Submission to
Commerce, Industry and Technology Bureau
Regarding
of Copyright Ordinance

Inter-Institutional Task Force on Reprographic Rights Licensing
and
Joint University Librarians Advisory Committee
established under
Heads of Universities Committee (HUCOM)

15 February 2005

This submission is made jointly by the Inter-Institutional Task Force on Reprographic Rights Licensing and the Joint University Librarians Advisory Committee (JULAC), both established under the Heads of Universities Committee (HUCOM). This submission represents the collective views of the eight UGC-funded institutions in Hong Kong regarding the current Review of Certain Provisions of Copyright Ordinance. The eight institutions are:

City University of Hong Kong,
Hong Kong Baptist University,
Lingnan University,
The Chinese University of Hong Kong,
The Hong Kong Institute of Education,
The Hong Kong Polytechnic University,
The Hong Kong University of Science and Technology, and
The University of Hong Kong.
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Introduction

Objective of Copyright Law

TRIPS and WIPO Treaties

1. As in the case of all intellectual property laws, copyright law is enacted not merely to protect the interests of the right holders but to achieve a higher goal: to serve the public interest by promoting learning, dissemination of knowledge, free flow of information, and the progress of science and arts so that society as a whole benefits. This objective is embedded in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) with which Hong Kong must comply. Article 7 of TRIPS states: “The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.”

2. This objective is universally recognized and affirmed. In the World Intellectual Property Organization (WIPO) Copyright Treaty adopted by the Diplomatic Conference in December 1996, the Preamble expressly states that the Treaty is to recognize “the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention”. The same appears in the Preamble of the WIPO Performances and Phonograms Treaty adopted by the same Diplomatic Conference. In both treaties, the public interest of education, research and access to information is regarded by WIPO as larger than the interests of the right holders.

3. In setting out the objective of copyright law, TRIPS and the two WIPO treaties have in effect laid down the following principle: while copyright law confers certain rights upon copyright owners, such rights are not absolute and must give way to the larger public interest when the latter is being threatened. This is particularly so in circumstances where the rights are capable of obstructing learning, dissemination of knowledge and free flow of information, and stifling scientific research and artistic creativity. In these circumstances, the law must protect the larger public interest by preventing the right holders from exercising their rights which harm the public interest.
Judicial views in Europe and US

4. The principle stated in Paragraph 3 has been affirmed and applied by courts around the world. In Europe, the European Court of Justice has applied the principle to prevent a copyright owner from using copyright law to abuse its dominant position in the relevant market in order to secure its monopoly: Radio Telefis Eireann v Commission of the European Communities [1995] FSR 530. In the US, the Supreme Court has refused a claim on copyright which seeks to prevent a legitimate new product from being put on the market: Sony v Universal City Studios (1984) 464 US 417. In two landmark decisions, the US Supreme Court has re-stated the principle as follows: “[c]reative work is to be encouraged and rewarded but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and the other arts” (Sony v Universal City Studios (1984) 464 US 417) — this is because “[t]he primary objective of copyright is not to reward the labor of authors, but to promote the Progress of Science and useful Arts. To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work” (Feist Publications v Rural Telephone Service (1991) 499 US 340).

5. In any copyright reform, Hong Kong must adhere to the above principle as laid down by TRIPS and the two WIPO treaties. From the legal point of view, Hong Kong must do so as part of its international legal obligation under TRIPS. From the social and economic points of view, Hong Kong must adhere to the principle in order to provide its people with the broadest access to knowledge and information, which is necessary for it to continue to produce intelligent and creative minds through education, and to sustain its vibrant and adaptive economy by innovative ideas and inventions. Accordingly, any legislative amendment to expand the private interests of copyright owners must not sacrifice the larger public interest. Indeed, if the public interest is jeopardized because of any private interest, it is the private interest that must give way.
Copyright Exemption

Exhaustive Approach vs Non-Exhaustive Approach

**UK's exhaustive approach — “Fair Dealing”**

6. The exemption provisions of the Copyright Ordinance (sections 37–88 and sections 240–261) represent the statutory protection of the public interest in Hong Kong vis-à-vis the private interests of copyright owners. The large number of such provisions — a total of 74 — stems from the exhaustive approach originated from the UK: namely, that all exemptions must be exhaustively listed so that any act which does not fall within the exemptions is prima facie infringing. One significant feature of this exhaustive approach is that the fair dealing provisions are restrictive; they permit fair dealing with a copyright work only when the dealing is for a prescribed purpose, typically, research, private study, criticism, review or news reporting (see, eg, sections 29 and 30 of the UK Copyright, Designs and Patents Act 1988; and sections 38 and 39 of the Copyright Ordinance). Accordingly, if a dealing is not for any of these purposes, then even though the circumstances are such that the dealing is fair and ought to be permitted (eg for teaching purposes), it is still prima facie infringing under the law.

**US's non-exhaustive approach — “Fair Use”**

7. The UK exhaustive approach to copyright exemption contrasts sharply with the US non-exhaustive approach. In the US, permitted acts are not listed exhaustively but covered by the broad umbrella of “fair use” under section 107 of the US Copyright Act 1976, which reads:

> “Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. . . .” *(For the provision in its entirety, see Appendix 1.)*

It is clear from section 107 that the US fair use is not confined to specific acts or purposes, and that it expressly covers copying for the purposes of teaching, including multiple copying for classroom use. All these are in stark contrast with the fair dealing provisions of the UK Copyright, Designs and Patents Act 1988 (sections 29
and 30) upon which Hong Kong's fair dealing provisions (sections 38 and 39 of the Copyright Ordinance) are based.

**Problems with the exhaustive approach**

8. Because of historical reasons, the UK exhaustive approach has been adopted in a number of common law countries, most notably, Australia, Canada, New Zealand and Singapore. After years of experience, the problems with this approach are now well known. Most fundamental of all, the exhaustive approach is rigid and does not cater for any new use which ought to be permitted, particularly new uses which come with new technological developments and which are conducive to the progress of science and arts. Under the exhaustive approach, every time a new use is to be allowed, special legislative amendments must be enacted to specifically remove all liabilities arising from that use. This partly explains why the current Copyright Ordinance would have 74 provisions setting out the specific permitted acts. This already large number is bound to increase if the Ordinance is to include new uses, rendering the Ordinance even more complex and difficult to understand by the general public.

**Recommendations in UK, Canada and Australia**

**Relating to Exhaustive Approach**

**UK**

9. The fundamental problem with the exhaustive approach as described in Paragraph 8 has been repeatedly pointed out by countries following the approach. In the UK, in a report (entitled “Copyright and Designs Law: Report of the Committee to Consider the Law on Copyright and Designs”) published in 1977 by the Whitford Committee set up to review the then copyright law in the UK, it was strongly recommended that the fair dealing exemption ought not to be restricted to particular works and particular purposes and that a general defence of fair dealing should be enacted:

“All sort of work is likely to be of public interest, and the freedom to comment, criticize, to discuss and to debate, ought not, in principle, to be restricted to particular forms (‘criticism or review’ or ‘reporting current events’). . . . A general exception in respect of ‘fair dealing’ . . . would be sufficient to cover the interests of the press, publishers and broadcasters, reviewers and commentators. Such an exception should also cover ‘fair dealing’ for the purposes of research or private study, and there should be no need to refer to this field expressly.” [Paragraphs 676–677]
10. In Canada, in a white paper (entitled “From Gutenberg to Telidon: A White Paper on Copyright”) published in 1984 by the Canadian Department of Consumer and Corporate Affairs, a view similar to that of the Whitford Committee was expressed, urging for the adoption of a broadly defined fair use exemption not confined to any set of prescribed purposes:

“[The new Copyright Act should] provide both a definition of fair dealing (to be termed ‘fair use’) and a prioritized list of factors to be considered in determining whether a particular use of a work is a fair use. . . . ‘Fair use’ will be defined as a use that does not conflict with the normal exploitation of the work or subject matter and does not reasonably prejudice the legitimate interests of the copyright owner.” [at pages 39–40]

11. In Australia, in a report (entitled “Simplification of the Copyright Act 1968”) published in 1998 by the Australian Copyright Law Review Committee, a recommendation was made to the Australian government to change its existing exhaustive system of fair dealing to a non-exhaustive system:

“The Committee recommends the expansion of fair dealing to an open-ended model that specifically refers to the current exclusive set of purposes — such as research or study (ss.40 and 103C), criticism or review (ss.41 and 103A), reporting news (ss.42 and 103B) and professional advice (s.43(2)) — but is not confined to those purposes.”[Paragraph 6.35]

“The recommended model is not limited to an exclusive set of purposes such as are regarded as currently falling within fair dealing. In the Committee's view the removal of such a limitation will provide greater flexibility by allowing courts to determine the existence of additional purposes that are regarded as falling within fair dealing. The Committee considers that this approach will enable fair dealing to be adapted by the courts to changing technology and will move the application of fair dealing into the digital environment. The recommended approach would therefore answer the criticism that the current fair dealing provisions are inflexibly linked to specific purposes and are difficult to apply to new technologies.” [Paragraph 6.33]
Recent Breakthrough in Singapore: Change to Non-Exhaustive Approach

12. Common to the recommendations made in the UK, Canada and Australia is the clear view that the exhaustive approach to copyright exemption is fundamentally flawed and that the solution lies in expanding the fair dealing exemption to a non-exhaustive model. Although these recommendations have not been passed into law in the countries concerned, a breakthrough has taken place very recently in Singapore. In November 2004, after two years of extensive study and consultation, Singapore passed the Copyright (Amendment) Act 2004 which, among other things, changes Singapore’s exhaustive fair dealing system to a non-exhaustive system akin to that of the US fair use. Pursuant to the amendment, “fair dealing” under section 35 of Singapore’s Copyright Act is extended to include any purpose, in addition to those prescribed under the previous law. To assess whether a dealing constitutes “fair dealing” under the new law, considerations are to be given to a set of factors including those listed in section 35(2) of the Act. (For the amended section 35 in its entirety, see Appendix 2.)

Problems with the Exhaustive Approach in Hong Kong

13. In Hong Kong, the problems with the exhaustive approach to copyright exemption are well known within the education sector. In our “Submission to the Commerce and Industry Bureau Regarding Permitted Acts for Educational Purposes” in December 2001, we already pointed out the problems in relation to fair dealing and multiple copying for the purposes of instruction. The following are just some of the obvious ones:

(a) Fair dealing is given a restrictive definition and applies only to five prescribed purposes. It does not extend to other purposes, including teaching.

(b) There are no guidelines in the Copyright Ordinance as to what would be considered as “fair” in the context of fair dealing.

(c) Although section 45 of the Copyright Ordinance allows reprographic copying for the purposes of instruction without having to obtain the consent of the copyright owner, the copying can only be “to a reasonable extent”. The Ordinance again provides no guidelines for assessing reasonableness in this context.

(d) Despite the Government's attempt to formulate conditions for determining “reasonable extent” in the context of section 45 by issuing the “Guidelines for Photocopying of Printed Works by Not-for-Profit Educational Establishments”, the conditions stipulated therein are so stringent that it is virtually
impracticable for teachers to be able to rely on the Guidelines. A good example is the “three-day rule” in Clause (D3) requiring that the time of the decision to use a copyright work and the proposed time of its use in the classroom should be within three days. This makes the Guidelines virtually useless as teachers cannot afford to prepare their teaching materials only within three days before the lecture, given that the wait time for such materials to be printed and distributed to the students would normally take at least a few days. (For the Guidelines in their entirety, see Appendix 3.)

(e) Reprographic copying for the purposes of instruction is allowed under section 45 only on condition that there is no licensing scheme available. The same restriction is found in section 44, which authorizes recording of broadcasts or cable programmes for educational purposes. Hence the mere existence of a licensing scheme covering the copying or recording in question will immediately preclude the statutory permission, forcing schools to buy licences from the licensing body, whether or not the licensing scheme is reasonable.

(f) Having separate provisions for fair dealing and reprographic copying for the purposes of instruction makes the law unnecessarily complex and confusing. It is not easy even for lawyers to understand and comply with the law, let alone teachers and students.

(g) Moreover, the Copyright Ordinance does not address the need for libraries which function as extension of classrooms to support teaching by setting up print and electronic Library Reserves. At the request of a faculty member, a library may have to photocopy and place on reserve excerpts of copyright works in its collection in accordance with the concept of fair dealing. The library may have to scan and create electronic copies of this material to make them available for instructional purpose, with access limited to the institution’s students. In addition, instructors may have to place examination papers on Library Reserves, even though they may contain excerpts from copyright material, such as formulas, maps, pictures, etc.

Our Recommendations

A non-exhaustive approach

14. From our experience in the education sector, the existing fair dealing provisions in the Copyright Ordinance are unduly restrictive and are harming the public interest by hindering the ability of teachers and students to use copyright works for teaching and learning. We strongly echo the recommendations made in the UK, Canada and Australia as mentioned in Paragraphs 9–11 above and urge that the existing fair dealing exemption of the Copyright Ordinance be changed from an exhaustive
system to a non-exhaustive system. We firmly believe that only such a change can bring about a proper balance between the public interests of the community and the private interests of copyright owners, and to ensure that our copyright system is flexible enough to accommodate new uses and new circumstances that may emerge in the future, without having to resort repeatedly to legislative amendments.

15. Such a change can be implemented by modifying the exhaustive language of the existing fair dealing exemption, similar to what has been done in Singapore. Instead of confining the fair dealing purposes to research, private study, criticism, review and reporting current events, the new fair dealing provision should state that the exemption applies to any purpose, including those expressly prescribed in the provision. Furthermore, to avoid doubt and to protect adequately the larger public interest of education, the new provision should expressly state that teaching (including multiple copies for classroom and library use) is a legitimate purpose for fair dealing.

Criteria for determining whether an act is fair dealing

16. As regards the criteria for determining whether an act is fair dealing, we recommend the retention of the existing factors set out in section 38(3) of the Copyright Ordinance i.e.,

(a) the purpose and nature of the dealing;
(b) the nature of the work; and
(c) the amount and substantiality of the portion dealt with in relation to the work as a whole.

In addition, we recommend the inclusion of the following factors in the list:

(d) the effect of the dealing upon the potential market for, or value of, the work or adaptation; and
(e) the possibility of obtaining the copyright work within a reasonable time at an ordinary commercial price.

This list of factors should remain non-exhaustive, and all relevant factors should be considered in the circumstances of a case. Furthermore, in assessing whether an act is fair dealing, the primary consideration is that the act 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, as is currently provided under section 37(3).
**Introduction of a quantitative test for fair dealing**

17. To add certainty to the law, we recommend that a quantitative test be introduced in respect of fair dealing by way of copying for the purposes of research, private study or teaching (including multiple copies for classroom and library use). The objective of such a test should be to establish a “safe harbour” by setting out the minimum extent within which copying for the said purposes will be deemed to be fair dealing. If the extent of copying goes beyond the “safe harbour”, then whether it is still fair dealing will depend on the court’s assessment of all relevant factors including but not limited to those mentioned in Paragraph 16 above.

**Our Proposed New Fair Dealing Provision**

18. In sum, we recommend that the existing section 37 of the Copyright Ordinance be maintained, and that the fair dealing provisions (sections 38 and 39) be amended to the following form:

(1) Fair dealing with a work of any description for any purpose, including the purposes of research, private study, criticism, review, reporting current events, and teaching (including multiple copies for classroom and library use), does not infringe any copyright in the work or, in the case of a published version, in the typographical arrangement.

(2) In determining whether any dealing with a work of any description is fair dealing, factors to be considered include -

(a) the purpose and nature of the dealing;
(b) the nature of the work;
(c) the amount and substantiality of the portion dealt with in relation to the work as a whole;
(d) the effect of the dealing upon the potential market for, or value of, the work or adaptation; and
(e) the possibility of obtaining the copyright work within a reasonable time at an ordinary commercial price.

(3) [quantitative test for copying for the purposes of research, private study or teaching (including multiple copies for classroom and library use)].

(4) [procedural requirements for fair dealing (eg acknowledgment)].

(5) [miscellaneous provisions for fair dealing].
19. The fair dealing provision proposed above is technologically neutral. Digital copying is equivalent to any other form of copying.

20. This proposed fair dealing provision makes it clear that all the existing prescribed purposes for fair dealing (research, private study, criticism, review and reporting current events) are preserved. At the same time, the provision is flexible enough to enable the court to extend fair dealing, whenever appropriate, to new uses and new purposes necessary for protecting the public interest. This flexibility will not render the proposed provision in any way more uncertain than the existing one, but rather provide the desirable and necessary room for judicial development. Furthermore, as far as assessment of “fairness” is concerned, the proposed provision has included additional factors for assessment as well as a quantitative test for copying, which makes the proposed provision much more certain than the current fair dealing provision.

21. We do not agree with the view that changing our fair dealing system to a non-exhaustive system similar to the US fair use would make it difficult for our courts to develop our copyright jurisprudence. Quite the contrary, it is by lifting the statutory restrictions imposed by our existing exhaustive system that our courts will be given the free hand to develop the law and to respond to the ever changing environment, particularly changes brought forth by new technologies. We also do not agree with the criticism that a non-exhaustive fair dealing system may be incompatible with TRIPS. Such a criticism is totally unfounded, as one only needs to note that the US has never been challenged for violating TRIPS because of its non-exhaustive fair use.
Scope of Criminal Provisions
Related to End-user Piracy

The Need for Unhindered Access to Information

22. Tertiary institutions in Hong Kong are substantial users of copyright works. At the same time, our staff and students are also involved in numerous activities resulting in the creation of works protected by the Copyright Ordinance. We are therefore deeply concerned with the rights of not only the copyright users but also the copyright owners, and we strongly believe that there is a need for maintaining a proper balance between these two groups.

23. As Hong Kong is transforming into a knowledge-based society to make itself competitive in the modern world, it has to upgrade the quality of its population, particularly the young. Education has a key role to play in this regard. Unhindered access to information and its timely dissemination and distribution in a reasonable manner is necessary not only for teachers and students, but also members of other sectors of the community.

Detrimental Effect to Education

24. We strongly oppose the proposal to expand the scope of end-user criminal liability to cover other types of copyright work such as published books, magazines, periodicals, artistic works, etc. in addition to computer programs, movies, television dramas and musical recordings.

25. The effect of such expanded criminalization is to force teachers to refrain further from including copyright works in their teaching materials, even where such inclusion may turn out to be permitted by the Copyright Ordinance. This is because the threat to teachers is just too great: the mere fact that a teacher may commit a criminal offence for possessing an unauthorized photocopy of a copyright work (including but not limited to an unauthorized photocopy of a newspaper article or book, an unauthorized recording of a television or cable news programme) with a view to the copy being used in education because education is regarded as a form of business in the Copyright Ordinance. This would clearly affect the students adversely by circumscribing their exposure to valuable articles and useful materials not found in textbooks.
Copyright Works Already Given Adequate Protection by Law

26. Under the current Copyright Ordinance, copyright works are already adequately protected. Specifically:

(a) For computer programs, movies, television dramas and musical recordings, anyone who possesses an infringing copy for the purpose of, or in the course of, any trade or business may commit a criminal offence, unless he/she proves that he/she does not know and has no reason to believe that the copy in question is an infringing copy.

(b) For any type of copyright work, anyone who buys, sells, distributes, imports or exports otherwise than for private and domestic purposes infringing copies may commit a criminal offence, unless he/she proves that he/she does not know and has no reason to believe that the copy in question is an infringing copy.

(c) In addition, a copyright owner can always instigate a civil action against any infringement under civil law.

27. Illicit copying by profit-making copy shops has been sufficiently dealt with by the new “copy shop possession offence” created under the Copyright Ordinance with effect from 1 September 2004. Pursuant to this new provision, a person would commit an offence if he possesses for the purpose of, or in the course of, a profit-making copying service business, an infringing copy of a copyright work as published in a book, magazine or periodical. The maximum penalty is four years’ imprisonment and a fine of $50,000 per infringing copy.

Actions Taken by Educational Establishments Against Inappropriate Copying by Users

28. At present, all of the eight UGC-funded institutions have put in place measures to protect copyright works. The following are just some of the measures:

(a) Posting warning notice prominently next to every photocopying machine on campus drawing users’ attention to the importance of observing intellectual property law and warning against inappropriate copying.

(b) Entering into licensing arrangement with the Hong Kong Reprographic Rights Licensing Society (HKRRLS) for production of course packs for use by students. (We understand that primary and secondary schools have also taken out licences with HKRRLS.)

(c) Taking out licences for making multiple copies of newspaper articles.
(d) Holding seminars on campus to raise the awareness of staff and students on intellectual property rights.

29. Libraries and academic departments have expanded their subscriptions to electronic materials, like e-journals and databases. Downloading by a user exceeding a certain limit is strictly forbidden and warning notices have been posted on all access pages against this. Furthermore, access (both physical and electronic) is strictly controlled so that only members of the University can use these materials.

**Protection of Teachers and Students in the US**

30. It is instructive to compare the position of teachers and students in Hong Kong with that in the US. A look at some of the important provisions in the US Copyright Law serves as a good example for comparison:

(a) Section 107 (Limitations of exclusive rights: Fair use)
   This section introduces the non-exhaustive “fair use” doctrine and lists out the main factors in determining whether the use made of a work in any particular case is a fair use.

(b) Section 108 (Limitations of exclusive rights: Reproduction by libraries and archives)
   This section spells out the conditions under which a library or archive, or any of its employees acting within the scope of their employment, can reproduce one copy or phonorecord of a work, or to distribute such a copy or phonorecord.

   Under this section, university libraries can set up reserves or electronic reserves (e-reserves) systems to provide students access to materials selected by teachers that are required or recommended course readings if the materials thus provided are within the ambit of fair use or covered by licences. The materials in question can be photocopies or digitized versions of original volumes or electronic files.

(c) Section 506 (Criminal offences)
   This section stipulates the requirements for prosecuting violation of copyright, namely:

   (a) A show of wilful intention;

   (b) A person who infringes a copyright wilfully

      (i) for purposes of commercial advantage or private financial gain,

      or
(ii) by the reproduction or distribution, including by electronic means, during any 180-day period, of one or more copies or phonorecords of one or more copyright works, **which have a total retail value of more than US$1,000.**

For the purposes of the subsection (b), evidence of reproduction or distribution of a copyright work, by itself, shall not be sufficient to establish wilful infringement.

31. Clearly, in the US, teachers and students enjoy a much broader protection under the non-exhaustive fair use umbrella and, at the same time, only those acts which are wilfully done and which are for pursuit of financial gain will attract criminal liability. Hence, teachers and students in the US are much better protected by the law than their counterparts in Hong Kong against criminal sanctions, particularly for acts that infringe copyright inadvertently.

Our Recommendations

**NOT to expand the scope of end-user criminal liability to cover all types of copyright work**

32. **We strongly oppose to the expansion of the scope of end-user criminal liability to cover all types of copyright work.** Such expansion, in the context of our present copyright system, will only hurt the public interest of education by deterring teachers from using copyright materials for teaching and thereby circumscribing students' exposure to valuable articles and useful materials not found in textbooks.

**Have appropriate measures in place first**

33. We hold the view that instead of expanding criminal liability under the Copyright Ordinance, the Government should introduce appropriate measures into the law to protect the public interest. We reiterate our recommendations in Paragraphs 14–18 above, namely:

(a) **That the existing exhaustive fair dealing system be changed to a non-exhaustive fair dealing system.**

(b) **That a quantitative test be introduced in respect of fair dealing by way of copying for the purposes of research, private study or teaching (including multiple copies for classroom and library use).**

34. The objective of such measures is to protect users who make legitimate use of copyright works, and to dispel any uncertainty or ambiguity attached to the meaning of “fair dealing” so that users, particularly teachers and students, can be more
confident in judging whether or not their use of copyright works falls within the scope of fair dealing. Such measures should be introduced as soon as practicable. The Government should then examine their effect on copying activities before deciding if any expansion of criminal liability under the Copyright Ordinance is indeed necessary. This prudent approach is to ensure that the larger public interest is not sacrificed as we seek to further protect the private interests of the copyright owners.

Assurance to teachers

35. Access to information and dissemination of knowledge lies at the heart of education. Without adequate safeguard, the path to learning can be easily blocked by hurdles imposed by law. Hence we oppose to expanding the scope of end-user criminal liability at this stage. We also urge the legislature to give assurance that teachers, as end-users in Hong Kong, will not have to face criminal prosecution for possessing or using copyright materials merely for the purposes of teaching.
End-user Liability  
Associated with Parallel Imported Copies

Our Recommendations

Removal of civil and criminal liability unless the act is done for profit or financial gain

36. We recommend the removal of civil and criminal liability in relation to parallel importation of copies of all categories of copyright works and the possession, exhibition in public and distribution of such parallel-imported copies unless the act is done for profit or financial gain. In the absence of a motive for profit or financial gain, these acts do not conflict with a normal exploitation of the copyright works by the copyright owners and do not unreasonably prejudice the legitimate interests of the copyright owners.

37. Parallel-imported copies of copyright works are lawfully made in their countries of origin and lawfully purchased in those countries. As the copyright owners have already made a profit upon the first sale of such copies, the acts referred to in the preceding paragraph which are not done for profit or financial gain do not prejudice the copyright owners and thus should not be regarded as illegal under the law. This is particularly so where the acts are done for the purposes of teaching, learning, research, use in libraries and classrooms, and all other bona fide educational use. Such acts should be free from all legal restrictions.

Importation of unique versions of works and works of low or non-commercial value

38. Parallel-imported videocassettes, DVDs and similar products are needed for teaching and research purposes, especially when the contents of the imported works include episodes, shots and/or scenes that are not available in local editions. In particular, each edition of a film produced in a different country or at different time is a unique version having its own unique value from the educational point of view. This is regardless of whether it is the original uncut edition, an edited version, or a version dubbed in another language. Some of these versions may not be available from local suppliers but can only be imported from overseas.

39. Purchasing a copyright work that has never been imported by a local sole supplier should not be regarded as parallel importing. It is not unusual for a copyright work of low or non-commercial value not to be distributed by any local supplier. However the work may be required by a local user for use in teaching or research. A Spanish edition of a feature film and a conference proceeding in CD-ROM are two of the examples. Importation of these materials should not incur civil or criminal
liability, otherwise it will prevent local users from using them and will hamper the free flow of information.

Timely acquisition of educational or training materials at more affordable prices

40. Besides those considerations such as free trade and increasing the availability of products in the market, we are in favour of a system that is conducive to promoting the widest dissemination of knowledge and the broadest circulation of educational and research materials in a manner most cost effective and most beneficial to teachers, students and the general public. Educational establishments shall be allowed to lawfully acquire such educational and research materials, in good time, anywhere in the world where the materials are more readily available and more affordable prices are offered.
Objective of Section 273

41. We fully agree with the view of the Commerce, Industry and Technology Bureau as expressed in Paragraph 6.5 of the current Consultation Document that in considering the proper scope of the anti-circumvention provision (i.e., section 273 of the Copyright Ordinance), it must be borne in mind that the objective of the provision is to protect the copyright of a work and not the technology or devices employed to protect the copyright of the work. Hence, any amendment of the provision must target at acts infringing copyright rather than just the circumvention activities themselves. Most importantly, any amendment must not harm the public interest by removing or diminishing the scope of copyright exemption in the name of anti-circumvention.

42. The existing section 273 of the Copyright Ordinance provides civil relief against a defendant who makes, deals in or possesses for any trade or business any device or means specifically designed or adapted to circumvent a copy-protection measure, or who publishes information intended to enable or assist other persons to circumvent a copy-protection measure, and the defendant knows, or has reason to believe, that the device, means or information will be used to make infringing copies or infringing fixations of performances. The provision has been successfully invoked in Hong Kong by copyright owners in civil actions against defendants who made or dealt in devices that circumvent copy-protection measures employed in computer games: Sony Computer Entertainment v Lik Sang Int’l (HCA 3583/2002); Nintendo v Lik Sang Int’l (HCA 3584/2002). The same is true in the UK in respect of section 296 of the UK Copyright, Designs and Patents Act 1988, upon which section 273 of the Copyright Ordinance is based: see Sony Computer Entertainment v Owen [2002] EMLR 34

Problems with Section 273

Damaging effect to research and teaching

43. The successful invocation of section 273 indicates that it is able to protect copyright owners in Hong Kong in relation to circumvention of copy-protection. However, as the provision currently stands, it appears that the “making” of a circumvention device or means may attract liability even though the making is not for any trade or business (see especially the Chinese version of the provision). If so, the provision may impose
liability on any scientist or software engineer whose legitimate research activities involve circumventing existing technological protection measures (e.g., in the fields of cryptography and security), whether or not they are for any commercial purpose. Similarly, it is arguable that under section 273, a teacher who, in the course of giving his lecture, discloses information which enables or assists a student to circumvent a copy-protection measure, may be legally liable. If all these are correct, their damaging effect on research and teaching within the territory and on the public interest of the community cannot be overstated.

Our Recommendations

Liability only for acts done for profit or financial gain

44. By reasons stated in Paragraph 43 above, we strongly recommend that section 273 be amended to clarify that the making of a circumvention device or means will only attract liability if the making is for profit or financial gain, and that a teacher will not be liable merely because he, in the course of teaching, discloses information which enables or assists his students to circumvent a copy-protection measure.

Criminal sanction shall NOT be introduced

45. As section 273 is relatively new, and its exact scope and effect remains to be tested, any move to introduce criminal sanctions under the provision is premature and dangerous. Indeed, given that the provision has been relied on by copyright owners and has been successful in protecting their interests as regards circumvention of copy-protection, it is prudent to take a wait-and-see approach to monitor the operation of the provision for a longer period of time before deciding whether or not to introduce criminal sanctions under the provision.

46. At this stage, we do not see any compelling reason for expanding section 273 to cover devices or means designed to circumvent access control measures. Indeed, it is never an objective of copyright law to prevent access to a work, but rather the copying of it. The introduction of a provision for circumvention of access control goes against the spirit of copyright law, and will only make the Copyright Ordinance even more difficult and confusing for anyone to follow.

47. In practice, circumvention of access control invariably leads to circumvention of copy-protection, the former being merely a precondition for the latter. Bearing in mind that the objective of section 273 is to protect the copyright of a work and not the
technology or devices employed to protect the copyright of the work (see Paragraph 41 above), it is consistent with this objective that the provision should prohibit circumvention of copy-protection (which involves copyright infringement), rather than circumvention of access control itself.

Allowances for anti-circumvention scientific research

48. Similarly, we do not see any compelling reason for expanding section 273 to cover the act of circumvention itself, be it circumvention of copy-protection or access control. We are concerned that such an expansion would hinder the progress of legitimate research involving the circumvention of existing technological protection measures by subjecting researchers to legal liabilities, especially those in the fields of cryptography and security. We are also concerned about a recent trend brought forth by the digital technology: namely, that copyright owners are relying more and more on technological measures to prevent copying and/or access to their works in digital form. If the act of circumvention (whether of copy-protection or access control) is treated as an illegal act distinct from copyright infringement, a person may be held liable for circumvention even when his use of the work does not infringe copyright. This is contrary to the objective of section 273 (see Paragraph 41 above).

Fair dealing for materials in digital format shall be upheld

49. More fundamentally, by introducing a prohibition against the act of circumvention itself, the protection of the public interest afforded by fair dealing will be emasculated, as any person who wishes to use a copyright work protected by copy-protection or access control will have to obtain the consent of the copyright owner even though the use constitutes fair dealing. If the copyright owner refuses to give consent, the person will be denied of use of the work, despite that he is entitled to do so under the fair dealing exemption. This plainly goes against the principle of copyright law (see Paragraphs 1–3 above).

Allowances for normal functioning of libraries

50. We fully agree with the view of the American Libraries Association and other relevant bodies regarding circumvention of a technological measure. They recommended that the relevant law should:

“– Make it possible for libraries to go around copy protection mechanisms in DVDs or CD-ROMs to make a copy for preservation or archiving. Libraries and archives must be able to make such preservation copies well into the future, as
digital storage formats become obsolete. Preservation of knowledge is a core mission of libraries.

- Permit foreign language teachers to circumvent technological access controls so that digital works purchased abroad can be played on electronic devices purchased in this country.
- Enable a librarian to unlock a technological measure to make a copy for inter-library loan purposes.”

[www.alal/ala/washoff/WOissues/copyrightb/fairuseleg/HR107_1pg_0604.pdf]

Each year, libraries in Hong Kong spend a substantial sum in purchasing copyright materials in digital format. It is imperative and in the public interest that they are allowed to make full use of such materials for the benefit of library users.

In its rightful role, libraries acquire and preserve knowledge for the future generation. Circumvention of technological protective measures should be made available to libraries for preservation, archival and educational purposes. Libraries must acquire digital works from other regions to support teaching and research and hence should be permitted to access digital works such as DVDs purchased in other regions on compatible devices available in Hong Kong.

Consumers’ rights should be protected

51. We strongly agree with the view of the Commerce, Industry and Technology Bureau as expressed in Paragraph 6.6 of the current Consultation Document that in considering the proper scope of the anti-circumvention provision (i.e., section 273 of the Copyright Ordinance), we have to ensure that devices used mainly for legitimate purpose, notably all-area-code DVD players, which are now commonly available in the market and which enable consumers to play genuine DVDs imported from other regions, will not be caught. It is in the public interest that such basic rights of the consumer be protected.
Appendix 1

US Copyright Act 1976, Section 107 (“Fair Use”)

The United States adopts a non-exhaustive system for “fair use”. Section 107 of the US Copyright Act 1976 sets out the fair use principle and a non-exclusive list of factors for determining fair use.

Section 107 reads:

“Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include —

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for, or value of, the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.”

It is worth noting that the four factors for determining fair use as set out in section 107 are not exhaustive, though they are by far the most important factors as considered by the US courts. The assessment of fair use involves balancing all of the four factors and other factors deemed relevant. Each factor is weighed differently depending on the facts of the case in question.
Appendix 2

Singapore Copyright Act, Section 35
(As Amended in November 2004)

Prior to 16 November 2004, section 35 of the Singapore Copyright Act was based on the exhaustive model. Pursuant to the Singapore Copyright (Amendment) Act passed on 16 November 2004, section 35 is changed to a non-exhaustive model extending fair dealing to any purpose other than a purpose referred to in section 36 (criticism or review) or 37 (reporting current news).

The amended section 35 reads:

“(1) Subject to this section, a fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, for any purpose other than a purpose referred to in section 36 or 37 shall not constitute an infringement of the copyright in the work.

(1A) The purposes for which a dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, may constitute a fair dealing under subsection (1) shall include research and study.

(2) For the purposes of this Act, the matters to which regard shall be had, in determining whether a dealing with a literary, dramatic, musical or artistic work or with an adaptation of a literary, dramatic or musical work, being a dealing by way of copying the whole or a part of the work or adaptation, constitutes a fair dealing with the work or adaptation for any purpose other than a purpose referred to in section 36 or 37 shall include —

(a) the purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit educational purposes;

(b) the nature of the work or adaptation;

(c) the amount and substantiality of the part copied taken in relation to the whole work or adaptation;

(d) the effect of the dealing upon the potential market for, or value of, the work or adaptation; and

(e) the possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price.
(3) Notwithstanding subsection (2), a dealing with a literary, dramatic or musical work, or with an adaptation of such a work, being a dealing by way of the copying, for the purposes of research or study —

(a) if the work or adaptation comprises an article in a periodical publication, of the whole or a part of that work or adaptation; or

(b) in any other case, of not more than a reasonable portion of the work or adaptation,

shall be taken to be a fair dealing with that work or adaptation for the purpose of research or study.

(4) Subsection (3) shall not apply to a dealing by way of the copying of the whole or a part of an article in a periodical publication if another article in that publication, being an article dealing with a different subject-matter, is also copied.”

Note that the factors for determining whether an act is fair dealing as set out in subsection (2) are non-exhaustive. Factors (a)–(d) in the subsection are virtually identical to the four factors in section 107 of the US Copyright Act for assessing fair use (see Appendix 1). Factor (e), however, is not present in section 107 of the US Copyright Act.
Appendix 3

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

A. Background

(A1) 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.

(A2) 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.

(A3) 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 purposes where no relevant licensing schemes are available.

(A4) The purpose of these Guidelines is to set down the conditions for determining the extent of permissible photocopying of printed works by or on behalf of not-for-profit educational establishments for instruction purposes. For-profit educational establishments are not covered by these Guidelines.

(A5) These Guidelines represent the consensus among various copyright owners and educational users. A list of organizations endorsing these Guidelines is shown in Appendix 1. These Guidelines are not intended to affect or prejudice the permitted acts

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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 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.
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: –

(B1) “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.

(B2) “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).

(B3) “Illustrations” include charts, graphs, diagrams, drawings, cartoons and pictures accompanying other works and included for illustrative purposes.

(B4) “Textbook” means a book written in accordance with any syllabus issued by the Hong Kong Curriculum Development Council.

(B5) “Course” means subject, programme, module or other similar descriptions in relation to a course of study provided by a not-for-profit educational establishment.

C. Scope

(C1) 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.

(C2) 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.

(C3) These Guidelines do not allow the production of course packs.

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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.


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”.

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.
(C4) 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.

(C5) 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

(D1) 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.

(D2) Copying should not be used to replace or substitute for published anthologies, compilations, collective works or course packs which are commercially available.

(D3) Copying should be done on the initiative13 of a teacher or teachers working together as a group.

(D4) 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

(D5) 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.

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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.

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.
(D6) 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

(E1) Multiple copies of a work may be made by or on behalf of a teacher giving a course.

(E2) 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.

(E3) Copies of any work should only be made and used for one course in a not-for-profit
educational establishment.\(^{15}\)

(E4) The number of copies made should not exceed one copy per student in a course.

(E5) There should not be more than 27 instances\(^{16}\) of copying made for one course in one
academic year.\(^ {17}\)

(E6) 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).

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

(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.

(E7) 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 2004\(^{21}\))

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\(^{20}\) 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.

\(^{21}\) 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).
About the HUCOM Inter-Institutional Task Force on Reprographic Rights Licensing

The Inter-Institutional Task Force on Reprographic Rights Licensing is established by the Heads of Universities Committee (HUCOM) to look into reprographic rights licensing in UGC-funded institutions and, whenever necessary, to negotiate collectively with licensing bodies with regard to the acquisition of the relevant licences.

HUCOM is a body formed by the Presidents and Vice-Chancellors of the following UGC-funded institutions:

- City University of Hong Kong;
- Hong Kong Baptist University;
- Lingnan University;
- The Chinese University of Hong Kong;
- The Hong Kong Institute of Education;
- The Hong Kong Polytechnic University;
- The Hong Kong University of Science and Technology; and
- The University of Hong Kong.

The Task Force was formed in June 2000 and comprises one representative from each of the above institutions. It is advised by a legal consultant who specializes in intellectual property.

Current members of the Task Force are:

- Mr Patrick KWONG (Convener) Director, City University of Hong Kong Press, City University of Hong Kong
- Mr Ping Kwan CHIU Director of General Administration Hong Kong Baptist University
- Mr Tommy K. Y. YEUNG Associate Librarian, Lingnan University
- Mr Barry BURTON University Librarian, The Hong Kong Polytechnic University
- Mr Jacob LEUNG University Secretary, The Chinese University of Hong Kong
- Ms Connie WONG Manager, Resources and Administrative Services, The Hong Kong Institute of Education
- Mr Donald WASSINK Associate University Librarian, The Hong Kong University of Science and Technology
- Dr Kevin K H PUN Associate Professor, Department of Computer Science and Department of Law, The University of Hong Kong
- Dr Colin STOREY (co-opted member from the Joint University Librarians Advisory Committee) Librarian, The Chinese University of Hong Kong
About the Joint University Librarians Advisory Committee

The Joint University Librarians Advisory Committee (JULAC) is a committee of the Heads of University Committee (HUCOM). It is a forum to discuss, coordinate, and collaborate on library information resources and services among the libraries of the eight tertiary education institutions funded by the University Grants Committee of the Hong Kong SAR Government.

JULAC has established a number of committees including a Committee on copyright. Current members of the JULAC Copyright Committee are:

Mr Barry BURTON (Chairman) University Librarian, The Hong Kong Polytechnic University
Ms Winnie CHIM Associate Librarian, The Hong Kong Polytechnic University
Mr Steve DINGLER Assistant Librarian, Hong Kong Baptist University
Ms Doris HUI Senior Assistant Librarian, The Hong Kong Institute of Education
Ms Shirley LEUNG Sub-Librarian, The Chinese University of Hong Kong
Ms Irene SHIEH Law Librarian, University of Hong Kong
Mr Don WASSINK Associate University Librarian, The Hong Kong University of Science and Technology
Mr K.S. YEUNG Associate Librarian, City University of Hong Kong
Mr Tommy YEUNG Associate Librarian, Lingnan University
Ms Josephine LEE (Secretary) Assistant Librarian, The Hong Kong Polytechnic University