

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

by

The Joint University Librarians Advisory Committee (JULAC)

April, 2006

This submission is made by the Joint University Librarians Advisory Committee (JULAC), a committee reporting to the Heads of Universities Committee (HUCOM). It represents the collective views of the eight UGC university librarians in Hong Kong regarding the current review of certain provisions of the Copyright Ordinance:

Prof. Steve Ching, University Librarian, The City University of Hong Kong (Chair)
Mr. Barry Burton, University Librarian, The Hong Kong Polytechnic University
Ms. Kylie Chan, Acting University Librarian, The Hong Kong Baptist University
Dr. Tony Ferguson, University Librarian, The University of Hong Kong
Mr. Frederick Nesta, University Librarian, Lingnan University
Mr. Michael Robinson, Institute Librarian, The Hong Kong Institute of Education
Dr. Samson Soong, University Librarian, The Hong Kong University of Science and Technology
Dr. Colin Storey, University Librarian, The Chinese University of Hong Kong

Preamble

1. As members of the Joint University Librarians Advisory Committee (JULAC), we wish to make the following points specifically relating to the use of copyright materials in libraries in the higher education sector in Hong Kong.
2. We strongly support the direction in which these new proposals and amendments are progressing copyright law in Hong Kong. The Bill has struck an adequate balance between the protection of intellectual property and the dissemination of information, a vital component of modern teaching and learning, which emphasizes creative thinking and a wider educational experience to encompass 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, librarians and students, thus greatly facilitating teaching and learning.
3. University librarians will continue to assist in the assiduous education of our university communities in understanding the concept of intellectual property, in respecting the rights of the creators of print and electronic content and in complying with the copyright law.

Response to the specific provisions of the Copyright (Amendment) Bill 2006

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

4. The proposed exemption in this Bill of criminal liability for copying or distributing copyright printed works by educational establishments is very welcome.

Amendments to the existing permitted acts for education

5. We strongly support 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 of reasonable extent of passages from published works by educational establishments only if licensing schemes are not available. The removal of the existing restriction on copyright exemption by the presence of licensing schemes is crucial to promote the use of print and electronic information in university libraries.

Provisions concerning circumvention of effective technological measures and Rights Management Information

6. Copyright exemption to circumvent technological measures must be provided to non-profit libraries so that they can perform their roles of preservation, archiving and distribution of information. All media, including audiovisual materials and digital resources, should be covered in the copyright exemption since non-print resources now play a very significant role in information preservation and dissemination in state-of-the-art libraries. With the rapid development of technology, the various kinds of media and the devices to use them evolve very quickly and only last for a few years. Media shifting is essential for the long-term preservation and archiving of information for our future generations (*see* a UNESCO training item that backs up this reformatting challenge, particularly: “2.12 ...All AV archives and museums complain that they are more or less forced to store obsolete technology, recording and professional studio equipment in order to ensure the possibility of reproduction and copying processes...”, and, “3.9 ...The safeguarding and preservation of AV material thus take priority over use...Photographs, films and sound recordings all ideally require 'back-up copies' to safeguard by multiple documentation of source material...” (1)).
7. Archiving should not be restricted solely to replacement copies of works, but should also allow for a copy for preservation and back-up purposes. We are of the opinion that, after making best efforts to secure permission from copyright owners, librarians

may need to circumvent copy protection in media such as DVDs or CD-ROMs to make a copy for preservation or archiving purposes. The reasons are:

- First, it is the librarians' experience that a copyright owner's authorization, if granted, may not be secured within the required time-period, given busy university teaching schedules.
- Second, there are certain conditions wherein librarians need to make such copies, such as: (a) to use the copy in day-to-day business and leave the first generation original untouched for as long as possible; (b) to copy an item from another source when the home copy has been lost and cannot now be replaced in the marketplace, or when it is irretrievably damaged; (c) to preserve copyrighted works stored in outdated formats such as laserdisc and U-Matic videotape by copying and converting them into a format that is more easily accessible (e.g. DVDs): and, (d) to preserve acquired e-resources stored in outdated formats such as floppy disc or CD-ROMs by copying and storing them in a more permanent storage medium.

8. Librarians should have the right to circumvent technological access controls, so that digital works legally purchased abroad can be used locally.

Liberalization in the use of parallel imports

9. We are of the view that libraries in universities should be allowed to acquire lawfully educational and research materials anywhere in the world where they are more readily available. 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.

10. Libraries in Hong Kong, be they public, school, or university libraries, often have to resort to purchase books directly from overseas agents either for convenience or for a discount, or both. The books so purchased are not for re-sale in the Hong Kong market and so they are not imported for commercial gain *per se*.

11. Parallel-imported videocassettes, DVDs and similar products are needed for teaching and research purposes, especially when the contents of the imported works include episodes, shots and/or scenes that are not available in local editions. In particular, each edition of a film produced in a different country or at different time is a unique version having its own unique value from the educational point of view. This is regardless of whether it is the original uncut edition, an edited version or a version dubbed in another language. Some of these versions may not be available from local suppliers but can only be imported from overseas.

12. Purchasing a copyright work that has never been imported by a local sole supplier should not be regarded as parallel importing. It is not unusual for a copyright work of low or non-commercial value not to be distributed by any local supplier. However, the work may be required by a local university for use in teaching or research.

(1) <http://www.unesco.org/webworld/ramp/html/r9009e/r9009e00.htm#Contents>