

Hon Kenneth Ting Woo-shou,
Panel Chairman
LegCo Panel on Commerce and Industry Review of Certain Provisions of Copyright Ordinance

Dear Mr. Ting,

I strongly recommend that the Government distinguish between educational and commercial/business uses of information in its Copyright Ordinance deliberations.

Chapter One of the Consultation Document notes the ordinance grew out of perceptions related to “rampant copyright piracy in computer software, films and music.” It further notes that the measure “targets acts of copyright piracy by business end users.” It is most unfortunate that Hong Kong’s university libraries have been defined as “business end users.”

Hong Kong’s university libraries are integral to the development of the common good. Unless we have a well-educated citizenry, we will not be able to compete in the global economy. Unless we have an educated and prosperous community, the market for the very information products the Ordinance is designed to protect will not exist in Hong Kong and we will be reduced to the role of a transit stop for these products as they are distributed to other parts of the world.

In chapter 2 of the Permitted Acts for Educational Purposes document, the premise is that copying for all educational purposes is likely to be in “conflict with a normal exploitation of the work by the copyright owner” and therefore we need to legislate what might be copied “to a reasonable extent.” I believe this is the wrong approach. Libraries, for example, do at times make photocopies of articles from journals they purchased (libraries are commonly charged more than individuals since it is known from the beginning that more than one person will be able to access the information) and place them on “reserve” at the request of a teacher. But the purpose is an educational one, not a commercial one. Unless students are educated there will not be the opportunity for commercial purposes.

Libraries need to be excluded from the definitions of business users. University libraries buy educational content to share with students; Very little of what they purchase is of a popular nature that attracts the kind of “rampant copyright piracy in computer software, films, and music” that the Ordinance is designed to stamp out.

The Consultation Document proposes that one of two proposals should be adopted and alludes to a third approach as well:

- “copyright owners and the educational sector work out together some detailed, non-statutory guidelines for different circumstances.”
- [the Government should] “legislate in more definitive terms the extent of free, permissible copying.”
- We should employ Licensing Bodies which will grant licenses to copyright users.

I don't believe any of these three approaches would be good for the economy of Hong Kong:

- While librarians would welcome an opportunity to discuss with publishers and authors how their information is used, to begin with the premise that educational copying is exploitive misses the point. Libraries know what constitutes unfair copying and are willing to abide by what has been termed "fair use" – that is, you don't deny publishers the right to exploit their investment.
- Having the Government develop a formal set of rules would also miss the point. Educational copying is different from commercial or business copying.
- Licensing agencies assume that educational copying is commercial copying and they just make taking more money from university libraries easier. Libraries already paid their money for the levels of use that their materials will receive.

I would like to suggest that we adopt a simpler rule to govern libraries and higher education:

If the copying (irrespective of the medium of communication) is done for educational purposes, it is permitted as long as it does not deny the copyright holders of real opportunities to sell multiple copies of their products. If such copying is done and a court of law determines that such act did indeed deny the copyright holder of a real opportunity to sell multiple copies, the guilty party should be held liable.

Students should be expected to buy textbooks but they cannot be expected to subscribe to hundreds of journals just in case their teachers decide they should all read a single article during the 5th week of the term. Nor can they be expected to all buy all of the books the library purchases just in case their teacher requires them to read chapter 5 of a specific book in addition to their textbook. Nor can they purchase all the books and journals needed to conduct research. That is what libraries are for.

I hope you can give this point of view serious consideration.

Sincerely,

Anthony W. Ferguson
Librarian
University of Hong Kong