

**Notes of the 2nd 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 19 June 2002

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

Present :

Hong Kong Subsidized Primary Schools Council

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 Reprographic Rights Licensing Society

Joint University Librarians Advisory Committee (JULAC)

Hong Kong Library Association

Hong Kong Publishing Federation Limited

Hong Kong Educational Publishers Association

The Anglo-Chinese Textbook Publishers Organisation

Ms Laura TSOI
Commerce and Industry Bureau

Mr CHAN Hau-wing
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 Copyright Licensing Association

The meeting commenced at 3:10 p.m.

Confirmation of Notes of 1st Working Group meeting

1. Mr Stephen SELBY asked whether the Working Group members had any comments on the Notes of the 1st Working Group Meeting.
2. The representative of HUCOM proposed that the word "編製" in the Chinese version of the Notes be changed to "製作", and that the word "coursepack" be changed to "course pack". The members accepted this proposal.
3. The representative of HUCOM further suggested that the Chinese term for "course pack", i.e. "教材套", might not be clear to some users. Discussions on this issue ensued and various proposals, including "教材選集" and "自編教材", were made by the members.
4. Mr SELBY suggested that it was not necessary to have an in depth discussion on the term at this stage. The members could consider the views of primary and secondary schools and then revisit the issue later on. He noted that the term "套裝教材" was used in the Points of Discussion document and suggested that the term be used at this stage. There was no objection to this proposal.
5. The representative of HUCOM moved to confirm the Notes as the formal records of the 1st Working Group meeting. The representative of Hong Kong Association for Computer Education ("HKACE") seconded and the motion was passed. It was further agreed that the Notes would be placed on the internet by posting them at the IPD website.

Matters Arising: Agenda Item II(a)

6. Mr SELBY invited the representative of JULAC to inform the Working Group members about his discussions with JULAC members on the issue of proposed exclusion of course packs from the guidelines. The representative of JULAC informed the Working Group that he had not discussed the issue with his colleagues as the meeting had been cancelled.
7. The representative of JULAC then explained that librarians were concerned about the proposal because they might have to explain the guidelines to the users. Also he believed users would look for the word "course pack" in the guidelines. His view was that the guidelines should be, as far as possible, all encompassing.
8. Mr SELBY said that if the concern of JULAC was the potential need to explain the guidelines to the users then there was no need to worry. He emphasised that the guidelines would be written very clearly. He believed the policy behind the guidelines was more important. He also explained that Hong Kong's international obligations had to be taken into account when formulating the scope of the guidelines. His preliminary view was that course packs should be excluded from the guidelines.
9. The representative of JULAC agreed to withdraw his objection to the proposed exclusion of course packs at this stage and wait for the final version of the guidelines. He commented that the concept of "spontaneity" could be further developed under B(i) of the Points for Discussion document.
10. Mr SELBY agreed with the comment and suggested that the explanation in the U.S. Classroom Guidelines might not be sufficient for local circumstances.
11. The representative of HKACE agreed that the issue of course pack should be put aside at this stage and that the term "spontaneity" could be defined in the guidelines.
12. Mr SELBY noted there was a preliminary consensus among the members that course packs should be excluded from the guidelines and that further explanation of the term "spontaneity" might be necessary.
13. Members noted that the representative of Hong Kong Subsidized Secondary Schools Council was not present to give their views on the issue of course packs.

Matters Arising: Agenda Item II(b)

14. Mr SELBY invited the representatives of the publishing industry to inform the

Working Group members of their views on the issue of "textbooks".

15. The representative of the Anglo-Chinese Textbook Publishers Organisation ("ACTPO") suggested that "textbooks" could be defined by referring to the list of textbooks prescribed by the Hong Kong Curriculum Development Council. He also suggested that the copying of a small amount from a textbook within the same educational institution would be acceptable to the publishers. He expressed concern at the suggestion of using the definition of "educational establishment" in the Copyright Ordinance because for-profit educational institutions would also be covered. He believed the guidelines should not include for-profit educational institutions.
16. Turning to the specific amount of copying, the representative of ACTPO suggested that copies made in accordance with the following conditions would be acceptable to the publishers:
 - (a) less than 5% of a book within one month;
 - (b) less than 10% of a book in aggregate and without time limit;
 - (c) notwithstanding (a) and (b), not exceeding one chapter of a book;
 - (d) not exceeding one copy per teacher for the sole purpose of teaching;
 - (e) for photographs and illustrations, not more than one photograph or one illustration from a book.
17. The representative of ACTPO added that the above conditions were qualified by the following considerations:
 - (a) the act of copying should not unreasonably prejudice the interests of the relevant copyright owners;
 - (b) the act of copying should not unreasonably affect the sale of the relevant books;
 - (c) consumables (e.g. exercises, worksheets) were not included;
 - (d) the act of copying had to be "spontaneous" – systematic, organised copying was not included;
 - (e) not applicable to works placed on an intranet;

- (f) the copies made within the scope had to bear a suitable copyright notice.
18. The representative of ACTPO further added that he felt the proposed scope would satisfy the needs of teachers to copy small amounts from books.
 19. In relation to the definition of "textbooks", Mr H. W. CHAN observed that the list provided by the Curriculum Development Council did not cover university textbooks.
 20. The representative of HUCOM suggested that the needs of universities might not be covered by the publishers' proposal. The representative of ACTPO clarified that the proposal only applied to textbooks written for the Hong Kong syllabus.
 21. Mr SELBY observed that under the U.S. Classroom Guidelines, both copying for a teacher's own use and copying for distribution to students were covered. At the last Working Group meeting it was proposed that only multiple copying needed to be discussed. He expressed concern that the proposal of the publishers might not satisfy the needs of schools and teachers.
 22. The representative of the Hong Kong Professional Teachers' Union ("HKPTU") agreed that only multiple copying needed to be discussed. He also expressed concern that compilations would not be covered by the publishers' proposal. Mr SELBY emphasised that the important consideration was "spontaneity".
 23. The representative of ACTPO maintained that the proposal for copying of textbooks was only for use by teachers, not for distribution to students.
 24. Mr SELBY queried that if the copy made was for the teacher's own use only, then why was it necessary to consider other factors such as "not-for-profit" or "within one educational institution". He further commented that the aim of the current exercise was to develop guidelines to allow the copying of small amounts and the distribution of such copies to students.
 25. The representative of ACTPO commented that if such copying and distribution were accepted then the publishing industry would be threatened.
 26. Mr SELBY expressed the view that the publishers' proposal was more restrictive than what was already permitted by law, and that distribution to students needed to be addressed. He also believed using "not-for-profit" as one of the criteria might cause practical difficulties, as many higher learning institutions had a mix of profit and non-profit activities.

27. Mr CHAN agreed that whether an educational establishment was "not-for-profit" was not easily identifiable. He suggested that it might be easier to determine whether an organisation was "charitable" by looking at its tax status.
28. Mr SELBY acknowledged that this was a difficult issue but invited the publishers to reconsider. He understood the industry might be affected. One solution might be that if the copying involved textbooks, then the exemption would be reduced from 10 percent to 5 percent. However he believed any other more complicated limitations might be difficult for teachers to use and might be at odds with the spirit of the law.
29. The representative of the Hong Kong Publishing Federation Limited ("HKPFL") indicated that the proposal made by the representative of ACTPO was a resolution passed by the members of the publishing industry. He agreed to convey the views of the Working Group to the members again in order to achieve a balanced and reasonable result. The next meeting with the members would be held on 3 July 2002.
30. Mr SELBY emphasised that the Working Group should focus on multiple copying and distribution of copies to students, not single copying by teachers.
31. Ms Laura TSOI expressed the view that if the rationale of HKPFL's request for excluding textbooks from the scope of the guidelines was that it would discourage students from buying textbooks, then this was already covered under clause D(i) in the Points for Discussion document. She suggested that the meeting proceeded to the discussion on Part D.
32. Mr SELBY noted that in the U.S. Classroom Guidelines "textbooks" were not specifically mentioned as they were covered by the general principles.
33. The representative of the Hong Kong Library Association ("HKLA") said that the considerations were clearly identifiable – (i) spontaneity; and (ii) that the interests of the publishers should not be unfairly prejudiced.
34. The representative of HKPTU suggested that the nature of use of textbooks in Institutes of Education might be different as lecturers often discussed the quality of textbooks.
35. Mr SELBY noted that lecturers who made copies for bona-fide purposes of criticism or review enjoyed a specific exemption for such acts under section 39 of the Copyright Ordinance.

36. The representative of HUCOM noted that section 38 only allowed a reasonable portion of a copyright work to be copied for the purposes of research or private study.
37. The representative of HKEPA explained that he understood multiple copying was the main concern. The publishers discussed the issue but further discussions would take place at the two meetings to be held on 29 June and 3 July 2002. He suggested that the next Working Group meeting be held after 3 July 2002.

Part D of the Points of Discussions document

38. The representative of JULAC queried the meaning of the various Parts in the document.
39. Mr SELBY explained that Part C stipulated the types of works to be covered by the guidelines. Part D represented the major principles of the guidelines, and Part E provided the details, which should not contradict the principles in Part D. He further explained that the document was only prepared for the purpose of discussion and the guidelines would explain the above very clearly to the readers.
40. Mr SELBY then went through clauses (i), (ii) and (iii) in Part D. The Working Group members did not make any comments on these clauses.
41. On clause (iv) of Part D, Mr CHAN queried whether it was intended to be used by individual teachers only.
42. Mr SELBY confirmed that clause (iv) was intended to be used by individual teachers. He agreed that the clause might need further elaboration to make that point clear.
43. The representative of HKLA suggested that 25 years ago when the U.S. guidelines were formulated, requests for permission were probably made by post and the process would have taken a long time. But now these requests could be sent by email to the licensing bodies and replies could be received very quickly. He queried the interpretation of the word "unreasonable" in clause (iv) under our current circumstances.
44. Mr SELBY thought that in practice the interpretation of the word "unreasonable" would depend on the facts of each individual case. For instance, it might be more difficult to locate the owner of certain old or obscure copyright works. However, he noted that licensing bodies would provide assistance in the process of

obtaining permission from copyright owners.

45. The representative of HUCOM agreed with the views of the representative of HKLA. He also suggested that the test for “spontaneity” did not have to use a fixed period of time. A condition such as “use of the work was not contemplated at the time when the teacher planned the course” could be used instead.
46. Mr SELBY suggested that use of a work could be considered “spontaneous” if the use took place (for example) within one month of the decision to use the work and other considerations were satisfied. That would effectively mean one month was deemed to be a “reasonable” period of time under clause D(iv). He further suggested that any period exceeding one month would require permission from the copyright owner.
47. The representative of ACTPO suggested that one week would be more reasonable, as one month implied forward planning.
48. The representative of HKACE expressed his concern that if the licensing body did not represent all relevant copyright owners then it might still take a long time for the users to undertake searches in order to obtain permission. He thought if there was a licensing body which represented all the relevant copyright owners then teachers would be happy to use it, as the idea was not to save costs but to enable the teachers to use the materials they had chosen.
49. The representative of HKPTU suggested that it might be necessary to know the authority of the licensing bodies. Also he felt that whatever time period was adopted enforcement would still be difficult.
50. The representative of ACTPO acknowledged the difficulties in enforcement, but emphasised that it was the obligation of both copyright owners and users to comply with the guidelines.
51. The representative of the Hong Kong Subsidized Primary Schools Council said that the Working Group should focus on helping the teachers satisfy their needs in teaching. She suggested that the interpretation of the word “unreasonable” might need to be different for local publications and overseas publications.
52. Mr SELBY believed there might be difficulties in treating overseas works differently as the principle was that all works should receive the same treatment regardless of origin. He also noted that the guidelines would cover newspapers if that was agreed by the members.

53. The representative of the Hong Kong Academy for Performing Arts believed there was no need to have separate treatment for overseas works. Her experience was that large publishers usually responded quickly while small publishers often did not respond at all. She therefore believed the origin of the work was not the distinguishing factor.
54. Mr SELBY noted that HKRRLS represented overseas publishers as well as local publishers. He believed teachers would be more comfortable with a fixed period of time than having to interpret what was “unreasonable”. He suggested the clause should be clarified to say “begin to use” within one month/week.
55. The representative of ACTPO agreed that it was better to have a fixed period of time but he needed to discuss the issue with the members of the publishing industry.
56. Mr SELBY noted that while the discussions on clause D(iv) had not reached a conclusion, there was a consensus to specify a fixed a period time under this clause. He suggested that the proposed period be placed in square brackets first to indicate that further discussions were required.

Part E of the Points for Discussions document

57. Mr SELBY went through clause E(i). The members did not make any comments or objections.
58. On clause E(ii), Mr SELBY explained that the word “retention” was not in the U.S. Classroom Guidelines. It had been added to this clause as he considered it unreasonable to retrieve or destroy the copies distributed to the students.
59. The representative of ACTPO commented that it would be difficult to control further copying. He also believed if multiple copying was accepted then it would have to be done within an educational establishment.
60. Mr SELBY suggested that the guidelines should require the teachers to explain to the students how the copies of copyright works should be used.
61. The representative of HKLA agreed that while it might be difficult to prevent copying in practice, it was important to warn and educate the users.
62. The representative of HKPTU considered such warning could be added in clause E(iii)(f).

63. Mr SELBY said IPD would prepare a draft clause requiring the teachers to inform the students on the proper use of the distributed copies of copyright works.
64. Clause E(ii) was agreed to by the members.
65. Mr SELBY explained that the figures in square brackets were taken from the U.S. Classroom Guidelines.
66. Clauses E(iii)(a) and (c) were agreed to by the Working Group members.
67. In relation to clause E(iii)(b), the representative of HUCOM believed the users would prefer not to have such a restriction as it would be difficult to keep count in practice.
68. The representative of ACTPO believed it should be retained, otherwise copying could continue indefinitely.
69. Mr SELBY queried the effect of deleting clause E(iii)(b).
70. The representative of ACTPO objected to its deletion.
71. Mr SELBY suggested that the clause be retained at this stage. He noted that the publishers would be more comfortable with the guidelines if clause E(iii)(b) was retained. However he did not want to create an impractical situation and he requested the teachers to give further consideration to this clause.
72. Mr SELBY further suggested that the remaining issues in Parts D and E would be set out in order to facilitate discussions at the next meeting.

Next Meeting

73. The 3rd Working Group meeting would take place at 3:00 p.m. on 4 July 2002 at IPD.

The meeting closed at 5:20 p.m.