

**Notes of the 6<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 August 2002**

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

**Present** : The Hong Kong Association for Computer Education  
(HKACE)

The Hong Kong Academy for Performing Arts  
(HKAPA)

Hong Kong Copyright Licensing Association  
(HKCLA)

Hong Kong Reprographic Rights Licensing Society  
(HKRRLS)

Joint University Librarians Advisory Committee  
(JULAC)

Hong Kong Library Association (HKLA)

Hong Kong Publishing Federation Limited (HKPFL)

Hong Kong Educational Publishers Association  
(HKEPA)

The Anglo-Chinese Textbook Publishers Organisation  
(ACTPO)

Ms Laura TSOI  
Commerce, Industry and Technology Bureau

Mr CHAN Hau-wing  
Education Department

Mr Peter K. F. CHEUNG (Convenor)  
Intellectual Property Department

Mr Andy LAU } (Joint Secretaries)  
Intellectual Property Department

Miss Joey HUNG }  
Intellectual Property Department

**Absent with apologies :** Hong Kong Professional Teachers' Union (HKPTU)

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

Hong Kong Subsidized Secondary Schools Council (HKSSSC)

Hong Kong Subsidized Primary School Council (HKSPSC)

*The meeting commenced at 3:05 p.m.*

1. Mr CHEUNG, the Deputy Director of Intellectual Property, consulted the Members if any one would like to act as convenor for the meeting. No views were raised by the Members. Mr CHEUNG then enquired if any one of them would then object him acting as such. No one raised any objection. Mr CHEUNG then took the role of convenor.
2. Mr CHEUNG decided to use Cantonese to conduct the meeting after the first representative of JULAC indicated that this was acceptable to him because he had a translator.

### ***Agenda Item I***

#### ***Confirmation of Notes of the 5th Working Group Meeting (English)***

3. The first representative of HKCLA proposed to change the wording of paragraph 87 as follows: -

"87. The representative of HKCLA said they had talked to their members on the issue and proposed 2 days. For other alternatives, she said she would need to talk to their members."

4. The representative of ACTPO proposed to change the wording of paragraph 10

as follows: -

"10. The representative of ACTPO said the publishing industry felt it would be prejudicial to their interests if for-profit educational establishments were allowed to make copies of their materials. However he indicated that ACTPO would consider two different sets of guidelines - one applicable to not-for-profit educational establishments, the other applicable to for-profit educational establishments."

5. The members accepted the above proposed changes.

***Confirmation of Notes of the 4<sup>th</sup> Working Group Meeting (Chinese)***

6. The Members confirmed the notes as drafted.
7. Mr CHEUNG suggested that the Working Group go through the whole Points for Discussion document (version 4 - 14/8/02) in conjunction with the Agenda (as tabled).
8. There was no objection to the suggestion and the Working Group proceeded to examine the Points for Discussion document.

***Paragraph A (Agenda Item II(a))***

9. Mr CHEUNG raised the issue of "not-for-profit/for-profit" educational establishments for discussion. He noted that the Copyright Ordinance Cap. 528 only defined "educational establishments" in its Schedule 1. It did not make any differentiation between "for-profit" and "not-for-profit" schools. This was not without reasons. This was largely due to historical reason: many educational organisations had been established under ordinances at the time the Copyright Ordinance Cap. 528 was brought into existence. Indeed, the government did consider this issue when this Ordinance was drafted but found "for-profit/not-for-profit" criteria too difficult to apply in practice, for example, a charitable organisation could also have its own profit and loss account.
10. The representative of ACTPO said that for reasons stated in the last meeting, they firmly rejected the idea that the guidelines should also include "for-profit" educational establishments. The international publishing community would be very concerned about the inclusion of them in the guidelines.
11. The second representative of HKRRLS said that they had talked to AAP and the

publishers in U.K. and Holland about the issue. They all held a firm view that profit-making educational establishments should be excluded from the guidelines. Since they were profit-making, they should be treated as business entities instead of educational establishments.

12. The representative of HKACE queried if one should consider if a particular act of a teacher was permitted under the guidelines instead of looking at the status of a school where teaching took place. He added that the spirit of section 45 was to ensure there was a free flow of knowledge and information among the students for the purpose of study. He saw a problem if the students in a private school were denied free access to such knowledge and information.
13. Mr CHEUNG said that it was not very clear what should be included in "not-for-profit" educational establishments.
14. Mr LAU explained that the Footnote 1 had been revised following a discussion with Mr H. W. CHAN. According to Mr CHAN, the references to other types of schools were not entirely correct and should be revised. For example, at least one school under Direct Subsidized Scheme was "for-profit" and private secondary or primary schools could also be "not-for-profit".
15. The representative of HKEPA noted that there was a reference to "Private Schools Offering Non-formal Curriculum" on the website of Education Department and questioned if ED had in fact its own classification of private tuition schools.
16. Mr H. W. CHAN clarified that private schools offering non-formal curriculum could be "not-for-profit" and might be registered as a charitable organisation. He reported that the classification of schools adopted by ED based either on curriculum or finance type.
17. Mr CHEUNG invited the views from the Members towards two sets of guidelines, one for "for-profit" educational establishments and the other "not-for-profit" educational establishments.
18. The second representative of HKRRLS referring back to the earlier query of the representative of HKACE, said that a teacher was only a representative of an educational organisation. It was the status of an organisation instead of the nature of a teacher's act that one should look at when applying the guidelines. So long as such organisation was "for-profit", it should apply for necessary licence for copying. This was a right legal principle.

19. The representative of HKAPA said that the law was clear in that every one had the right to free flow of information and do the permitted act under the section. The only question that needed to be considered was the definition of "reasonable extent". This was to ensure the legitimate interests of the copyright owners would not be unreasonably prejudiced. They supported that "for-profit" educational establishments should also be included in the guidelines.
20. The second representative of HKRRLS defended their position by saying that "for-profit" educational establishments could always make use of "fair dealing" provision in cases of personal research and private study.
21. Ms TSOI clarified that the Working Group was discussing guidelines in the context of section 45 of Copyright Ordinance Cap. 528 which was not a "fair dealing" provision. Under section 45, there was no differentiation between "for-profit" and "not-for-profit" educational establishments. It applied equally to them. She said that if "for-profit" educational establishments were excluded from the guidelines, they could still be able to make use of the permitted act under the section. Without any guideline to apply to them, there would be uncertainty in the extent such permitted act could be done by them. The publishers' interest would be at risk. Further, since there was no member representing "for-profit" educational establishments in the Working Group, it was not fair to devise another set of guidelines for them in their absence. In the circumstances, having only one set of guidelines to cover both "for-profit" and "not-for-profit" educational establishments was a preferable option though it might not be a perfect one.
22. The representative of HKAPA posed a question for the Members' consideration: whether the mere inclusion of "for-profit" educational establishments in the guidelines was tantamount to exploiting the interest of the copyright owners or they should be included in the guidelines but had to pay a greater licence fee to reflect their "profit-making" status.
23. The representative of HKEPA said that the allowance for copying merely catered for the genuine needs of educational sector. There was no such allowance for commercial organisations. They would not accept the extension of preferential treatment to educational establishments which were profit-making and in essence a business entity. They were making lots of money on account of collection of school fees.
24. The representative of HKPFL said that they would not take issue with schools like government schools and private schools, which were registered with ED

and offered formal curriculum within a formal time table. However, they were against private tuition schools.

25. The representative of HKAPA believed that one should not look at how much money these "for-profit" educational establishments were making but rather the value of a copyright work. If they made copies more than those allowed by the guidelines, they should be required to obtain a licence from the copyright owners and pay necessary licence fee.
26. The second representative of HKRRLS said that the need to have a separate set of guidelines for "for-profit" educational establishments was due to the unclear definition of "educational establishments" in section 45.
27. The representative of ACTPO said that amending section 45 would be the ideal option. Those "for-profit" educational establishments were actually a business entity. The only difference between them and other business entities was that they engaged in businesses under the name of education. He considered them to be of no difference from other business entities and did not understand why the former should be specifically looked after.
28. The representative of HKACE said that the law already allowed photocopying of copyright works to a "reasonable extent". The purpose of the guidelines was to clearly define what was meant by "reasonable extent" so as to avoid disputes saving time and cost. This was beneficial to all. As their members were mostly from the subsidised schools sector, the "for-profit" and "not-for-profit" distinction was not that much a concern to him. Therefore, he would not insist on the inclusion of "for-profit" educational establishments in the guidelines. If any dispute arose between them and copyright owners, just let them resolve it through court proceedings. He found it acceptable even if the guidelines did not cover "for-profit" educational establishments if at the end of day no consensus on the issue of "for-profit" and "not-for-profit" educational establishments could be reached.
29. The representative of HKAPA on the other hand expressed the view that if "for-profit" educational establishments like private tuition schools were not bound by the guidelines, the situation would be very uncertain and they had no rules to follow to decide when a licence for multiple copying needed to be obtained from copyright owners.
30. Mr CHEUNG said that no consensus could be obtained on this issue and suggested the Working Group go through the other agenda items.

***Clause C (Agenda Items II(b) and (c))***

31. Mr CHEUNG noted from the list of attendees (as tabled) that the representative of Hong Kong Subsidized Secondary Schools Council who proposed the amendment to **Clause C(ii) (Agenda Item II(b))** at the 5th Working Group meeting was absent at the meeting. He enquired if the Working Group had any contrary views regarding this revised clause. No contrary views were raised. He said that HKSSSC would be consulted at the next meeting.
32. Mr CHEUNG moved on to discuss the added **Clause C(iii) (Agenda Item II(c))**.
33. By way of background, Mr LAU explained that "course packs" were, by consensus at the 5th Working Group Meeting, excluded from the guidelines. He said some Members at the 5th Meeting had suggested that a special provision dealing with such exclusion be added as Clause C(iii). By consensus the term "course pack" was also defined in Clause C(iii). He added that under the U.S. Guidelines, the term was not defined. The proposed definition was based on the one used by CLA in U.K. The numerical limits in square brackets were from the CLA definition and were open for discussions.
34. Mr CHEUNG invited the views from the Members on the numerical limits [4] and [25].
35. Mr H. W. CHAN raised his concern about the meaning of the term "course of study". He said it was easily understood in the context of post secondary colleges. However, its meaning was not so clear for primary and secondary schools. Whether it referred to a particular topic of discussion in a certain subject taught in a class? If so, the restrictions intended by this proposed clause would be unduly wide.
36. The representative of HKACE shared Mr H. W. CHAN's view.
37. The second representative of HKRRLS confirmed that they had checked that the proposed Clause C(iii) was the one used by CLA in U.K. and that the term "course pack" was not defined in the U.S. Guidelines. HKRRLS was happy with the clause as drafted if the Members wished to include a definition of such term.
38. Mr CHEUNG enquired of the Members if they wanted to define the term "course pack".

39. The second representative of JULAC felt it right to define the term "course pack". She considered the term "course of study" to be quite inappropriate in the context of post secondary colleges. These colleges would instead call it "a course".
40. Mr CHEUNG raised the issue if a time element should be introduced in Clause C(iii)(c) as drafted or this sub-clause was really necessary.
41. The second representative of HKRRLS did not object to the deletion of Clause C(iii)(c). No contrary views were raised regarding such deletion.
42. Mr CHEUNG summed up the following: -
  - (a) Deletion of Clause C(iii)(c) was agreed to by the Members; and
  - (b) the question that if the term "course of study" was appropriate could be discussed further at the next meeting.
43. He asked the Working Group to consider the numerical limits in the square brackets first.
44. Ms TSOI asked if numerical limits had to be introduced into Clause C(iii) for she was afraid that if this clause was made too restrictive, the guideline would be of little use to users in meeting their practical needs.
45. Mr H. W. CHAN shared the same view with Ms TSOI.
46. The representative of HKACE said that there were already a lot of restrictions elsewhere in the guidelines governing copying. In addition, there was "spontaneity" requirement.
47. Mr CHEUNG said that the issue of introduction of numerical limits in Clause C(iii) would be further discussed at the next meeting.

***Clause D (Agenda Items II(d) and (e))***

48. Mr. CHEUNG moved on to discuss **Clause D(ii)** in Points for Discussion document (**Agenda item II(d)**).
49. Mr. LAU said that at the last meeting, it had been discussed that "to create" and "to replace or substitute" were two different issues which needed to be clarified. A clause specifically dealing with the "creation" part was dealt with in Clause C(iii). In order to facilitate discussions on the rest of the Clause, the relevant

part of the U.S. Guidelines was set out as a reference.

50. The representative of HKEPA suggested to add the word "printed" before "course packs" in the Clause D(ii).
51. The first representative of JULAC further suggested to add the words "published or commercially available" immediately before "anthologies, compilations, collective works or printed course packs" in the Clause D(ii).
52. The above suggestions were agreed to by the Members.
53. Mr CHEUNG then moved on to discuss **Clause D(iv)** in the Points for Discussion document (**Agenda Item II(e)**).
54. The first representative of HKCLA confirmed that they had talked to their Members and accepted 3 working days.
55. Ms TSOI said that she did not quite understand the drafting of the clause. She queried if it would still be deemed unreasonable for a teacher to obtain permission for the copying if no efforts had been shown to obtain such permission within 3 working days period.
56. Mr LAU said that the "proviso" was added to reflect the views of HKRRLS expressed at the last meeting.
57. The second representative of HKRRLS said that they appreciated the difficulty on part of a teacher to get permission for the copying if the proposed use was going to take place within 3 working days. They considered 3 working days an appropriate period for purpose of defining "spontaneity". However, on the other hand, they also expressed the view that the teacher should make efforts to obtain permission after 3 working days period. This was to ensure no one would abuse the right to copying. They were prepared to accept the deletion of the proviso in the Clause D(iv).
58. Mr CHEUNG noted HKRRLS's position. Deletion of the proviso in Clause D(iv) was approved.
59. Mr LAU explained that the proposed Clause D(v) was added to address the concern of HUCOM and JULAC that neither section 38 nor section 41 allowed them to make slides or transparencies for teaching purposes. They therefore would have to rely on section 45 and be bound by the spontaneity requirement in the guidelines. They considered that the making of transparencies, etc.

should not be subject to the spontaneity requirement.

60. The second representative of JULAC recalled that when spontaneity requirement was being discussed in the last meeting, she had noticed that the requirement applied to multiple copying and for single copying, they should not be subject to the 'spontaneity" requirement. That was the reason why they wished to add a clause clarifying this.
61. The representative of HKEPA queried what was meant by "extracts of work" and if copying should be by means of a reprographic process.
62. Mr CHEUNG suggested to improve the drafting of this clause for further discussion at the next meeting.

***Clause E (Agenda Items II(f) to (l))***

63. Mr LAU said that the figure "9" in the **Clause E(iii)(b) (Agenda Item II (f))** was adopted in the U.S. Guidelines. A letter had been sent to the U.S. Copyright Office seeking further details on this issue. However the reply from the U.S. Copyright Office did not provide any useful information about the rationale behind the figure.
64. The second representative of HKRRLS said they had asked AAP the same question and were given to understand that there were 9 months of teaching in a school year in the U.S..
65. Mr CHEUNG suggested that the Members decide on the number of instances of copying allowed for a month first and this way they could work out the figure for an academic year which had 10 months of teaching.
66. The representative of HKACE said that a course in the Universities might not spread out for a whole school year. There could be intensive courses which lasted for, say, only 5 days.
67. Mr CHEUNG posed a question for the Members' consideration: should the number of instances of copying be restricted by reference to a course of study (which term might need to be defined) or by reference to time, say, copying once per week.
68. The representative of HKAPA preferred that instances of copying should be restricted by reference to time. She suggested four instances of copying per month.

69. The second representative of JULAC expressed the concern that the teachers' flexibility would be adversely affected if they were only allowed to make copying once per week. She stressed that "flexibility" was important to teachers.
70. The second representative of HKRRLS preferred following the U.S. guidelines.
71. Mr CHEUNG suggested the Members consider the range between 20 to 40 instances of copying within an academic year.
72. The second representative of JULAC suggested 27 instances of copying made for one course.
73. The first representative of HKCLA asked if "one academic year" should still be retained in the clause.
74. Mr CHEUNG said these words should be retained.
75. No one raised any objection to the suggestion of JULAC.
76. Mr CHEUNG suggested to discuss the sub-paragraphs of **Clause E(iii)(d) (Agenda Item II(g))** one by one.

***Clause E(iii)(d)(1)***

77. The first representative of HKCLA confirmed their approval of sub-paragraph (1). Mr CHEUNG noted that it was agreed to by the Members.

***Clause E(iii)(d)(2)***

78. Mr CHEUNG invited views from the Members regarding sub-paragraph (2) **(Agenda Item II(g))**.
79. The first representative of HKRRLS said that they preferred the U.S. guidelines.
80. There were no other comments on this clause.

***Clause E(iii)(d)(3) (Agenda Item II(h))***

81. Mr CHEUNG noted that there was no objection to the revised Clause E(iii)(d)(3).

***Clause E(iii)(d)(4)***

82. The second representative of HKRRLS confirmed their acceptance of the clause.

Other Members did not have other comments.

***Clause E(iii)(d)(5) (Agenda Item II(i))***

83. Mr CHEUNG said that this clause on textbook was necessitated by the special circumstances of Hong Kong.
84. Mr LAU explained why the words "in one academic year" were added in sub-paragraph (B). He said without a time limit in the clause, once a work had been copied up to the percentage limit it could never be copied again under the guidelines. He therefore thought the addition of "in one academic year" was necessary and reasonable.
85. The representative of HKAPA enquired about the situation where a teacher made reference to the same textbook while teaching different courses e.g. Physics and Integrated Science.
86. Mr H. W. CHAN suggested to use the term "for a course" in place of "in one academic year".
87. Mr CHEUNG remarked that there were further restrictions contained in sub-paragraphs (C) and (D).
88. Referring to sub-paragraph (D), the representative of HKACE enquired what if a teacher changed his job from one school to another.
89. The first representative of JULAC expressed the view that the word "textbook" should be defined.
90. The representative of HKEPA asked how the word "chapter" be interpreted, noting that terms like "module" and "unit" were also found in some textbooks.
91. The second representative of HKRRLS considered the word "Chapter" to be appropriate for "textbook" category and compared the limitation set for this category with that suggested by AAP proposal for "other works" category.
92. Ms TSOI said that there was a definition for "textbooks". It referred to "books written in accordance with the syllabus issued by the Curriculum Development Council."
93. The representative of ACTPO said he would need to discuss with their Members on the definition.

94. The second representative of HKRRLS expressed the view that books written in accordance with public examination syllabuses should also be included in the definition.
95. The representative of ACTPO added that there were two types of syllabuses which were not issued by Curriculum Development Council: i) teaching syllabuses published by teaching community, which were regarded as textbooks and ii) examination syllabuses issued by the Hong Kong Examination Authority.
96. Mr CHEUNG suggested to revise the definition of "textbooks" as follows: -  
  
"books written in accordance with the syllabus issued by the Curriculum Development Council and Hong Kong Examination Authority."
97. The representative of HKACE asked if books which claimed to be written to support the teaching of syllabuses like A-level and O-level would also be included in the definition.
98. The representative of HKAPA agreed the need to have a clearer definition of "textbook". She noted that the restriction contained in this sub-paragraph was only intended to give preferential treatment to Hong Kong textbooks and queried if the protection would extend to cover books written in relation to overseas examinations.
99. Mr H. W. CHAN noted the publishers' wishes of the inclusion of anything written for Hong Kong examination in the definition. He queried if a different name instead of "textbook" should be given to this category of copyright work.
100. Ms TSOI enquired of HKRRLS about the reason why they wished to revise the definition of "textbooks" and said that for anything excluded from this definition, they would still be subject to the restrictions contained in other conditions in the guidelines.
101. The second representative of HKRRLS said that he just reflected their Members' wishes to the Working Group. He would need to further discuss with their Members on the issue.
102. Mr CHEUNG asked the Members to send in their views (if any) regarding the definition and their reasons in support to IPD.

***Clause E(iii)(d)(6) (Agenda Item II(j))***

103. Mr LAU explained that AAP did not consider "Chapter" to be an appropriate unit of measure and they suggested using the number of words instead.
104. The second representative of HKRRLS said that the term "chapter" was not clear and AAP proposal should be preferred.
105. Mr CHEUNG invited views from the Members which clause should be adopted, the one as drafted or the AAP proposal.
106. The first representative of JULAC said that it was very impractical for universities to do word count if AAP proposal was adopted whilst the "percentage" formula was easy to understand. He suggested to keep the whole clause as drafted save the last three lines commencing with "but if the work is divided into chapters...". He did not support AAP proposal.
107. The second representative of JULAC added that the limit set at 1,000 words in AAP proposal was very restrictive for books used in universities as they could be very large in volume.
108. The second representative of HKRRLS argued that impracticality associated with word count should not be a justified reason to relax the restriction. Users' convenience should not be preferred at the expense of the publishers' interest. If the numerical limit "1,000" was considered too small, it could be changed to a greater figure, say 2,000 or 3,000, by discussion. He would need to discuss this with their Members but in principle they supported the AAP proposal.
109. Ms TSOI queried when calculating the number of pages, if a differentiation should be made between traditional printed works and works in the form of electronic version.
110. Mr LAU clarified that the guidelines were to cover works "in printed form" only. This was stipulated in Clause C(i) in the "Points for Discussion" document.
111. Mr CHEUNG said that the Points for Discussion document needed to be rationalised for further discussion at the next meeting.

***Clause E(iii)(e) (Agenda Item II(k))***

112. The first representative of HKCLA stated that each newspaper aggregated many works from different authors. So, it was not practical to use the same

measurement for newspapers quoted at Clause E(iii)(e)(1). Therefore, she suggested a separate provision for "articles in newspapers" under Clause E(iii)(e)(1) as follows: -

"(a) articles in newspapers, not more than 9 works may be copied from the same title for one course in any one academic year."

113. The second representative of JULAC said that there was no restriction for the fair dealing exception in section 39.
114. Mr CHEUNG clarified that the act allowed under section 39 should not unreasonably prejudice the legitimate interests of the copyright owner.
115. The representative of HKLA queried if the limitation contained in the clause proposed by HKCLA was too restrictive.
116. The first representative of HKCLA said that their clause was intended to encourage users to use works from different titles. If users wished to make copies exceeding the limit proposed, they should obtain necessary licences.
117. The second representative of HKCLA added that they would usually approve an application for a licence of copying if the prescribed limit was exceeded. It was just a matter of formality.
118. Mr CHEUNG noted HKCLA's position that they would deal with cases with flexibility.
119. Mr CHEUNG invited views from the Members about the issue of "current news" (**Agenda Item II(I)**).
120. The second representative of JULAC said that she spoke for Mr KWONG, the representative of HUCOM who was absent at the meeting. She repeated HUCOM's stance that "current news" should be exempted from the restrictions imposed by the guidelines. She said according to HUCOM, "current news" should be defined as "news on issues currently under discussion". The definition addressed the need to refer to "old news" if a certain topic was discussed. That explained why HUCOM did not want to define the term by reference to a number of days.
121. Mr CHEUNG invited the Members to consider the following: -
  - (a) HKCLA's proposed clause stated above: with respect to articles in newspapers, not more than 9 works might be copied from the same title in

any one academic year, whether or not they were from different authors;  
and

- (b) HUCOM's proposal to add an exception which would allow the copying of "current news" (defined as "news on issues currently under discussion") beyond the restrictions.

***Paragraph III New Items***

- 122. No new items were requested by the Members.

***Paragraph V Date of Next Meeting***

- 123. Mr CHEUNG noted that according to the time table, the next meeting scheduled on 30 August 2002 would be a plenary one. Since there were outstanding issues yet to be resolved, he suggested the Members should continue to hold discussion on 30 August 2002. No objection to the suggestion was raised by the Members.
- 124. Ms TSOI suggested that the absentees of this meeting should be encouraged to come to the next working group meeting since they represented the users whose views were also important in formulating an agreed set of guidelines.
- 125. The first representative of JULAC proposed the next working group meeting be held on 6 September 2002 at 3:00 p.m.
- 126. Mr CHEUNG said that the next meeting would be held at 3:00 p.m. at IPD either on 30 August 2002 or 6 September 2002. The Members would be notified once the date was confirmed.

*The meeting closed at 5:55 p.m.*