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By e-mail (mary\_chow@citb.gov.hk)

Brussels, 9 January 2006

We thank you for the opportunity to comment on the “Refined Proposals on Various Copyright Related Issues”.

In general we support the submission made by the Hong Kong and International Publishers’ Alliance (HKIPA). In addition, we wish to comment in particular on the proposals relevant to section 45(2) of the Copyright Ordinance (7b Educational permitted acts).

The Administration rightfully states that the UK Copyright Act limits the fair dealing in education to when a licence is not offered by the rightsholders. The UK educational institutions are currently licensed by the Copyright Licensing Agency.

This is in line with the European Union Directive 2001/29, which obliges the EU Member States to either remove any exception to the exclusive right in respect of reprography, e.g. fair dealing/fair use/private copying, or alternatively ensure that the rightsholders are guaranteed a fair compensation. Article 5.2b of the Directive states that exemptions to the exclusive right may be granted, “*in respect of reproduction on paper or any similar medium, effected by the use of any kind of photographic technique or some other process having similar effects, with the exception of sheet music, provided that rightsholders receive fair compensation*”.

It is also in line with current legislation in other parts of the world. As a part of the justification for removing the obligation in the HK Copyright Ordinance to take up a licence when offered, the Administration refers to Australia, Canada and Singapore. In Australia there is a statutory licence for the reproduction in educational institutions that covers analogue as well as digital copying. It allows educational institutions the right to make copies and obliges them at the same time to pay



remuneration to the rightsholders. The conditions are set out in licensing schemes offered by the Copyright Agency Limited (CAL), the Australian RRO. For further information we refer you to CAL's web page on [http://www.copyright.com.au/educational\\_institutions.htm](http://www.copyright.com.au/educational_institutions.htm), which also contains a link to the pertinent articles in the Australian Copyright Act.

Furthermore, a similar statutory licence for reproduction in educational institutions exists in the Singapore Copyright Act (see for instance information provided by the Singapore government on <http://www.ipos.gov.sg/main/index.html>). Educational institutions are permitted to reproduce portions of works against an obligation to pay equitable remuneration. The licensing schemes are administered by CLASS, the Singapore RRO.

The fair dealing provisions in the Canadian Copyright Act allow use of material, only within certain limits, for research or private study, criticism and review and news reporting. A broad educational exemption is not created under fair dealing. Consequently, educational institutions need a licence to make multiple copies for class room, which can be verified by accessing the web pages of Access Copyright (<http://www.accesscopyright.ca>) and COPIBEC (<http://www.copibec.qc.ca>), the Canadian RROs, which administers these licences in English speaking Canada and Quebec respectively.

Thus, the countries referred to by the Administration in the "Refined Proposals" should be taken as documentation to justify the maintenance of the current obligation of educational institutions to take up a licence when offered, rather than to remove it. Furthermore, we would invite the Administration to visit IFRRO's web page on [www.ifrro.org](http://www.ifrro.org) to verify that the common way for educational establishments to reproduce copyright works for educational purposes is through a licence, generally offered by Reproduction Rights Organisation (RRO) such as HKRRLS.

For further information on relevant stipulations in national legislation, we also refer you to IFRRO's web page, and the database with Articles in national copyright legislation relevant to the administration of reprographic rights, available on <http://www.ifrro.org/show.aspx?pageid=copyright/filter&culture=en>

In our view, if the existing obligation to take up a licence, e.g. as offered by HKRRLS in Hong Kong is removed we would claim that this would place Hong Kong out of step with the trends in the region and the rest of the world. We would therefore respectfully request that this proposal is not carried forward by the Administration.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Olav Stokkmo'. The signature is fluid and cursive.

Olav Stokkmo  
Secretary General