Dear Ally Gray, EmuBands,

We the undersigned 31 human rights organizations and practitioners write to express our profound concern about your company's recent decision to remove the pro-democracy anthem 'Glory to Hong Kong' from your global distribution partners. The move to take down the song from streaming platforms such as Apple Music, iTunes, and Spotify may constitute complicity with this arbitrary infringement of the freedom of expression and access to information. Your decision appears based on a flawed understanding of a court order in Hong Kong, which does not adhere to international human rights law concerning acceptable restrictions on the freedom of expression, and certainly does not apply extraterritorially. You have acknowledged "[your company] are not experts in the issues involved and would not wish to insult anyone's intelligence by pretending." As experts, we urge you to immediately reverse the arbitrary ban and resist future pressure to reimpose such a ban.

We note that a few days after the imposition of your ban, DGX Music, the artists behind the content, successfully found a new distributor to resume global access. In their statement, they noted that, "unjustified repression will not silence the people, and even if we lose our instruments and our accompaniment, even if we lose a publisher, our pursuit of freedom and democracy will never end." Now, even though DGX Music has found a new distributor, we still express our alarm at your decision and flawed understanding of the Hong Kong decision.

On 8 May 2024, the Hong Kong Court of Appeals reversed the High Court's July 2023 decision, which ruled against the ban over concerns of possible 'chilling effects' on free speech, and instead invoked the National Security Law to call on intermediaries not to provide access to the 2019 protest song 'Glory to Hong Kong' with the intent of 'inciting others to commit secession,' 'with a seditious intention,' as to 'misrepresent it as the national anthem' or to 'suggest that [Hong Kong] is an independent state', among others. Even the vague and overbroad decision is clear that the song itself is not explicitly illegal.

While flawed, the injunction does allow for exemptions, which we worry you have failed to take into consideration in imposing your ban. The judgment holds that the '[o]rder does not prohibit any lawful acts in connection with the Song, whether its melody or lyrics or in combination, conducted for purposes such as academic activity and news activity, provided that they do not involve any of the acts as set out [above].' However, by imposing a global ban across all of your distribution partners you make it impossible for anyone to access the song even for such purposes deemed lawful under the already restrictive injunction.

Furthermore, the injunction invokes the highly-problematic National Security Law (NSL) as its basis. For example, the injunction draws on the certificate issued by the Hong Kong Chief Executive issued under NSL Article 47, which empowers the executive to make unilateral determinations regarding national security that are binding upon the court, a distinct infringement on the independence of the judiciary.

The injunction's reliance on the NSL raises serious human rights concerns in light of the documented crackdown in Hong Kong since the Law came into force in 2020. This is why, in its Concluding Observations on the fourth periodic report of Hong Kong in November 2022, the UN Human Rights Committee called on Hong Kong to 'repeal the current National Security Law and, in the meantime, refrain from applying it.' More recently, the UN Committee on Economic, Social and Cultural Rights in its March 2023 Concluding Observations on the third periodic report of China, including Hong Kong, recommended Hong Kong ensure that the NSL does not arbitrarily interfere with the independence of the judiciary and that it must be reviewed to bring it in line with its economic, social and cultural rights obligations.

To this end, decisions based on the NSL, such as the injunction, should be treated under the same concerns and opposed due to its incompatibility with international human rights law. We are therefore concerned that your actions, as such, may constitute complicity with this arbitrary infringement of the freedom of expression and access to information, under both UK and international human rights law.

Article 10 of the United Kingdom Human Rights Act 1998, protects the right to freedom of expression and to receive and impart information regardless of frontiers, including through public protest, the arts, and online. This is likewise enshrined in the European Convention on Human Rights, Article 10, incumbent upon all Council of Europe member states. Article 19 of the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR) establish the right to freedom of expression and access to information.

International human rights law holds that the freedom of expression may only be limited under strict circumstances, based on the principles of legality, legitimacy, and necessity and proportionality. Vague or overbroad restrictions are never permissible. National security may only be used to protect the country's existence against the threat of force, and never to protect the government from embarrassment or the exposure of information. Restrictions must be based on a direct and immediate link between the expression and the protected interest, and specific, tailored, and the least intrusive means capable of achieving the same limited result.

The UN Guiding Principles on Business and Human Rights (UNGPs), furthermore, calls on businesses to avoid 'causing or contributing to adverse human rights impacts through their own activities' and to carry out human rights due diligence to identify, prevent, and mitigate any adverse human rights impacts. The UNGPs also calls on companies to side with international human rights principles when faced with conflicting requirements.

For these reasons, the Global Network Initiative, the leading multistakeholder forum for freedom of expression and privacy at the intersection of technology and human rights, has expressed its concerns with the injunction and the risks it poses to human rights in Hong Kong and extraterritorially.

Your company's removal of the song from its global distributors has been opposed by the artists. Since the 8 May ruling, acts of solidarity in protest of the injunction have taken place in the UK, with more planned moving forward. As such, we draw your attention to the potential reputational risks faced in the UK and elsewhere as a result of the ongoing ban.

To this end, we ask that you publicly disclose any communications between your company and the Hong Kong authorities regarding global distribution of 'Glory to Hong Kong', that you publicly disclose information on any human rights impact assessments or other decision-making leading up to the imposition of the ban, and that you immediately reverse the arbitrary ban, resume distribution across global partners, and resist future pressure to reimpose a global ban.

Sincerely,

Access Now
ARTICLE 19
Assembly of Citizens' Representatives, Hong Kong (ACRHK)
China Aid Association
Chinese Human Rights Defenders (CHRD)
Citizen Congress Watch (CCW)
Committee for Freedom in Hong Kong Foundation (CFHK)
Covenants Watch 人權公約施行監督聯盟
Democracy for Hong Kong (D4HK)
Doublethink Lab
EngageMedia Collective
424 Foundation
FIDH - International Federation for Human Rights
GreatFire

Hong Kong Centre for Human Rights
Hong Kong Democracy Council (HKDC)
Hong Kongers in San Francisco Bay Area
Hong Kong Labour Rights Monitor (HKLRM)
Hongkonger in Deutschkand e.V.
HongKongers in Leeds
Hong Kong Watch
Human Rights in China (HRIC)
Judicial Reform Foundation 財團法人民間司法改革基金會
Kit Chan
Lady Liberty Hong Kong
Netherlands for Hong Kong
Open Net
Re-Water CIC
Ricker Choi
Safeguard Defenders
Taiwan Labour Front 台灣勞工陣線

香港：英國發行商應撤銷對民主之歌的全球審查制度

致Ally Gray, EmuBands,

我們以下署名的31個人權組織或倡議者，欲藉此信表達對貴公司近日決定將民主示威歌曲《願榮光歸香港》從全球發行夥伴中下架的深切擔憂。將這首歌從蘋果音樂、iTunes和Spotify等串流平台下架的舉措可能構成任意侵犯言論自由和知情權的共謀行為。貴公司的決定似乎是基於對香港法院裁決的錯誤理解，該裁決不僅不符合國際人權法中有關可接受的對言論自由加以限制的規定，且顯然不適用於域外。貴公司已然認知到了「貴公司並非相關問題的專家，也不希望因為佯裝專家而冒犯任何人的智慧。」而作為專家，我們敦促貴公司立即撤銷此任意的禁令並對抗未來重新實施此類禁令的壓力。

我們注意到，在貴公司下架歌曲的幾日後，該歌曲創作團隊DGX Music找到了一個新的發行商重新上架該歌曲。在該團隊的聲明中，他們指出：「*不公正的迫害不會使人民沈默，即使我們失去了樂器及伴奏，即使我們失去了發行商，我們對自由和民主的追求永遠不會結束*」。現在，即便DGX Music已經找到了新的發行商，我們仍對貴公司的決定及貴公司對於香港情勢的錯誤認知表示擔憂。

2024年5月8日，香港上訴法院推翻了高等法院於2023年7月作出的裁決（該裁決因擔憂可能對言論自由產生「寒蟬效應」而裁定禁令無效），並轉而援引《國家安全法》，要求中介平台不得以「煽動他人分裂」、「具有煽動意圖」、「將其誤傳為國歌」或「暗示香港是一個獨立國家」等為目的，提供2019年的抗議歌曲《願榮光歸香港》。而即使是這一模糊不清且過於寬泛的裁決亦清楚表明，這首歌本身並不明確違法。

儘管禁令存在缺陷，但其確實存在豁免範圍，我們擔心貴公司在實施禁令時並未考慮這一點。該裁決指出，「只要這些行為不涉及上述的任何行為，禁令並不禁止與該歌曲相關的任何合法行為，無論是其旋律或歌詞，或其組合，也不論基於學術活動和新聞活動等目的與否。」然而，通過對貴公司的所有發行夥伴實施全球性禁令，貴公司將導致任何人皆無從存取這首歌曲，即便基於限制性禁令下已被視為合法的目的亦然。

此外，該禁令援引了問題重重的《國家安全法》(NSL)作為依據。例如，禁令援引了香港行政長官根據《國家安全法》第47條簽發的證明書，該規定授權行政長官就國家安全做出對法院具有約束力的單方面認定，這明顯侵犯了司法獨立。

有鑒於自2020年《國家安全法》生效以來於香港發生並記錄在案的鎮壓行動，禁令對該法的依託引發了嚴重的人權顧慮。正因如此，在2022年11月對香港的第四次定期報告的

結論性意見中，聯合國人權委員會呼籲香港「廢除現行的《國家安全法》，同時不要實施該法。」更近期，在2023年3月對中國（包括香港）的第三次定期報告的結論性意見中，聯合國經濟、社會和文化權利委員會建議香港確保《國家安全法》不會任意干預司法獨立，並且必須對其進行審查，以使其符合其經濟、社會和文化權利的義務。

為此，基於《國家安全法》的所做出的裁決，例如該禁令，也應受到同樣的關切並予以反對，因為它違反了國際人權法。因此，我們擔心，根據英國人權法及國際人權法，貴公司的舉措可能構成任意侵犯言論自由和知情權的共謀行為。

《1998年英國人權法》第10條保障了言論自由權，以及不受國界限制地接收和傳遞資訊的權利，包括透過公眾抗議、藝術和網路。這同樣體現在《歐洲人權公約》第10條中，而這是歐洲理事會所有成員國皆應遵守的規定。《世界人權宣言》第19條和《公民與政治權利國際公約》則確立了言論自由權及知情權。

國際人權法規定，只有在嚴格的情形下，才得以基於合法性、正當性和必要性以及比例原則對言論自由加以限制。模糊或過於廣泛的限制是絕不被允許的。國家安全只能用於保護國家免受武力威脅，而絕不能用於保護政府免於受辱或資訊披露。限制必須基於言論表達與受保護利益之間直接而密切的聯繫，且必須是具體而針對性的，並採取能夠達成相同有限結果中侵害程度最小的手段。

《聯合國工商企業與人權指導原則》（UNGPs）還呼籲企業避免「通過自身行為導致或加劇負面人權影響」，並展開人權盡職調查，以辨別、預防和減輕任何負面人權影響。《聯合國工商企業與人權指導原則》更進一步呼籲企業在面對相牴觸的規則時選擇支持國際人權原則。

基於這些原因，全球網絡倡議組織（Global Network Initiative）作為在科技與人權交叉領域中促進言論自由和隱私的主要多方利害關係人論壇，對該禁令及其對香港和境外人權帶來的風險表示擔憂。

貴公司將這首歌從全球發行商中移除的舉動已經遭到創作者們的反對。自5月8日的裁決以來，在英國已爆發了抗議該禁令的聲援行動，並且計畫發起更多行動。因此，我們提請貴公司注意，貴公司將因禁令的持續實施而在英國和其他地方面臨潛在的名譽風險。

為此，我們要求貴公司公開披露貴公司與香港當局所有有關《願榮光歸香港》全球發行的通訊往來，以及所有有關實施禁令前的人權影響評估或其他決策的資訊，並立即撤銷此任意的禁令，恢復在全球合作夥伴中的發行，並對抗未來重新實施全球性禁令的壓力。

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