

**Notes of the 1<sup>st</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 Friday 14 March 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 Secondary Schools Council (HKSSSC)
  - 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 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 Organisation (ACTPO)

Representative of Hong Kong Copyright Licensing  
Association (HKCLA)

*[In attendance for meetings of the Working Group  
only]*

Representative of Television Broadcasts Limited  
(TVB)

Representative of Hong Kong Cable Television  
Limited (HKCTV)

Representative of International Federation of the  
Phonographic Industry (Hong Kong Group) Limited  
and representative of IFPI Asian Regional Office  
(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 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. Stephen SELBY (Convenor)  
Intellectual Property Department

Ms. Joey HUNG (Secretary)  
Intellectual Property Department

**Absent with apologies:** Representative of Grant Schools Council

Representative of Hong Kong Professional Teachers' Union (HKPTU)

Representative of AOL Time Warner

Representative of Asia Television Limited (ATV)

Representative of Star TV

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

1. Mr. Stephen SELBY welcomed the Working Group members. He said that as more concerned organisations (e.g. IFPI, CASH and the television stations) were invited to take part in developing the Guidelines, there were more members in this Working Group than the previous one. Since some participants attended the meeting for the first time, he briefed the meeting again on the background, objective and duties of the Working Group.

2. Mr. SELBY explained that as regards the copying of printed works in the educational context, the publishing industry and the education sector had reached a consensus through consultation with the assistance of the Government. They had jointly formulated a set of Guidelines for Photocopying of Printed Works by Not-for-profit Educational Establishments (previous Guidelines) to clarify the meaning of the expression “reasonable extent”. The Guidelines were generally well received by the education sector. This was just a part of the whole exercise. Now we had to deal with the copying and distribution of works in an electronic environment in the educational context. This involved two circumstances. The first was about materials downloaded from the internet to the computers of local schools and printed onto paper for distribution to students or uploaded on school intranets. The second was about books in printed form converted into electronic form by scanning and then uploaded on school intranets.
3. Mr. SELBY said that as agreed in the last plenary meeting, the current Guidelines were to be prepared in accordance with the practice and approach adopted in formulating the previous Guidelines. In other words, preliminary discussions were held in the plenary meeting while the Working Group would take up the specific task of preparing the Guidelines. Finally the draft Guidelines would be submitted to the plenary meeting for approval.
4. Mr. SELBY emphasised that the draft Guidelines prepared by the Intellectual Property Department (IPD) could be used for the Working Group’s reference only and as a basis for preparing the Guidelines. The draft Guidelines did not represent the stance of the Government. The Working Group could refer to the relevant information of overseas countries and the previous Guidelines.
5. Mr. SELBY stated that as shown from the experience in drafting the previous Guidelines, members of the last Working Group reached a consensus in a few months in a flexible and pragmatic manner and jointly formulated the previous Guidelines after rational discussions. Therefore, he proposed that the same practice and approach be adopted

this time.

6. Mr. SELBY said again that he was just the Convenor of the Working Group and he welcomed views from all parties. He also emphasised that the Government had taken no position on preparing the Guidelines. It was hoped that the participants could iron out the differences and jointly formulate the Guidelines by consensus. There could be some conflict of interest for the Government as it also ran schools, which used copyright works. He asked whether anyone had any objection to the role played by the Government in the process or his role as the Convenor. No objection was raised.
7. Mr. SELBY asked whether those absent in the last plenary meeting had any views.
8. The representative of HKEPA indicated that he supported the reasonable use of printed copyright works by the education sector. However, he opined that the copying and distribution of works involving the electronic media would pose a serious problem. Anyone who knew the password could enter the school intranet and make unlimited copies. He quoted an example as follows. Assuming that 20 schools were run by a sponsoring body, if each school could download 5% of the content of the same copyright work from the internet, the whole copyright work could be downloaded. As the publishing industry had no way of conducting any checks, this would seriously affect the business viability of the publishing industry. This was an area of utmost concern to the industry.
9. Mr. SELBY expressed his understanding of the concerns of the publishing industry.
10. The representative of OUHK expressed the view that the example quoted by HKEPA was an extreme one that many schools would “act in concert”. While the law stipulated that educational establishments might make copies for instructional purposes to a reasonable extent, the above extreme example had already gone beyond the scope of reasonable use. He emphasised that the point under consideration now

was “reasonable use”.

11. The representative of HUCOM pointed out that the concerns of the publishing industry were in fact also applicable to the copying of printed works. He remarked that the publishing industry should have basic trust towards the education sector in relation to the reasonable use of copyright works. He said, for example, that The University of Hong Kong had adopted “access control” to restrict access to information on the relevant intranet by requiring the users to enter their names and passwords. It was of course not possible for the universities to make a hundred percent guarantee on the degree of safety of using on-line information. However, the issue that we should consider was under what circumstances and conditions could limited copying be made.
12. The representative of JULAC remarked that the agreements signed by the universities for subscribing electronic magazines contained terms providing that the users were confined to staff and students only. The university information centres would take appropriate measures to prohibit students from providing the password to other people in order to prevent illegal access to and use of information by a third party.
13. The representative of MPIA said that basically they did not oppose to the use of film clips for instructional purposes. But the following two points should be noted:
  - (a) The control of on-line distribution of the electronic copies of films involved monitoring and checking of the use of the electronic copies.
  - (b) If a film was copied by electronic means with the copied section accounting for only a small part of the whole film (e.g. a section of 15 or 20 minutes), it might be difficult to express fully the theme of the film that the director wished to express. This would have an adverse effect on the perception of the whole film.
14. Mr. SELBY replied that according to the principle adopted in formulating the previous Guidelines, except under “spontaneous”

circumstances, teachers should seek the approval and permission from the relevant copyright owners first before using the copyright works. In response to the views mentioned in paragraph 13(b) above, Mr. SELBY said that this was merely a question of artistic sense. He emphasised that the concerns of the representative of MPIA were in fact also applicable to other types of copyright works, e.g. musical works, books, poems etc. Teachers were allowed to take an excerpt from such works for instructional purposes with no objection from the copyright owners and the relevant bodies.

15. The representative of International Federation of the Phonographic Industry (Hong Kong Group) Limited said that he represented the commercial musical industry. He agreed that teachers should be allowed to use musical recordings to a reasonable extent if it was necessary to do so for instructional purposes. However, there should be a licensing scheme to deal with the copying and distribution of musical recordings in electronic format. He added that at present 90% of the on-line musical recordings in electronic format were pirated works. If teachers were permitted to download such works, it would mean an indirect encouragement to piracy.
16. Mr. SELBY agreed that it was necessary to prevent pirated on-line musical recordings from turning into “genuine” ones after being used to a reasonable extent for educational purposes.
17. The representative of MPA said that no one except the copyright owners should be allowed to upload films to the Internet. The public could view film trailers provided by the relevant copyright owners. Basically, all on-line films presently available were pirated works. If the education sector needed to use Hollywood film footage for instructional purposes, permission could be sought from the relevant film companies and copyright owners via MPA.
18. The representative of TVB shared the views of the film industry. She had reservations about the inclusion of copyright works such as films and audio-visual works in the Guidelines. As a matter of fact, broadcast programmes involved works of other industries such as the

musical industry. It was impossible for a broadcast company to give permission for the use of all copyright works. TVB had an on-going licensing arrangement with most Universities in Hong Kong where Universities could make copy of certain of their programmes and put them in their libraries for teaching and reference purposes. This arrangement had worked well and the time normally required for TVB to grant any licence was short.

19. The representative of HKSSSC emphasised that as clearly stated in the legislation, the Guidelines were needed for instructional purposes. It was uncommon for the education sector to copy copyright works to a large extent. Therefore, copyright owners and the relevant bodies should not be unduly worried.
20. Mr. SELBY stated that the Guidelines would deal with the copying and distribution of works in an electronic environment but not the playing of works.
21. The representative of HKEPA reiterated their previous stance. They supported the copying of copyright works by the education sector for instructional purposes, except the copying and distribution of works in an electronic environment. It was because publishers had no way of keeping things under control and serious problems would easily arise. For example, the teachers might copy 5% of a work in an electronic environment in a certain week. They might delete it and copy another 5% of the same work in the same way in the following week. In doing so, they could use the copied parts to replace the books that were to be purchased for use on a regular basis. As a result, the interests of the publishing industry would be prejudiced and its business viability would not be under protection.
22. Mr. SELBY personally held that the situation mentioned by HKEPA was not caused by the Guidelines. Whether or not the Guidelines were formulated, the situation might also arise. Nevertheless, the advantage of formulating the Guidelines was to stipulate clearly what copying acts were permitted in the education sector and what were not. The Guidelines would facilitate the work of the publishing industry and the

education sector.

23. The representative of TVB pointed out that different types of copyright works involved different copyright owners. For example, for music used in their programmes, they had to obtain appropriate licences from music owners or their representatives. In any case, they had not been given the Internet right and therefore, could not possibly authorize distribution of their programmes with third party content on Internet. She believed that the Working Group should first discuss whether it was necessary for the educational establishments to include films in the proposed Guidelines.

*[The representative of HKSSSC left the meeting early at 3:50p.m.]*

24. Mr. SELBY stressed that today's discussion should focus on copying and distribution rather than broadcasting of works. Whether or not the Guidelines should cover works like musical recordings, films, broadcasts etc. should depend on the needs of the education sector. However, if the issue was considered to be very complicated and should be more appropriately dealt with by a licensing scheme, it would also be reasonable to do so. He asked the participants to give their views on these issues.
25. The representative of HKRRLS said that they had sought the advice of the Association of American Publishers (AAP) on the Guidelines. AAP advised that so far the United States had not adopted any guidelines for copying of multi-media works. As for the United Kingdom, guidelines were in place for text copying and single copying only, but not for multi-media works or multiple copying.
26. The representative of HKECL shared the organisation's experience with the meeting. She said HKECL was a local education website that provided education resources by using the internet as a platform. It also functioned as a medium to provide educational organisations with services such as networking, educational hardware and software as well as educational resources. At present, it had one million registered users, including students and parents. The objective of HKECL was to

facilitate teaching and learning. The information was mainly provided by the teachers, schools and others. It was extremely rare that they needed to use pop music or films. Up to now, HKECL was in good operation. The file information included the authorised website links such as BBC, CNN and Science Museum as well as about 1000 hours of ETV programmes permitted for use through the Education and Manpower Bureau (EMB). Past experiences had indicated that most of the copyright owners were willing to grant permission to HKECL for using their copyright works. Since HKECL had already done everything in respect of copyright on behalf of the teachers, they could use the on-line educational resources provided by HKECL without any worry. If the information was compiled by the teachers or HKECL, any person could use the information, provided that the source of the information had to be acknowledged. The representative held that a relaxed approach should be adopted in drawing up the Guidelines so as to encourage and support teaching. She added that some publishers agreed to upload 10% of the electronic version of the new books that they published to HKECL for users' trial reading.

27. The representative of International Federation of the Phonographic Industry (Hong Kong Group) Limited opined that the licensing scheme was a well-trying and effective approach to deal with the use of copyright works. It was not necessary for the Government to formulate the Guidelines to exempt users from applying for a licence from the copyright owners. Once copying and distribution of works in an electronic environment was allowed, it would be very difficult to put this under control.
28. Mr. SELBY invited participants to express their views on the following:  
  
“Should the Guidelines cover only literary and dramatic works in written/textual form, artistic works and music works in the form of sheet music but not other types of copyright works such as films, sound recordings, broadcasts, video recordings etc.?”
29. The representative of OUHK remarked that now we had to deal with the question of copying and distribution of works to a reasonable extent. It

would be meaningless to require users to apply for a licence within this reasonable extent. Nowadays teaching was already done by means of the multi-media. To make learning more interesting, teachers might make use of some pictures, sound recordings or film clips to help explain or elaborate the subjects being taught. For example, a film clip of about 30 seconds was shown to students to facilitate teaching. In such circumstances, he did not believe this would go beyond the reasonable extent stipulated by the law, not to mention an infringement of copyright. He supported formulating the Guidelines to set down the limit of copying and distribution and to provide a clear basis for the education sector.

30. Mr. SELBY asked the representative of OUHK whether there were many “spontaneous” cases.
31. The representative of OUHK responded that he was not a member of the last Working Group. He said that he personally did not agree to the “spontaneous” requirement because the preparation of teaching materials, whether spontaneous or not, should not constitute an infringement of copyright. To make learning more effective, teachers should be allowed the reasonable use of copyright works, no matter whether the works were copied by electronic means or not. If it was necessary to copy a complete work, permission from the copyright owner should be obtained first. He also said that if every teacher was required to comply fully with the procedures and obtain permission before using any copyright work (even only a small part), it would bring much trouble to the copyright owners even from their perspective.
32. Mr. SELBY asked the participants again whether the Guidelines should cover works such as films, musical recordings etc.
33. The representative of the HUCOM considered that we should not use the type of work as a criterion for determining whether that work should be included in the Guidelines. He said that most subjects (e.g. Physics) did not need to use films for instructional purposes, but some subjects like communication, journalism and advertising sometimes needed to use popular music in the course of teaching. He stressed that the

legislative intent was to balance the interests of all parties. While encouraging creativity and allowing reasonable use as well, the law did not just protect the interests of the copyright owners. He said that it would be overoptimistic to believe that any dispute between the publishing industry and the education sector could be resolved through peaceful negotiation. He said, for example, that the dispute between the universities and the copyright licensing institution in the United Kingdom had to be determined by the Copyright Tribunal in 2001. The case ended up with a judgment in the universities' favour. Therefore, the Guidelines should be formulated to set out the limit of permissible copying and distribution. Such acts were permitted as long as they were done for instructional purposes and the extent of copying did not exceed a certain percentage in one academic year. By striking a balance between the interests of copyright owners and users and clarifying the ambiguities in the legislation, disputes could be minimized and the work could be carried out more smoothly.

34. Mr. SELBY added that while the law did not give exclusive rights to copyright owners, exemptions were allowed. However, the primary consideration for permitted acts was that these acts should not conflict with a normal exploitation of the work by the copyright owner or unreasonably prejudice his legitimate interests. This code of practice was recognised in the international community.
35. The representative of HKSPSC pointed out that the previous Guidelines had addressed many concerns of the teachers. If the teachers were subject to too many constraints in producing the teaching materials, they would lose their motivation in teaching. She opined that if teaching materials contained elements such as music recordings and films, they would help to stimulate students' senses and enhance their interest in learning. Therefore, the Guidelines would greatly benefit teaching if these works were covered.
36. The representative of ACTPO said that as the Guidelines involved the multi-media, there would be many problems in the development process. While we could refer to the U.S. Guidelines in preparing the previous

Guidelines, no similar international guidelines were available for reference in the current exercise.

37. In response, Mr. SELBY said that though no relevant experience could be drawn from overseas countries, we could regard the formulation of the Guidelines as a great challenge for Hong Kong. He believed that the problems could definitely be overcome through consultation. Even if the problems could not be overcome eventually, we could put an end to the discussion in due course.
38. The representative of HKECL asked whether rampant piracy was the cause for setting up the Working Group and formulating the Guidelines. She personally considered that the piracy situation was not serious. Nevertheless, it would be beneficial to both the education sector and copyright owners, if the conditions and extent of permissible copying and distribution were laid down in the Guidelines.
39. Mr. SELBY explained that Hong Kong's copyright legislation gave certain exclusive rights, including the right to make copies, to copyright owners of works. But at the same time, it allowed the copying of copyright works to a reasonable extent by educational establishments. The purpose of the Guidelines was to set out the conditions under which copying might be regarded as reasonable. The previous Guidelines stipulated that exemption from obtaining the permission of copyright owners would only be granted if photocopying was made under the principle of "spontaneity" and the extent of photocopying did not exceed the specified percentage. As such, the target scope of the Guidelines was extremely narrow.
40. The representative of HKPEL commented that HKECL had done much to provide convenience for the education sector. He also supported the agreement reached last time on the reasonable exploitation of printed works. However, the current Guidelines involved multi-media contents that went beyond geographical boundaries and were not confined to Hong Kong's publishing industry. He opined that Hong Kong should draw on overseas experience and begin developing the Guidelines only when sufficient information were available. In fact, he saw no urgency

in formulating the current Guidelines. He said that nowadays publishers would publish works in electronic format by different means (e.g. music, animation). If the works contained materials from a third party, they had no right to grant a license for use by those in the education sector, and the issues involved were likely to be rather complicated. As for the technical aspect, he made no comments.

41. The representative of OUHK opined that the advantage of formulating the Guidelines was to provide users with a clear and specific basis to determine the meaning of the expression “reasonable extent”. If the copying and distribution of works went beyond the scope of the Guidelines, permission from the copyright owner was required. This would not only encourage more teachers to use copyright works, but also enhance the users’ awareness of protecting intellectual property.
42. Mr. SELBY personally considered that the previous Guidelines brought forth positive effects. The Guidelines did not encourage large-scale photocopying activities. Instead, there was a decline in large-scale and unreasonable photocopying activities.
43. The representative of TVB pointed out that in view of the wide spectrum of multi-media works, the participants might not be adequately representative. She said, for example, that TVB did not own the copyright of commercials. A commercial might last only 30 seconds but it was not easy to lay down the reasonable extent of permissible copying in the Guidelines. This also depended on whether the copying made up a substantial part of the commercial. The provisions on reasonable use in the existing legislation already provided the education sector with adequate flexibility to deal with the issue. The Guidelines would impede teaching instead. In addition, she expressed concern over whether on-line activities could be properly monitored technically.
44. Mr. SELBY stated that as the current Guidelines involved multi-media works, he had also considered what organisations should be invited to participate in the formulation work. He opined that there would be difficulties in the exercise but that did not mean attempts could not be made.

45. The representative of HUCOM indicated that they shared Mr. SELBY's view that the Guidelines would bring forth positive effects. He had been working as a teacher for over ten years and his observation was that teachers were absolutely law-abiding. After the Guidelines were formulated, teachers would know under what circumstances should permission be obtained from copyright owners for copying and distribution. A set of clear guidelines would indirectly encourage teachers and students to use on-line resources properly and enhance their knowledge in information technology.
46. Mr. SELBY said that under certain circumstances, the laws of Hong Kong allowed schools to play cable programmes without infringing copyright. However, the law did not allow schools to download and copy the relevant works for long-term storage and distribution to students through the internet or intranet.
47. The representative of International Federation of the Phonographic Industry (Hong Kong Group) Limited said that while reasonable use for purpose of education was acceptable, further distribution was not. As a matter of fact, the publishers would face more serious problems. There were in fact not many cases of copying and distribution of musical works and they could be resolved through the licensing schemes.
48. Mr. SELBY indicated that IPD might need to prepare a simple list setting out the permitted acts in respect of films, musical recordings, broadcasts etc. for participants' information.
49. The representative of CASH suggested that invitation to join the Working Group should be extended to visual arts (societies) including painters, photographers, architects which products were under copyright protection.
50. Mr. SELBY expressed his reservations about the suggestion, which would, however, be considered.
51. The representative of JULAC said that technologies were already available to provide protection to works on the internet. For example,

electronic watermarks could be embedded in photographs, museum exhibits or graphics shown on the internet. Users had to download the watermarks together with the works. She agreed that a set of guidelines involving contents of the multi-media would be more complicated. However, if teachers were required to obtain permission from copyright owners each time before using the copyright works, teaching activities would likely to be impeded, hence discouraging the use of such works.

52. The representative of MPA said that they had not received any applications for use of film clips in the past year. The applications received, if any, would be referred to their member companies. Besides, the Customs and Excise Department also had MPA's contact information. He pointed out that a film might involve more than one copyright owner. Sometimes the background scenes (e.g. the scene showing Michelle YEOH jumping down from a cliff) might incur very high costs. As regards the use of a certain excerpt from a film, discussion had to be made with the relevant copyright owner.
53. Mr. SELBY said that the court would determine the reasonable extent of copying and distribution of copyright works if the dispute between the user and the copyright owner had to be settled in the court.
54. The representative of OUHK added that the court would also consider whether there had been an infringement of the copyright owner's rights.
55. Mr. SELBY said that the court would consider if the economic interests of the copyright owners had been prejudiced.
56. The representative of HKECL said that intellectual property was a sophisticated legal subject. The discussion should, however, focus on teaching. So far HKECL's on-line information had been available for access free of charge without prejudicing the interests of the copyright owners. The United Kingdom formulated the Guidelines for Fair Dealing in an Electronic Environment in 1998. She opined that the teaching activities would be impeded if teachers were required to obtain the permission for copying and distribution annually.

57. Mr. SELBY added that the economic interests of the copyright owners should also be given consideration.
58. The representative of BSA requested the Secretariat to put down on record the following question that he raised at the meeting:  
“Will computer software be excluded from the Guidelines?”
59. Mr. CHAN Hau-wing of EMB said that from his contacts with a number of schools, he personally held that schools were law-abiding and had never thought of committing any infringement act. He pointed out that in fact instruction at school always took place within a certain period of time. If teachers were required to obtain in advance the permission for copying and distribution every time copyright works were used, a huge volume of applications would be received at the same time and this would possibly give rise to operational problems.
60. A proposed timetable for future Working Group meetings was distributed to the members. Except the third meeting to be held on Monday, all meetings would be held on Fridays. The next meeting would take place on 4 April 2003 at 3:00 p.m. at IPD.
61. Mr. SELBY hoped that all members could attend future meetings. He understood that Microsoft was a member of BSA. Since Microsoft was also a manufacturer of educational software, BSA could also consider sending a representative to the meeting. He thanked the participants for attending the meeting and declared the meeting closed.

*The meeting closed at 5:00 p.m.*