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Introduction

THINGS have come a long way since the time when teaching materials mainly consisted of the book and the blackboard. These days we try to introduce as many varied stimuli into the classrooms as possible; we encourage students to seek out facts for themselves and to experiment. Photocopiers are used in every school, and there are computers and televisions in most classrooms.

We never give any thought to the principles of arcane subjects like air traffic control or meteorology; but our view of such things would change quickly if suddenly new technology allowed every child's bicycle to fly. Although bicycles will remain firmly on the ground for the time being, technology is allowing teachers' and schoolchildren's minds to fly. You can access data in any country of the world; you can publish sophisticated works on the INTERNET with a potential readership of millions. Printed works can be scanned and stored on high-capacity optical disks. Music, film, images, the printed word can be combined seamlessly into multimedia presentations. Operating in this brave new world without grasping the principles of intellectual property protection is like riding a flying bicycle through a busy air transport corridor without understanding air traffic control or weather information.

In this context, the teaching profession in Hong Kong has two duties. One is to seek to provide students with a basic understanding of intellectual property as it affects their daily lives. The second is to ensure that the activities of schools and the teachers themselves do not directly come into conflict with the principles of intellectual property protection, thus spoiling efforts to give the younger generation a correct understanding of how to behave.

This Booklet aims to give primary and secondary teachers and school administrators enough understanding of intellectual property protection (mainly copyright) to allow them to avoid pitfalls and to operate as a good role-model for pupils. We recommend that you read this handbook in conjunction with our other publication, 'Intellectual Property in Hong Kong', so that you can get a broader view of the subject as it affects the public at large as well as in the narrower area of the classroom situation.

The Law of Intellectual Property

COPYRIGHT is part of the overall structure of law which protects creative effort: the law of 'intellectual property'. The law protects intellectual property rights by dividing them into categories of monopolies. Roughly speaking, intellectual property law works like this -

- it defines rights by ring-fencing the monopolies granted
- it defines *permitted acts* by creating certain legal exceptions to the monopolies in the public interest (in America, these are called 'fair use exceptions'.)
- it defines *remedies* which set out the way the right owner or the government can enforce rights by civil or criminal proceedings, and
- it sets out ways that rights can be acquired, for example through registration, and how rights can be assigned or licensed by one party to another (for example by collective rights management agencies).

So for example —

- the owner of a registered trademark can attach his mark to his goods or services and he can stop anyone else from attaching the mark to their goods or services;
- the owner of a patent can manufacture products incorporating his patented invention, and can exclude anyone else from using that invention; and
- the owner of a copyright can copy, publish, perform or import his works and can stop anyone else from doing so.

This system allows creators and subsequent owners of rights to gain economic benefit from charging other people royalties or a lump-sum for using the marks, products or works over which they have obtained their legal monopoly.

It's always a good idea to try and understand copyright in terms of *both* rights *and* responsibilities. Intellectual property law is usually designed to strike a balance between rights and responsibilities. The best way to answer the question 'do I have the right to do this?' is to consider 'would it be fair for someone to do this to me?'

What Does the Law of Copyright Protect?

COPYRIGHT protects the expression of ideas. It does not protect the underlying ideas themselves. What does that mean? Well, your recipe for a Chinese dish is an 'idea'. You can write it down, or record a sound or video tape explaining the recipe or draw a set of diagrams or take some photographs explaining how to prepare the dish. When you have done that, copyright law protects your written explanation, or sound or video recording, or your drawings or photographs: no-one is allowed to copy them or publish or broadcast them unless you give permission. But people who follow your instructions, learn the ideas behind them, teach them to other people or even open a restaurant specializing in serving your special dish, would not be infringing your copyright.

The written expression of an idea is called a 'works' in copyright law. Here are examples of 'works' which can be protected in Hong Kong -

- literary works
- drama
- music (the composer's rights)
- artistic graphics and sculpture
- photographs
- computer software
- sound recordings (a person who makes a sound recording has separate rights from the composer and performer)
- films
- broadcasts (a broadcaster can have separate rights from the author, performer or recording studio)
- cable programmes
- typographical lay-outs of published editions of works

Furthermore, performers of live performances have a separate right to prevent unauthorised exploitation of their performances.

Copyright protects works which are original but regardless of the 'quality'. A Form One student's dreary essay on how he spent his summer holidays gets the same degree of copyright protection as a work which has won the Nobel Prize for Literature. A kindergarten pupil's finger-painting of her dog gets the same protection as a painting by CHAI Baishi.

As you can see from the list of 'works' which can be protected in Hong Kong, people who assemble works (say a cinema film) from, for example, a script/screenplay (literary work), actors' performances, musical soundtrack (musical score/lyrics), sound recordings and video recordings can claim a separate right from those of the contributing talents. So 'multimedia' is nothing new to copyright law. And when a film is included in a broadcast and broadcasts are subsequently re-organized for cablecasting, new rights arise at each stage.

This leads to a very important point: rights in what on the surface seems a single 'work' can in fact amount to a very complex network of rights originating from a number of countries round the world at different times.

What Exclusive Rights Do Copyright Owners Enjoy?

NOW we come to the exclusive rights that copyright law gives to the creator of the works listed in the previous paragraphs. These are known in copyright law as 'restricted acts'. They include -

- copying,
- issuing copies to the public (publishing),
- renting computer programs or sound recordings to the public¹
- making copies of works available on the INTERNET,
- performing, showing or playing works in public,
- broadcasting works by wireless or cable; and
- adapting (e.g. translating a work or adapting a two-dimensional plan to a three-dimensional object.)

If a work is used in one of the ways described above without the creator's permission, it is an 'infringing' copy, performance or broadcast. There are also some things you are not allowed to do with an infringing copy of a work: you may not knowingly -

- import to Hong Kong
- export from Hong Kong
- possess for trade or business purposes
- sell
- distribute

an infringing copy or recording of a work. Acts like these are known as 'secondary infringement'. Some of these acts can result in criminal prosecution.

¹ The rental right has been extended to films and comic books by the Copyright (Amendment) Ordinance 2007. The commencement date of the new rental right will be announced later.

How Long Does Copyright Protection Last?

THE monopoly that copyright law gives to the creator does not last forever: the 'golden number' for copyright protection is fifty years. But that fifty years operates differently depending on the nature of the work.

- In the case of *literary, dramatic, musical or artistic works* and broadly speaking, for *films* as well, copyright protection lasts for fifty years from the end of the calendar year in which the author died. So if a child genius composes a piano sonata at the age of ten and dies aged 90, the total period of copyright protection could be 80 years plus 50, equals 130 years. After the death of the creator, the copyright passes to his heirs. So don't imagine that because Picasso is dead, his works are no longer protected.
- A *sound recording* is protected for 50 years from the time it is made, or if during that period it is released, 50 years from its release.
- A *performer's performance* is protected for 50 years from the time the performance takes place or, if during that 50 year period, a recording of the performance is released, the protection lasts for 50 years from its release.

Note another important point here: ***copyright does not get registered. It arises naturally from the moment a 'work' is first reduced to a permanent form.*** Use of the '©' mark is not a sign of registration: it is a warning to respect the copyright-owner's rights.

What about works of creators from outside Hong Kong? Although you could argue about the legal detail, the simplest approach is to assume that ***the outline in the previous paragraphs applies to works originating outside Hong Kong just as much as to works from within Hong Kong.*** The reason is (a) that Hong Kong is bound by a group of international treaties to respect copyright in works of creators from other places, and most of the world is covered by these treaties; and (b) Hong Kong's copyright law recognizes and protects copyright in works from all parts of China (including Taiwan) and all around the world anyway.

Photocopying in School

HONG KONG'S Copyright Ordinance provides exemptions for copying of copyright works in schools under limited circumstances. It is important to note that these exemptions are subject to specific conditions. **Photocopying of copyright works should never be the first option adopted in the classroom.** We recommend the following approach -

1. Always try to create your own materials. You can then authorise their reproduction to your heart's content.
2. If you really need to copy a work, try to get permission from the copyright owner or the following licensing bodies:
 - [Hong Kong Reprographic Rights Licensing Society \(HKRRLS\)](#) which represents authors and publishers and grants licences for the copying of published works e.g. books; or
 - [Hong Kong Copyright Licensing Association \(HKCLA\)](#) which represents certain newspapers and magazines and grants licences for the copying of such publications.

Most publishing houses control all the copyrights of the works they publish: contact the publisher or licensing body rather than the author in the first instance.

3. Use the exemptions in the Copyright Ordinance to make copies for limited purposes.

Create your own work

This is always the best option. 'Creating your own work' does not always have to mean literally making the work yourself: you can ask a friend or colleague to write or draw something for you and give you permission to make copies. (See the end of this publication for a discussion of the problems which may arise in asking students to contribute their copyright works.) Consider the following options:

- There are a number of computer CD-ROM products of artwork and photographs that can be copied and used by the licensee without the need for further permission. Try to buy some good sets for the staff-room computer. As an alternative, try down-loading free clip art (subject to conditions of use in the 'readme files') from reliable sources on the INTERNET.
- Do you really need to use that real newspaper story or official report? Couldn't you make up your own, simulated story or report based on something you have read?

- Do you really need to copy a picture from an art book to illustrate 'cubism' or 'the Ling Nan School'? Try to draw your own 'cubist' picture.
- Wouldn't your own computer produce a nice graph of your own, hypothetical set of chemistry experiment results so that you don't need to copy one out of a textbook? The CD-ROM products mentioned in the first bullet point above will probably contain prepared diagram elements for science and maths illustrations, circuit diagrams and flow charts, 3-D graphics, animations and audio/visual clips, too.

Getting permission to make copies

The suggestions in the last paragraph may not work so well if you are teaching a module about Roald Dahl's 'Witches' or LU Xun's 'Kong Yi Ji'. You can't be expected to teach on the basis of 'simulations' of great literature. (Note that copyright law does not protect the names of the authors themselves or the titles of their works: you can use those freely.)

When you are considering getting students to read literary works, the first question you should ask yourself is 'why shouldn't they buy the book?' In the school context, there can be a number of answers to that question: but 'because they can't afford it' is certainly the wrong one.

It is true that there are students who can't afford books. But teachers have no remit to provide them a social service by making unlawful copies and distributing them². Authors, the staff of publishing houses and booksellers also have to earn a living so that they can send their children to school. Robbing the author and publisher so as to give your students a cheaper education solves nothing. If a student needs to read a whole book, he should have a legitimate copy of the book. (A second-hand volume is also legitimate.)

Maybe the work is not on the market, is out of print or is in very short supply. In that case, you may have no choice but to contact the publisher and ask for permission to make copies. If the work is a newspaper or magazine article, you should contact the publisher or HKCLA. If the work is all or part of a published book, you can ask for permission from HKRRLS.

² Primary One to Form Seven Students with family financial hardship can apply for the School Textbook Assistance from the Student Financial Assistance Agency (SFAA).

Making use of the exemptions

Exemptions can be useful when teachers or students are proposing to copy a very limited passage from a publication (for example, a single poem from an anthology, or a paragraph to illustrate a certain literary style.)

It is important to understand the underlying principles of exemptions, set out in the introductory provisions (Section 37) of Division III of the Copyright Ordinance. The primary consideration is that **'the act (here we are talking of copying) does not conflict with a normal exploitation of the work by the copyright owner and does not unreasonably prejudice the legitimate interests of the copyright owner.'**

The intention of this wording (which is found in international treaties binding on the Hong Kong SAR) is to make it clear that the exempted acts must be fair and reasonable. They are not to be used to avoid the purchase of legitimate copies of works where they are available, nor to save money for students or teachers (however impoverished.)

Fair dealing exemption

The 'fair dealing' exemption, aimed at facilitating modern teaching methods, is found in Section 41A of the Copyright Ordinance. The exemption applies not only to works in printed form but also to works made available on the INTERNET. It allows teachers and students to use or deal with reasonable portions of copyright works in a fair manner for teaching and learning in a specified course of study provided by an educational establishment³.

A specified course of study refers to

- a course developed on the basis of curriculum guidelines issued or endorsed by the Curriculum Development Council; or
- a course consisting of an assessment of a student's ability and skills that leads to an award of qualification.

To decide whether your dealing with a copyright work is "fair", you need to consider all the circumstances, in particular:

- the purpose and nature of the dealing, including whether such dealing is for non profit-making purpose and whether it is of a commercial nature;

³ The list of educational establishments could be found in Schedule 1 of the Copyright Ordinance.

- the nature of the work;
- the amount and substantiality of the portion dealt with in relation to the work as a whole; and
- the effect of the dealing on the potential market for or value of the work.

The following example would be considered 'fair':

- a student copying a small portion of a copyright work and incorporating it in his project for illustration with acknowledgment of the source of the work.

But the following example would NOT be considered 'fair':

- a student copying the whole or a large portion of a textbook because he believes the textbook is too expensive (this is not fair dealing because the amount is too great and the market for the book was adversely affected).

If you want to include any passage or excerpt from a published literary or dramatic work in an anthology, you must properly acknowledge the title and authorship of the work and deal with the work in a fair manner in order to enjoy the 'fair dealing' exemption.

Please note that a copy made under this 'fair dealing' exemption may not be sold, offered for sale, lent or hired to others.

Other exemption for reprographic copying

For teaching or learning purposes

The reprographic copying of passages from published works is dealt with in Section 45 of the Copyright Ordinance. Because it deals with 'reprographic' copying, it does not cover what you (the teacher or the student) copy by hand onto a blackboard or notice board (those are dealt with in Section 41⁴). But it does include -

- photocopying;
- scanning into a computer;
- making an overhead projector transparency;
- making your own tracing, handwritten or typed copy and photocopying that.

Teachers and students are permitted to make reprographic copies of artistic works or passages from literary, dramatic or musical works 'to a reasonable extent' for teaching or learning purpose provided that -

⁴ Section 41 allows teachers or students to copy literary, dramatic, musical or artistic works, to a reasonable extent, in the course of instructions or preparation for instructions. However, copying should not be made by reprographic means.

- where the copying is made by a teacher, it is done for giving instructions on behalf of an educational establishment;
- where the copying is made by a student, it is done for receiving instructions in a specified course of study⁵ provided by an educational establishment;
- there is no licensing scheme available in respect of the works being copied; and
- after the copy has been made pursuant to the exemption it is not sold, offered for sale, lent or hired to others.

Note in respect of the third point that licensing schemes are now in place, in particular from HLRRLS and HKCLA, in respect of a large variety of works.

Teachers often ask what is 'a reasonable extent'? Unfortunately, there is no fixed rule. It would not be reasonable to copy the whole of 'The Diary of a Madman' to illustrate the style of LU Xun. Remember that the whole of a single newspaper article is a copyright work in its own right. The following suggestions are to help you judge whether reprographic copying is 'reasonable':

- what is the minimum needed to get across the point I am teaching?
- could I have just copied the section of text onto the blackboard/OHP slide without photocopying?
- could I have asked students to buy or borrow the published work from which the copy was made?
- could I have obtained permission or a reprographic licence to cover it?

In relation to the last bullet point, remember that if a licensing scheme exists in relation to the work, all the other questions are superfluous: you would not be entitled to the exemption in section 45.

In fact, to allow for photocopying of textbooks, most educational establishments including government schools, subsidized schools, special schools, grant schools and caput schools have reached [agreements with HKRRLS](#). The agreement allows teachers, staff or students of such schools (upon instruction by teachers) to make copies of printed works in *hardcopy form* for teaching and learning purposes under certain limits. Not-for-profit educational establishments which have not entered into any licence agreement with HKRRLS may photocopy limited portions of printed works for instruction purposes according to the [“Guidelines for Photocopying of Printed Works by Not-for-profit Educational Establishments”](#).

⁵ The meaning of “specified course of study” is explained in the earlier part of this Handbook under “Fair dealing exemption”.

In relation to photocopying of newspapers and magazines, HKCLA has granted a [licence](#) to kindergartens, primary and secondary schools for making photocopies of certain newspapers and magazines for internal reference and instruction purposes subject to certain limits.

For schools that have not subscribed to the above licensing arrangements, you could consider whether the intended copying satisfies the criteria of [“fair dealing”](#) under section 41A. As we will discuss in section below on “Relationship between the exemptions”, the exemptions in sections 41A and 45 operate independently of each other. However, if your proposed activities do not constitute “fair dealing”, you should obtain a licence from the copyright owner or the relevant licensing body.

For examination purpose

A teacher has more latitude to use reprographic copies of literary, artistic or dramatic works where the copying is done solely for the purpose of setting examination questions or communicating examination questions to candidates or answering examination questions. But after the copy has been made for examination purposes, it may not be sold, offered for sale, lent or hired to others.

Research or private study

If you have ever read through the Copyright Ordinance, you will have noticed that there is a section (Section 38.) which allows 'fair dealing in a work for the purpose of research or private study.' We shall discuss this provision later, but for now, please note that it only deals with the fair dealing by researchers or students themselves: not with making of multiple copies by teachers for students (As is made clear by Section 38(2)(b)).

Relationship between the exemptions

Each of the above exemptions operates independently. For example, where an act of copying by a teacher or a student is not covered by the reprographic copying exemption in section 45, the act could still be covered by the 'fair dealing' exemption if all the criteria for 'fair dealing' are satisfied.

To sum up about copying

You should be able to see from the above that certain copying (that you may feel to be rather common) is ***not permitted*** under the law -

- 'book photocopying services'

- preparation by teachers of compilations of chapters from textbooks to cover a term's coursework;
- placing copies of published works onto websites accessible by the public for students to use.

If any of the above things are done without the copyright owner's permission, they infringe copyright. The copyright owner is entitled, to seek a court injunction to stop the infringement and may seek damages for his or her loss.

Moreover, if any of these things were done for commercial dealing in the infringing copies, or if copies for non-commercial purposes were distributed to such an extent as to affect prejudicially the owner of the copyright, the person responsible, may be prosecuted as a criminal and fined up to \$50,000 per infringing copy, and sentenced to a maximum of four years' imprisonment.

Computers and Software

Computers in the School

NO school can run its computers with un-licensed software. Obvious as that point might seem, it is not always followed. Sometimes students get to bring their own software from home and load it onto school computers (with or without the teachers' knowledge.) Sometimes schools network their computers and then run single-user licensed software on the whole network. Sometimes schools buy twenty computers and run them with just one set of licensed software. Sometimes schools accept a 'special offer' from computer vendors to sell them computer hardware with all the software they want loaded on the hard disk 'for free'.

When these things happen, it is usually more due to muddle and misunderstanding than bad faith on the part of the school. But all the things mentioned in the preceding paragraph infringe copyright in computer software. The owners of the copyright can (and frequently do) take civil action in the courts to stop this sort of infringement. In such circumstances, muddle and misunderstanding are not a defence in law. Moreover, if schools knowingly possess infringing copies of software with a view to using them in school activities, they might be subject to criminal sanction.

Here are some guidelines for schools in using computers -

- make sure a senior staff member in the school is responsible for supervising everything that goes on in the day-to-day running of school computers. [Guide to Software Management](#) and training programmes are available for such people
- never budget for computer hardware without budgeting for all the software that you foresee will be used on it;
- there are special software licences for networks. If your school computers are networked, make sure you have the right licences⁶. (The boxed software you usually buy off-the-shelf in legitimate software stores is not likely to be the one you need. Check with the local representative of the software company);
- don't pay more for licensed software than you need. Make it a policy to ask the dealer if he can offer discounts for software used in educational establishments

⁶ The boxed software you usually buy off-the-shelf in legitimate software stores is not likely to be the one you need. Check with the local representative of the software company. Moreover, many software companies offer educational versions for schools or educational use at significant discount. Check out for these discounts with the authorized software vendors.

(as many do);

- put credible controls in place so that students cannot make illicit copies of software from one computer to another, or for their own home use;
- computer fonts are works protected by copyright; but when you have obtained a licensed copy of computer font software, you do not need further copyright clearance to use the font in your artwork or your web site.

Computers in the home

You might think that computers in the private homes of staff or pupils are beyond the scope of your concern. This is not necessarily so.

When staff use their own home computers to produce work for the school (whether working at home or on private portable computers brought to school) they may give rise to a liability on the part of the school if the software being used is not licensed.

We recommend that school staff should not use their home computers to produce work on behalf of the school.

More and more teachers are asking their students to do homework using a computer at home. This may put pressure on students to use computer software they cannot afford, thus inducing them to buy pirated software. It is important that if your school recommends students to use more expensive software, they make allowances in their budgets to purchase genuine sets of the software for installation in the school's computers so that students can use them.

I have heard some stories from students whose teachers have asked them to use pirated software, and have recommended where to buy it. Such guidance from teachers is totally inappropriate: it amounts to encouraging students to consort with criminals who deal in pirated goods.

So please do not ask students to produce homework using expensive software if they cannot realistically be expected to pay for legitimate versions. If you offer an option to produce homework on computer, provide an alternative for work to be handed in done without computers without a lower marking.

Schools should not lend computer software to teachers or students. Copyright law does not prevent the lending of licensed software provided that no direct or indirect

economic advantage is involved (although hiring of software for commercial benefit without the copyright owner's permission is not allowed.) But software licensing conditions normally specify use on a specific computer or network of computers, and so lending to others for use in other computers is likely to cause a breach of the end-user licence conditions and could result in copyright infringement.

The INTERNET

The INTERNET gives everyone the chance to become a publisher with a potential readership of millions. Being a publisher (even if not for profit) places you under the same responsibilities about copyright that a commercial publisher bears.

The production of school web pages and students' personal web pages are an excellent medium for teaching the principles of copyright protection. We hope that schools who encourage web-page projects will include intellectual property protection as a main educational objective of such activities.

School web pages

Works on the INTERNET can be protected by copyright. Normally, copyright works may not be copied without permission (even into computer RAM memory). However, if a transient and incidental copy is made and such copying is technically required for the viewing of the work in an INTERNET browser, it would not be an infringement. INTERNET browsing does not contravene Hong Kong's copyright law.

Making available copies of a copyright work to the public through wire or wireless means (including making available copies through the INTERNET) without the consent of the copyright owner is not allowed. That means that schools who place any materials on their Web pages (including text, graphics, photographs or music) without the permission of the copyright owner are infringing copyright. However, schools may make available copies of a copyright work through its Intranet for teaching purposes in a specified course of study if they comply with the criteria of the [“fair dealing” exemption](#). It is important to note that in addition of the criteria mentioned in the earlier part of this Handbook, the following conditions apply where a work is placed on a school's Intranet:

- you should adopt appropriate security measures, such as requiring login username and password, so that access to the work would be restricted to the users who need

to use it for teaching or learning in a specified course of study, and persons who need to maintain or manage the network; and

- you should ensure the work is only stored for a period of time which is just long enough for the intended teaching or learning purpose. In any event, 12 months is the maximum duration allowed.

Where your school has adopted the above measures, it is still necessary for teachers and students to deal with the copyright work in a fair manner in order to enjoy the 'fair dealing' exemption.

It has been argued that establishing a hypertext link to another website could, in certain cases, infringe the rights of that other website. Therefore, we recommend that you seek permission from the webmaster of another site before making a hypertext link to it.

Only use other people's trade marks or logos with permission. Although it is unlikely that a school which displays a trademark would infringe the trademark right, there is a significant chance of infringing copyright in the mark or the logo (which can be an artistic work in its own right). Do not limit your concern for intellectual property rights to Hong Kong law: the INTERNET does not recognize geographical boundaries. Your school may be found liable for infringement under foreign law in any country in which your material is available through the INTERNET.

The golden rule is 'create your own work: don't copy from others.' That way, you can never encounter any risk of infringing copyright.

Teaching resources

Some teachers create teaching resources by placing materials on a web site for students and colleagues to copy. These sites are fine as long as they do not reproduce material from books, magazines or other sources without authority. However, if teachers intend to copy or extract teaching materials from copyright works and place them on the school's website, they should ensure that the proposed acts satisfy the criteria of the "fair dealing" exemption discussed earlier in this Handbook under ["School web page"](#). Otherwise, teachers should obtain a licence to facilitate their proposed teaching activities.

To be risk-free, all the text, all the artwork and all music on such sites must be the

work of the people responsible for the site, or else authorized by the copyright owners. Computer fonts are works protected by copyright; but when you have obtained a licensed copy of the font software, you do not need further copyright clearance to use the font in your artwork or your web site. In addition, you should obtain permission from the webmasters of all the sites to which you create hypertext links. (If the web page you want to link to doesn't give a contact address, you can try emailing to trouble@mail.xyz.com where 'xyz' is the name of the website.) Another useful search engine for information on proprietors of web pages can be found at <http://www.whois.net>.

To sum up about use of computers in school

- Make a single staff member responsible for managing computer systems in the school: don't leave it to every staff member to make their own rules.
- Make your rules clear and simple (so that students and teachers can understand easily). Put them in writing.
- Ensure that your school's compliance with computer copyright rules sets a good role-model for students.
- Encourage students to learn the rules of copyright as an integral part of their IT studies in school.
- Create material for yourself. If you must copy, always get permission.

Sound and Video Recordings

THE rules for sound and video recordings look a bit confusing at first. The reason for that is that the Copyright Ordinance has set out the law dealing with:

- **Making** sound and video recordings of radio, broadcast TV and cable programmes,
- **Playing** sound and video recordings of radio, broadcast TV and cable programmes, and
- **Playing** sound and video recordings (other than recordings of Radio, TV and Cable Programmes).

The general principles governing all three are similar: that is, recordings can be used in schools for teaching and learning purposes. The recordings could be shown or played before an audience consisting wholly or mainly of teachers, pupils and their parents or guardians. Here are the details. Please decide which category of activity you are proposing to do and plan accordingly.

Making sound and video recordings of broadcast or cable programmes

Normally (that is, outside the school context) you can make a recording of a cable or broadcast radio or TV programme for your domestic viewing at a later time ('time-shifting'.) Making a recording or copy for other purposes needs licences from the broadcaster.

Note that you often need different categories of licences for the recording of a broadcast or cable programme: one in respect of the underlying musical, literary or dramatic work, one in respect of the recording or performance, and another in respect of the broadcast or cable programme itself. It is advisable for you to contact the broadcaster or cable programme service provider as a first step as they may be able to provide information to you on other licences required.

At present, there is no licensing scheme covering making of recordings of a cable or broadcast radio or TV programme: but if a licensing scheme is developed in the future, schools will have to use it to get licences to make (but not to play) recordings of a cable or broadcast radio or TV programme.

In the meantime, educational establishments are allowed to make recordings to show to students at the school for teaching purposes (not entertainment). But this sort of recording is only allowed provided you do not clip off the credits at the beginning or end.

It is not a problem if the actual recording is made outside the school (e.g. at a teacher's home) for the purposes of teaching in the teacher's school. The recording must not be done 'for gain': that is, you can't set up a commercial service making such recordings for schools. Also, the recording cannot subsequently be hired or sold to third parties.

Playing sound and video recordings of radio, TV and cable programmes

You *may* show or play a sound or video recording of a broadcast or cable programme (even if there is a licensing scheme in existence) without infringing copyright provided that all three of the following conditions are satisfied:

- the playing is in an educational establishment⁷
- the playing is to an audience consisting wholly or mainly of teachers, pupils and their parents or guardians
- the playing is for the purpose of giving or receiving instruction

You can see from this that you *cannot* play video or sound recordings of Radio, TV and Cable Programmes for purposes such as -

- school fairs to raise funds for parent-teacher associations or charities,
- functions to which the public can be admitted,
- entertainment purposes,

without getting appropriate licences in advance. You should contact the broadcaster or cable programme service provider and other copyright owners of the works involved. The organizations listed in the Annex may also be able to help you to obtain the necessary licences. The [Composers and Authors Society of Hong Kong \(CASH\)](#) represents composers and authors and grant licences for public performance of published musical works. [Phonographic Performance \(South East Asia\) Limited \(PP\(SEA\)L\)](#) represents copyright owners of music recordings and grant licences for public playing of music recordings in their repertoire.

⁷ Please refer to footnote 3 for the meaning of “educational establishments”.

Note that you often need different categories of licences for the playing of recordings of broadcast or cable programmes: one in respect of the underlying musical, literary or dramatic work, one in respect of the recording or performance, and another in respect of the broadcast or cable programme itself.

Playing sound and video recordings (other than recordings of radio, TV and cable programmes)

You may play a sound or video recording (e.g. a video tape, audio tape or CD) or a broadcast or cable programme (even if there are licensing schemes available):

- the playing is in an educational establishment⁸
 - the playing is to an audience consisting wholly or mainly of teachers, pupils and their parents or guardians
 - the playing is for the purpose of giving or receiving instruction
- without infringing copyright.

You should be aware that rented videos are normally rented for domestic viewing, not use in schools. To show rented videos in school (even where the criteria listed above are met) may be a breach of the conditions of hire of the video. If you plan to show hired videos, please check with the video rental outlet and get their agreement first.

But you cannot play video or sound recordings for purposes such as -

- school fairs to raise funds for parent-teacher associations or charities,
- functions to which the public can be admitted,
- entertainment purposes,

unless you have obtained appropriate licences in advance. The organizations able to provide such licences or assistance are listed at the Annex.

Note that you often need **two** categories of licences for the playing of audio-visual works: one in respect of the underlying musical, literary or dramatic work, and another in respect of the recording or performance of it.

“Fair Dealing” exemption

Teachers may make a short clip of a sound or video recording (e.g. a film) and incorporate it in their teaching materials for use in a specified course of study provided by an educational establishment if the criteria for the [“fair dealing”](#)

⁸ Please refer to footnote 3 for the meaning of “educational establishments”.

[exemption](#) are satisfied. The “fair dealing” exemption could also be used by students for the learning purpose as long as the relevant criteria are fulfilled.

The following example would be considered 'fair ':

- a teacher playing a short clip of a film, which is not being currently shown in cinemas, for illustration in his teaching presentation. The title of the film, the producer and the principal director must be acknowledged.

But the following example would NOT be considered 'fair ':

- a teacher playing a DVD of a currently shown movie in class for students' entertainment after exams were over (this is not fair dealing because it is a currently shown movie and it was not used for an educational purpose).

To sum up about use of broadcast, cable programmes, sound and video recordings in school

- For teachers, use them only for instruction,
- Students are allowed to use short clips of audio-visual works for learning purposes under limited circumstances provided it constitutes “fair dealing”,
- When recording, don't cut the credits or alternatively, include relevant acknowledgements,
- Only use them in the school, and
- Restrict them for showing mainly to teachers, pupils and their parents, guardians.

Live School Performances

DRAMATIC performances, poetry recitals and concerts are a normal part of school life. Copyright law supports these activities in schools.

Anyone (whether in school or not) is allowed to recite a reasonable extract from a published literary or dramatic work in public and to make a recording of such a recitation, provided that they properly acknowledge the title and authorship of the extract. This exception only applies, however, to a solo recital (i.e. not to choral poetry recital or a dramatic performance), and does not allow people to recite the whole of a work. It operates, for example, to allow people to include recognizable literary or dramatic quotations in public speeches without the need for copyright clearance.

For live performances of musical, literary or dramatic works, you do not need to obtain a licence, regardless of whether the performer is a pupil, teacher or anyone else, under the following circumstances:

- The performance is in an educational establishment⁹
- The performance is made before an audience consisting wholly or mainly of teachers, pupils and their parents or guardians
- The performance is made for the purpose of giving or receiving instruction.

But performances without a licence are not permitted for purposes such as -

- school fairs to raise funds for parent-teacher associations or charities that are open generally to the school staff, the students, parents and other guests invited by them,
- functions to which the public can be admitted,
- performances conducted by guests invited by the school for entertainment purposes,

unless you have obtained a licence in advance. You should normally only require one licence in respect of the musical, literary or dramatic work itself. The organizations able to provide such licences or assistance are listed at the Annex.

⁹ Please refer to footnote 3 for the meaning of “educational establishments”.

Copying and Other Acts for Research and Private Study

Fair dealing

COPYING and other acts for research or private study is what a student or researcher does for him- or herself: it does not involve any other person. The process of copying for research or private study is what you do to help yourself learn or arrange data obtained in the process of research.

Hong Kong's Copyright Ordinance allows fair dealing in any type of copyright work for the purpose of research or private study. 'Fair dealing' can include copying or any other of the restricted acts in copyright (e.g. performance, recording, adapting). If you translate a reasonable passage of text as an exercise in developing language skills, that would be considered 'fair dealing'. To decide whether an act is 'fair dealing' the law requires you to consider:

- the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
- the nature of the work;
- the amount and substantiality of the portion dealt with in relation to the work as a whole; and
- the effect of the dealing on the potential market for or value of the work.

These considerations must also be set in the context of the primary consideration that 'the act (here we are talking of fair dealing) does not conflict with a normal exploitation of the work by the copyright owner and does not unreasonably prejudice the legitimate interests of the copyright owner.'

The first conclusion you should draw is that fair dealing for the purpose of research or private study has nothing to do with allowing students to save money. Rather, it is an acknowledgment that reasonable note and record taking is an essential part of the process of private study and research which should not be stifled by copyright considerations.

With respect to published printed books and periodicals, the student's first recourse should be to borrowing them from a library, or to buying them if he or she will need

to refer to them regularly. If you copy a book or part of a book to save the expense of buying it or the bother of borrowing it, then immediately something is wrong.

There is a popular urban myth that the 'fair dealing' provisions in Hong Kong's copyright law can be related to a definitive percentage of a work that can be copied. Some places outside Hong Kong do specify such percentages. Some publishers and collecting societies also state sometimes that they don't require a licence for copying below a certain percentage of a work. However, if this is the case, you must ascertain that from the copyright owner or collecting society: there is no general rule of percentages in Hong Kong.

Licensing schemes

Having said that Hong Kong's law does not permit the copying of works outside the scope of the exemptions, the publishers themselves or their representatives are sometimes prepared to do so. They recognize that books go out of print or become unobtainable in Hong Kong. They also recognize that there is a commercial market for people who want to need to use a part of a book, newspaper or magazine but not the whole volume or issue. To cater to this demand, they have come up with a licensing scheme which allows people to copy from published editions of literary or dramatic works, or have the copies made for them, by paying a fee. Information on some of the commonly used licensing schemes can be found in the website of the licensing bodies listed in the Annex to this handbook.

When seeking permission from a licensing agency, you should ensure that the work you wish to copy is one of the works that the licensing agency is authorized to represent. While the range of works represented is rapidly increasing, it may be that certain types of works or certain publishing houses are still not covered. You can get the necessary advice from the agencies listed in the Annex.

Copyright in Works Created by Teachers and Students

Teachers' works

TEACHERS enjoy copyright protection for the works they create for non-school purposes, or for general educational purposes. But if they are employed full-time at a school and they create works for teaching use in their school, the copyright in such works will normally belong to the school (i.e. the employer) rather than the teacher personally. Since it is a normal practice for teachers to do a proportion of their school-related work at home (e.g. marking and class preparation), it is unlikely to be a sufficient justification to claim personal ownership of copyright just because work was not done physically in the teacher's school.

If you are a teacher and you wish to create a work and have personal ownership of the copyright, you should enter into an understanding with your employer in advance. The ownership of copyright as between employer and employee can always be settled by mutual agreement between both parties in advance.

For non-Government employees, there is a provision in copyright law that if a work is exploited by the private employer (or someone else with the employer's permission) in a way that could not reasonably have been contemplated by the employer and the employee at the time of making the work, the employee is entitled to an award. The amount of the award is to be agreed between the parties, or by the Copyright Tribunal if the parties fail to agree.

So, for example, if you work for a private school and you write a school play which unexpectedly becomes a Broadway hit (stranger things have happened), you would be entitled to a share of the windfall your school enjoys from the copyright royalties.

This provision does not, however, apply to Government employees.

Students' works

Students are not employed in schools, so the copyright in their works belongs to them. Schools can't publish their students' works or distribute them on the INTERNET

without the student's permission. Of course, this permission can be given in a very informal way, and in many circumstances, students may produce works with the implicit understanding that they will be copied or published (because, for example, the school has a well-established tradition of publishing outstanding essays of students or entering them for competitions.)

On the other hand, if it is intended that works be exploited commercially, it is advisable for schools to enter into written agreements with the students concerned. As a general principle, students under the age of 18 and mentally handicapped students do not have the legal capacity to enter into contracts. In such cases, schools should involve their parents or guardians in making such agreements.

It is common for universities to make and publish rules about the ownership of copyright in works and research done by university students and researchers. These rules become part of the terms under which the students or researchers gain admission and are binding on all the parties unless they are varied by mutual agreement.

To sum up on copyright in works created by teachers and students

- Copyright in works made by teachers for the school in the course of their employment (even if done at home) will normally belong to the employer.
- Copyright in students' works belong to the students.
- It is always open to schools, teachers and students to vary these assumptions by mutual agreement. Any discussion with schoolchildren about ownership of copyright should involve the parents, so that the students are not put under undue influence by the school.

Licensing Bodies

How to contact HKRRLS

Hong Kong Reprographic Rights Licensing Society
802 Stanhope House
738 King's Road
Hong Kong

Telephone : (852) 2516 6268
Fax : (852) 3105 1468
E-mail : info@hkrrls.org
Web site : www.hkrrls.org

How to contact HKCLA

Hong Kong Copyright Licensing Association
P.O. Box 31712,
Causeway Bay Post Office,
Hong Kong

Telephone : (852)2948 3650
Fax : (852)2603 7165
E-mail : enquiry@hkcla.org.hk
Web site : www.hkcla.org.hk

How to contact PP(SEA)L

Phonographic Performance (South East Asia) Limited
16/F., Guardian House,
32 Oi Kwan Road,
Wanchai, Hong Kong

Telephone : (852)2861 4318
Fax : (852)2866 6869
E-mail : enquiry@ppseal.com
Web site : <http://www.ppseal.com>

How to contact CASH

(For public performance of published musical works)

Composers and Authors Society of Hong Kong (CASH)

18/F, Universal Trade Centre

3 Arbuthnot Road

Central, Hong Kong

Telephone : (852)2846 3268

Fax : (852)2846 3261

E-mail : general@cash.org.hk

Web site : www.cash.org.hk

Intellectual Property Department
Government of the Hong Kong Special Administrative Region
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