

Responses to the Government's legislative proposals to improve copyright protection and exemption regimes

The Open University of Hong Kong (OUHK) supports the Government's proposals put forward on 16 March 2006 concerning legislative amendments to the Copyright Ordinance. The OUHK believes that the amendments in the Bill are positive and that they strike a balance for both parties — the users and the owners of copyright works. The amendments also set out clearer criteria and help to eliminate uncertainties.

The OUHK welcomes the Government's proposal for amendments particularly in these areas:

- 1. The extension of the fair dealing to activities 'for purposes of giving or receiving instruction' instead of just for purposes of research and private study as in the current Copyright Ordinance.** The provisions will provide universities and schools (providers of instruction) and students (recipients of instruction) the right to use copyright materials to a reasonable extent and with flexibility.
- 2. The addition of factors for determining fair dealing — for 'a non-profit making purpose' and 'the effect of the dealing on the potential market for or value of the work'.** These additions will allow educational establishments to lawfully use small amounts of work for educational purposes provided it does not result in any financial loss for the copyright owners. This would eliminate a large amount of administrative work both for the users in applying for copyright clearance and also for the copyright owners in dealing with them. This change would definitely help to facilitate the dissemination of knowledge, whereas previously many users were deterred from using material as this involved a lot of administrative work and getting a timely response from the copyright owners.
- 3. The exemption of non-profit-making educational establishments from the proposed criminal offence of making and distributing infringing copies of copyright printed works.** This exemption is necessary and would help to relieve

teachers and instructors who would otherwise hesitate in distributing useful copyright printed works (within specified limits) which are useful information for students.

4. The OUHK is pleased to see that conditions for committing criminal offence are now clearly set out — when it is done on a regular or frequent basis and when it results in a financial loss to the copyright owner. Safe harbour perimeters are clearly defined. Particularly we are pleased that it is now NOT a criminal act if articles in newspapers are distributed within reasonable amounts (not exceeding 1000 copies within any 14-day period). This permits the dissemination of relevant news from newspapers or magazines to staff members of an organization.
5. In the current Copyright Ordinance, the act of recording or copying, permissible under sections 44 and 45, is not allowed if licenses under licensing schemes are available. This condition is now repealed in the Copyright (Amendment) Bill 2006 — Sections 44(2) and 45(2). This is fairer as previously users were disadvantaged if licensing schemes were available.
6. The inclusion of new defense provisions in 119B (10) and (11) is reasonable and fair. This protects employees who are not in a position to make or influence a decision regarding the acquisition, removal or use of the infringing copy, or the making or distribution of the infringing copy.

To summarize, the Open University of Hong Kong is pleased with the amendments to the Bill.

The Open University of Hong Kong

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