

**Submission to the LegCo Panel on Commerce and Industry
Regarding "Permitted Acts for Educational Purposes"
(Chapter 2 of Consultation Document Entitled
"Review of Certain Provisions of Copyright Ordinance")**

*Task Force on Reprographic Rights Licensing
Heads of Universities Committee*

SUMMARY

Current problems with fair dealing and permitted acts for educational purposes

- Under the existing Copyright Ordinance, fair dealing is given a restrictive definition. To qualify for fair dealing, the dealing must be for one of the prescribed purposes, namely, research, private study, criticism, review and news reporting. Fair dealing does not extend to other purposes, including teaching.
- There are no guidelines in the Copyright Ordinance as to what would be considered as "fair" in the context of fair dealing. This places teachers and students who make copies of copyright materials in a precarious position, even when the copying is made for the prescribed purposes.
- Although section 45 allows reprographic copying for the purposes of instruction, the copying can only be "to a reasonable extent". The Copyright Ordinance provides no guidelines for assessing reasonableness in this context. This again places teachers who prepare course materials for their students in a precarious position.
- Section 45 allows reprographic copying for the purposes of instruction only on condition that there is no licensing scheme available. The same restriction is found in section 44, which authorises recording of broadcasts or cable programmes for educational purposes. 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 reasonable.

Our recommendations

1. The existing restrictive UK model of fair dealing should be replaced with the open-ended US model of fair use. This can be accomplished by expanding the current exclusive list of purposes (research, private study, criticism, review and news reporting) to a non-exclusive list that encompasses teaching and other educational purposes.
2. The new fair dealing provisions should explicitly state that fair dealing includes the recording of broadcasts and cable programmes for educational purposes. Such recording should be permitted whether or not there are licensing schemes available. Accordingly, section 44 of the Copyright Ordinance could be subsumed within the new fair dealing provisions thereby simplifying the law.
3. The new fair dealing provisions should explicitly state that, subject to the guidelines referred to in paragraph 5 below, fair dealing for teaching purposes includes reprographic copying for classroom use. Such copying should be permitted whether or not there are licensing schemes available. Accordingly, section 45 of the Copyright Ordinance could be subsumed within the new fair dealing provisions thereby simplifying the law.
4. The new fair dealing provisions should explicitly state that, subject to the guidelines referred to in paragraph 5 below, fair dealing applies not only to the making of print copies, but also to the following acts:
 - the making of electronic copies by any means;
 - the conversion of printed materials into digital files, and vice versa;
 - the uploading of materials for teaching purposes to a school Intranet accessible only to students enrolled in the relevant course.
5. To give certainty to the law, there should be clear guidelines as to what would constitute "fair dealing". Such guidelines should, **at a minimum**, allow the following:
 - in respect of single copying, the copying of
 - (i) a chapter from a book;
 - (ii) an article from a periodical or newspaper;

- (iii) a judgment from a law report;
- (iv) a short story, short essay or short poem;
- (v) a chart, graph, diagram, drawing, cartoon or picture from a book, periodical or newspaper.

- in respect of multiple copying for the purposes of instruction:
 - (i) the copying does not exceed more than one copy per student enrolled in the course;
 - (ii) the copying meets the tests of brevity, spontaneity and cumulative effect as set out in the US Guidelines for Classroom Copying endorsed by the US Congress; and
 - (iii) each copy includes a notice of copyright.
- 6. Although the guidelines can in theory be implemented by way of agreement between copyright owners and general users, this is unlikely to be fruitful in view of the lack of representation for general users in Hong Kong. We therefore recommend that the guidelines be implemented by legislation. Furthermore, as the guidelines are likely to be detailed, we recommend that the legislation be by way of regulations issued under the Copyright Ordinance i.e., secondary legislation.
- 7. We recommend that a Working Group with broad representation be formed with a short-term goal of formulating guidelines relating to educational use of the Internet. In the long term, the Working Group should monitor the ever changing digital environment and the new information technologies, with a view to advising the Government on matters relating to copyright law, fair dealing and collective licensing.

About the HUCOM Task Force on Reprographic Rights Licensing

The Task Force on Reprographic Rights Licensing is established by the Heads of Universities Committee (HUCOM) to look into reprographic rights licensing in UGC-funded institutions and, whenever necessary, to negotiate collectively with licensing bodies with regard to acquisition of the relevant licences.

HUCOM is a body formed by the Presidents and Vice-Chancellors of all UGC-funded institutions, including:

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

The Task Force was formed in June 2000 and comprises one representative from each of the above institutions. It is advised by a legal consultant who specialises in intellectual property.

Current members of the Task Force are:

Mr Patrick KWONG (Convenor)	Director, University Publications Office, City University of Hong Kong
Mr Ping-kwan CHIU	Director, General Administration Office, Hong Kong Baptist University
Ms Connie WONG	Manager, Resources and Administrative Services, Hong Kong Institute of Education
Mr Tommy K Y YEUNG	Associate Librarian, Lingnan University
Mr Jacob LEUNG	University Secretary, The Chinese University of Hong Kong
Mr Barry BURTON	University Librarian, The Hong Kong Polytechnic University
Mr Donald B WASSINK	Associate University Librarian, The Hong Kong University of Science and Technology
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Dr Colin STOREY (co-opted member from the Joint University Libraries)	Librarian, The Chinese University of Hong Kong

Advisory Committee)