



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

國際唱片業協會(香港會)有限公司

13<sup>th</sup> July, 2006

The Hon SIN Chung-kai, JP  
Chairman of Bills Committee on Copyright (Amendment) Bill 2006  
Room 410, West Wing  
Central Government Offices  
Hong Kong

Dear The Hon SIN Chung-kai, JP,

**Re : Playing of sound broadcasts inside vehicles**

We refer to the above vehicular driver exemption, we have received an opinion from London's head office for your attention as follows:

*Background:* Sound recording producers have an exclusive public performance right in Hong Kong (sec. 27 of the 1997 Copyright Ordinance). CITB proposes to exempt from this right the "playing (...) inside a vehicle for the purpose of affording the driver of the vehicle access to public information" (proposed new section 258A, page C363 section 52 of the Copyright (Amendment) Bill 2006).

It is our view that **this exemption is unnecessary and, if passed, would result in legal uncertainty.** A "Public performance" takes place only where the playing of the sound recording is "in public". In the UK, where a similar exclusive public performance right exists, the term "in public" was considered in a long list of court cases. The main criteria applied by the UK judiciary for determining whether a performance is of a "public" nature is the character of the audience. Supporting tests to determine the character of the audience are whether members of the audience are tied by family relationship and whether the public at large has potential access to the place of performance [see, for example, *Jennings v Stephens* [1963] 1 Ch. 469 and *PRS v Harlequin* [1979] FSR 233].

In the case of public vehicle, it is clear that the audience, which changes frequently, has free access to the place of performance and is not bound by any family ties.

We are of the view that the exemption is unnecessary because in situations where the driver plays the music/broadcast for his own enjoyment or information, the playing is not a public one anyway as there is no audience other than the individual driver. On the other hand, if the proposed exemption is passed, it would be impossible to determine in situations where there are passengers/audience present whether the playing is for "public information" or not. The driver will always be able to make the argument that the broadcast music was played while he was waiting for a news break, hence making the application of the public performance right ineffective, and practically impossible, not only with respect to small taxis but also public buses and other large transport vehicles.

In this connection, we wish to draw your attention that we have been granting licensing scheme to public transports in Hong Kong with respect to the playing or showing of



musical sound/visual recordings or broadcast embodying these works for years and any uncertainty creates difficulties in enforcing the public performance right in many situations that involve public transport and will only lead to unnecessary litigation.

Thank you for your kind attention.

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

A handwritten signature in black ink, appearing to read 'Ricky Fung', is written over a circular stamp that is mostly illegible.

Ricky Fung  
Chief Executive Officer

c.c. IFPI (Hong Kong Group) Committee  
IFPI Asian Regional Office  
Mr Gadi Oron – IFPI