

**Submission to
the Bills Committee on
Copyright (Amendment) Bill 2006**

Concern Group of the Education Sector on Copyright Law

April 2006

This submission is made by the Concern Group of the Education Sector on Copyright Law. It represents the collective views of the twenty-six education organizations in Hong Kong regarding the current Review of Certain Provisions of Copyright Ordinance.

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Foreword

The education sector has been keenly concerned with the amendment of the Copyright Ordinance which it anticipates will have long-term effects on teaching and learning. Established in March 2004, the Concern Group of the Education Sector on Copyright Law (the “Concern Group”) was set up by educational organizations in Hong Kong to channel their collective views and concerns about copyright issues to the Government, copyright owners, licensing bodies and other stakeholders so that the interest of the education sector could be well observed in the course of legislative changes. As of now, there are 26 educational organizations in the Concern Group.

2. The terms of reference for the Concern Group are summarized as follows:
 - (a) to collect views from the education sector on the amendments of the Copyright Ordinance and to present them to the Government with the aim of facilitating teaching and learning, and the free dissemination of information;
 - (b) to enter into discussion with the Government, copyright owners, licensing bodies and other stakeholders on issues related to copyright in education, including but not limited to enhancing the present set of “Classroom Guidelines” and other similar guidelines that might be introduced by the Government and/or other relevant parties; and
 - (c) to address other issues related to the use of copyright materials in teaching and learning.
3. After a series of public consultations regarding the Review of Certain Provisions of Copyright Ordinance, the Government issued in March 2006 the Copyright (Amendment) Bill 2006. The Concern Group is of the view that the Government has in general taken into account the concerns expressed by the education sector in drafting the Bill. We believe that the Bill, if written into legislation as it is now, will be a relief to the education sector with regard to the use of copyright materials in teaching and learning, and is congruent with the spirit of the amended Copyright Ordinance, which covers permitted acts of the public, including teachers and students, to use a reasonable amount of copyright works free of a levy. In response to the invitation of the Bills Committee, the Concern Group respectfully submits its views on the Bills, as follows.

Constraints on the education sector under the existing Copyright Ordinance

4. The education sector found the existing Copyright Ordinance restrictive, with a number of constraints unreasonably imposed on teaching and learning. Under the existing Copyright Ordinance, a teacher or student can reproduce copyright works if the reproduction falls within the ambit of ‘fair dealing’ or ‘permitted acts for educational purposes’. Such provision does not allow the education sector to carry out reasonable endeavours in the course of its business. The following highlights some obvious problems encountered by the education sector in the use of copyright works under the existing Ordinance.

- (a) To enhance the quality of teaching, there is a genuine need for teachers to make and distribute multiple copies of a reasonable amount of copyright works so as to supplement students’ studies with useful information that is not included in their textbooks. However, multiple copying in the course of instruction or preparation for instruction is not a permitted act under the existing Ordinance.
- (b) The use of information technology is vital for education today. The Internet provides a perfect platform for learning and efficient dissemination of knowledge. To facilitate student access to useful multimedia materials or materials extracted from books, journals or magazines, it is common for teachers to upload them to the school intranet. Since uploading copyright works to the school intranet is considered as distributing multiple copies, it is also not considered a permitted act under the existing Ordinance.
- (c) Despite the issuance of the “Guidelines for Photocopying of Printed Works by Not-for-Profit Educational Establishments” in September 2002 (and revised in March 2004 to cover newspaper articles), the conditions stipulated in the Guidelines are so stringent that it renders the Guidelines virtually impracticable for teachers to rely on in the use of copyright printed works in the classrooms. The restrictions include the “three-day rule” (which permits teachers only to make photocopies of the required printed materials three days before the photocopied materials are distributed in class) and the “repetitive rule” (which disallows teachers to use the photocopies of the same copyright printed works in class). These restrictions impede teaching effectiveness.

- (d) The permitted acts of recording broadcasts and cable programmes and reprographic copying of passages from published works by educational establishments respectively under sections 44 and 45 will be useless if there are relevant licensing schemes granting authorization for the recording or copying concerned. Hence the mere existence of a licensing scheme covering the copying or recording in question will immediately preclude the statutory permission, forcing schools to buy licences from the licensing body, whether or not the licensing scheme is reasonably priced.
- (e) The existing provisions in the Ordinance impose a severe handicap on teachers trying to gain access to copyright works for the purpose of teaching.
- (f) Laws and guidelines on copyright in education can never be crystal clear. If criminal sanctions were to be expanded to cover using copyright printed works in educational endeavours, the mere fear of breaking the law would deter teachers, and students as well, from using copyright printed works even within the boundary of law. This would definitely hamper the dissemination of information and affect the quality of teaching, resulting in the students' inability to seek valuable articles and useful materials not found in textbooks.

The Copyright (Amendment) Bill 2006

— A balance between the interests of copyright owners and users

5. The Concern Group strongly believes that the copyright law must strike a balance between the interests of copyright owners and those of the public in using copyright works for educational and other purposes that are beneficial to society as a whole. While the rights of the copyright owner must be protected, such protection should not inhibit learning or obstruct the free dissemination of information. We are of the view that in the Copyright (Amendment) Bill 2006, the Government has struck a balance for both the copyright users and end-users, including those from the education sector.

Copyright Protection

Business end-user criminal liability

6. The Government proposes to maintain the existing scope of business end-user possession criminal liability to cover only the four categories of copyright works, namely, computer programmes, movies, television dramas, and musical recordings. At the same time, it proposes to introduce a new criminal offence for significant infringing acts of copying with the intention to distribute to staff or participants copies of copyright works published in four specific types of printed works, namely, newspapers, magazines, periodicals and books. However, noting the need of teachers, the Government proposes to exempt non-profit making educational establishments and educational establishments subvented by the Government from the proposed criminal provision in the interest of education.

7. The Concern Group welcomes the Government's proposal that educational establishments be exempted from criminal liability in making for distribution or distributing infringing copyright printed materials in the course of giving and receiving education. We believe the exemption is necessary, or else teachers will have great hesitation in using copyright printed works, thus affecting the passing of knowledge to students.

8. The Concern Group notes the concerns expressed by copyright owners, particularly the publishers, about the alleged copying of textbooks and materials, marketed primarily for instructional users, on a 'significant' scale by the education sector. The Concern Group wishes to make it known that it does not support such acts and is committed to educating students to respect copyright and intellectual properties. We are also given to understand that with criminal sanctions imposed against copyright infringing activities in copying shops, the concerns by copyright owners can be further addressed.

9. We opine that the worries expressed by copyright owners that the exemption of education sector from criminal liability will lead to rampant infringement are uncalled for. In fact, we believe that allowing teachers and students to use copyright works to a reasonable extent for educational endeavours can actually arouse students' interest in the copyright works concerned, which may help raise the standing of the publications in question, if not boost their sales later on.

Copyright Exemptions

Fair dealing for education

10. The Concern Group welcomes the Government's proposal to introduce fair dealing provisions for educational purposes. The relaxed and enhanced provisions will provide teachers and students the right to use copyright materials to a reasonable extent and with flexibility in schools and universities. This would definitely help enhance the effectiveness of classroom teaching and facilitate the dissemination of knowledge.

11. We are of the view that the four conditions in fair dealing provisions are reasonable because by observing the four conditions, a balance will be struck between allowing flexibility for the educational sector to use a fair amount of copyright works and protecting the legitimate interest of the copyright owners. It is believed that if no such fair dealing provisions exist, students, and parents as well, will not, for example, buy a whole book merely to use only a few pages of it in their course of learning.

12. We expect that under the fair dealing provisions, making for distribution and distributing multiple copies of copyrighted materials in class should be permitted if the amount to be distributed is considered "fair". By the same token, uploading a reasonable portion of copyright works to the school Intranet for student access should also be considered "fair dealing". Both teachers and students, and in turn, society, will benefit from such flexibility.

13. To achieve whole person education, teaching and learning should not be confined to classroom instruction. Extra-curricular activities also play an important role in contemporary teaching. The Concern Group is therefore of the view that fair dealing for education should be extended beyond "the purpose of giving or receiving instruction in a course of study provided by an educational establishment" to cover the fair use of copyright materials in teacher-supervised extra-curricular activities, such as preparing materials for a field trip.

Improvements to the permitted acts for education

14. The Concern Group welcomes the removal of the existing restriction that the permitted acts of recording of broadcasts and cable programmes and reprographic copying of passages from published works by educational establishments will not be permitted if there are relevant licensing schemes granting authorization for the copying work concerned. This removal allows teachers and students to record broadcasts and cable programmes and makes reprographic copies of passages from published works to a reasonable extent, which can further enhance the quality of teaching and learning.

15. The Government has proposed to extend the scope of permitted acts of using copyright works for education to cover not only the acts done by teachers but also those by students. The Concern Group welcomes this positive approach and considers it conducive to interactive and project-based teaching.

16. We support the inclusion, under the improved permitted acts, of the immediate family members of students in the composition of audience of a performance held in educational establishments during which copyright works are used. We would like to further suggest the inclusion of a limited number of *bona fide* guests, such as friends, patrons and donors of educational establishments to the group of audience. This would enable the schools to build up their relationship with their stakeholders.

New permitted act for persons with a print disability

17. The Concern Group supports the new permitted act for persons with a print disability. Under the new permitted act, institutions that support such disabled people can produce specially adapted copies of copyright works for their use under certain conditions. The new flexibility can facilitate the use of copyright materials by persons with a print disability, and help teaching in special education and integrated education.

Liberalization in parallel importations

18. The Concern Group fully supports the removal of civil and criminal liability associated with the importation and possession of parallel imported items of copyright works for educational and library use. Such a proposal will not only facilitate the import by educational establishments of copyright works that are considered to be of low or no commercial value and therefore not distributed by local suppliers, but will allow them to lawfully acquire educational and research materials elsewhere across the globe where such materials may be more readily available and at lower prices.

Way Forward

19. The use of copyright materials in the digital environment is essential to and an inevitable trend in contemporary teaching. The Concern Group is of the view that the advance of technology has come to a stage that forbidding an appropriate use of copyright works in the digital environment will be a disservice to society because it will suffocate effective teaching and learning, both of which have become increasingly dependent on the support of the internet.

20. The Concern Group hopes that in the next round of consultation, the Government would, in spite of the divergence of the views of the copyright owners and the copyright users, find solutions that would not deprive the education sector of the use of the internet tools. It is hoped that the Government will adopt a liberal and non-exhaustive approach to the fair use of copyright works in the digital environment for educational endeavours.

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## About the Concern Group of the Education Sector on Copyright Law

The Concern Group of the Education Sector on Copyright Law was set up by educational organizations in March 2004. As of now, there are 26 educational organizations in the Concern Group, which are listed in alphabetical order as follows:

### Membership

|                                                       |              |
|-------------------------------------------------------|--------------|
| City University of Hong Kong                          | 香港城市大學       |
| Grant Schools Council                                 | 補助學校議會       |
| Hong Kong Association of Heads of Secondary Schools   | 香港中學校長會      |
| Hong Kong Association of Sponsoring Bodies of Schools | 香港辦學團體協會     |
| Hong Kong Baptist University                          | 香港浸會大學       |
| Hong Kong Direct Subsidy Scheme Schools Council       | 香港直接資助學校議會   |
| Hong Kong Education City Limited                      | 香港教育城有限公司    |
| Hong Kong Federation of Education Workers             | 香港教育工作者聯會    |
| Hong Kong Private Schools Association Limited         | 香港私立學校聯會     |
| Hong Kong Professional Teachers' Union                | 香港教育專業人員協會   |
| Hong Kong Special Schools Council                     | 香港特殊學校議會     |
| Hong Kong Subsidized Primary Schools Council          | 香港津貼小學議會     |
| Hong Kong Subsidized Secondary Schools Council        | 香港津貼中學議會     |
| Hong Kong Teacher-Librarians Association              | 香港學校圖書館主任協會  |
| Joint University Librarians Advisory Committee        | 大學圖書館聯席諮詢委員會 |
| Lingnan University                                    | 嶺南大學         |
| The Chinese University of Hong Kong                   | 香港中文大學       |
| The Hong Kong Academy for Performing Arts             | 香港演藝學院       |
| The Hong Kong Association for Computer Education      | 香港電腦教育學會     |
| The Hong Kong Institute of Education                  | 香港教育學院       |
| The Hong Kong Library Association                     | 香港圖書館協會      |
| The Hong Kong Polytechnic University                  | 香港理工大學       |
| The Hong Kong University of Science and Technology    | 香港科技大學       |
| The Open University of Hong Kong                      | 香港公開大學       |
| The University of Hong Kong                           | 香港大學         |
| Vocational Training Council                           | 職業訓練局        |

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