

(Translation)

**Notes of the 4<sup>th</sup> 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 16 May 2003 (Friday)  
at the Intellectual Property Department  
Room 2501, 25<sup>th</sup> Floor, Wu Chung House,  
213 Queen’s Road East,  
Wanchai, Hong Kong**

Present :

- Representative of The Open University of Hong Kong (OUHK)
  
- Representative of Hong Kong Teacher-Librarians Association (HKTLA)
  
- Representative of Hong Kong Subsidized Secondary Schools Council (HKSSSC)
  
- 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 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 Hong Kong Educational Publishers Association (HKEPA)

Representative of the Anglo-Chinese Textbook Publishers Organization (ACTPO)

Representative of Television Broadcasts Limited (TVB)

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

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

Representative of Hong Kong Education City Limited (HKECL)

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

Mr. CHAN Hau-wing  
Education and Manpower Bureau (EMB)

Mr. Simon IP  
Education and Manpower Bureau (EMB)

Mr. Stephen SELBY (Convenor)  
Intellectual Property Department

Ms. Joey HUNG (Secretary)  
Intellectual Property Department

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

Representative of Union of Government Primary School  
Headmasters and Headmistresses

Representative of Hong Kong Subsidized Primary  
Schools Council (HKSPSC)

Representative of Hong Kong Professional Teachers'  
Union (HKPTU)

Representative of Hong Kong Cable Television Limited  
(HKCTV)

Representative of AOL Time Warner

*The meeting commenced at 3:10 p.m.*

1. Mr. SELBY welcomed participants of the Working Group to the meeting.

#### **Agenda Item I**

2. Ms. Joey HUNG reported that members proposed the following amendments:
  - (i) The representative of HKEPA proposed to amend 「不能禁止」 in paragraph 25 as 「無法有效監管」.
  - (ii) The representative of the IFPI (Hong Kong Group) Limited proposed that in paragraph 42 (the current paragraph 43), 「在版權人同意下」 be added after 「甚或」.
  - (iii) Representative of the OUHK proposed that a new paragraph (i.e. paragraph 48) be added in between paragraph 47 and 48 (the current paragraph 49):

「香港公開大學代表指出，既然電視廣播公司說如果它擁有該廣播節目的版權的話就會批准教育團體使用，否則要請示版權擁有人，他看不到電視廣播公司寧可選擇特許安排的原因在哪裏。」

The first sentence in paragraph 71 (the current paragraph 72) should read:

「香港公開大學代表認為，假如電影及音樂界給予教育界免費的特許安排，而且有關版權作品的幅度也大，則教師們十分樂於見到及歡迎。」

- (iv) The representative of MPA proposed that the sentence 「除非法律作出豁免，他們無法授權學界使用該等片段」 in paragraph 50 ( the current paragraph 51) be deleted.

Besides, 「貯存」 in paragraph 67 (the current paragraph 68) should read 「用正版」.

- (v) Representative of HUCOM said that the last sentence in paragraph 63 (the current paragraph 64) should read 『 「公眾」一詞泛指一群一群的人(相互有家庭關係或類似家庭關係的人除外(domestic or quasi-domestic circles) 』。

3. Mr. SELBY asked the participants if they had any objections to the proposed amendments. They raised no objections. He said the Secretariat would amend the draft notes of meeting to incorporate the amendments, and the revised version would be e-mailed to representatives concerned for perusal. The notes of the fourth meeting would be taken as confirmed if no further amendments were received within one week. The participants raised no objection.

## **Agenda Item II**

4. Mr. SELBY enquired the participants if they had any proposed amendments to the notes of the second meeting of the Working Group (English version). The participants raised no objection and the notes of meeting were confirmed unanimously. Mr. SELBY added that the notes of meeting would be uploaded onto the IPD web site for browsing by members of the public.

## **Agenda Item III (1)**

5. Mr. SELBY invited the publishing sector to express views on Agenda Item III (1). He further clarified that the portion of a textbook uploaded onto the school intranet was meant to be the content reproduced according to the previous Guidelines.
6. Representatives of HKEPA said that they had held discussions with the sector and they were divided on this issue. The sector was worried that the on-line activities would be out of their control as they were in lack of a clear concept of “Intranet”, not to mention the way it operated. Furthermore, the sector was in no position to

authorize the education sector to use the works involving a third party. He stressed that the sector has always been supportive of educational activities but objected in principle to the singling-out arrangement of textbook from other types of intellectual property.

7. Representative of the ACTPO shared the views of the representative of HKEPA. He said that they could not authorize the education sector to use works involving a third party, nor did they have a clear concept of the way the intranet operated. They did not know whether there were effective surveillance measures in schools as well. All these worried them.
8. Representative of HKRRLS indicated that publishers from the US and U.K. did not support the issue either. The act mentioned in the issue should only be performed with permission from the copyright owner. The issue should not be resolved simply by formulating a set of guidelines. As there were no such guidelines in the US and U.K., they did not understand why Hong Kong should take the lead. Since application for reproducing works of other media could be approved through licensing arrangements, publishing works should not be an exception.
9. Mr. SELBY hoped that the Working Group would deal with different kinds of works in the same way. He stressed that the previous Guidelines had included reproduction conditions for textbooks out of the consideration for the interests of local publishers. He asked the representative of HKRRLS whether they had the authority to grant the “electronic licensing” on behalf of members of the Society.
10. Representative of HKRRLS confirmed that they could only grant the reprographic licensing for printed works but not the “electronic reprographic licensing” involving the scanning, uploading and distribution of works via the Intranet. Notwithstanding this, HKRRLS could act as an agent to liaise with copyright owners concerned on behalf of the users in respect of an application for the “electronic reprographic licensing.”
11. Representative of the HKACE would like to clarify the following two points:
  - (i) The Copyright Ordinance in Hong Kong allows the education sector, for instruction purposes, to use copyright works “to a reasonable extent”. The Working Group is set up with the goal to formulate guidelines and provide a basis for the interpretation of “a reasonable extent”. The intent of the legislation would be distorted if some organizations presumed the reasonable extent as zero and licensing arrangements were required in all circumstances.

(ii) Representative of the related sector indicated they could not authorize reproduction of works involving a third party. He was, however, of the opinion that the meeting was held to enable representatives in the context of existing regulation, to reflect views of their sectors on certain issues, which would serve as references for the formulation of the Guidelines. Since the sector was in no position to authorize the use, the education sector might have to apply to a number of organizations for the authorized use of a small portion of copyright works for instruction purposes. This proved that there was a need to resolve the matter by the formulation of Guidelines.

12. Mr. SELBY opined that the issue deliberated by the Working Group this time was more complicated. Under the existing copyright law, teachers can, for instruction purposes, to a reasonable extent, copy, display and show the copyright work for the viewing of students such as embedding a portion of the musical work in the PowerPoint presentation, without obtaining the consent of the copyright owners. The further uploading, storage and distribution of the materials via the Intranet, however, was not exempted under the existing law. He understood that the participants of the Working Group could not speak on behalf of a third party, nor could all the copyright owners or education workers be invited to attend the meeting, which was practically unfeasible. However, he believed that the participants, representing their respective sectors, could adequately reflect views of copyright owners from different sectors so that a consensus could be reached and the Guidelines be formulated. He suggested that the definition of “Intranet” be first discussed so that different sectors would be able to grasp the concept and felt assured in the discussion of the remaining issues. The participants of the Working Group raised no objection to the suggestion.

### **Agenda Item III (2)**

13. Mr. SELBY said that items (1) to (8) in Part A of the draft Guidelines were about the background and legal aspects of the Working Group, which needed not be discussed in detail at this stage. He read out item A (6), which contained the general principle, as follows:

“The purpose of these Guidelines is to set down the conditions for determining the extent of permissible copying and distribution for acts specified in paragraph (D)(1) below by or on behalf of not-for-profit educational establishments for instruction purposes. For-profit educational establishments are not covered by these Guidelines.”

14. The representative of OUHK said that although the Guidelines covered only not-for-profit educational establishments, it should not affect the rights of for-profit educational establishments or education workers engaging in for-profit work to perform the statutory permitted acts.
15. Mr. SELBY said that there is no differentiation between "for-profit" and "not-for-profit" institutions in the definition of "educational establishments" under the copyright law in Hong Kong.
16. The representative of IFPI (Hong Kong Group) Limited enquired about how "for-profit" and "not-for-profit" educational establishments should be differentiated.
17. Mr. SELBY said that the following definition was provided in item B (5) of the draft Guidelines:

"Not-for-profit educational establishment" means an educational establishment specified in Schedule 1 of the Ordinance provided that it is also a not-for-profit establishment. These include all government schools, aided schools, schools operated by the English Schools Foundation, and other kindergartens, schools, colleges and universities specified in the "List of approved charitable institutions and trusts of a public character" under section 88 of the Inland Revenue Ordinance (Cap. 112)."
18. The representative of IFPI (Hong Kong Group) Limited pointed out that for both for-profit and not-for-profit educational establishments, licensing arrangements should be adopted with regard to the use of copyright works by the education sector.
19. Mr. SELBY agreed in principle with the representative of IFPI (Hong Kong Group) Limited that there should not be any differentiation between for-profit and not-for-profit educational establishments. The differentiation was only adopted by the last Working Group as a general principle in formulating the previous Guidelines in response to the concerns of the publication sector. For-profit educational establishments might make profit from making multiple copies of printed works and distributed such copies to their students.
20. The representative of IFPI (Hong Kong Group) Limited reiterated that they supported the reasonable use of copyright works for instruction purposes by the education sector. It would be acceptable even if the educational establishments collected fees from the students, as long as the copyright works were used genuinely for instruction purposes. They also permitted the reasonable use of musical

recordings by the education sector, however, they considered that licensing arrangements, a more flexible means, should be adopted in this respect.

### **Definition of “Intranet”**

21. Mr. SELBY briefed the participants about the Technology, Education and Copyright Harmonization Act (TEACH Act) of the US.
22. Mr. SELBY said that the legal text of the TEACH Act is difficult to understand. He has read an article on the TEACH Act<sup>1</sup> and would, with the consent of the author, copy and distribute the article for the participants’ reference at the next meeting.
23. Mr. SELBY said that TEACH Act mentioned about the following circumstances:
  - (i) Authorized not-for-profit educational establishments in the US may, under limited circumstances, use copyright works through digital means for distance learning courses without obtaining the copyright owner’s consent nor paying any royalties.
  - (ii) The law also requires educational establishments to adopt appropriate management measures and set out statutory requirements in relation to such measures. For example, students taking the courses should not have an unlimited access to relevant copyright works and a time limit should be set according to the class session of the course concerned. However, the TEACH Act did not specify the time limit. Mr. SELBY also suggested including the time factor in the definition of the term “Course” in item B(1).
24. Mr. SELBY then read out in English the following permitted acts under the TEACH Act as mentioned in a certain article:
  - transmission of the performance via digital networks of
    - an entire non-dramatic literary or musical work; and

---

<sup>1</sup> New Copyright Law for Distance Education: The Meaning and Importance of the TEACH Act Revision: September 30, 2002 at [http://www.ala.org/Content/NavigationMenu/Our\\_Association/Offices/ALA\\_Washington/Issues2/Copyright1/Distance\\_Education\\_and\\_the\\_TEACH\\_Act/teachsummary.pdf](http://www.ala.org/Content/NavigationMenu/Our_Association/Offices/ALA_Washington/Issues2/Copyright1/Distance_Education_and_the_TEACH_Act/teachsummary.pdf)

- reasonable and limited portions of all other performances, including those incorporated in any type of audio-visual work, such as videotapes and films, and any dramatic musical work.
  - transmission of displays of works via digital networks, including still images, in amounts comparable to typical face-to-face displays in live classroom session.
  - transmissions made to students officially enrolled in the class wherever they are located, whether a classroom, a library, a dorm room, at work, or at home.
25. Mr. SELBY pointed out that the TEACH Act required educational establishments to adopt technologically feasible measures, for example, password access and limited access to on-line information to enrolled students. He added that though the word “reasonably” was frequently used in the TEACH Act, no explanation of its meaning was given.
26. Mr. SELBY indicated that TEACH Act required the educational establishments: i) to adopt technically feasible measures to prevent in a reasonable manner students from storing the information transmitted on-line for a period of time beyond the class session of a course; ii) to refrain from doing certain acts which might reasonably be in conflict with the technical measures taken by the copyright owners to prevent unlawful storage and distribution of information; and iii) to provide faculties, students and staff with information on the US Copyright Act. Some scholars in the US held the view that the TEACH Act made exacting demand on educational establishments and therefore proposed that unless necessary, the educational establishments should act in pursuance of the original statutory provision for exemption. Mr. SELBY said that he would make copies of the article after obtaining consent of the author for distribution to the participants at the next meeting.
27. The representative of the OUHK said that all of their students had their own user names and not common password, and students could access to online information during academic term. He noticed that although the University had disabled the “copy” and “paste” functions, the students were still able to remove the bar to these functions. He said that technically speaking, the University could take steps to limit the access of information to certain people only.
28. Mr. SELBY enquired of the representative of the OUHK for how long would the online information be usually stored.

29. The representative of the OUHK replied that some information would be stored for as short as 4 to 5 months, others for as long as one year, depending on the duration of respective course. He said that there was a total of about 100 to 200 teachers and students in one course. He added that the purpose of transmitting information (which was different from the printed text) via the Internet was to facilitate learning by students (for example, those on overseas business trip).
30. The representative of HKPFL asked when educational establishments deleted the file, whether they would delete the file addresses only or the whole file. In addition, he queried about the security of the password system (which comprised of public key and private key) of the internet. Although the use of password could verify the identities of users, he could not rule out the possibility of simultaneous logins by a number of people using the same password. As a result, they were unable to monitor the extent of use of on-line materials by users. Furthermore, he said that intranet was a network accommodating a large number of servers where copies could be stored and he doubted if all the files could be truly deleted.
31. Mr. SELBY said, some US academics opined that TEACH Act only required educational establishments to adopt feasible and reasonable technical measures, however, they should not necessarily provide 100% protection.
32. The representative of HKPFL said that he only expressed his worries. He added that schools should always provide new “password” for students to ensure the security of password. Concerning the definition of “intranet” defined in the agenda, he opined that the emphasis was placed on members' identities without stating the responsibilities of the administrators or the users. He also pointed out that firewall, a basic requirement, had not been provided in primary and secondary schools' intranet.
33. Mr. SELBY said that it was reasonable to require the schools to adopt effective administrative measures but the level of confidentiality required should not be as high as that of the government departments. The film industry and music industry of the US shared the view.
34. The representative of HKPFL expressed that they would feel much assured if the educational establishments in Hong Kong adopted stringent surveillance measures.
35. In response to the views of the representative of HKPFL, the representative of the HKACE made the following comments:

- (a) To his understanding, under the Inland Revenue Ordinance of Hong Kong, relevant parties were allowed to use passwords for the purpose of authenticating their identification. Given that the Guidelines to be formulated were not laws, he questioned whether it would be appropriate for the Guidelines to impose password requirements even more stringent than those stipulated by the Inland Revenue Ordinance.
- (b) For primary and secondary schools, “intranet” was a vague concept. Some schools had in-house servers, which blocked outsiders’ access to their intranets. However, some schools had to hire the common server of an Internet Service Provider, for example, the HKedCity website of the Hong Kong Education City Limited. Under such circumstances, firewalls were not provided.

He opined that at present there were legislations against the unlawful act of obtaining information through access to networks by illegal means. The proposed Guidelines needed not deal with such issues. Instead, the Working Group should focus on the discussion of actual problems arising from operations such as the number of users, the time limit for storing information and management measures, etc. Regarding the definition of “intranet”, it should be considered in terms of functionality and outcome.

- 36. The representative of IFPI (Hong Kong Group) Limited held the view that “intranet” was a vague concept. It should be a closed network of a school that served the students only.
- 37. Mr. SELBY said that, as he understood it, the school intranet is a local area network (LAN). But in fact, all LANs nowadays were equipped with linking function to the internet.
- 38. The representative of HUCOM pointed out that intranet in fact originated from the internet. The intranet was a relatively closed network which adopted encryption or password login measures. Hence, access to the network was not for everyone. The network itself was not completely closed to the outside world. He understood the worries of the publishing industry. However, if there was no consensus among the participants on this point, the discussion could not possibly continue. He opined that they should first agree on the meaning of “intranet” before deciding on how copyright works could be uploaded, what copyright works would be stored and the extent of storage and distribution.

39. The representative of IFPI (Hong Kong Group) Limited said that he had no objection to the resolutions put forward by the representative of HUCOM.
40. The representative of HUCOM added that according to experience of the University of Hong Kong, both firewall and access control were reasonable precautionary measures. Although there was no absolute guarantee against hackers, so far there had been no abuse of on-line information. He pointed out that as teaching materials were actually quite dull and boring, not many people would be interested in their copying and distribution. The industry needed not worry too much.
41. The representative of IFPI(Hong Kong Group) Limited said that if the Guidelines were not formulated with careful considerations, they might indirectly legitimize the unlawful acts of downloading musical works from the internet. He reiterated that the industry and the education sector should come to an understanding of the definition of a reasonable extent, through direct dialogue, and resolved the problem by way of licensing arrangements.
42. The representative of the OUHK clarified that the matter under discussion was the free use of copyright works to a reasonable extent by the education sector without having to obtain licences from the copyright owner. Cases where licences had to be obtained from the copyright owner and licence fees be paid should be discussed in other occasions but not at this meeting.
43. Mr. SELBY expressed the view that the scope of discussion was not necessarily confined to matters relating to the proposed Guidelines. Discussion from different perspectives could facilitate a better understanding of the coverage of teaching activities, the extent of copying and distribution of works and the meaning of “intranet” as well. This would then enable the education sector to establish an appropriate mechanism governing the copying and distribution of copyright works electronically (for example, through the issue of blanket licences or granting of statutory exemptions by means of legislation).
44. The representative of HUCOM explained the difference between the proposed Guidelines and a blanket licence. The former was to be formulated by the industry and the education sector with the Government acting as convenor. The Guidelines set out clearly the extent of copying and distribution of copyright works and should not be changed easily. A blanket licence, however, was to be issued unilaterally by the copyright owner. Unless they were issued with lenient conditions and were not to be amended at any time, blanket licences issued could always be revoked or replaced by another blanket licence with stringent control. The education sector

did not see any need to require that licences should be obtained in all circumstances (even though the extent of copying and distribution was small).

45. Mr. SELBY said that licensing conditions could be harsh or lenient. For example, the Oriental Daily and the Apple Daily had issued public statements to permit the education sector to make copies of the articles in the newspapers for instruction purposes.
46. The second representative of the JULAC indicated that the universities had to deal with the renewal of thousands of licensing agreements every year, which involved massive workload. There was indeed a need for formulating the Guidelines to facilitate the free use of the copyright works by the education sector to a reasonable extent without obtaining the licences. The universities could adopt technical surveillance measures to monitor the intranet to check whether there were simultaneous logins to the system with the same password. The password could also be invalidated upon the lapse of a period of time.
47. Representative of HKPEL opined that the definition of “intranet” should include the requirements of technical specification such as the standard of “DOI (Digital Object Identifier)” mentioned earlier.
48. Mr. SELBY said participants of the meeting had initially come to the consensus that “intranet” could be defined as a network with access control and only available to restricted community. The definition needed not contain too many technical terms.
49. Representative of the OUHK considered the proposed definition in Agenda Item III (2) clear.
50. Mr. SELBY added that the definition of “intranet” should include the following elements:
  - (i) the access of the system is restricted;
  - (ii) each user has his own password and the sharing of one password by many is not allowed (i.e. ‘one to one’, not ‘one to many’).

He said that the definition of “Intranet” would be further discussed at the next meeting from the perspectives of timing, types of works and exemption. The management responsibility of education establishments would be discussed as well.

He also reminded the participants to bring with them both the Chinese and English version of the Guidelines for discussion to the next meeting.

51. Mr. SELBY said the next meeting would take place on 6 June 2003 (Friday) at 3:00 p.m. at Intellectual Property Department. He thanked the participants for attending the meeting and declared the meeting closed.

The meeting closed at 5:10 p.m.