

**Supplemental Submission on Copyright Reform Relating to
Circumvention of Technological Measures &
Digital Rights Management System**

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1. This short note supplements what I said at the Meeting of the Panel held on 19 July 2005 in relation to two copyright issues: (1) circumvention of technological measures, and (2) digital rights management system (DRMS).
2. Although the two issues are related, circumvention of technological measures is a legal issue whereas DRMS a technological one. Circumvention of technological measures is concerned with acts that seek to overcome the technological protection of copyright works by technological means. On the other hand, DRMS refers to a sophisticated computer system that is designed to do, among other things, the following: hosting and storing digital copyright works, granting licences for the use of such works, keeping track of the copyright status of such works (eg change of copyright ownership, expiry of licences etc), and charging for the use of such works.

Circumvention of Technological Measures

3. Circumvention of technological measures is illegal under s 273 of the Copyright Ordinance (Cap 528). In addition to what has been stated in the submission of the HUCOM Task Force in this regard, I will urge that any reform of s 273 should ensure that scientific research in the relevant areas is not thereby stifled.
4. Paragraph 34 of the CITB's "Proposals on Various Copyright-Related Issues" dated June 2005 only mentions an exemption for "research into cryptography". This is not enough. By way of comparison, s 1201 ("Circumvention of copyright protection systems") of the US Copyright Act (Title 17, US Code) provides exemption for, among other things, the following :-
 - (a) Reverse engineering.
 - (b) Encryption research.
 - (c) Circumvention of technological protection of personally identifying information.
 - (d) Security testing.

To ensure that scientific research and development in Hong Kong is not hampered by the law, any amendment to s 273 of the Copyright Ordinance should provide for a scope of exemption no less than that under s 1201 of the US Copyright Act.

DRMS

5. DRMS is protected under s 274 of the Copyright Ordinance. At present, DRMS is still being developed and has yet to be made commercially viable ie convenient and cheap enough for the users. As the DRMS technology stands, it is impracticable and unreasonable to require schools in Hong Kong to install a DRMS before they can use copyright materials for teaching in the digital environment.

6. I strongly object to the view that unless a school has installed a DRMS, it is not allowed to use copyright materials for teaching on the school's Intranet. However it is expressed, such a view in effect prevents virtually all schools in Hong Kong from using copyright materials in the digital environment for teaching, which is against the current international trend of making full use of the digital technology for education.

7. The motive behind the DRMS is to protect the interests of the copyright owners. By means of a DRMS, copyright owners will be able to control all access to their works in digital form and to charge a fee for such access. DRMS does not serve the needs of the users (though it has to be made user-friendly in order to persuade users to use it, which is something that all DRMS developers are still striving to achieve).

8. In the premises, it is logical to suggest that if the copyright owners insist that the installation of a DRMS is a pre-condition for schools to use copyright materials on the schools' Intranets, then copyright owners should pay for the installation of such a system and make it freely available to all schools in Hong Kong. The expenses incurred by the copyright owners can be recouped from the licence fees paid by the schools in the long run.