

**Notes of the 2nd Plenary 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 22 August 2003 (Friday)
at the Intellectual Property Department
Room 2501, 25th Floor, Wu Chung House,
213 Queen’s Road East,
Wanchai, Hong Kong**

- Present :**
- Representative of Hong Kong Private Schools Association Limited
 - Representative of Hong Kong Direct Subsidy Scheme Schools Council
 - Representative of Hong Kong Association of Sponsoring Bodies of Schools
 - Representative of The Open University of Hong Kong (OUHK)
 - Representative of Vocational Training Council (VTC)
 - Representative of Hong Kong Teacher-Librarians Association (HKTLA)
 - Representative of Witman Publication Co (HK) Ltd.
 - 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 Academy for Performing Arts (HKAPA)
 - Representative of Hong Kong Copyright Licensing Association (HKCLA)
 - [In attendance only]*
 - 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 International Federation of the Phonographic Industry (Hong Kong Group) Limited (IFPI)

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

Representative of Music Publishers Association

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

Ms. Mimi Lee
Education and Manpower Bureau (EMB)

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

Mr. Peter CHEUNG (Convenor)
Intellectual Property Department

Ms. Brenda WAN (Secretary)
Intellectual Property Department

Absent with apologies:

Representative of CAPUT Schools Council

Representative of Grant Schools Council (GSC)

Representative of Hong Kong Prevocational Schools Council

Representative of Hong Kong Special Schools Council

Representative of Council of Early Childhood Education and Services

Representative of Association of Principals of Government Secondary Schools

Representative of Union of Government Primary School Headmasters and Headmistresses

Representative of Hong Kong Federation of Education Workers

Representative of Hong Kong Shue Yan College

Representative of Government Librarians Association

Representative of Apple Daily

Representative of Oriental Daily News and The Sun

Representative of Hong Kong Publishers and Distributors

Association

Representative of Hong Kong Subsidized Secondary Schools Council (HKSSSC)

Representative of Hong Kong Professional Teachers' Union (HKPTU)

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

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 Motion Picture Industry Association Ltd. (MPIA)

Representative of Motion Picture Association (MPA)

Representative of Business Software Alliance (BSA)

Representative of Hong Kong Education City Limited (HKECL)

The meeting commenced at 2:40 p.m.

Agenda Item I

1. Mr. Peter CHEUNG introduced himself and welcomed all to the meeting. All members agreed to the replacement of Mr. SELBY by Mr. Peter CHEUNG to act as the convenor for the meeting.
2. Mr. Peter CHEUNG introduced the papers for the meeting, including the notes of the 1st Plenary Group Meeting, the notes of the 7th Working Group Meeting (Chinese version), the notes of the 6th Working Group Meeting (English version), the Draft Hong Kong Education Sector's Proposed Guidelines for Copying and Distribution of Works in the Intranet by Not-for-profit Educational Establishments, the Draft Charter on Educational Fair Use of Digitalized Copyright Works, and the Draft Licence Agreement for Not-for-profit Educational Establishments, etc. He said that this meeting aimed at reaching a consensus and discussing the way forward.

Agenda Item II

3. Mr. CHAN Hau-wing of EMB suggested replacing "government schools" mentioned in paragraph 4 of the notes of the 1st Plenary Group Meeting with "the EMB".
4. The notes of the 1st Plenary Group Meeting were confirmed.

Agenda Item III

5. The Secretary informed members that HKCLA proposed to amend paragraph 58 in the notes of the 7th meeting (Chinese version) as follows:

「香港複印授權協會代表表示，此特許協議雖然以教學用途為大前提，但“Blanket”一詞太闊，較難使版權擁有人接受，建議以用途作單位；另外，因此特許協議對象是教學團體，最後可能以象徵式收費或甚至不收任何費用，但協議精神應包括特許費用一項；對於協議內的特許權持有人(Licensor)應有的責任(Obligations)字句不夠具體，建議列明違約的後果；若結束特許安排時，應清楚列明所需時間，如三十日通知期及必須刪除檔案副本等字句；最後，建議加入匯報機制等。她認為，協議是保障雙方的，但此協議版本未能全面照顧版權擁有人的利益。」

6. The notes of the 7th meeting (Chinese version) were confirmed by members.
7. The Secretary reported that the representative of IFPI proposed to replace “musical works” in paragraphs 2,10,12 and 73 in the notes of the 6th meeting (English version) by “sound recordings / audio-visual recordings”, and the Chinese version should be amended accordingly.
8. The notes of the 6th meeting (English version) were confirmed by members.

AGENDA IV (i)

9. Mr. Peter CHEUNG reported that agenda item IV (i) was “To report and discuss ‘Hong Kong Education Sector’s Proposed Guidelines for Copying and Distribution of Works in the Intranet by Not-for-profit Educational Establishments’, and if possible, approve and adopt them and consider the logistics, publicity and timing of launching the Guidelines, if applicable”. He said that though seven meetings had been convened by the Working Group, copyright owners from different sectors were in general not supportive with respect to the formulation of the Guidelines and the

copyright owners present at the meetings were not fully representative. He pointed out that most of the members were of the opinion that if the draft Guidelines were formulated without the consensus of both copyright users and owners, it would be meaningless for the former to approve of the proposed Guidelines on a unilateral basis. However, individual members strongly requested IPD to take up the co-ordination work and the formulation of specific guidelines. In view of the request and our “can do” working culture, the Secretariat proceeded with the task.

10. Mr. Peter CHEUNG raised that the United Kingdom had once endorsed the implementation of similar guidelines in 1998, but the coverage was much narrower and the publishing industry was in support of the guidelines.

11. Mr. Peter CHEUNG asked members of the plenary meeting to consider the following three points:

i) Whether the Guidelines for copying and distribution of works on the intranet by not-for-profit educational establishments proposed by the education sector out of its one-sided wish had to be completed. He pointed out that as the draft Guidelines would not be recognized by copyright owners of any sector, to act in accordance with such Guidelines might possibly go beyond the scope of fair dealing. He reminded the education sector that in doing so, users might incur legal liabilities. He said that there was the need for IPD, as the convenor, to ensure that the formulation of the unilaterally proposed Guidelines and its application by copyright users would not cause the participating members and the organizations they represented to incur any legal liability;

ii) If the Guidelines were to be formulated unilaterally, the specific contents should reflect the minimum level of standard generally acceptable to both copyright users and owners. The setting of this minimum standard level on a unilateral basis was not easy either.

iii) The specific contents of the Guidelines should not go beyond the reasonable extent of statutory permitted acts.

12. Mr. Peter CHEUNG said that the specific Guidelines were drafted at the request of Dr. YUEN of OUHK. The Secretariat had laid down some criteria in the Guidelines and hoped that the relevant sectors would agree to them. He invited comments from the representative of OUHK.

13. The representative of OUHK opined that the draft Guidelines could serve as a basis for discussion. He considered it a responsible draft, as it specified that no person should use the copyright works of others at will. He held that the education sector should comply with the draft Guidelines and follow out their spirit.
14. Mr. Peter CHEUNG added that the Secretariat had drafted the Charter for reference with a view to seeking the community's reception to the principles of the education sector in its fair use of digitalized copyright works, thereby balancing the interests of users and copyright owners as far as possible. He considered fairness to be the fundamental principle of the Charter and invited views of the copyright owners.
15. The representative of the Hong Kong Direct Subsidy Scheme Schools Council remarked that teachers should be able to act within the permitted scope of the Guidelines. However, if the Guidelines could not be taken as the approved criteria, they would become a trap leading to liabilities. He suggested allowing the publishing sector more time so that the name of the endorsing organizations could be included in the Guidelines. The Guidelines with the names of the endorsed organizations might be taken as judges' reference in case of lawsuits. Otherwise the Guidelines would give no protection to users at all.
16. Mr. Peter CHEUNG responded that no copyright owners/organizations approved the Guidelines at this stage. In the absence of the blessing of the copyright owners, the Guidelines would be just a one-sided appeal of the copyright users of the education sector. He opined that the purpose of the meeting was to seek the support of the copyright owners in principle and preferably, the acceptance of the substantial Guidelines by the copyright owners.
17. The representative of IFPI pointed out that the phonographic industry would like to help the education sector. If the education sector formulated the Guidelines unilaterally, the Guidelines might become a trap. The purpose of his attending the meeting the day was to advise the Plenary Group that the industry was arranging a licensing scheme for the members. He remarked that Mr. Selby had once stated in the meeting that licensing schemes would not only allow the education sector to use the copyright works, but also make users face up to the legitimate rights of the copyright owners. He said that the phonographic industry could not approve the Guidelines at the moment. He asked whether there were any representatives of the education sector who could discuss a collective licensing scheme with them.
18. Mr. Peter CHEUNG responded that the education sector might not object to paying for the use of copyright works. The aim of the Guidelines was to work out a

reasonable extent for the education sector to use the works free of charge. If the extent was exceeded, the copyright users had to obtain a licence. The charges under the licensing scheme could be nominal.

19. The representative of IFPI said that money was not the only concern for the phonographic industry. The industry hoped that fairness could be seen. The industry also had to accept international liability, as most of the copyrights did not originate in Hong Kong. He remarked that he did not see at the moment the urgent need of the education sector to use pop songs for instruction purposes because the education sector could have a wide range of choices.
20. Mr. Peter CHEUNG said that he wanted to listen to the opinions of the publishing industry.
21. The representative of ACTPO remarked that ACTPO hoped to provide convenience for the education sector. The same approach was adopted in formulating the previous Guidelines. He pointed out that a lot of materials in textbooks came from a third party and the licensing obtained by ACTPO usually did not include digital rights. Hence, there would be the problem of mandate. He said that ACTPO members were also very concerned about the monitoring in schools. It would give rise to a lot of unexpected problems if the Guidelines for the copying of copyright works in an electronic environment were formulated in the absence of a well-established DRM (Digital Rights Management) system. ACTPO opined that it was not the right time to formulate the Guidelines yet if the copyright owners of other electronic media, such as musical works and films, did not approve the Guidelines. ACTPO preferred granting authorization for copying to schools in the form of licensing and suspending the discussion on the Guidelines until a suitable time.
22. Mr. Peter CHEUNG asked how ACTPO could give authorization to schools if it did not have a mandate in relation to digital rights.
23. The representative of ACTPO replied that if ACTPO had the copyright of the materials, its members could handle the schools' requests directly. If the copyright was held by a third party, its members could act on behalf of the copyright owner. He pointed out that it was difficult for users to distinguish between different publishers but ACTPO members could act as coordinators.
24. The representative of IFPI said that the Guidelines did not cover sound recordings and films, and therefore, they did not directly concern IFPI. He pointed out that the Guidelines were hard to enforce due to its ineffectual in law. He further opined

that copyright owners would rest assured of allowing the education sector to use copyright works when there was a well-established DRM system in the future. He thought this was a matter of time only.

25. The representative of HKPFL reiterated their stance:
 - i) They did not accept Guidelines involving the publishing industry only as the Guidelines should cover multi-media environment. If only 2-dimensional publishing industry would be involved, they would be unable to convince their members to follow the Guidelines;
 - ii) They would like to cooperate with the education sector by allowing the latter to use copyright works through licensing. As members of HKPFL included publishers of textbooks and books and magazines of other kinds, they could not support the formulation of the Guidelines in the name of HKPFL. He held the view that if an author disagreed to the terms and conditions of the Guidelines, he or she had a right to institute legal proceedings and HKPFL could do nothing to interfere.
26. The representative of HUCOM asked why formulation of Guidelines was impossible while licensing arrangement would work in digital environment where DRM was still not well-established.
27. The representative of IFPI said that licensing schemes were adopted by copyright owners on a voluntary basis. He remarked that collective licensing schemes might not be non-discriminatory, but users could choose different terms and conditions based on their own cases. Only licensing schemes could cover the use of copyright works originated from different regions since there were numerous copyright works throughout the world. He would like to see an orderly and gradual approach in handling this issue. He remarked that technology had its contribution as witnessed in DRM which could set expiry dates for copyright works. The phonographic industry was studying the use of self-expire files. Fixing expiry dates for their works would clear their suspicions. This was the future trend.
28. The representative of HUCOM inquired if the industry had considered adopting licensing schemes free-of-charge.
29. The representative of IFPI replied that some schemes were free of charge, while some were not. He indicated that licensing schemes were formulated in the light of social environment, and he illustrated this with an example. He said that works

found in the library with licence expired could be used for adding sound effects and background music into PowerPoint presentation, while the use of works whose licence still valid required payment. He further said that lyrics were educational and courses such as the one on Simon and Garfunkel was a course to do with lyrics. The teacher could play the Piano Concerto of Beethoven by playing a CD in class. He received proposals asking IFPI to consider whether 15 seconds would be regarded as reasonable use. IFPI was consulting its members on the proposals. He was of the view that if IFPI did not know how the education sector would use their works, it would be difficult for them to establish long-term licensing schemes.

30. Mr. Peter CHEUNG explained that it was necessary to strike a balance between the aspirations of users and the interests of copyright owners. Copyright owners might be unwilling to grant licence as DRM was still not well-established at the moment. As such, the formulation of Guidelines incurred a certain risk. If copyright owners did not approve the Guidelines, the consequences could be very serious. He suggested that the draft Guidelines be treated as the aspirations of non-profit-making establishments for using printed works on the web.

31. Mr. Peter CHEUNG pointed out that the problem of failing to formulate Guidelines was universal and not unique to Hong Kong. He reported that the Hong Kong Government had put forward a proposal on holding a regional symposium tentatively called “Educational Fair Use of Digitalized Copyright Works” by WIPO (World Intellectual Property Organization). The proposal had been approved by the Central Government and submitted to the Director-General of WIPO through the Chinese Ambassador to Geneva. The symposium was expected to be launched in February next year.

32. Mr. Peter CHEUNG revealed that the symposium would examine the following issues subject to the agreement of WIPO:

values of the education sector, difficulties in formulating the Guidelines, licensing of electronic copyrights by copyright owners, rights of the third party, scope of electronic copyright works, coverage of the Guidelines, consequences of exceeding the scope of the Guidelines, DRM technology, proceeds and viewpoints of copyright owners, etc.

33. Mr. Peter CHEUNG did not think that efforts of the Working Group had been wasted after a number of meetings. He opined that even if consensus could not be reached on the Guidelines, Hong Kong could share its experience in an international level in the symposium and seek supports from various aspects.

34. The representative of OUHK remarked that the symposium aimed at providing an opportunity for the representatives to voice their opinions and did not bear any responsibility, so it might turn out to be a forum only. He further said that the Working Group already found it very difficult to convince the publishing industry. To reach a consensus in the symposium would be even more difficult. He cast doubts on the effectiveness of the symposium. He held the view that since the Working Group failed to formulate the Guidelines, it had a responsibility to request the Legislative Council to handle this issue through legislation. The education sector had an urgent need for copying to facilitate teaching.
35. Mr. Peter CHEUNG responded that very often symposiums had positive effects since they always brought about cohesion and served to pioneer new ideas. He said that to set the minds of users and copyright owners at rest, legislation was a good alternative if a consensus could not be reached through administrative means or negotiations. For instance, the legislation could set out the scope of fair use in a clear and specific manner, or establish a statutory licensing system for educational purposes (to model after that of Australia). He, however, stated that the Government needed to consider seriously the proposals of legislation and setting up a statutory licensing system because both of them required resources.
36. The representative of HUCOM commented that no doubt it would be better if a consensus could be reached, but unfortunately, under the consensus approach, if a copyright owner is selfish, it could simply refuse to consent or even retire from the Working Group, and no guidelines can be resulted. He supported to deal with the issue through legislation. Nonetheless, he considered it necessary to explain to the Legislative Council why the previous Working Group succeeded in formulating the Guidelines for copying printed works, while the present Working Group failed to formulate Guidelines for copying in an electronic environment which resulted in a waste of resources. He protested the argument that the failure was due to a lack of mandate because if that was the case, Working Group meetings should not be convened at all. He proposed to reflect to the Legislative Council the fundamental difficulties, such as immature DRM, worries of the industries concerned, too extensive coverage of the Guidelines, and the involvement of undeveloped areas.
37. Mr. Peter CHEUNG said that the Working Group was doing a pathfinding job. He considered that a consensus could be reached and mandate secured in the course of discussion. He believed that both sides intended to formulate the Guidelines, otherwise, they did not need to convene the meetings. Legislation was one of the feasible solutions before a well-established system had been developed.

38. The representative of ACTPO responded that they were not selfish copyright owners and said that they were only exploring the possibility of electronic copyright licensing but found that there were a lot of problems to overcome. He said that the concept of electronic copyright might not yet exist when the legislation set out the scope of reasonable extent. He stressed that ACTPO was not refusing to formulate the Guidelines, otherwise, they would not spend time on the discussions.
39. Mr. Peter CHEUNG observed that both sides had made their best endeavors. He said the negotiation process was very important and the IPD would report to the Legislative Council that though administration negotiation had been conducted, a consensus was still unable to be reached.
40. The representative of IFPI considered that the efforts made and time spent by the Working Group had not been wasted. IFPI, which had not entered into any licensing scheme before, would try to develop a licensing scheme tailor-made for the education sector. He supported the launching of an international symposium so that it could be made known that not only did the education sector has aspirations, the copyright owners had aspirations too.
41. Mr. Peter CHEUNG hoped that the whole world would take heed of the problem and make concerted efforts to tackle it. He concluded that the Working Group failed to reach a consensus and the only alternative for the time being was through legislation. IPD would reflect the situation to the Commerce, Industry and Technology Bureau. On the other hand, IPD would launch the symposium to explore other practicable means.
42. The representative of JULAC enquired about the status of the Guidelines.
43. Mr. Peter CHEUNG replied that the draft Guidelines were formulated at the request of the representative of OUHK. If the Guidelines had been approved, they could be regarded as the aspirations of the education sector in Hong Kong and put forward in the international symposium.
44. The representative of JULAC indicated that the draft Guidelines had been submitted to JULAC and its members made many comments. She asked if discussions on the Guidelines should continue.
45. The representative of HUCOM stated that if the plenary meeting decided not to formulate the Guidelines for copying of copyright works in an electronic environment, it must explain why a consensus could not be reached. He enquired

if the education sector was not permitted to use the materials on the Internet or upload materials onto it. He believed that the teaching staff might be in great doubt as to whether they were allowed to do so. He wanted to know the reasons for the failure in formulating the Guidelines. He asked if it was because the Working Group was not representative enough or the Group had the wrong members.

46. Ms. Mimi LEE of EMB shared the view of the representative of HUCOM. She remarked that much time was required for legislation, and they might not be able to fight for a time slot for legislation. She said that school would begin soon. EMB had to represent the government schools on the one hand and its views on copyright represented the education sector's on the other. If it was unable to find a way to follow out the spirit of section 45 of the Copyright Ordinance under constraints and determine a reasonable extent for use of copyright works in the new school term, a lot of problems might arise in the coming academic year. The process of legislation could be very long. She asked how the problem during the time gap could be solved. She said that although schools could join the respective licensing schemes for using copyright works like musical records, she wondered if the secondary, primary and special schools wished to adopt this method. She pointed out that the negotiation process of a licensing scheme was quite long and complicated, and the charging of fees presented another problem. Moreover, aided schools would have certain difficulties in paying the licence fees. She hoped that guidance on the meaning of reasonable extent could be provided. She asked what else the education sector could follow in case no guidelines were formulated. In her opinion, should there be a licensing scheme, the coverage had to be wider. Sharing the same view with the representative of HUCOM, she wondered how members could discuss the formulation of a comprehensive licensing scheme if they were unable to reach a consensus on the formulation of a set of comprehensive guidelines. She asked if this was a "mission impossible".
47. The representative of HKPFL advised that the phrase "mission impossible" was also mentioned in the 1st meeting of the Plenary Group. HKPFL continued to participate in the discussion because it hoped that good results could be yielded. He considered such a problem an international one, which was beyond HKPFL's control. Regarding the publication of works in printed form, there were only some 3,000 books published in Hong Kong every year; whereas the number of books published in the United States and the Mainland were 50,000 to 60,000 and 100,000 respectively. The publishing sector in Hong Kong only accounted for a small part of the publication industry. Therefore, it was not in a position to make a decision. This was a fact which members of the plenary meeting had to look in the face. He

pointed out that the publishing sector had responded positively to the request of the education sector, such as suggesting the setting up of a DRM system. He reiterated that the principles adopted in formulating the guidelines on the spontaneous and fair use of printed works could not be applied to the formulation of the guidelines on the fair use of multimedia works, for the two sets of Guidelines were not exactly the same. He held that each set of Guidelines or legislation process was stand-alone. Success in formulation of the previous Guidelines did not imply that the proposed Guidelines in question could be completed successfully.

48. The representative of OUHK opined that any reasonable extent would become unreasonable with the accumulation of materials, which could not be prevented by technology. As such, there was no reasonable extent of using copyright works in an electronic environment. To his regret, members had not discussed the meaning of reasonable extent as he could remember. School would begin very soon. He considered it necessary to inform the Legislative Council of the urgent need to resolve this matter because the issue at hand was not that the education sector had liberty to use on-line teaching. In fact, teachers were now teaching through the web.

49. The representative of IFPI said that the meeting helped to gather opinions of both sides and the draft Guidelines could be referred to when preparing collective licensing schemes. Regarding the urgency of this matter to the education sector, he remarked that he was not sure whether the music industry could render much help to the teaching profession because teachers did not encourage listening of popular songs. The sector might consider setting out in the licence that the teaching profession was permitted to use segments of classical music not exceeding 15 seconds in duration free-of-charge. He had written on behalf of IFPI to Mr. SELBY, Director of IPD, expressing IFPI's understanding of the education sector's aspirations. This showed that the efforts they devoted to the discussions had not been wasted. However, he stated that IFPI could not allow the teaching profession to use all copyright works. He then reiterated IFPI's stance as follows:

- i) teachers were not permitted to use a copyright work without authorization and create a new one based on it resulting in the ownership of the copyright of the derived work. This was their minimum requirement;
- ii) pirated works on the Internet should not be legalized.

He disagreed to the view that attending the meetings was a waste of time for he learnt a great deal throughout the discussions.

50. Mr. Peter CHEUNG concluded that the Copyright Ordinance aimed at recognizing the results of copyright owners' untiring efforts and giving them economic benefits in return for their creation through copyright law. Members agreed that Hong Kong should conform to international standards. To strike a balance between the interests of the copyright owners and those of the users, users could make reasonable use of copyright works for scientific research, private study, news commentary, library and instruction purposes without prejudice to the interests of copyright owners. He pointed out that general Guidelines would be difficult to formulate since reasonableness was a concept of equity depending on one's particular circumstances. Besides, there was no court case to be referred to for clear guidance. The work for the time being was to define whether the use of works was reasonable. This might not be a "mission impossible"; rather, it was a "mission improbable".

51. Mr. Peter CHEUNG said that it was difficult to settle this matter once and for all. He proposed plans in the short-term, medium-term and long-term as follows:

Short-term plan: He held that though there were no guidelines clearly setting out the permitted extent of use, copyright works could still be used provided that the user had a good conscience and knew he was making a reasonable use of the works. Before a court case that could be referred to occurred, users had to act on their own discretion, and if users had worries, they might seek permission from the copyright owners in advance. Though seeking permission might cause trouble, a balance had to be struck between the interests of both sides. Since the commencement of the copyright law in 1912, a definition of "reasonable extent" had been lacking. One could not say that Hong Kong's attempt to formulate the Guidelines ended in fiasco as other countries also failed to do so.

Medium-term plan: The content of their discussions could form the basis of the aspirations for legislation. "Reasonable extent" could be defined through legislation, while the exclusive rights of copyright owners could be diminished to right of equitable remuneration through the statutory licensing system for educational purposes. The merit of this plan was the provision of a legal basis for the protection of users and for the guarantee of a return to the copyright owners under statutory licensing schemes adopted through the statutory

mechanism.

Long-term plan: He suggested that an international online copyright clearance centre be set up with the development of DRM technology for granting a package of licences to the education sector. This proposal could be started off in the symposium to be co-organized with WIPO hoping to make a significant contribution to the world.

52. Mr. Peter CHEUNG commented that these three plans were not contradictory and could be implemented concurrently. He hoped that all members would accept these short-term, medium-term and long-term strategies.

Agenda IV(ii)

53. Mr. Peter CHEUNG briefed members on two papers. He pointed out that the Charter aimed at reminding users of copyright works of the principles to be followed in their reasonable use of the works of others. It was also hoped that copyright owners would realize that while they had certain rights, they were required to undertake ethical commitments. As regards the Licence Agreement for Not-for-profit Educational Establishments, it was a draft which provided a basis for discussion for individual organizations. However, it served as a reference only. Legal advice had to be sought before the Agreement was put to practice.

Agenda V

54. Mr. Peter CHEUNG remarked that the way forward was to implement the short-term, medium-term and long-term strategies mentioned above. He invited members' views on the issue.
55. Mr. Jeffrey Chan of CITB indicated that provisions on the meaning of reasonable extent under the Copyright Ordinance were included in the public consultation conducted by the Government in 2001. In March 2002, CITB reported to the Legislative Council that the content of reasonable extent would further be explored. Nevertheless, the subject was not included in the Copyright (Amendment) Bill 2003 under deliberations by the Legislative Council. He opined that the legislative proposals concerned could be submitted to the Legislative Council for deliberations in the 2004/05 legislative session the earliest.

56. Ms Mimi LEE of EMB indicated that the Guidelines on printed works had been formulated and licensing agreement had been signed by the parties concerned. The renewal of the licence was in progress. However, there were divided views on the terms and conditions of the licence and controversy over the fees charged. Since the charges were set by the sector unilaterally, she raised a query on the basis of royalty charges. She enquired if there were any legislations which monitored the charging of royalty.
57. Mr. Peter CHEUNG said that since copyright was a kind of private property, copyright owners had the rights to charge royalty. Moreover, a mechanism (Copyright Tribunal) had been set up to determine whether the royalty charges under the licensing scheme were reasonable.
58. The representative of OUHK pointed out that the meeting was convened for the purpose of discussing issues raised by Ms Mimi LEE. The formulation of Guidelines could avert the problem of royalty charges so that users would feel assured in using the copyright works without obtaining permission or licence from copyright owners. He disagreed to the copyright owners' view that the licence could solve the problem because of the following reasons:
- i) the procedures were complicated and the licence was not up to the requirements of the users;
 - ii) licensing was not the original intention of formulating the Guidelines. The Guidelines originally aimed at using the copyright works by users within a reasonable extent. To abandon this principle would mean non-compliance with the rights and obligations conferred by the copyright law.
59. Ms Mimi LEE of EMB supported the view. She opined that the spirit of section 45 of the Copyright Ordinance aimed at allowing the education sector to copy printed works or electronic works to a limited extent. The cooperation between copyright owners and the users were of paramount importance. She held the view that copyright owners should respect the spirit of section 45 and understand the needs of the education sector. It was anticipated that plenty of copyright works would be used by the education sector. Without the Guidelines, the principals would interpret the definition of reasonable extent of copying in their own ways after the school began. She pointed out that school-based management was the current education strategy, each school would produce its school-based teaching materials. This would be the direction for the education sector. She supported the view that the issue should be resolved by legislation but did not want a provision stipulating

that users had to pay for the licence. She opined that a bottom line should be set by copyright owners as which copyright works could be used by the education sector free of charge and which should be charged. She suggested that freebies available for use by education sector without going through the negotiation process or obtaining the licence should be listed out in the Guidelines. She enquired whether there were flexible uses of copyright works without the need of obtaining permission or licence.

60. Mr. Peter CHEUNG indicated that all creative works were automatically protected by copyright law and registration was not required. Permission had to be obtained for copying except those which indicated that they could be used freely.
61. The representative of IFPI opined that cost-effectiveness was the main concern in the formulation of the Guidelines or the enactment of legislation. There were merits in defining the extent of exemption by legislation or licensing. The merit for licensing scheme was that it could go beyond the extent of exemption. The industry would try to assist the copyright owners to reach a consensus with the education sector but the industry would have to accept international liability. He said he refrained from using the word “freebies” as different copyright owners might have different views, and some copyright owners might be reluctant to abandon their rights. He opined that teachers could choose not to use the copyright works concerned. He reiterated that money was definitely not what the industry had in mind and the industry also had aspirations. He opined that collective licensing scheme could be formulated through negotiations while legislation enactment allowed less flexibility. It might give rise to mistakes if legislation was enacted before there was a clear situation of the DRM. He said flexibility was important to the phonographic industry.
62. The representative of VTC enquired why legislation enactment was considered the medium-term plan and the licensing scheme the long-term plan. He asked whether it was the other way round.
63. In response, Mr. Peter CHEUNG said the licensing scheme had an extensive coverage covering all kinds of digital works which included literary works, music, drama, artistic works, sound recordings and video recordings. World-wide support was required and an overall consensus should be reached. As such, the procedures were time-consuming. Comparatively speaking, legislation enactment in Hong Kong took shorter time and provided better protection to the users.

64. The representative of IFPI enquired whether there were any internationally accepted principles on fair use available for the industry's reference.
65. Mr. Peter CHEUNG remarked that a paper on copying of works from the Internet was produced in Britain in 1998. However, it was only accepted by the printing industry and it did not cover other digital copyright works. He pointed out that any similar consensus reached in Hong Kong or in the neighbouring regions would be made available for members' reference and discussion. He considered that it was a matter of time and a consensus might be reached when the time came.
66. The representative of OUHK raised the last point. He wished to make it clear that although both the reasonable extent stipulated by the law and the licensing scheme allowed users to use the copyright works legitimately, the two approaches were basically different. What should be focused on right now was the small scale of copying free of charge and he held the view that teachers had two ways of handling:
- i) using a small quantity of copyright works for instruction purposes to a reasonable extent without seeking approval from copyright owners;
 - ii) using a large quantity of copyright works by means of licensing schemes.
67. The representative of OUHK agreed that copying in an electronic environment involved accumulation and users knew that they should not accumulate copies of the works. He opined that the meeting should not abandon the discussion on the definition of reasonable extent because of the problem of accumulation. He pointed out that the reasonable extent should be similar to the extent stipulated in the previous Guidelines. He was of the view that should there be legislation enactment, the meeting had to indicate that copyright owners were reluctant to set out what reasonable extent was because in an electronic environment, the extent of copying would easily become unreasonable.
68. The representative of HKPFL said that he did not accept the comments made by the representative of OUHK. He pointed out that in the past seven meetings of the Working Group, HKPFL repeatedly expressed their views, raised technical issues or provided concrete figures. Copyright owners' reluctance was not the sole deciding factor of whether the Guidelines could be successfully formulated. In fact, intellectual property itself was a very complicated issue, digital environment had its own uniqueness and the issue of accumulation did exist. He pointed out that piracy of VCDs was rampant because of easy production. He remarked that he did

not evade the problems in the working group meetings, rather, he put forward suggestions on technical issue in a proactive manner.

69. The representative of JULAC remarked that the licensing scheme was fine. The objective of the Guidelines could well be achieved if all the copyright owners could reach a consensus and arrange a blanket licence.
70. The representative of HKPFL opined that different media had their own uniqueness and limitations. It was very difficult to devise a cross-media licensing scheme. He pointed out that intellectual property started from individuals. There were plenty of copyright owners and the intermediary represented only some of them. He suggested that users could join different schemes if the terms and conditions were agreeable to them. For the time being, the kind of copyright works and the kind of media needed by the education sector of Hong Kong were not set out.
71. The representative of JULAC enquired whether there were different licenses for different publishers and copyright owners in future.
72. The representative of IFPI said they were willing to take the lead and hoped to negotiate with the education sector. He stressed that the major concern of the industry was not money, but a collective licensing scheme that could make the copyright owners rest assured. He admitted that different industries such as publishing, movie and music industries had their own uniqueness and it was difficult to a certain extent to set out a licensing scheme.
73. The representative of JULAC remarked that many licensing schemes would be in place in future. She enquired if the licensing schemes were the ones referred to in section 45(2) of the Copyright Ordinance.
74. In response, Mr. Peter CHEUNG said the licensing schemes in future were those referred to in section 45(2) of the Copyright Ordinance. He pointed out that any person could be a copyright owner and a user at the same time and the law protected the rights of everyone.
75. The representative of HKCLA said, since its establishment a year ago, the Association had represented 12 local newspapers. Three of the local newspapers did not join their Association as members. Different industries could make their own industrial decisions, same for copyright owners. For example, the Oriental Daily News and the Sun had a licensing scheme while Apple Daily waived the royalty charges. Likewise, the same thing happened in this industry.

76. The representative of JULAC said the education sector would face a lot of difficulties due to the various licensing schemes.
77. The representative of HKCLA said the Association had done what they could to waive the royalty charges for secondary and primary schools and kindergartners. However, the problems faced by the Association could not be resolved immediately. They would like to do better, but they might not be able to.
78. The representative of IFPI enquired by what channels could they communicate or discuss with the education sector after the meeting.
79. In response, Mr. Peter CHEUNG said meetings could always be convened to discuss issues of common concern. He suggested that the short, medium and long term strategies be set as the objectives with a view to reaching a consensus. If the majority of the members considered it necessary, or IPD needed to consult members on any new ideas, meetings could always be convened.
80. The representative of IFPI enquired about the position of the Guidelines and the Charter, whether they would be drafted by IPD or there would be an alternative arrangement.
81. In response, Mr. Peter CHEUNG said that the Guidelines were drafted at the request of some members. They could serve as a reference. If a consensus could be reached, the Guidelines would represent the stance of the education sector and serve as the basis for negotiation.
82. The representative of OUHK opined that the suggestions put forward by IFPI were useful to the education sector. He considered it difficult for IFPI to hold discussions with individual schools and he suggested discussions be held between IFPI and EMB which represented the schools.
83. Ms Mimi LEE of EMB said that EMB would like to see an extensive coverage under the Guidelines or licensing scheme. It would not be easy to handle if negotiations were conducted separately, and heavy administration work would be generated. Being the policy bureau and representing the stance of the government schools, EMB could help to push forward the negotiation.
84. The representative of OUHK indicated that most of the members of the plenary meeting were users instead of copyright owners. It would be meaningless if the copyright owners did not agree to the Guidelines. He said that OUHK considered

the Guidelines reasonable and could serve as a reference. He opined that application of the Guidelines incurred a certain risk. Therefore it would be up to the users to use it or not.

85. Mr. Peter CHEUNG said that it was the education sector's one-sided wish to draft the Guidelines, and the approval of other copyright owners had not been sought. It was only the own will of individual schools to take the risk to apply the Guidelines rather than the consensus of the plenary meeting. He urged users to be cautious and advised OUHK to seek legal advice before putting the Guidelines to use.
86. Ms. Mimi LEE of EMB opined that the draft Guidelines could only be served as a reference on voluntary basis. She would not recommend the schools to use the Guidelines, as both sides did not agree to it and a consensus had not been reached over the aspect of reasonable extent. The Guidelines could be served as a reference in the negotiation of the licensing scheme. EMB would initiate a dialogue between EMB and the school councils.
87. The representative of VTC requested IPD to act as the co-ordinator between the education sector and the copyright owners.
88. In response, Mr. Peter CHEUNG said IPD had to consider whether there was value-added to the liaison work. As copyright owners had web sites of their own and the relevant information had been stored on the web page of IPD, he suggested that the education sector could make use of the web page to browse the information.
89. The representative of VTC enquired if IPD would prepare a mailing list of the members of the plenary meeting for liaison purposes.
90. Mr. Peter CHEUNG indicated that the information concerned could be stored in the web page of IPD should a consensus be reached.
91. The representative of IFPI opined that some unrelated people could make access to the information by this means. He suggested that the information be sent to members by e-mail.
92. The Secretary said that the mailing list would be sent to members of the plenary meeting.

93. Mr. Peter CHEUNG thanked members of the Working Group and the plenary meeting for the valuable views expressed in the past meetings. He then declared the meeting closed.

The meeting closed at 4:40 p.m.