

Guidelines for Photocopying of Printed Works by Not-for-profit Educational Establishments

A. BACKGROUND

- (1) Copyright law gives certain exclusive rights to copyright owners of printed works. Such rights include the right to copy the work. That means someone who wants to copy a printed copyright work needs to obtain the owner's permission first.
- (2) To balance the interests of copyright owners and users, the Copyright Ordinance (Cap. 528) ("the Ordinance") provides certain limited allowances for copying of copyright works by educational establishments. However, the acts allowed should not conflict with a normal exploitation of the work by the copyright owner and should not unreasonably prejudice the legitimate interests of the copyright owner.
- (3) Section 45 of the Ordinance allows photocopying of literary, dramatic, musical and artistic works **to a reasonable extent** by or on behalf of educational establishments for instruction purposes¹ where no relevant licensing schemes are available.
- (4) The purpose of these Guidelines² is to set down the conditions for determining the extent of permissible photocopying³ of printed works⁴ by or on behalf of not-for-profit educational establishments for instruction purposes.⁵ For-profit educational establishments are not covered by these Guidelines.⁶

¹ Under section 45(2), copying is not authorised if licences under licensing schemes are available in respect of the relevant works and the person making the copies knew or ought to have been aware of that fact. As licences are currently available from licensing bodies in respect of most of the works covered by these Guidelines, copying is not authorised under section 45 for these works. However, the Administration made a proposal to the Legislative Council in March 2002 that the limitation in section 45(2) should be removed. Legislative amendments are in the process of being prepared.

² The *U.S. Guidelines for Classroom Copying* were used as a reference in the preparation of these Guidelines. The *U.S. Guidelines* can be viewed at www.copyright.gov/circs/circ21.pdf (pages 7 & 8).

³ "Photocopying" does not include the making of electronic copies.

⁴ Section 45 of the Ordinance also allows copying of works in other formats, e.g. works in digital format. However, these Guidelines apply to printed works only. Guidelines on copying of copyright works in digital format will be formulated separately.

⁵ Prior to the removal of section 45(2), these Guidelines operate as an agreement between the endorsers as to the extent of permissible photocopying in not-for-profit educational establishments. With the removal of section 45(2) in the future, these Guidelines will become both an agreement between the endorsers and a guidance on the meaning of "reasonable extent" when copying copyright works under section 45 of the Copyright Ordinance.

⁶ Under the Copyright Ordinance, an "educational establishment" basically means any school, college or university which is registered with the Education Department. These include both not-for-profit

- (5) These Guidelines represent the consensus among various copyright owners and educational users. A list of organisations endorsing these Guidelines is shown in Appendix 1. These Guidelines are not intended to affect or prejudice the permitted acts under the Copyright Ordinance, or any rights which may be conferred under other laws, or any licensing arrangements with licensing bodies.

B. DEFINITIONS

In these Guidelines: –

- (1) "Course pack" means a compilation (whether bound or loose-leaf) of 4 or more photocopied extracts from one or more sources which is intended to provide students with a compilation of materials designed to support the teaching of a course.
- (2) "Not-for-profit educational establishment" means an educational establishment specified in Schedule 1 of the Copyright Ordinance provided that it is also a not-for-profit establishment. These include all government schools, aided schools, schools operated by the English Schools Foundation, and other kindergartens, schools, colleges and universities specified in the "List of approved charitable institutions and trusts of a public character" under section 88 of the Inland Revenue Ordinance (Cap. 112).⁷
- (3) "Illustrations" include charts, graphs, diagrams, drawings, cartoons and pictures accompanying other works and included for illustrative purposes.
- (4) "Textbook" means a book written in accordance with any syllabus issued by the Hong Kong Curriculum Development Council.⁸
- (5) "Course" means subject, programme, module or other similar descriptions in relation to a course of study provided by a not-for-profit educational establishment.⁹

and for-profit educational establishments. However, the publishing industry is not prepared to endorse a set of Guidelines which would specifically allow for-profit educational establishments to make copies of printed works for instruction purposes. As the Guidelines were prepared using a consensual approach, for-profit educational establishments have been excluded from the scope of the Guidelines.

⁷ As the Education Department does not maintain a register of educational establishments based on the for-profit/not-for-profit nature of the establishment, this formulation has been adopted in order to identify the not-for-profit educational establishments. The List can be viewed at the Inland Revenue Department website: www.info.gov.hk/ird/eng/paf/lac.htm.

⁸ More restrictive conditions apply to the copying of textbooks. Compare Clause E(6)(a) with E(6)(b).

⁹ For example, Chinese in Primary one and Primary 6 should be considered as two separate "courses"; every subject or unit in a 3 year university degree course should be considered as a separate "course".

C. SCOPE

- (1) These Guidelines apply to literary, dramatic, musical and artistic works in printed form including items such as books, newspapers, periodicals, sheet music and printed music items.
- (2) Works which are primarily intended to be “consumable”, such as workbooks, exercises, standardised tests, test booklets and answer sheets, are not covered by these Guidelines.¹⁰
- (3) These Guidelines do not allow the production of course packs.¹¹
- (4) Under these Guidelines, single copies of transparencies, slides and other similar non-electronic presentation materials consisting of reprographic copies of works can be made by or on behalf of a not-for-profit educational establishment for the purposes of instruction.¹² Clauses D(4) and E(1) to E(5) do not apply to the making of such single copies of transparencies, slides and other similar non-electronic presentation materials.
- (5) Those who wish to make copies of printed works beyond the scope of these Guidelines should contact the relevant copyright owners or licensing bodies (see Appendix 2) for the grant of permission or licences.

D. GENERAL CONSIDERATIONS

- (1) Students should purchase books and publications that are used by them on a regular basis. Copying should not be used to substitute the purchase of such publications.
- (2) Copying should not be used to replace or substitute for published anthologies, compilations, collective works or course packs which are commercially available.
- (3) Copying should be done on the initiative¹³ of a teacher or teachers working together as a group.

¹⁰ Textbooks which contain a small amount of exercises are covered by the Guidelines.

¹¹ Preparation of course packs usually involves a substantial amount of planning in advance. Therefore the school/teacher should have sufficient amount of time to seek permission or obtain a licence from the relevant copyright owners or licensing bodies. One of the conditions for making copies under these Guidelines is that the copying must be "spontaneous" (see Clause D(4)). As the production of course packs does not fulfil this condition, it is specifically excluded.

¹² This provision clarifies that slides, transparencies etc for use in teaching may consist of single copies of printed works, even if the preparation of the slides, transparencies etc is not "spontaneous" according to Clause D(4).

¹³ This means that a teacher should not make copies under these Guidelines if he/she has been asked by a third party to do so. The need and decision to copy should be made by the relevant teachers themselves.

- (4) The time of the decision to use the work and the proposed time of its use in the classroom should be so close that it would be unreasonable to require the teacher to obtain permission for the copying. If the time between the decision and the proposed use is 3 working days or less then for the purpose of this clause, it will be deemed unreasonable to require the teacher to obtain permission for the copying.¹⁴
- (5) Every set of copies of works made under these Guidelines should contain the following details on the front page or a covering sheet:

Author (if known):

Title of the work:

Source (publisher):

Date of making of this copy:

This material has been copied in accordance with the "Guidelines for Photocopying of Printed Works by Not-for-Profit Educational Establishments". You are not permitted to make any further copy of this work, or to make it available to others. It is important to understand and respect copyright.

- (6) At least once every academic year, teachers who make copies of materials for distribution to students pursuant to these Guidelines are obliged to draw attention to and explain to their students the content of the copyright notice specified in Clause D(5) above.

E. MULTIPLE COPYING FOR INSTRUCTION PURPOSES

- (1) Multiple copies of a work may be made by or on behalf of a teacher giving a course.
- (2) Copies made under these Guidelines are for the purpose of distribution to students for teaching, discussion or classroom use. Students may retain the copies for subsequent reference.
- (3) Copies of any work should only be made and used for one course in a not-for-profit educational establishment¹⁵.
- (4) The number of copies made should not exceed one copy per student in a course.

¹⁴ Copying under these Guidelines should be "spontaneous". If the time of the teacher's decision to use the work and the proposed time to use it in the classroom is more than 3 working days apart, then the teacher is required to seek permission from the relevant copyright owner or licensing body before making the copies. The purpose of this provision is to exclude systematic and organised copying from the scope of the Guidelines.

¹⁵ Copies made for one particular course should not be re-used in other courses.

- (5) There should not be more than 27 instances¹⁶ of copying made for one course in one academic year.¹⁷
- (6) Copies made should be brief and short.
- (a) For one course in any one academic year, except for textbooks,¹⁸ the following limits on individual works apply:
- (i) Articles in newspapers or periodicals – a complete article of any length;
 - (ii) Poems – not more than 250 words; stories or essays – not more than 2,500 words (both word limits may be extended to allow the completion of an unfinished line of a poem or of an unfinished paragraph of a story or essay);¹⁹
 - (iii) Artistic works (including illustrations) – a complete work; but if there is more than one artistic work printed on the same page – the whole page;
 - (iv) Musical works – an excerpt not exceeding 10% of the number of pages of the work (rounded up to allow a complete page to be copied);
 - (v) Other works – an excerpt not exceeding 2,500 words or 10% of the number of pages of the work (including illustrations), whichever is less (rounded up to allow a complete page to be copied).
- (b) Copying of textbooks is subject to the following conditions:²⁰
- (i) Not more than 2% of the number of pages of a textbook (rounded up to allow a complete page to be copied) may be copied for one course in a calendar month;
 - (ii) Not more than 5% of the number of pages of a textbook (rounded up to allow a complete page to be copied) may be copied in aggregate for one course in any one academic year;

¹⁶ This clause limits the number of times copying can be done in an academic year. The figure 27 is based on the quantity adopted in the *U.S. Guidelines for Classroom Copying*, i.e. 9 instances per school term. A teacher may copy up to 3 works in one "instance", as copying 4 or more works would be regarded as making a "course pack", which is not allowed under the Guidelines.

¹⁷ "Academic year" is used instead of "school term" as it appears to be a more appropriate unit of measure for Hong Kong.

¹⁸ For limits on copying of textbooks, see Clause E(6)(b) below.

¹⁹ The figures 250 and 2,500 are based on the figures adopted in the *U.S. Classroom Guidelines*. There were discussions on whether it was appropriate to have a single set of limits for works in English and Chinese. The consensus was that the limits appear appropriate for both languages and that it would be inconvenient to teachers to have two different sets of limits.

²⁰ The organisations endorsing these Guidelines accepted that separate treatment is necessary in order to protect the interests of local educational publishers. The conditions of copying for textbooks are more restrictive than those applicable to other works.

- (iii) Notwithstanding (i) and (ii), not more than one chapter of a textbook may be copied for one course in any one academic year; and
- (iv) The copying must be made within the premises of an educational establishment.

(7) Copies made are subject to the following additional limits: –

- (a) With respect to articles in newspapers, not more than 15 works may be copied from the same newspaper title for one course in any one academic year;
- (b) With respect to:
 - articles in periodicals
 - poems (250 words or less); stories or essays (2,500 words or less)
 - artistic works
 - musical works

not more than 3 works may be copied from the same author for one course in any one academic year. If the above works are contained in a collective work, not more than 9 works (provided that each one of which has to be from a different author) may be copied from the same collective work for one course in any one academic year; and

- (c) In other cases, not more than 3 excerpts may be copied from the same author for one course in any one academic year.

Dated: 30 September 2002 (Revised on 10 March 2004²¹)

- **End** -

²¹ The Guidelines have been revised on 10 March 2004 to cover photocopying of newspapers. Suitable amendments have been made under Clauses C(1), E(6)(a)(i), and E(7)(a).

Appendix 1

List of Organisations Endorsing the Guidelines

(Unless otherwise specified, the following organisations became endorsers on September 30, 2002)

- | Name of Organisation | 機構名稱 |
|---|---------------|
| 1. Caput Schools Council | 香港按額津貼中學議會 |
| 2. Hong Kong Prevocational Schools Council | 香港職業先修學校議會 |
| 3. Hong Kong Private Schools Association Limited | 香港私立學校聯會 |
| 4. Hong Kong Subsidized Secondary Schools Council | 香港津貼中學議會 |
| 5. Hong Kong Subsidized Primary School Council | 香港津貼小學議會 |
| 6. Hong Kong Direct Subsidy Scheme Schools Council | 香港直接資助議會 |
| 7. Hong Kong Association of Sponsoring Bodies of Schools | 香港辦學團體協會 |
| 8. Association of Principals of Government Secondary Schools | 政府中學校長協會 |
| 9. Hong Kong Professional Teachers' Union | 香港教育專業人員協會 |
| 10. Task Force on Reprographic Rights Licensing established under Heads of Universities Committee | 大學校長會複印授權專責小組 |
| 11. Hong Kong Shue Yan College | 香港樹仁學院 |
| 12. The Open University of Hong Kong | 香港公開大學 |
| 13. The Hong Kong Association for Computer Education | 香港電腦教育學會 |
| 14. The Hong Kong Academy for Performing Arts | 香港演藝學院 |

Name of Organisation 機構名稱

15. Vocational Training Council
職業訓練局
16. Hong Kong Copyright Licensing Association Ltd.
香港複印授權協會
17. Hong Kong Reprographic Rights Licensing Society Ltd.
香港版權影印授權協會
18. Joint University Libraries Advisory Committee
大學圖書館聯席諮詢委員會
19. Hong Kong Teacher-Librarians Association
香港學校圖書館主任協會
20. Hong Kong Library Association
香港圖書館協會
21. Hong Kong Publishing Federation Limited
香港出版總會有限公司
22. Hong Kong Publishers & Distributors Association
香港出版人發行人協會
23. Hong Kong Educational Publishers Association
香港教育出版商會
24. Anglo-Chinese Textbook Publishers Organisation
中英文教出版事業協會
25. Witman Publishing Co (HK) Ltd.
偉文出版社(香港)有限公司
26. Grant Schools Council
補助學校議會
(added: April 3, 03)
27. Hong Kong Special Schools Council
香港特殊學校議會
(added: April 3, 03)
28. Education and Manpower Bureau
教育統籌局
(for and on behalf of all government schools)
(added: April 3, 03)

The Guidelines were developed by a Working Group convened by the Director of Intellectual Property and under the auspices of the following Government bureau and departments:

Commerce, Industry and Technology Bureau
工商及科技局

Education and Manpower Bureau (formerly known as Education Department)
教育統籌局 (前名：教育署)

Intellectual Property Department
知識產權署

For enquiries on the Guidelines, please contact Ms Brenda Wan of the Intellectual Property Department (Tel: 2961 6872; email: brendawan@ipd.gov.hk).

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- | | | |
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| 2. | Hong Kong Commercial Daily | 香港商報 |
| 3. | Hong Kong Daily News | 新報 |
| 4. | Hong Kong Economic Journal | 信報 |
| 5. | Hong Kong Economic Times | 香港經濟日報 |
| 6. | Ming Pao | 明報 |
| 7. | Sing Pao | 成報 |
| 8. | Sing Tao Daily | 星島日報 |
| 9. | South China Morning Post &
Sunday Morning Post | 南華早報 |
| 10. | Ta Kung Pao | 大公報 |
| 11. | The Standard | 英文虎報 |
| 12. | Wen Wei Po | 文匯報 |

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