

The Open University of Hong Kong

Submission to the LegCo of Panel on Commerce and Industry

Review of Certain Provisions of Copyright Ordinance

We have read the captioned document and have the following comments to make.

Section 1.11

- (a) We believe that government and non-profit-making organizations have a responsibility to be accountable to copyright holders in the same way that businesses are. Even though such organizations make no financial gain for themselves by using the material, they should still be required to seek permission before distributing the work of others freely. However infringement of copyright should be exempt from criminal liability (see (c) and (d)).
- (b) **Employees in possession of an infringing copy supplied by the employer for use in business should not be criminally liable.** Some employees may genuinely not be aware of the fact that the material supplied infringes copyright, and even if they are, they may not feel in a position as a subordinate to argue with a manager of a higher rank.
- (c) **End-user criminal liability should apply only to copyright works afflicted by rampant piracy.** Such infringement results in significant financial gains for the persons who infringe the copyright at the expense of the copyright owners. Infringement of copyright on a smaller scale is not such a serious problem as to warrant wasting government resources enforcing the law.
- (d) **Certain acts of the end-user which infringe copyright but which do not give the end-user any commercial advantage or private financial gain should be exempt from criminal liability.** Small-scale infringements done on an ad hoc basis for the sake of performing daily tasks more efficiently or providing useful information to students are not against the spirit of copyright protection. This could include small items like tables, figures, photos or short articles. In some of these cases it is sometimes difficult to track down the copyright holder, or the decision to use the material would be made at the last minute and there would be no time to apply for permission. Teachers might be reluctant to use the resources available to them to keep their students up-to-date with current affairs for fear of being held criminally liable. Since these kinds of acts involve no commercial advantage, they should be exempt from criminal liability.

- (e) **The phrase ‘in connection with’ should be removed.** This term is too vague and difficult to define and does not add anything of value to the rest of the clause. It only serves to confuse people about whether something they are doing which has a very slight connection with business is illegal.

Section 2.13

(a) **We do not feel it is appropriate to use legislation to define the terms ‘passages’ and ‘to a reasonable extent’.** This would be too restrictive and any final definition would be unlikely to please all parties. However, **some guidelines should be put into place** so that users feel comfortable that a certain extent of usage of copyright materials is acceptable. If such non-statutory guidelines were adopted we would recommend the following as a reasonable limit, bearing in mind the approaches used in other countries:

- 3% of a work or 5 pages whichever is greater
- the number of copies to be limited to one class/course.

We would also like to emphasize that the same guidelines should be set for all kinds of media. So if, for example, material which was used in print was also used online in an Intranet, this usage would be covered to the same extent.

(c) **The act of recording or copying permissible under sections 44 and 45 should be permitted no matter whether licences under licensing schemes are available or not.** We should not all be under obligation to join licensing schemes. In addition, new schemes may become available at any time and employees would become liable if they failed to keep track of what licensing schemes were available while committing the act of recording or copying under sections 44 and 45 at the same time.

(d) **There should be a new act to permit the uploading of copyright works to a school Intranet.** We are now living in an Internet age and if we have obtained permission to reproduce the material in print we should also be permitted to reproduce it online, provided that it has a restricted access for a fixed number of students, as is the case with a school or university Intranet. Copyright users should not have to reapply for permission to use the same material in different media forms.

Section 3.4

(a) and (b) **A new act should be provided to permit works to be transcribed into forms suitable for use by visually impaired persons no matter whether a licensing scheme is available or not.** This would give more access for people with visual impairment to materials available to others. The copyright law should be inclined to assist the underprivileged or disabled persons to pursue knowledge.

Section 4.9

- (a) **The statutory exemption should be extended to cover all underlying copyright works included in the broadcast or cable programme.**

- (b) **The exemption should be extended to cover all public places** where the broadcast or cable programme is shown or played except where goods or services are supplied at prices which are substantially attributable to the facilities afforded for watching or listening to the broadcast or programme.

Section 7.13

- (a) **We do not see any advantage in the Copyright Tribunal being replaced with an arbitration system.** There are no grounds to support the view that the Copyright Tribunal is biased towards copyright owners or that an arbitration system would be less expensive.

- (b) **We believe licensing bodies should be mandated to be registered and to publish their scale of royalty charges.** This would increase their transparency and avoid any unscrupulous behaviour by those setting the royalty charges. It would also reduce the feeling of unfairness on the part of those who subscribe to those societies and the authors.