcasting and (iii) the playing of the broadcast of their works in public.

Article 2 (1) of the Berne Convention provides that the expression "literary and artistic works shall include, among others, musical compositions with or without words and cinematographic films."

⁷ Article 9 (1) of the TRIPS provides that Members shall comply with articles 1 through 21 of the Berne Convention.

⁸ Article 8 of WIPO Copyright Treaty.

Article 15 of WIPO Performances and Phonograms Treaty and Article 2 (g) as to the definition of "communication to the public" for the purpose of Article 15.