

(Translation)

**Notes of the 5th Working Group Meeting
on “Development of Non-statutory Guidelines
for Copying and Distribution of Works in an Electronic Environment
by Not-for-profit Educational Establishments”**

Held on Friday 6 June 2003

**at the Intellectual Property Department
Room 2501, 25th Floor, Wu Chung House,
213 Queen’s Road East,
Wanchai, Hong Kong**

Present : Representative of Union of Government Primary School
Headmasters and Headmistresses

Representative of The Open University of Hong Kong (OUHK)

Representative of Hong Kong Teacher-Librarians Association
(HKTLA)

Representative of Hong Kong Subsidized Primary Schools
Council (HKSPSC)

Representative of Task Force on Reprographic Rights Licensing
established under Heads of Universities Committee (HUCOM)

Representative of The Hong Kong Association for Computer
Education (HKACE)

Representative of Hong Kong Copyright Licensing Association
(HKCLA)

[In attendance for meetings of the Working Group only]

Representative of Hong Kong Reprographic Rights Licensing
Society (HKRRLS)

Representative of Joint University Librarians Advisory
Committee (JULAC)

Representative of Hong Kong Library Association (HKLA)

Representative of Hong Kong Publishing Federation Limited
(HKPFL)

Representative of The Anglo-Chinese Textbook Publishers
Organisation (ACTPO)

Representative of The Hong Kong Academy for Performing
Arts (HKAPA)

Representative of Motion Picture Industry Association Limited
(MPIA)

Representative of Motion Picture Association (MPA)

Representative of Business Software Alliance (BSA)

Representative of Composers and Authors Society of Hong
Kong Limited (CASH)

Representative of Music Publisher Association

Mr. Jeffrey CHAN
Commerce, Industry and Technology Bureau (CITB)

Mr. Simon IP
Education and Manpower Bureau (EMB)

Mr. Stephen SELBY (Convenor)
Intellectual Property Department

Ms. Joey HUNG
Intellectual Property Department

(Secretary)

Ms. Brenda WAN
Intellectual Property Department

Absent with apologies: Representative of Grant Schools Council (GSC)

Representative of Hong Kong Subsidized Secondary
Schools Council (HKSSSC)

Representative of Hong Kong Professional Teachers'
Union (HKPTU)

Representative of Hong Kong Educational Publishers
Association (HKEPA)

Representative of Television Broadcasts Limited
(TVB)

Representative of Hong Kong Cable Television
Limited (HKCTV)

Representative of AOL Time Warner

Representative of International Federation of the
Phonographic Industry (IFPI) (Hong Kong Group)
Limited

Representative of Hong Kong Education City
Limited (HKECL)

The meeting commenced at 3:05 p.m.

1. Mr. SELBY welcomed the Working Group members to the meeting.
2. Mr. SELBY said that due to redeployment of duties, Ms. Brenda WAN would succeed Ms. Joey HUNG as the Secretary of the Working Group.

Members expressed their gratitude to Ms. HUNG for her past support to the Working Group.

Agenda Item I

3. The representative of HKEPA proposed the following amendment to the Chinese version of the draft notes of the 4th meeting-

(a) Paragraph 6

The last sentence “.....但不理解為何要特別處理教科書” should read “.....但原則上反對把教科書與其他類別的知識產權分開獨立處理”.

4. The representative of HKACE proposed the following amendments to the Chinese version of the draft notes of the 4th meeting-

(a) Paragraph 11(i)

The last sentence “如果把沒有制定指引的後果理解為不能在「合理的範圍」進行複製，這是扭曲了立法的原意。” should read “如果有些機構把這「合理範圍」設定為零，全部要透過特許安排來處理，這是扭曲了立法的原意。”

(b) Paragraph 11(ii)

In the original version, add “正由於業界也無法授權，教育界當要使用少量作品作教學用途時，可能須要向多個機構申請授權，這正好證明需要以指引的方式去解決。” as the last sentence.

(c) Paragraph 35(a)

“.....如果沒有法定效力的指引，規定採取更嚴格的核實措施，他質疑做法是否恰當。” should read “.....目前要制定的指引並非法律，但對通行密碼的規定比稅務條例還要嚴格，他質疑做法是否恰當。”

5. Members of the Working Group accepted the above proposed amendments. The notes of the 4th meeting (Chinese version) were confirmed.

6. Mr. SELBY requested that further amendments, if any, should be sent to the Secretariat by 5 p.m. on the following Monday (9th June). The English translation of the notes of the 4th meeting would be prepared by the Secretariat in due course for members' perusal.

Agenda Item II

7. The notes of the 3rd meeting (English version) were confirmed.

Agenda Item III

8. Mr. SELBY said that the articles tabled at the meeting could help members understand the TEACH Act of the US. If members considered it necessary, IPD could arrange for the translation of excerpts of the articles to facilitate discussion. No request for translation was raised.
9. Mr. SELBY suggested that the Working Group discuss, in the light of Hong Kong's circumstances, the definition of "intranet", its components and the security measures to be taken by not-for-profit education establishments. The participants raised no objection.
10. Mr. SELBY pointed out that the consensus reached at the last meeting was that the school intranet could only be accessed by teachers and students using individual passwords.
11. Mr. SELBY asked participants as regards the uploading of teaching materials containing copyright works to the intranet, how long should the storage period be regarded as reasonable. He mentioned that according to that article, the TEACH Act of the US was aimed at "moderated teaching". In the course of distance learning under circumstances which were similar to classroom teaching, students could have access to the teaching materials on designated websites. After a specified period of time, the materials would no longer be stored in the website. Therefore, the website was not a database. Mr. SELBY asked participants to refer to the relevant requirements of the TEACH Act.
12. The representative of HKPFL said that the digital rights involved in distance learning were not found in the intranet environment, but in the internet or extranet environment. When we discussed the definition of intranet, we could only refer to some concepts of the TEACH Act because the Act was about distance learning, while the Guidelines only

dealt with the licensing or fair use in the intranet environment. The former had a larger scope than the latter. In distance learning, students could view on-line materials at home. But the intranet was a specific environment. It was a computer network which required students to be physically defined before they could have access to it.

13. Mr. SELBY asked whether the representative of HKPFL considered that the definition of intranet meant that students had to be inside the school premises before they could have access to the computer network (i.e. they could not have access at home).
14. The representative of HKPFL indicated that according to the existing intranet licensing arrangement (especially in primary and secondary schools), users were restricted to have access to the school network inside the school premises. As such, from the physical perspective, “intranet” was confined to the area inside the school premises only. If a student gained access to the network at home through dial-up or other means, even though he had used a password, yet from the environmental perspective, he had gained access to the school intranet from a network. Thus, to a certain extent, this could be defined as extranet. In fact, the intranets of primary and secondary schools might not allow simultaneous access by over 1 000 students. This might not be the case in the universities. The Working Group could understand the term “intranet” from the perspective of “distance learning”. But his personal view was that members should not spend time on discussing the definition of intranet because the term was not easily defined in law. The scope of the term could change with time. In particular, when full wireless on-line facilities were available at schools in future, it would be more difficult to define the school network environment.
15. Mr. SELBY asked if the term “intranet” could be defined in terms of educational outcome. For example, teachers hoped that students could have access to information on the network either in school or at home.
16. The representative of HKPFL said that students’ learning took place in three environments : (1) a designated classroom; (2) the campus; and (3) the community and family. The first two environments were easy to define. As the third environment was outside the school, it would be very difficult to define “fair use” in this environment without a generally accepted definition.
17. In response to the views of the representative of HKPFL, the representative of HKACE opined that the discussion should focus on laying down various environments with restrictions so that the copyright

owners would rest assured. There might be restrictions on the number of users and password control. A consensus on these issues could be reached through discussion. He pointed out that even if every school had its own intranet, the server might not necessarily be located in the school. He quoted his school as an example. In his school, the intranet server was not located in the school, but rather at the service provider company. However, as far as the users were concerned, they had access to the same network. He also considered that the definition of intranet should not include too many technical requirements to prevent the use and copying by other people. He pointed out that the previous Guidelines allowed the making of multiple copies for students' use, but no technical measures were in place to prevent students from making further copies. In fact, the act of making further copies was illegal. This was already governed by the existing legislation. He considered that members should not seek to prevent further copying by various technological means before releasing the copy.

18. The representative of OUHK asked the representative of HKPFL why they had to prohibit students' access to the school intranet at home.
19. The representative of HKPFL said that if the Guidelines mentioned the environments in which copying and distribution would be allowed, such environments should be clearly defined.
20. The representative of OUHK pointed out that from the perspective of knowledge dissemination, the definition of intranet was not a must. Even for the purpose of defining the environment in which students were allowed to have access to the network, it should not include considerations of technical operations. He understood the views of the representative of HKPFL, but for them the greatest protection was to allow students to have access to the intranet only within the campus. However, in view of the current teaching and learning trend, it was unjustified that students were not allowed to access the information on their school intranets from places outside the school (e.g. in the community or at home) for the purpose of studying. If the Guidelines did not allow this, there would be defects in them.
21. The representative of HKPFL said that they were concerned about how digital materials could be used within the scope of fair use. He was worried that the definition of intranet would translate into another network concept. He asked if it was necessary for the Working Group to continue discussing the definition of the term.
22. The representative of JULAC suggested that the term "intranet" be

changed to “limited access network” to address the concerns of the representative of HKPFL. She quoted the limited access campus network of her school as an example, pointing out that teachers and students could access the information on the campus network at home through dial-up, modem connections or VPN broadband facilities.

23. The representative of HKPFL opined that the phrase “limited access network” was rather vague. He suggested using the term “campus/school network” to clearly define the teaching environment under which fair use of copyright works was allowed.
24. The representative of JULAC said that the term “intranet” could be replaced by a specific “internet protocol range”.
25. The representative of HKPFL opined that the advantage of using the phrase “campus/school network” was that it would be possible to trace under what circumstances the act of contravening the “fair use” of copyright works took place.
26. Mr. SELBY held that within the scope of the Guidelines, the definition of intranet should not be regarded as the equivalence of a technical term. He asked the participants whether the outcome of the education process should be considered, i.e. students could have access to the network not only in the classroom and within the school premises, but also at home.
27. The representative of HKSPSC said that primary students basically could have access to the information on their school intranet for the purpose of doing homework or studying.
28. The representative of HKPFL pointed out that the scope of the “Hong Kong School Net” of the Chinese University of Hong Kong was defined in terms of web-based benchmarks and did not involve the concept of intranet. In this case, students were using the information in a free environment. On the other hand, the networks of some schools (e.g. the La Salle College) had limited access. For example, users required a password to log in. The limited access network was not a fully open environment. He indicated that the latter would be more acceptable.
29. Mr. SELBY asked whether there was a consensus on allowing students to have access to the school network at home by using personal passwords.
30. The representative of HUCOM added that “at home” should be replaced by “outside school premises” so that the Guidelines could cover situations allowing access to the network from overseas by visiting

students (e.g. those returned to their countries during the outbreak of SARS). But it was still a network with restricted access.

31. Mr. SELBY remarked that in other words, the network should be accessible from anywhere but not accessible by everyone.
32. The representative of HKPFL clarified that the scope of “limited access” could be very wide (e.g. 10 million people might be allowed to access the network). He pointed out that only assigned users should be allowed to use the network.
33. The representative of HKACE considered that the uploading of presentation materials containing copyright works to the school intranet for students’ reading and studying after class should belong to one of the “purposes of instruction” mentioned in ss. 41 and 45 of the Copyright Ordinance. Such an act was just like teaching in class by the teacher in front of students and should not be regarded as “subsequent dealing”.
34. Mr. SELBY said that the statutory definition of “subsequent dealing” did not include the act mentioned by the representative of HKACE. As regards whether such an act was permitted by law, it would need further confirmation.
35. The representative of OUHK opined that learning could take place in different environments and was not confined to the classroom. It would be against the current trend of teaching and learning if students were not allowed to access the school network from outside school premises. He suggested that the “storage period” be set at one school term or one academic year.
36. The representative of HKPFL pointed out that for primary and secondary schools, setting the storage period at one academic year was tantamount to allowing the permanent storage of the information. The reason was that the curricula of primary and secondary schools were different from those of the universities or extramural courses in that they were not provided on the basis of course units. Modular courses might be provided once every few years, but the curricula of primary and secondary schools were basically the same every year. If the definition of “storage period” was too lenient, it would virtually mean that primary and secondary schools were allowed to store the information indefinitely. For the copyright owners, this would be no different from giving up their rights.

37. The representative of HKACE added that the meeting was only discussing the restricted access. In other words, during the first year, only students in F.1A class (40 students) had access to the information, but in the following year, students of another F.1A class (another 40 students) would have access to such information.
38. The representative of HKPFL said that this would involve the long-term inclusion of systematic copies for use to a reasonable extent and would violate the principles of the publishers.
39. The representative of OUHK indicated that restrictions on the storage of information could be laid down. For example, information could not be stored more than once, twice or three times.
40. The representative of HKPFL said that they had no objection to the storage of materials in the server by the teachers. However, he considered it inappropriate to set the “storage period” at one academic year. He was of the opinion that a consensus could be reached through discussion.
41. The representative of HKSPSC pointed out that in view of the differences in students’ levels of studies and learning abilities, it was necessary to store the teaching materials on the intranet to cater for students with varied learning abilities. Besides, it would in fact be very difficult to ask teachers to prepare new teaching materials every term or every academic year.
42. The representative of HKACE opined that prior consent of the copyright owners should be obtained for continuous use of copyright works. He mentioned that the previous Guidelines only allowed teachers to copy copyright works without prior consent of the copyright owners under spontaneous circumstances.
43. The representative of HKPFL suggested that the storage period should be set on the basis of “months” rather than “terms”.
44. Mr. SELBY asked the participants whether it was not necessary to consider the restrictions on “moderated learning” in the TEACH Act of the US. He invited the representatives to give their views on the length of the “storage period”.
45. The representative of HKSPSC inquired whether the Guidelines would allow teachers to store in their hard disks teaching materials after expiration of the storage period for future use.

46. Mr. SELBY said that under Hong Kong's existing Copyright Ordinance, the statutory permitted acts did not include the storage mentioned by the representative of HKSPSC. His personal view was that this did not fall within the scope of research and private study.
47. Mr. SELBY suggested that the Working Group should discuss the feasible ways to allow teachers to retain an archive copy for personal use. If there was a need to use the copy again, perhaps prior permission should be obtained from the copyright owner.
48. The representative of HKPFL said that the teaching materials stored on the intranet could be duplicated automatically into many copies in a network system, just like the printing of publications. This was the area they were concerned about.
49. Mr. SELBY said that the discussion was not focussed on technical copies.
50. The representative of HUCOM said that his understanding was that the existing Copyright Ordinance allowed the making of temporary and ancillary copies of the work by technical means to facilitate the viewing of materials on the internet. In formulating the previous Guidelines, members were not worried that students might make further copies of the photocopied work distributed to them. He did not understand why, for copying of works in the electronic environment, the publishing industry was worried about this.
51. The representative of HKPFL pointed out that "digital copying" did not involve any copying cost. However, copying by means of traditional printing would at least involve the costs of paper, printing and toner cartridge. As the copying process of the former was simple and did not incur any production cost, it would seriously affect the interests of the publishing industry.
52. The representative of the JULAC suggested that certain restrictions be imposed on the storage of materials on the intranet. For instance, information stored on the school intranet should not exceed 10% of the content of a certain copyright work. This would allay the concerns of the publishing industry.
53. The representative of HKPFL held that, with regard to original works, even if the stored portion only accounted for a very small percentage of the work, it might still be the quintessence of the work. He mentioned that there was an article on Digital Rights Management (DRM) and fair

use in the April issue of an American journal called “Communications of the ACM”. They hoped that schools should introduce appropriate measures on DRM to record the types of information stored on the network server. Schools should, as the circumstances might require, make the records available for copyright owners’ inspection. With this system of mutual trust in place, the users would use the copyright materials in a disciplined manner so that the publishing industry might rest assured.

54. The representative of HKAEC expressed his appreciation of the approach put forward by the representative of HKPFL. He pointed out that the organisations represented by the Working Group members were law-abiding bodies. He hoped that a consensus could be reached through discussion.
55. The representative of OUHK opined that schools should adopt practicable measures to prevent students from making unlawful copies by means of the network. Members had reached a consensus on this issue. The Working Group might consider setting a time limit for the “storage period”. A teacher who used a copyright work continuously should obtain the consent of the copyright owner.
56. The representative of HKPFL pointed out that he had to consult the members about the time limit of the “storage period”. He reiterated that the DRM function on the intranet could facilitate the legitimate use of copyright works and allay the industry’s concerns.
57. Mr. SELBY asked whether the “record system” mentioned by the representative of HKPFL was similar to a register. If the copyright work was a book, the particulars to be recorded included the title, the name of the author, ISBN and the page(s) copied.
58. The representative of HKPFL said that the particulars to be recorded should also include the file name of the record, which was to be decided by the teachers themselves.
59. Mr. SELBY illustrated with the example of using “F4 History.htm” as the file name. He said that the Guidelines could incorporate the requirements of the above “record system”. Members could also make templates for the record (e.g. by means of Microsoft Excel) so that teachers could use the templates to fill in the information.
60. The representative of HKPFL stated that “xml” should be added after the names of Excel files to facilitate processing of information in the

future. This would facilitate payment of licence fees when the licensing mechanism developed into a licensing scheme for electronic rights in the future.

61. The representative of HKAEC considered that storage of record by means of computer software was only a technical matter. This was not difficult to implement.
62. The representative of HKSPSC opined that the record system of text photocopying was already available. It would be preferable to have the software for preparation of record for teachers to follow.
63. Mr. SELBY asked where the DRM records would be kept and who would inspect the records. For example, he wondered whether schools were required to make available the records for inspection by anybody (including the copyright owner) within 24 hours upon receipt of the inspection notice.
64. The representative of HKACE felt that the copyright owners should have the right to inspect the DRM records.
65. The representative of the MPA reiterated that so far they had never received any application from the education sector for using the film clips produced by the film companies they represented for instructional purposes. They did not object to the use of film clips by the education sector for instructional purposes, but the sector should file formal applications stating the film clips to be used, the reasons for using and the circumstances under which the film clips would be used. The films, unlike textbooks, did not have page numbers. Also, a film released in different years might have different versions, with different titles and cast. Therefore, when applying for the use of films, detailed information should be given to enable the copyright owner of the film concerned to grant the permission to use.
66. Mr. SELBY concluded that members of the Working Group had generally reached a consensus on the idea of DRM.
67. The representative of MPIA reiterated that the Association only discussed the issue of DRM on behalf of their members. He pointed out that, since not all film companies were their members, even though the idea of DRM was generally accepted, there might actually be only a small number of film clips available for use. Hence, to a certain extent, the Guidelines might not be very effective. In discussing the issue of DRM, it should be noted that different media had their own special

characteristics and the DRM measure should be adjusted appropriately having regard to the circumstances of different sectors.

68. The representative of OUHK opined that so far the film industry's stance was that the issue of using film clips by the education sector for instructional purposes should be handled through licensing arrangements. He pointed out that the Guidelines would allow teachers to use copyright works to a reasonable extent without the consent of the copyright owner or payment of licence fees.
69. The representative of MPIA said that he agreed that the licensing arrangement mentioned by the representative of IFPI (Hong Kong Group) Limited in the previous meeting did not necessarily require payment of fees. He reiterated that the DRM measure had to be adjusted accordingly having regard to the characteristics of different sectors.
70. The representative of OUHK held that the discussion could not continue if members were unable to reach a consensus on the focal idea that the Guidelines would allow teachers' fair use of copyright works free of charge for instructional purposes. Teachers would perform statutory permitted acts based on their own understanding of the legislation.
71. Mr. SELBY said that the statutory exemption was also a kind of licence, except it was mandatory. He welcomed views from the representatives and hoped that the discussion could bring forth concrete recommendations.
72. The representative of HUCOM raised the following two points-
 - (1) He agreed that fair dealing was a kind of mandatory licence which was, however, different from the licensing arrangement referred to by the industry. As regards the former, the copyright owner could not make any change unilaterally or require the payment of a licence fee.
 - (2) He emphasised that from the perspective of the education sector, DRM was only a clear record of the information stored on the intranet. This would be a possible approach of development in the future. Therefore, the requirement of adopting the DRM measure should not be incorporated in the Guidelines. He was worried that DRM was a special technical term that went beyond the administrative capacity of ordinary schools (primary and secondary schools). He opined that from the perspective of the

industry, it was meant to pave the way for charging of licence fees. As the copyright notice in the previous Guidelines, the DRM measure would remind users to respect copyright works. Besides, the information recorded by DRM could be used as a basis for future litigation. In addition, he said that the record should not be made available for inspection by the public (including copyright owners) because there had been “fair dealing” with such information. As in the case of fair dealing with a work for the purpose of private study, users were not required to disclose their private revision record. He did not understand why teachers had to disclose their record of instruction.

73. Mr. SELBY stated that the Working Group could continue to discuss whether the DRM measure should be incorporated in the Guidelines. He understood that DRM was not a technical term.
74. The representative of HKPFL said that he was not authorised to discuss the conditions of the licensing arrangement with the users. He only reflected the industry’s views on the issues of the Guidelines and the compromise that could be made. Hence, he opined that the significance of the Guidelines was to reflect the compromise made by various industries. He added that the record of the relevant information under the DRM would enable the copyright owners to know under what circumstances the copyright work was used and when the information was deleted. This would help to settle disputes between the industry and the users and was the direction for long-term development.
75. Mr. SELBY clarified that the Government of the HKSAR was not vested with the power to grant mandatory licence. All new statutory exemptions would have to be scrutinised and approved by the Legislative Council. They had to comply with the standards of international conventions.
76. The representative of the HKPFL suggested that the period for storing the information on the server should not exceed six months. Information should only be stored once, not by sections. This was the minimum requirement. He opined that this time limit would meet the teaching needs. If there was a need for continuous storage, the user should obtain a licence in advance.
77. The representative of the ACTPO remarked that his previous understanding was that the “storage period” was calculated in days, but their members had not commented on the length of the period.

78. The representative of the HKRRLS said that they had not received their members' feedback on the "storage period".
79. Mr. SELBY asked the participants whether they would give up making reference to the mode of the TEACH Act of the US. He added that copyright works specially designed for distance learning were not exempted from the TEACH Act.
80. The representative of the HKPFL opined that the Working Group should give up making reference to the TEACH Act of the US. In addition, he hoped that there would be more guidelines on the "storage period", "instructional period", environment of use, archive, etc. for the industry's consideration.
81. Mr. SELBY invited the education sector to comment on the "storage period" and "archive".
82. The representative of OUHK opined that the discussion on the Guidelines should focus on the restrictions on distribution rather than file management.
83. The representative of HKPFL responded that infringement began with **copying** rather than distribution of works.
84. The representative of OUHK pointed out that if the Guidelines had to lay down specific requirements on file management, it would only cause unnecessary troubles. Besides, it would also be a question as to who should be responsible for file management.
85. Mr. SELBY said that if keeping an archive copy was not an act restricted by copyright, teachers should be allowed to keep the archive copy themselves without obtaining permission from the copyright owner. As to whether the Guidelines should clearly specify that teachers were allowed to keep the archive copy, the Working Group could have further discussions on this.
86. The representative of OUHK said that most of the time teachers would only select a small part of the copyright work for instructional purposes (e.g. for comment). It would be very troublesome if a fair use of very small and trivial portions had to be recorded in the DRM format each time. He opined that an acknowledgment attached to the fair use of the work would suffice.
87. The representative of HKPFL remarked that in fact a set of overelaborate recording procedures would enhance teachers' awareness

so that they would not use copyright works arbitrarily. This would produce a deterring effect.

88. The representative of HUCOM believed that the Guidelines would include requirements on the “storage period” and provide that the frequency of storage should not exceed one time. Hence, he held that the “archive” was only for the school’s internal storage and should not affect the economic interests of the copyright owner.
89. The representative of JULAC added that it was an “off-line archive”.
90. The representative of HKPFL pointed out that the discussion should not just focus on on-line networking. The industry was also worried about digital copying because such copying was easy and the cost incurred was low.
91. The representative of HUCOM pointed out that only information on the internet would be easily copied and off-line archive should not be regarded likewise.
92. The representative of HKACE pointed out that if the archive was stored for purposes other than back-up, then copying or distribution of it to the public via the internet would constitute infringement of copyright.
93. Mr. SELBY opined that distribution of archive copies on the internet could constitute civil and criminal liabilities. There were criminal liability provisions in respect of damaging distribution offences under Hong Kong’s Copyright Ordinance.
94. The representative of HKPFL said that teachers could search and retrieve the archive for future use of the course. Teachers would use less materials (textual materials in printed or electronic format) published by the publishers, hence posing an invisible threat to the business viability of the publishing industry.
95. The representative of HKACE pointed out that repeated use of archive information had already exceeded the scope of fair use.
96. The representative of HKPFL pointed out that the industry’s concern was that users could make the copying by means of the “archive” simply by pressing the key once. For example, there were 20 to 30 schools under the Po Leung Kuk and users could share the archive simply by pressing the key. He pointed out that they would not be able to give evidence in such a situation.

97. The representative of HKACE pointed out that even without the Guidelines or a consensus, the situation mentioned by the representative of HKPFL would exist.
98. The representative of HKPFL indicated that the interests of copyright owners had to be safeguarded. He emphasised that the DRM measure was adopted because it was a system for managing digital rights. Through the Digital Object Identifier (DOI), a label could be attached to on-line documents. When the storage period was over, the document would be deleted and the operation system could not be executed. He considered this a way to solve the problem. He also pointed out that the subject was being explored in the US.
99. Mr. SELBY said that -
 - (i) The Secretariat would prepare a list setting out the areas on which members had a preliminary consensus to facilitate the discussion next time.
 - (ii) As regards the issue on “archive”, he would examine it further with his solicitor colleagues.
100. The representative of OUHK said that it seemed that the discussion had focussed on the issue of transferring books in printed form to on-line publishing. He recalled that the Guidelines also dealt with the downloading of on-line materials to the local school computers, printing of such materials onto paper for distribution to students or uploading them to the school intranet.
101. Mr. SELBY said that the future discussion would cover this area. It was not known whether a consensus would be reached. He hoped the Working Group would carry out the whole exercise step-by-step.
102. The representative of HKPFL said that in a “huge database”, it was difficult for the industry to provide users with a clear definition of “fair use”. As they did not represent all copyright owners, they hoped teachers would assess whether a certain act was “fair use” by exercising their own judgment. But he also pointed out that they would face the reality and make compromise if it was preferable to have the Guidelines for teachers to follow.
103. The representative of HKACE said that although the Guidelines had defined, to a certain extent, what “reasonable extent” was, the Guidelines were not equivalent to law, but only a gentleman’s agreement.

104. Mr. SELBY said that the discussion might have the following three outcomes -

- (i) to reach a consensus within the scope permitted by law on defining what “reasonable extent” was;
- (ii) to deal with acts other than the “permissible acts” through licensing arrangements; or
- (iii) to propose legislative amendments to the Government for increasing the statutory exemptions in areas where the Working Group could not represent the copyright owners concerned.

Agenda Item IV

105. Mr. SELBY said that the next meeting would take place on 27 June 2003 (Friday) at 3 p.m. at IPD.

106. Mr. SELBY thanked the participants for attending the meeting and declared the meeting closed.

The meeting closed at 5:10 p.m.