



## Public Statement

### An Important Victory for Copyright Owners in the Hong Kong Music History

We represent for Hong Kong Recording Industry Alliance Limited (“**HKRIA**”) and its wholly-owned subsidiary, Hong Kong Karaoke Licensing Alliance Limited (“**HKKLA**”).

Established in October 2008, HKRIA is a not-for-profit copyright management organization and a Hong Kong registered copyright licensing body which handles the licensing of the broadcast, public performance and relevant usage of the copyrighted sound recordings and music videos owned by its record company members in Hong Kong, Macau and other territories. HKRIA’s founding members include Sony Music, Universal Music and Warner Music.

It has always been HKRIA’s mission to administer fair and reasonable licensing schemes that not only protect the music industry by collecting reasonable licensing fees for copyright owners, but also offer high quality licensing services that allow the general public to use HKRIA’s members’ music conveniently and legally in Hong Kong. On 1 July 2010, HKKLA commenced a scheme for the use and reproduction of karaoke music videos by physical outlets and establishments providing karaoke entertainment services (“**K-Server Licensing Scheme**”), thereby enabling karaoke operators to legally and easily use and reproduce quality music videos for public entertainment on a fair and reasonable basis.

On 9 August 2010, Neway Music Limited (“**Neway**”), a member of the Neway Karaoke Group which is the largest karaoke operator in Hong Kong, raised an objection with the Copyright Tribunal seeking to challenge the reasonableness of the terms of HKKLA’s K-Server Licensing Scheme and seeking to pay lower licensing fees (i.e. CT 2 / 2010, “**Proceeding**”).

The Proceeding has been dragged on for about a decade. Despite the relevant karaoke music videos were administered by HKKLA from 1 July 2010 to 30 June 2015 (when the K-Server Licensing Scheme came to an end), HKKLA did not receive a penny from Neway for its use and reproduction of the karaoke music videos until the conclusion of the Proceedings earlier this year. In the Proceeding, upon the Copyright Tribunal’s ruling that the terms of K-Server Licensing Scheme are fair and reasonable, HKKLA demand a total licence fee in the sum of **HK\$90,350,640** from Neway for the period from 1 July 2010 to 30 June 2015. Surprisingly, Neway claimed in its licence fee calculation submission that the licence fee payable by them should be a negative figure (which means Neway should not be held liable to pay any licence fees at all).

Hong Kong is a place which respects intellectual property and the rule of law. HKKLA vows to defend the important principle that reasonable fees must be paid for using a rightful owner's original music. HKKLA strongly believes that a suitable licence fee arrangement encourages music creators and producers to create more and better music for the public good, and ensures the healthy and sustainable development of the music industry. After years of persevering through the lengthy legal procedure at high legal costs, our client HKKLA can finally share with the public that:

The **Copyright Tribunal** has in their 23 December 2019 and 10 November 2020 decisions (which are the first ever decisions made by the Hong Kong Copyright Tribunal) **held** that:

1. Neway's allegation that the terms of HKKLA's K-Server Licensing Scheme are unreasonable be **dismissed**;
2. The structure and the rates of HKKLA's K-Server Licensing Scheme are **reasonable** and no variations to the terms are necessary;
3. Neway must pay the full amount of **HK\$90,350,640** as the licence fee for its use of the karaoke music videos administered by HKKLA from 1 July 2010 to 30 June 2015; and
4. Neway's arguments and conduct in calculation of the licence fees have been found to be **frivolous, vexatious or otherwise abusive of the Copyright Tribunal's process**. As a result, the Copyright Tribunal ordered Neway on a *nisi* basis to pay HKKLA's costs of and related to the calculation of licence fees on the party and party basis.

Further, pursuant to the Order On Costs of 8 April 2020, the Copyright Tribunal found that Neway conducted the Proceedings in a way that unreasonably or unnecessarily caused HKKLA to incur significant costs, and ordered Neway to pay 80% of HKKLA's costs of and related to the Proceedings on the party and party basis.

In future, our client shall continue to uphold their mission in protecting and serving the rights and interests of the music industry and Hong Kong's position as an intellectual property hub.

**ELLALAN**

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