

**Notes of the 1<sup>st</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 3 June 2002**

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

**Present** : Hong Kong Subsidized Secondary Schools Council  
  
Hong Kong Professional Teachers’ Union  
  
Task Force on Reprographic Rights Licensing established  
under Heads of Universities Committee  
  
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  
  
Joint University Librarians Advisory Committee  
  
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 Primary School Council

*The meeting commenced at 3:15 p.m.*

1. Mr Stephen SELBY welcomed the Working Group members. He noted that in the next few weeks, a substantial amount of work would need to be done by the Working Group before reporting back to the Plenary Group.
2. Mr SELBY explained that the objective of the development process was to formulate a set of guidelines that would provide guidance to teachers when, for teaching purposes, they needed to make copies of 4 types of copyright works: literary, dramatic, musical and artistic works.
3. Mr SELBY had originally suggested that the guidelines dealing with works in printed form would be finalised before starting work on the guidelines dealing with works in digital format. At the Plenary Meeting some Members expressed the view that the two sets of guidelines should be developed in parallel. However Mr SELBY believed that priority should be given to works in printed form.
4. Mr SELBY explained the background to the development process. The Copyright Ordinance (“the Ordinance”) gave certain exclusive rights to copyright owners, including the right to copy a work (section 23 of the Ordinance). On the other hand users of copyright work could rely on certain fair dealing exemptions in order to copy limited amounts of a copyright works without permission. These exemptions are subject to special conditions and any copying should not be in conflict with the normal exploitation of a work by the copyright owner.
5. Mr SELBY further explained that section 38 of the Ordinance contained such an exemption. It allowed fair dealing with a copyright work by users for the purposes of research and private study. It was a limited exemption as it only allowed a person to make a single copy of a reasonable extent of a work for his/her own use. Mr SELBY considered that under this exemption a teacher

could make a single copy of a work for his own classroom preparation. The situation would be different if a teacher was making copies for his/her students.

6. Mr SELBY explained that the U.S. Classroom Guidelines (“the U.S. Guidelines”) covered two situations – (1) copying by a teacher for his/her own use; and (2) multiple copying for classroom use. Mr SELBY’s view was that it would not be necessary for the new guidelines to target the first situation. The Working Group should concentrate on the second situation, which would be covered under the exemption provided in section 45 of the Ordinance.
7. Mr SELBY observed that there might be timing difficulties because the Ordinance is in the process of being amended. The Commerce and Industry Bureau (“CIB”) had made a proposal to the Legislative Council Panel on Commerce and Industry for certain amendments of the Ordinance, including amendments to section 45 of the Ordinance.
8. Mr Andy LAU explained that under the current section 45 there was a restriction on the availability of the exemption, i.e. if there was an applicable licensing scheme then the exemption would not be available to the user. The Government had already made a proposal to the Legislative Council Panel on Commerce and Industry to remove the restriction and to make the exemption available even where there was an applicable licensing scheme. This would take some time to finalise and in the meantime, the guidelines would serve as an agreement between those copyright owners and users who adopted the guidelines.
9. Mr SELBY noted that there would need to be some localisation of the U.S. Guidelines, in particular terms such as 'spontaneity' and 'brevity' might not be easily understood here. The spirit of the U.S. Guidelines would be retained in our own guidelines but the wording could be different.
10. Mr SELBY emphasised that the “Points for Discussion” document did not represent the Government’s view. It was only the starting point for the discussions. Mr SELBY also noted that the Government might have a conflict of interest in this exercise as the Government was the copyright owner in some publications and at the same time, teachers in Government schools were also users of other copyright works.
11. Mr SELBY suggested that two major issues should be settled before the Working Group started to go into the details of the “Points for Discussion” document.
  - The first issue was whether “course packs” should not be covered by the

guidelines as there should be sufficient time for schools to seek permission from the copyright owners of the works included in the course packs.

- The second issue was whether textbooks should be covered by the guidelines. As a student should purchase prescribed textbooks, there should be no need to make copies of prescribed textbooks. However a related question was how to define a “textbook”. Mr SELBY then invited the Working Group members to express their views .
12. The representative of the Hong Kong Educational Publishers Association (“HKEPA”) queried what would be the effect of including course packs and textbooks in the guidelines.
  13. Mr SELBY explained that if the guidelines simply allowed 10 percent of a printed work to be copied then 10 percent of a textbook could be copied and incorporated into a course pack. However if copying exceeded 10 percent then the guidelines would not assist and there could be an infringement of copyright.
  14. The representative of the Hong Kong Subsidized Secondary Schools Council (“HKSSSC”) explained that some schools used course packs because there was simply no suitable book on the market for certain subjects. He emphasised that from the schools’ perspective, if a textbook was prescribed then the students should be required to purchase the textbook. But he also noted that in those subjects where there was no suitable textbook on the market, it would be unrealistic to expect the primary or secondary school teachers to write their own teaching materials. It would also be very difficult for the schools to obtain the permission of all the copyright owners. Further there might be a fee on every article copied and used in the teaching material. He suggested that one solution might be the use of a licensing scheme.
  15. Mr SELBY considered that even if course packs were excluded from the guidelines, there would be sufficient time for teachers to seek the necessary permission from the publishers. He invited the representative of the Hong Kong Reprographic Rights Licensing Society (“HKRRLS”) to comment on his view.
  16. The representative of HKRRLS commented that in these circumstances HKRRLS could provide a “clearing house” type of service for the schools.
  17. The representative of the Hong Kong Publishing Federation Limited (“HKPFL”) asked about the definition of an “educational establishment”. Mr LAU explained that the term was defined in the Ordinance and a list of educational

establishments could be found in Schedule 1 of the Ordinance. The representative of HKPFL explained that he wanted to ascertain the scope and effect of the guidelines and see whether he was comfortable with them.

18. The representative of HKSSSC expressed some concern about the cost of licences issued by licensing bodies.
19. The representative of HKRRLS said in relation to the scope of the guidelines, the Education Department ("ED") might have information on the number of registered schools. It was also important to observe the purpose of the guidelines. It would not be appropriate to allow copying to become a means of substituting the purchase of a book.
20. Mr SELBY said that the U.S. Guidelines did not cover course packs because of the "spontaneity" requirement. He explained that under this requirement, the decision to copy had to come from the teacher himself, and there had to be insufficient time to seek permission from the copyright owners. He also suggested that some localisation of the terms of the U.S. Guidelines would be acceptable.
21. The representative of the Hong Kong Professional Teachers' Union ("HKPTU") queried the meaning of "course packs". He also felt that copying might be prejudicial to the interests of the publishers.
22. Mr SELBY emphasised the importance of "spontaneity" in considering whether a compilation of documents was a "course pack".
23. The representative of the Task Force on Reprographic Rights Licensing established under Heads of Universities Committee ("HUCOM") believed that a balance needed to be struck between the interests of the publishers and the educational users. He cited the experience in U.K. as an example. He believed there was a need to define the term "course pack" in terms of the minimum number of books required and the percentage allowed for copying. He said HUCOM's view was that permission from copyright owners and appropriate limitations should be required for the production of course packs.
24. The representative of the Anglo-Chinese Textbook Publishers Organisation ("ACTPO") was concerned that if course packs were included in the guidelines, there would be serious adverse impact on the publishing industry. He understood that it would be difficult for teachers to seek permission for every article they put in the course packs, and that a licensing mechanism would be useful. However he

believed that if course packs were excluded from the guidelines then there would be easier and smoother discussions of the Working Group meetings.

25. Mr SELBY summarized that the initial view of the Working Group members was that course packs should not be included in the guidelines.
26. The representative of The Hong Kong Association for Computer Education (“HKACE”) felt the term “course pack” was not clearly defined.
27. Mr SELBY expressed the view that if course packs were not included then it would not be necessary to try and define what constituted "course packs". But if course packs were included in our guidelines then the guidelines would be moving further away from the 'spontaneity test' in the U.S. Guidelines.
28. The representative of the Joint University Librarians Advisory Committee (“JULAC”) expressed the view that while he understood the difficulty in defining “course packs”, he believed they should be included in the guidelines.
29. The representative of HUCOM said that in the context of tertiary education, course packs were usually prepared and planned well in advance. It was only fair that some of the income from selling these course packs should go back to the publishers.
30. Mr SELBY asked whether HKRRLS, being an IFRRO member, could provide licences for obscure materials included in course packs.
31. The representative of HKRRLS replied that they could handle these requests. He also confirmed that in these situations even those without an existing licence could approach HKRRLS and apply for permission to reproduce printed works.
32. The representative of HKSSSC expressed the view that the ED had been encouraging teachers to develop their own teaching materials. However due to the teachers' limited resources and time, their teaching materials usually consisted of photocopies of printed works. He emphasised that if course packs were not included in the guidelines then the needs of the schools would not be satisfied.
33. Mr SELBY clarified that even if course packs were excluded from the guidelines, the teachers could still prepare course packs – they just needed to obtain permission from the copyright owners. He asked ED whether there was any consideration to copyright when the teachers were asked to prepare their own

materials.

34. Mr H. W. CHAN replied that HKRRLS and the Schools Council were negotiating a licence. He added that course packs were not included in the terms of the draft licence. However the draft licence allowed the schools to copy up to 10% of a printed work and to make multiple copies for students.
35. The representative of HKEPA commented that as the Working Group members represented different interests, it would be difficult to reach a consensus on the issue of course packs. He noted that most locally produced books were curriculum-specific, although he acknowledged that in some special cases course packs might be necessary.
36. Mr SELBY considered that unless there was a special reason why permission from copyright owners should not be required, otherwise permission should be obtained for the preparation of course packs. The representative of HUCOM queried whether the statutory indemnity under section 168 of the Ordinance would remain. Mr SELBY confirmed that the statutory indemnity was to stay.
37. Some discussions about the fees charged by HKRRLS ensued. Mr SELBY commented that the discussions were beyond the scope of the meeting.
38. The representative of JULAC said that he needed to discuss the issue of course packs with his colleagues. Mr SELBY invited him to report back at the next meeting.
39. The representative of HKSSSC expressed the view that course packs had to be included as the needs of the schools could not be left out. He acknowledged that the publishers had done a lot to relieve the teachers' burden. However he remained concerned and queried what was meant by "spontaneous". He further commented that teachers would feel that it was a problematic area for them.
40. Mr SELBY explained that "spontaneity" meant there was not enough time to get permission from the copyright owners and the copying was done by the teacher's own initiative rather than directed by someone else.
41. The representative of HKPFL commented that free-of-charge copying from textbooks would seriously affect the investments of publishers. He hoped the guidelines would provide sufficient protection to the publishers without stifling effective teaching in schools.

42. Ms Laura TSOI expressed the view that the guidelines were not meant to provide for all the copying needs of schools. Doing that would be against Hong Kong's international obligations. She believed the best solution was for ED and HKRRLS to include suitable terms in their licence agreement.
43. Mr SELBY noted that the representatives of JULAC and HKSSSC still had some reservations about the proposition that course packs would not be included in the guidelines. He respected their views and requested that they consider the proposition carefully. Mr SELBY noted that he had not received objection to the proposition from other Working Group members.
44. Turning to the issue of "textbooks", Mr SELBY invited the publishers to express their views.
45. The representative of HKEPA noted that textbooks were considered expensive in Hong Kong. He explained that it was a direct result of Hong Kong's small market size. Unlike publishers for the tertiary market, the publishers for school textbooks only served the local market. He agreed that no textbook would be 100 percent suitable for a particular course, but if teachers were allowed to copy 10 percent of 10 relevant books and put them together making it the "best textbook", buying would be replaced by copying. He believed educational publishers deserved special consideration, otherwise the local market would disappear.
46. Mr SELBY explained that while he understood that the Hong Kong publishing industry was experiencing difficulties, Hong Kong could not treat local publishers differently from overseas publishers. As non-educational books also involved a lot of effort and investment, Mr SELBY asked why textbooks needed special treatment.
47. The representative of HKEPA suggested that "textbooks" could be easily defined in Hong Kong as ED had a recommended list of textbooks. He also said special treatment was needed to protect local works and encourage local writers.
48. The representative of HKACE commented that defining "textbooks" by reference to the list of recommended textbooks maintained by ED could be problematic if the list was discontinued in the future.
49. Mr SELBY queried whether books published overseas could be placed on the list maintained by ED.
50. Mr CHAN said his understanding was that any textbook could be submitted for

consideration and the nationality of the publisher was irrelevant. He also noted that the list did not include textbooks for Forms 6 and 7.

51. The representative of HKSSSC said that HKSSSC never suggested that students should use compilations instead of buying textbooks. He believed copying of 10 percent of a book was too much. He could accept the copying of 2 or 3 pages from a book and then using them as supplement to textbooks. He felt that each student should have a textbook for each subject. The schools' view was that they did not want to prejudice the interests of the publishers, but they wanted to ensure that the teachers were protected from potential infringement actions if the teachers only made a small amount of copying. It was not practical for them to ask for permission from each copyright owner. The teachers would either do the copying without the permission, or they would do nothing. He believed the latter was more likely, and this could have a negative impact on teaching.
52. The representative of HKEPA believed that if the guidelines were drafted too widely, then the publishing industry could be seriously affected. But he felt there was a lot of room for the negotiation of a reasonable solution. In relation to the definition of "textbook", he suggested that since every school provided a list of prescribed textbooks to its students, "textbook" could be defined by making reference to such lists.
53. Mr SELBY added that perhaps if a book was on the prescribed list of textbooks of a school then it had to be purchased by the students of that school and not copied under the guidelines.
54. The representative of HKPTU queried whether copying textbooks would affect the legitimate interests of the publishers. He believed textbooks should not be covered by the guidelines.
55. The representative from the Hong Kong Academy for Performing Arts commented that it was important to clarify what was meant by "course packs", and that copying 1 or 2 pages would not have a significant effect on the sale of textbooks.
56. Mr SELBY expressed the view that if copying involved only 1 or 2 pages then publishers might accept that. However what was being discussed was 10 percent or a whole chapter. The publishers were concerned with the effect of such allowances.
57. The representative of ACTPO noted that as the publishers and the users each had

their concerns, the publishing industry would be affected if there was no mechanism to resolve the differences.

58. Mr SELBY proposed to the representatives of the publishers that perhaps they could let the Working Group know at the next meeting what they would consider as acceptable copying limits if textbooks were to be included in the guidelines.
59. The representative of the Hong Kong Library Association agreed that it was important to identify what was meant by “course packs”. He noted a lot of researchers from overseas were used to using course packs.
60. The representative of ACTPO commented that if the issue of course packs were dealt with properly then the issue of textbooks could also be covered. He agreed that he would consider the proposal made by Mr SELBY and return with an offer to the Working Group.
61. The representative of HKEPA explained that he was not concerned with the copying of, say, just one graph from a textbook. His main concern was that the ED was encouraging the schools not to use textbooks but to develop their own teaching materials. For instance about 70 to 80 schools this year were not buying textbooks for the subject of Chinese Language and would use compilations instead. This was a serious warning to the publishing industry.
62. The representative of HKPTU commented that not using textbooks did not necessarily mean infringement of copyright as the teachers could write their own materials.
63. Mr SELBY then summarized the issues discussed. In relation to course packs, he noted that they were not the result of spontaneity, and they involved a significant amount of copying. He proposed to the Working Group that the U.S. principle of spontaneity be accepted for the purpose of the guidelines. He also noted that there were situations where course packs were necessary. However he considered that in such situations there should be sufficient time for teachers to obtain permission from copyright owners or a licence from HKRRLS. He understood that the organizations present at the meeting might need to discuss the matter with their members. If their members found the proposal in relation to course packs acceptable, then non-spontaneous copying would not be included in the guidelines.. HKSSSC said that they did not simply want teachers to have to get permission from every copyright owner of every copy they made. That would be administratively complicated and in practice teachers would not do it. The

result would be a drop in the quality of teaching. Mr SELBY suggested that a licensing system could be the answer to that kind of situation.

64. In relation to textbooks, Mr SELBY noted that ED maintained a list of recommended textbooks and that both local and overseas publishers could submit books to the Education Department for that purpose. He acknowledged the suggestion that this could be a special situation and might need to be treated differently. He also acknowledged that there was a need for teachers to sometimes make photocopies of 1 or 2 pages from books. He urged the publishers to consider this practical need of the teachers. He also requested that the publishers provide a letter to the Working Group stating what level of copying from textbooks would be considered reasonable.
65. Mr SELBY's request was accepted by the representatives of the publishers.
66. A proposed timetable for future Working Group meetings was distributed to the Working Group members. The next meeting would take place on 19 June 2002 at 3:00 p.m. at IPD. It was confirmed that the Working Group members were free to decide on the representative they sent to the meeting. It was also agreed that in the future documents would also be sent to the Working Group members by email.
67. Mr SELBY noted that while there was no consensus yet there had been useful exchange of views. He thanked the participants for their efforts and declared the meeting closed.

*The meeting closed at 5:15 p.m.*