

A Submission to

The Bills Committee on Copyright (Amendment) Bill 2006

by

The HUCOM Task Force on Copyright in Education

April 27th, 2006

This submission is made by The HUCOM Task Force on Copyright in Education and represents the collective views of the eight UGC-funded tertiary institutions in Hong Kong regarding the current review of certain provisions of the Copyright Ordinance (Appendix 1).

Introduction

1. As members of the Heads of Universities Committee (HUCOM) Task Force on Copyright in Education (the Task Force), we wish first to record our satisfaction and our relief that Government have, in the measures proposed in the Copyright (Amendment) Bill 2006, addressed in large part the concerns of the Education Sector which have been repeatedly expressed since the appearance of the *1997 Ordinance*. The Bill has struck an adequate balance between the protection of intellectual properties and the dissemination of information, a vital component of modern teaching and learning which emphasizes cross-disciplinary and extra-curricular studies. The Bill, when passed into law, will eliminate the fear of unconscious transgression of the law on the part of university educators and students, thus greatly facilitate teaching and learning, and will become a blessing to society and all concerned.
2. We also wish to state that the Hong Kong Tertiary Education Sector deeply respects the legal rights and market expectations of copyright owners in terms of their published content - in print or in electronic form, and in any medium. The Tertiary Education Sector understands its obligations, duties and liabilities to ensure protection of such copyrighted materials and will assiduously continue to make every effort to assist the copyright owners in the safeguarding of these rights under Hong Kong law.

Criminal liability in making for distribution or distributing infringing copyright printed materials in the course of giving and receiving education

3. The proposed exemption in this Bill of criminal liability for copying or distributing copyright printed works by educational establishments is a *sine qua non* as far as the Tertiary Education Sector is concerned. We believe that if changes such as this proposal are perceived by other stakeholders as an unacceptable ‘liberalization’ of the *1997 Ordinance*, this would be a basic misconception. Our educational communities have always done business legally and responsibly. We acknowledge a serious and common duty to nurture students to appreciate the world of information and knowledge fully and maturely. Only then can they become

accountable, concerned and responsible citizens of the SAR, China and the world.

Fair dealing provisions for the purposes of giving or receiving instruction

4. The fair dealing provisions of the existing Copyright Ordinance are confined to the specified purposes of private study, research, criticism, review and news reporting. They are unnecessarily restrictive and we welcome the proposal to include a new fair dealing provision for the purposes of giving or receiving instruction. We believe the proposed medium-neutral fair dealing provision will be much more flexible than the existing permitted acts for education, and will allow evolution with technology.
5. We agree with the addition of a fourth factor in the test for fair dealing: “the effect of the dealing on the potential market for or value of the work”.
6. In reference to “fair dealing with a work by a teacher”, we prefer that the wording be modified to “fair dealing with a work by or on behalf of a teacher”. We hope that it is not the intention of the law to catch anybody who acted on behalf of a teacher, for example a university clerk performing photocopying services on the instruction of a professor.

Amendments to the existing permitted acts for education

7. We strongly support (as our Task Force has indicated before) the repeal of sections 44 (2) and 45 (2). Sections 44 (2) and 45 (2) of the existing Copyright Ordinance permit recording of broadcasts and cable programmes and reprographic copying to a reasonable extent of passages from published works by educational establishments only if licensing schemes are not available. Once a relevant licensing scheme is introduced, there is no copyright exemption for educational purposes in the use of either any published work or any broadcast and cable programme. Professors and students cannot make a copy of any published work to whatever extent nor record any broadcast and cable programme for educational purposes. Copyright exemption for educational purposes is “switched-off” once licensing schemes are “switched-on”. The removal of the existing restriction on copyright exemption is crucial to promote the use of information for teaching and learning in the information era. Copyright

exemption should not be replaced by licensing schemes; exemption needs to be provided for educational establishments no matter whether licensing schemes exist or not.

8. It should also be noted that there is no intention in the Tertiary Education Sector to withdraw from existing licensing schemes such as the Hong Kong Reprographic Rights Licensing Society (HKRRLS) course pack licensing scheme.
9. We suggest including friends, patrons and donors of educational establishments into the group of audience stated in section 43 (1) for performing, playing or showing of works in course of activities of educational establishments.

Provisions concerning circumvention of effective technological measures and Rights Management Information

10. We welcome the exemption for circumvention activities with the following purposes:
 - achieving interoperability of an independently created computer program;
 - research into cryptography;
 - identifying and disabling the function of a technological measure to collect or disseminate information which tracks and records the manner of a person's use of a computer network in order to protect privacy;
 - security testing for a computer or computer system/network;
 - gaining access to parallel imported copies of copyright works;
 - preventing access by minors to harmful materials on the Internet.
11. We note that the exemption for libraries to circumvent technological measures in media to make a copy for preservation or archiving purposes requested in a previous Submission to CITB (dated August 16, 2005) is not included in the Bill. We hope that the Bill will provide the exemption needed for purposes such as medium shifting for preservation or archiving not meant to infringe the copyright in a work.
12. We wish to point out that if provision of devices and services for circumvention of technological measures becomes a criminal offence, there would be no devices nor services

available for circumvention of technological measures which are actually required in the Education Sector for purposes other than infringement of copyright in a work, including instruction, preservation and archiving library materials. We ask that there be rulemaking on exemptions from prohibition on circumvention of technological measures that control access to copyrighted works similar to that in the *Digital Millennium Copyright Act*, USA. We assume that the public can contact Government for any exceptions to sections 273A, 273B, 273C and 273G if needed, according to provision of section 273H.

Liberalization in the use of parallel imports

13. We welcome the criminal and civil liability exemption to educational establishments and libraries for importation and possession for use of parallel imports of copyright works. Such a provision will not only facilitate the import of copyright works that are considered to be of low or no commercial value and therefore not distributed by local suppliers, but will also allow educational establishments lawfully to acquire educational and research materials worldwide where such materials are more readily available and at affordable price.

Concluding remarks

14. In conclusion, we think that the current proposals go a long way to solve the challenges which have been faced by the Tertiary Education Sector in complying with the 1997 *Ordinance*. The importance of the wider university educational framework of liberal studies and cross-disciplinary education in the coming four-year normative curricula should be noted. In addition, there is the absolute imperative to allow university professors and students to use copyright materials in the print and digital environment for teaching learning and research, and to follow the trend of making full use of digital technology in the pursuit of life-long education. The Hong Kong Tertiary Education Sector can embrace the provisions of this Bill to the absolute benefit of Hong Kong's future as an information and knowledge hub in the global economy.

Appendix 1

About the HUCOM Task Force on Copyright in Education

The Heads of Universities Committee (HUCOM) is a body formed by the Presidents and Vice-Chancellors of the following University Grants Committee (UGC) funded institutions:

City University of Hong Kong;
The Hong Kong Baptist University;
Lingnan University;
The Chinese University of Hong Kong;
The Hong Kong Institute of Education;
The Hong Kong Polytechnic University;
The Hong Kong University of Science and Technology; and,
The University of Hong Kong.

This Task Force (formerly ‘The HUCOM Inter-Institutional Task Force on Reprographic Rights Licensing’) was formed in June 2000 and comprises one representative from each of the above institutions. It is advised by a legal consultant who specializes in intellectual property.

The Task Force was established with the following Terms of Reference:

- a) The Task Force will consist of one representative from each of the UGC institutions, one of which will be elected as Convenor upon endorsement from HUCOM;
- b) The Task Force will monitor developments in Reprographic Rights Licensing and Government proposed amendments to the *Copyright Ordinance*, with particular attention paid to their impact on the tertiary sector, including but not limited to issues concerning copying printed materials and using electronic/digital copyright materials for teaching and research purposes;
- c) The Task Force will represent the UGC institutions in liaison and negotiations with all interested parties, including local and international licensing bodies, concerned groups in the copyright arena, Hong Kong Government departments and LegCo, on issues raised in (b) above in order that the views of the UGC institutions are fully understood and taken into account;
- d) The Task Force will give reports to HUCOM on the progress of any such discussions and negotiations as and when necessary.

A list of the current members of the Task Force is on the following page.

Current Members of the HUCOM Task Force on Copyright in Education

Institution	Name of Representative	Post
City University of Hong Kong	Prof Steve CHING	University Librarian
The Hong Kong Baptist University	Mr. CHIU Ping Kwan	Director of General Administration
Lingnan University	Mr. YEUNG Kai-yin, Tommy	Associate Librarian
The Chinese University of Hong Kong	Dr Colin STOREY (Convenor) Mrs. Shirley LEUNG (Secretary)	University Librarian Head of Public Services, Library
The Hong Kong Institute of Education	Ms Connie WONG	Council Secretarial and Administration Manager
The Hong Kong Polytechnic University	Mr. Barry BURTON	University Librarian
The Hong Kong University of Science and Technology	Ms Victoria CAPLAN	Access Services Manager, Library
The University of Hong Kong	Ms Alice LEE	Associate Professor, Department of Law