

## FAQs on Copyright (Amendment) Ordinance 2007

### Copyright Exemptions

Q1 Has the Copyright (Amendment) Ordinance 2007 (“the Amendment Ordinance”) introduced any new copyright exemptions? If so, when will they come into effect?

A1 The Amendment Ordinance has introduced new exemptions for the education sector, persons with print disability and public bodies. Furthermore, a new permitted act has been added for the playing of sound broadcast in vehicles. These new copyright exemptions have come into effect on 6 July 2007.

### *Fair dealing for education and improvements to permitted acts for education*

Q2 What new exemptions for the education sector have been introduced?

A2 The Amendment Ordinance has introduced the following new copyright exemptions for the education sector –

- A new “fair dealing” exemption is found in Section 41A of the Copyright Ordinance. The objective is to allow 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. Please refer to Q3 to Q12.
- All along, Section 43 of the Copyright Ordinance allows the performance and playing of copyright works in the course of activities of educational establishments under specified conditions and before an audience that was limited in scope. The scope of the audience has now been extended so that educational establishments can have added flexibility in using

copyright works in their activities. Please refer to Q13 to Q16.

- All along, Section 45 of the Copyright Ordinance allows educational establishments to make reprographic copies (e.g. scans and photocopies) of copyright works, to a reasonable extent, for teaching purpose. This exemption has now been extended to students. Students are now allowed to make copies of such works to a reasonable extent for learning purpose in a specified course of study. Please refer to Q17 and Q18.

Q3. What does “fair dealing” mean?

A3. “Fair dealing” of a copyright work means fair use of such a work. If a person uses a work in a fair and reasonable manner and under certain specified conditions, he will not incur any civil or criminal liability.

In considering whether certain acts constitute “fair dealing”, you need to take into account all the circumstances of the case, in particular –

- (a) the purpose and character of the dealing, including whether such dealing is of a commercial nature or for a non profit-making purpose;
- (b) the nature of the work;
- (c) the amount and substantiality of the portion dealt with in relation to the work as a whole; and
- (d) the effect of the dealing upon the potential market for or value of the work.

Q4. Does the “fair dealing” exemption allow teachers and students to use copyright works in whatever way they like so long as it is for

education purpose?

- A4. No. The use of the work has to be “fair” in order to qualify for this exemption. In determining whether the dealing is “fair”, you need to take into account all the circumstances of the case, in particular the four factors cited in Q3.

For example, the copying of an entire textbook by a teacher for distribution to his students, or the playing of a DVD of a currently shown movie in class for students’ entertainment after exams were over will not come within the exemption.

- Q5. Can teachers and students of a non-profit-making organisation which organizes training courses enjoy the proposed “fair dealing” exemption for education?

- A5. The “fair dealing” exemption applies in relation to a “specified course of study” (refer to Q7) provided by an “educational establishment”. To qualify for the exemption, the non-profit-making organisation has to be an “educational establishment” (as specified in Schedule 1 of the Copyright Ordinance).

- Q6. Are teachers and students in private tutorial schools entitled to benefit from the proposed “fair dealing” exemption for educational purpose?

- A6. Yes, so long as they are registered or provisionally registered as schools under the Education Ordinance.

Q7. Does the “fair dealing” exemption for education apply to all kinds of activities undertaken by educational establishments?

A7. The “fair dealing” exemption for educational purpose would apply to teachers and students who give or receive instruction in a specified course of study provided by an educational establishment only.

A specified course of study refers to –

(a) a course of study developed on the basis of guidelines issued/endorsed by the Curriculum Development Council; or

(b) a course of study that consists of assessment of a student’s competence in the course and leads to the award of a qualification.

Q8. Does the “fair dealing” exemption apply to works in printed form only?

A8. No, it also applies to works stored in electronic format, including those made available on the Intranet.

Q9. With the introduction of the “fair dealing” exemption to our copyright law, are educational establishments still required to obtain licences for making reprographic copies of printed publications for the purpose of instruction?

A9. The “fair dealing” exemption allows teachers and students to deal with reasonable portions of works under specified circumstances. However, the copying activities of an educational establishment may exceed the fair and reasonable portions permitted by the “fair dealing” exception or cause prejudice to the reasonable interests of copyright owners. It is therefore advisable for educational

establishments to acquire appropriate licences to cover their copying activities.

Q10. Does the “fair dealing” exemption allow educational establishments to upload copyright works onto their school Intranets for access by students?

A10. Where an educational establishment needs to upload a portion of copyright work onto its school Intranet for teaching purpose, the educational establishment should take the following measures before the fair dealing provision could apply –

(a) adopt appropriate security measures (such as requiring login user name 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

(b) ensure that 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 an educational establishment 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.

Q11. Can a student make photocopies of newspaper articles and books for the purpose of a school project?

A11. Under the amended Copyright Ordinance, a student who copies short extracts of works from newspapers and books and incorporates them in his school project in a specified course of study should not incur any liability. However, if the copying

exceeds fair and reasonable portions, he could be subject to civil liability.

Q12. Can educational establishments use pirated computer programs for teaching and demonstration purposes in a specified course of study under the fair dealing provision for education?

A12. No, the use of pirated computer programs for teaching or demonstration purposes could not be considered as “fair”. Educational establishments should note that they may attract criminal liability if they knowingly use pirated computer programs for teaching or demonstration purposes in the course of their teaching activities.

Q13. Will teachers or students bear any liability under the Copyright Ordinance if they give musical or dramatic performance in the course of activities of the educational establishments before an audience which consists of persons other than teachers and students?

A13. Under the amended Ordinance, as long as the audience consists *mainly* of teachers, students, the parents or guardians of the students and persons directly connected with the activities of the educational establishments, the copyright exemption provision will apply. The audience may include near relatives of students who accompany the students to attend the performance in the place of their parents or guardians. The audience may also include management committee members of the educational establishment and other honorable guests invited by the establishment.

Q14. Does the copyright exemption for public performance in the course of activities of educational establishments apply if the performance is given by persons other than teachers and students?

- A14. Yes, the performance may be given by any person for teaching purposes at the educational establishment.
- Q15. Who are the “persons directly connected with the activities of the establishments”?
- A15. They are persons who are concerned with the activities of the educational establishments in general (e.g. management committee members of the educational establishments, parents-teachers association members).
- Q16. Will a teacher bear any liability under the Copyright Ordinance if he plays or shows a movie, sound recording or broadcast or cable programme at school?
- A16. The copyright exemption for playing or showing a work in the course of activities of educational establishments will apply as long as the playing or showing is made within an educational establishment for teaching purpose. On the other hand, if the showing is for entertainment or fund-raising purpose, the exemption will not apply.
- Q17. Teachers and students are unable to rely on the reprographic copying exemption if there is a licensing scheme covering the copying of the copyright work in question. In such circumstances, could they rely on the “fair dealing” exemption instead?
- A17. Under the amended Copyright Ordinance, the “fair dealing” exemption operates independently from other exemptions. Specifically, where an act of copying by a teacher or a student is not covered by the reprographic copying exemption, the act could still be covered by the “fair dealing” exemption if all the criteria for “fair dealing” are satisfied. The inter-relationship between the two exemptions is confirmed in section 41A(6).

Q18. Are the “Guidelines for Photocopying of Printed Works by Not-for-profit Educational Establishments” still in operation?

A18. Yes. The Guidelines operate as a licence granted by the copyright owners to not-for-profit educational establishments. The Guidelines allow such establishments to photocopy printed works for instruction purposes under specific conditions.

Irrespective of whether the circumstances are covered by the Guidelines, educational users may also rely on the new “fair dealing” exemption, if the necessary conditions are met. Please refer to Q3 to Q12.

***Fair dealing for public administration***

Q19. With the introduction of the “fair dealing” exemption for public administration, would it still be necessary for a public body to acquire licences for use of copyright works for its normal operation?

A19. Under the amended Copyright Ordinance, the “fair dealing” exemption for public administration only allows fair dealing with a copyright work by a public body (defined to mean any department of the Government, the Executive Council and any District Council) or the Judiciary for the purpose of their efficient administration of urgent business. The public body would still need to acquire licences for use of copyright works for its normal business.

Q20. What is meant by “urgent business”?

A20. The amended Copyright Ordinance does not provide any legal definition for the term “urgent business”. The term will be construed using its plain and literal meaning (i.e., business that needs to be dealt with immediately). Whether there is a need for something to be dealt with immediately depends largely on the circumstances at the material time of the case in question.

***New permitted act for persons with a print disability***

Please refer to the FAQs on Copyright (Amendment) Ordinance 2020 for details.

***New permitted act for playing sound broadcast in vehicles***

Q21. Would taxi drivers attract any liability if they play radio broadcast inside their vehicles?

A21. No. By virtue of the Amendment Ordinance, they would not incur any liability as long as they are doing so primarily to have access to public information (e.g. report on road conditions, weather or news).

Q22. Would I attract any liability under the Copyright Ordinance if I play radio or TV broadcast inside my restaurant or clinic for the enjoyment of my customers/patients? Has the Amendment Ordinance introduced any specific exemption for this?

A22. Public playing of radio or TV broadcast in restaurants and clinics without the authority of the owners of the underlying copyright works attracts civil liability under the Copyright Ordinance. The Amendment Ordinance does not provide any exemption for the above activities.