

**Notes of the 4<sup>th</sup> Working Group Meeting  
On ‘Development of non-statutory guidelines  
in clarifying the expression  
“reasonable extent” in the permitted acts  
for educational purposes under the Copyright Ordinance’**

**Held on 16 July 2002**

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

**Present** : Hong Kong Professional Teachers' Union

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

The Hong Kong Association for Computer Education

The Hong Kong Academy for Performing Arts

Hong Kong Copyright Licensing Association

Hong Kong Reprographic Rights Licensing Society

Hong Kong Library Association

Hong Kong Publishing Federation Limited

Hong Kong Educational Publishers Association

The Anglo-Chinese Textbook Publishers Organisation

Ms Laura TSOI  
Commerce, Industry and Technology Bureau

Mr CHOW Pak-kan  
Education Department

Mr Stephen SELBY (Convenor)  
Intellectual Property Department

Mr Andy LAU (Secretary)  
Intellectual Property Department

**Absent with apologies :** Hong Kong Subsidized Secondary Schools Council  
Hong Kong Subsidized Primary Schools Council  
Joint University Librarians Advisory Committee (JULAC)

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

***Agenda Item I***

***Confirmation of Notes of the 3rd Working Group Meeting (English)***

1. The first representative of the Hong Kong Copyright Licensing Association ("HKCLA") noted that HKCLA was not included in the 'Present' list.
2. The correct reference in paragraph 13 should be "Hong Kong Educational Publishers Association".
3. The incorrect reference to "The representative of HKRRLS" in paragraph 18 was proposed to be changed to "A member".
4. The representative of HUCOM suggested some minor changes to the wording in paragraph 51.
5. The Members accepted the proposed changes.

***Confirmation of Notes of the 2nd Working Group Meeting (Chinese)***

6. The Members did not have any comments on the draft Notes.

***Agenda Item III***

***Clause E(iii)(e)***

7. Mr SELBY suggested that Agenda Item III be dealt with first as the issues in Agenda Item II were more complicated.
8. The representative of the Hong Kong Academy for Performing Arts ("HKAPA")

suggested that instead of one work, 3 works should be allowed to be copied from the same author under clause E(iii)(e)(1). She believed this would facilitate the making of comparison of an author's works.

9. The second representative of the Hong Kong Copyright Licensing Association ("HKCLA") expressed concern that under the proposal, the amount of copying allowed would be too extensive. She suggested that an upper limit be added to the clause.
10. The representative of the Hong Kong Association for Computer Education ("HKACE") noted that any copying would still be subject to other conditions contained in clause E (iii).
11. The second representative of HKCLA believed the proposal could have an adverse effect on the users' willingness to apply for a licence. From the newspaper publishers' prospective, 2% was quite significant. For instance, 2% of 300 articles published in one day would be 6 articles.
12. The representative of HUCOM queried for a newspaper article whether the author or the publisher was the copyright owner.
13. The second representative of HKCLA replied that the publisher would be the copyright owner for articles written by staff writers. For freelance writers the copyright ownership would depend on the agreement between the parties.
14. Mr SELBY asked whether two works would be acceptable since teachers would not be able to do any comparative study if only one work was allowed to be copied.
15. The second representative of HKCLA said her preference was to put a cap on the number of articles that could be copied in one school term.
16. The representative of HUCOM pointed out that such limitation already existed in clause E(iii)(b), and that only the actual figure needed further discussion. As one school term only lasted three to four months, not many articles could actually be copied during that time under the proposed guidelines. He believed allowing only one work to be copied was insufficient for the teachers.
17. The representative of HKACE queried how a user could identify the author of an article if it was not stated in the newspaper.
18. Mr SELBY said the user could ask the newspaper publisher for details. The

representative of HUCOM said on some websites of newspapers there were "Permissions Department" which facilitated the request for permissions.

19. The representative of HKAPA said that comparative studies on the works of well-known authors were often done at HKAPA. An author's works from different periods would be used as illustrations. For this purpose, she believed allowing 3 works to be copied would be more reasonable.
20. Mr SELBY proposed that 3 works from the same author be allowed to be copied in any one school term. He requested HKCLA to consider the proposal and inform the Working Group of their views.
21. The representative of HUCOM queried whether the word "work" could be interpreted as meaning, say, a whole book.
22. Mr SELBY thought the word was unlikely to be interpreted that way.
23. The representative of HKRRLS queried whether it was appropriate to use "school term" in the clause.
24. Mr SELBY suggested that for the purpose of consistency, all references to "school term" would be changed to "academic year" with an appropriate adjustment to the number of instances or works in the relevant clauses..
25. The second representative of HKCLA queried whether there was a definition of the term "course pack". She believed the operation of the existing licensing scheme for course pack would be affected if the term was not properly defined.
26. Mr SELBY explained the concept of "spontaneity" in the "course pack" context. He also pointed out that the Working Group was still discussing the meaning of "course pack", and whether it should be included in the proposed guidelines.
27. The representative of HUCOM said that in the U.S. Classroom Guidelines, there was no restriction on the number of instances current news reports could be copied. He suggested that for "spontaneous" copying of current news reports, the restrictions contained in clause E(iii)(b) and (e) should not be applicable.
28. The second representative of HKCLA felt that the scope of the suggestion would be too wide.
29. The representative of HUCOM said that his suggestion was in line with the provisions in the U.S. Classroom Guidelines. He noted that the U.S. Classroom Guidelines had been in force since 1976 and he was not aware of any newspaper

in the U.S. proposing to change the guidelines. He also considered the scope of application to be fairly narrow as current news reports were mainly used in social science subjects only.

30. Mr SELBY queried what would be the effect of the proposal. He also queried what news reports should be considered "current".
31. The representative of HUCOM clarified that any copying of current news reports had to be "spontaneous" but the number of instances of copying should not be restricted. He also explained that there was no definition for "current news" in the U.S. Classroom Guidelines. In his view a definition was not necessary.
32. Mr SELBY said in the U.K. there was a recent court case on the issue of new development of old news (*Hyde Park Residence Ltd. v D. Yelland and Ors*). The parties in that case argued what was meant by "current news". He expressed concern at the potential uncertainty if the term was not defined.
33. The second representative of HKCLA was concerned that all the contents in a newspaper could fall within the meaning of "current news".
34. The representative of HUCOM thought in practice it was most unlikely for a teacher to make 40 copies of a newspaper as it would be easier to buy them. He said the universities had already bought licences from HKCLA for copying newspaper clippings for reading by selected university staff, and it was not their intention to exploit the proposed exception.
35. Mr SELBY suggested that "current news" could be defined as news not older than 7 days of the date of copying.
36. The second representative of HKCLA emphasised that the definition was very important as some parts in a newspaper, such as special supplements, should not be considered as "current news".
37. Ms Laura TSOI said that even if the restrictions in clause E(iii)(b) and (e) did not apply to "current news", other restrictions would remain applicable. She also noted that the term was used in the Copyright Ordinance (section 39) without being defined.
38. The representative of HUCOM said he would talk to his colleagues about this issue and suggested further discussions at the next Working Group meeting.
39. The second representative of HKCLA said she had no objection to the proposed

"current news" exception. Her concern was how to define the term.

40. The first representative of HKCLA asked why "current news" was singled out for the proposed exception.
41. The representative of HUCOM explained that for current news, a teacher would not know in advance how many instances of copying would be sufficient. He believed the proposed exception would not affect the licensing bodies and the educational institutions would still be buying licences for copying beyond the approved limit.
42. The representative of HKACE believed that current news presented operational difficulties to teachers. If the restrictions in clause E(iii)(b) and (e) applied to current news, a teacher might use up his or her "quota" too early.
43. Mr SELBY said if the proposed guidelines led users to believe they did not have to obtain licences from licensing bodies than that would be in conflict with the Berne Convention. He also noted that Hong Kong did not have to strictly follow the U.S. Classroom Guidelines.
44. The representative of HUCOM agreed with Mr SELBY's comments but noted that universities had already obtained licences.

### ***Matters Arising***

#### ***Agenda Item II(e)***

45. Mr SELBY said the question was: whether Hong Kong should adopt the concept of "spontaneity", and if the answer was in the negative then what guidance should be given to teachers? He believed the "course pack" issue could be resolved more easily if the Working Group could reach a consensus on "spontaneity" first. He also queried whether it was practical for teachers to seek permission from copyright owners. The circumstances in the U.S. in 1976 were different - it was probably difficult to get permission in practice. However, with the advent of the Internet the current situation was different. He further queried what should be considered as "impractical response time" from the licensing bodies.
46. The representative of HKACE agreed that the response time from licensing bodies was an important consideration. He thought it depended on how much the licensing bodies could assist in obtaining permission and how complicated the

procedure was. He said ideally one licensing body could cover all the needs of teachers and if that was the case then a shorter response time period would be acceptable. Otherwise teachers might need a longer time period to allow them to seek permission from copyright owners.

47. Mr SELBY explained that for printed works there were two licensing bodies - HKRRLS and HKCLA. Specific works could be excluded in the licences. If a work was not in the list of excluded works then the licensee should feel safe in making copies of the work because there was an implied statutory indemnity in favour of the licensee. If a copyright owner thought his rights had been infringed by a teacher, he or she would have to seek redress with the organization which issued the licence. Further, under the statutory indemnity scheme, the amount of damages which could be awarded to a copyright owner in an infringement action would be limited to the amount that owner would receive if he or she was a member of the licensing body.
48. The representative of HUCOM provided information on the cost of licences granted to universities in Australia and the U.K.
49. The representative of HKACE queried the details of licences granted by HKCLA.
50. The first representative of HKCLA said the licence fees were waived for schools and kindergartens. However, the schools and kindergartens had to file monthly reports on the details of copying.
51. Mr SELBY asked the Members whether the concept of "spontaneity" in the U.S. Classroom Guidelines should be adopted.
52. The representative of HKPTU expressed the view that "spontaneity" should be included in the proposed guidelines.
53. Mr SELBY noted that there was a consensus amongst the Members to adopt the concept of "spontaneity".
54. The representative of ACTPO suggested that "spontaneity" should be qualified by considerations such as "making an effort to seek permission" and "impracticality".
55. Mr SELBY believed if "spontaneity" was adopted then "course pack" should be excluded from the proposed guidelines. Subject to the views of HKSSSC, he proposed that "course pack" be excluded from the proposed guidelines.

56. The representative of HUCOM believed a licence should be required for the production of "course pack".
57. The representative of HKACE thought that HKSSSC was only trying to explain the fact that schools needed flexibility in order to produce "course packs". He did not believe HKSSSC was trying to justify the production of "course packs" without obtaining the necessary licence.
58. Mr SELBY noted the consensus amongst the Members that "course pack" should be excluded from the proposed guidelines.

*Agenda Item II(b)*

59. The representative of ACTPO informed the Members that the result of discussions at a recent meeting of the publishers was that the copying of more than one illustration on the same page was acceptable, provided that only one page was copied.

*Agenda Item II(c)*

60. The representative of HKRRLS informed the Members the views of some overseas publishers. She said the response from the U.K. and the Netherlands was that only single copying should be allowed. The American Association of Publishers (AAP) generally agreed with the scheme of multiple copying but made the following comments:
  - (a) "Reasonableness" in clause D(iv) should be based on the amount of time it took to receive a response from the licensing body. As HKRRLS could provide a response within one or two days, anything beyond two days should be considered as constituting an adequate amount of time to "reasonably" expect a teacher to obtain the necessary permission.
  - (b) In relation to clause E(iii)(d)(7), "chapter" was not an appropriate unit of measure.
61. Mr SELBY said the consensus reached previously was to delete the reference to the time period in clause D(iv).
62. The representative of HKRRLS expressed the view that the meaning of what was "reasonable" should be clarified. She also believed for excluded works there should be evidence that the teacher made an effort to obtain permission to copy.
63. The representative of Hong Kong Library Association thought the effect of the

suggestion would be that the teachers would always have to make an attempt to get permission.

64. The representative of HKACE thought two days was too short in practice. He believed one week was more reasonable.
65. Mr SELBY noted the proposals to explain what was "unreasonable" in clause D(iv). As the consensus at the last meeting was that the explanation should be removed, he asked whether the Members wished to have an explanation for the term or not.
66. The representative of HKRRLS said she believed the system would work as they could respond to request and grant permission very quickly.
67. The representative of HKACE said he would like to know the details of application procedures and the response time from the licencing bodies.
68. Mr SELBY expressed the view that if the procedure in the proposed guidelines was tedious then it would not satisfy the practical needs of the teachers. He believed the teachers needed simple and practical guidelines.
69. The second representative of HKCLA said that the licence fees for schools and kindergartens had been waived by HKCLA.
70. Mr SELBY said that he welcomed the waiver of licence fees. He believed it was important to ascertain the effect of the list of excluded works. He said he would study the legal effect of the waiver, as it was important for teachers to have some certainty about the effect of it, and whether licensees under it could enjoy the "statutory indemnity" protection. He also queried whether blanket licences had been granted to schools.
71. The first representative of HKCLA said she needed to check with her colleagues before she could answer the question of whether licences had been granted to schools.

***Agenda Item (c)***

72. Mr SELBY noted that the publishers in the U.K. and the Netherlands wanted single copying only, but he queried whether there was any views regarding the separate treatment of "textbooks".
73. The representative of HKRRLS clarified that she was simply informing the Members the views expressed by the overseas publishers. She thought the

comments of the overseas publishers on clause D(iv) were clear and proceeded to inform the Members of AAP's other views. In relation to clause E(iii)(d)(2), AAP disagreed that complete works of short stories and essays of less than 2,500 words could be copied. They proposed that not more than 10% of such works should be allowed to be copied.

74. Mr SELBY queried whether AAP was aware of the limitation in clause E(iii)(e).
75. The representative of HKRRLS said AAP was aware of the limitation and had no comments on it. She also informed the Members that AAP disagreed with the "rounding up" provision in clause E(iii)(d)(7). AAP proposed that all "other works" should be subject to the limit of 10% on the number of pages of the work.
76. Mr SELBY suggested that for further discussions the provision for rounding up to a chapter be deleted but the provision for rounding up to a complete page be retained. IPD would prepare a revised Points for Discussion document with proposed deletions shown in "strikethrough" style.
77. Ms Laura TSOI queried whether the proposed limits of 250 and 2,500 words in clause E(iii)(d)(2) were subject to be proposed 10% limit.
78. Ms TSOI noted that 10% of a poem of 250 words meant only 25 words could be copied. This would appear to be an impractical and unsatisfactory result for teachers. Under the heading of "Brevity" in the U.S. Classroom Guidelines, the limit was 10% of 2,500 words. The representative of HKRRLS confirmed that the whole work could be copied if it was of less than 250 words (for short poems) or 2,500 words (for short stories or essays).
79. Mr SELBY said there appeared to be slight deviations from the U.S. Classroom Guidelines. A comparison would be made for further discussions at the next meeting.
80. The representative of the Hong Kong Publishing Federation Limited expressed the view that as the various word limits were derived from the U.S., they might only be suitable to works written in the English language. The limits might not be suitable to works written in Chinese, as there could be an inherent difference between the two languages in the number of words necessary to express the same idea.
81. Mr SELBY agreed that it was a valid point; but the issue had been discussed before. The consensus was that it was more practical to have one set of limits rather than having two different sets of limits.

82. Ms TSOI expressed the view that if there was authoritative studies which showed that the Chinese language required a certain extra percentage of words to express the same idea when compared with English, then the Working Group could consider having a different set of limits. However, in the absence of such studies and their results, it would not be justifiable or possible to have a different set of limits for each language.
83. Mr SELBY said the issue could be considered further but the lack of studies would present some difficulties in taking the issue further.
84. Mr SELBY suggested that the Points for Discussion document be further revised for the next meeting. The unsettled issues would be highlighted with different options set out for the Members' consideration.
85. The second representative of HKCLA said she would discuss the issues of "course pack", "spontaneity" and "current news" with other colleagues and see whether they considered the definitions for these terms were acceptable.
86. Mr SELBY said that the consensus on "course pack" was that it should be excluded from the proposed guidelines. However, he thought it was important to know the licensing situation with regards to schools and kindergartens.
87. The representative of HKRRLS said she had asked the U.S. publishers the rationale behind the choice of "9 instances" in the U.S. Classroom Guidelines. According to AAP it was because an academic year in the U.S. involved nine months of teaching.

*Agenda Item V*

88. The next meeting would be held on 30 July 2002 at 3 p.m. at IPD.

*The meeting closed at 5:20 p.m.*