

Hong Kong's Amended Copyright Law: a Guide for Teachers and Students

This leaflet highlights some of the changes brought to our Copyright Ordinance (“the Ordinance”) that affect teachers and students. The changes have come about as a result of the Copyright (Amendment) Ordinance 2007, which came into force on 6 July 2007. They aim to help teachers and students to make reasonable and fair use of copyright works for teaching and learning purposes in appropriate circumstances without infringing copyright.

“Fair dealing”

A new “fair dealing” exemption aimed at facilitating modern teaching methods has been added to our copyright law. The exemption is found in Section 41A of the Ordinance. It applies not only to works in printed form but also to works made available on the Internet. 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*.

A specified course of study is a course provided by an educational establishment, which has the following characteristics:

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

To decide whether an act of dealing with a copyright work is “fair”, you need to consider all the circumstances, in particular:

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

The following examples would be considered “fair”:

- a student copying a small portion of a copyright work and incorporating it in

his project for illustration with acknowledgement of the source of the work.

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

The following examples would NOT be considered “fair”:

- a student copying the whole or a large portion of a textbook because he believes the textbook is too expensive (this is not fair dealing because the amount is too great and the market for the book was adversely affected).
- a teacher playing a DVD of a currently shown movie in class for students’ entertainment after exams were over (this is not fair dealing because it is a currently shown movie and it was not used for an educational purpose).

The amended Ordinance specifically addresses the issue of placing copyright works on an Intranet; however, in addition to the general considerations relating to “fair dealing”, further special restrictions apply:

An educational establishment which makes available copies of a copyright work through its Intranet for teaching purpose in a specified course of study ***MUST***:

- adopt appropriate security measures, such as requiring login username and password, so that access to the work would be restricted to the users who need to use it for teaching or learning in a specified course of study and persons who need to maintain or manage the network; and
- ensure the work is only stored for a period of time which is just long enough for the intended teaching or learning purpose. In any event, 12 months is the maximum duration allowed.

Scanning and photocopying by teachers and students

All along, *educational establishments* have been allowed to make reprographic copies (e.g. scans and photocopies) of literary, dramatic, artistic or musical works, ***to a reasonable extent***, for teaching purpose. The exception can be found in Section 45 of the Ordinance. 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.

However, this exemption is only applicable to educational establishments and students if there is no licensing scheme authorizing the copying in question. In fact, most educational establishments including subsidized schools, government schools, special

schools, grant schools and caput schools have already entered into licence agreements with the Hong Kong Reprographic Rights Licensing Society (HKRRLS). The agreements allow their teachers, staff or students (upon instruction by teachers) to make copies of printed works in *hardcopy form* for teaching and learning purpose under certain limits. On the other hand, not-for-profit educational establishments which have not entered into any licence agreement with HKRRLS may photocopy limited portions of printed works for instruction purposes according to the “Guidelines for Photocopying of Printed Works by Not-for-profit Educational Establishments”.

Furthermore, the Hong Kong Copyright Licensing Association Limited has granted a licence to kindergartens, primary and secondary schools for making photocopies of certain newspapers and magazines for internal reference and instruction purposes subject to certain limits.

For details of the above licences and guidelines, please refer to the webpage of the Intellectual Property Department at www.ipd.gov.hk/eng/education.htm.

The exemptions under Sections 41A and 45 of the Ordinance operate independently of each other. For example, an act of copying by an educational establishment or by a student that is not exempted by the reprographic copying provision under Section 45 could still be covered by the “fair dealing” exemption under Section 41A if all the criteria for “fair dealing” are satisfied.

Performance, playing of audio and video recordings at an educational establishment

All along, the following activities that take place at an educational establishment have been permitted under copyright law:

- performance of a literary, dramatic or musical work by teachers or students or by any other person for teaching purposes; or
- playing or showing of a sound recording, film, broadcast or cable programme for teaching purposes.

The exemption is contained in Section 43 of the Ordinance. However, before the Ordinance was amended, these activities were only exempted if the audience consisted of teachers, students and the parents or guardians of the students.

The scope of the audience has now been extended. The audience can now consist

wholly or *mainly* of teachers, students, parents or guardians of the students and *other persons directly connected with the activities of the educational establishment*. For example, near relatives of students may accompany the students to attend school activities in the place of their parents or guardians. The audience may also include School Management Committee members.

However, if an educational establishment organizes an activity which is open to *all* the friends and relatives of its students or to the general public, the educational establishment cannot rely on this exemption. Instead, an appropriate licence should be obtained in advance for the public performance to take place.

Liberalization in the use of parallel imports

Parallel imported copies of copyright works are genuine copies that are originally made and destined for a market outside Hong Kong, but are subsequently imported into Hong Kong without the consent of the copyright owner.

Before the Ordinance was amended, importation of (except for private and domestic use) or dealing in a parallel imported copy of a copyright work was prohibited under our law. Moreover, a person risked being found liable for using or possessing a parallel imported movie, television drama, musical sound recording or musical visual recording in business (which may include some educational uses).

The amended Ordinance has relaxed this restriction. The amendments are set out in Section 35B of the Ordinance. Educational establishments (including their libraries) may now import or possess for use parallel imported copies of copyright works without resulting in any liability. However, the copies must only be used by the educational establishments for their own internal educational or library purpose. They are not allowed to use the copies for selling, hiring, offering for sale or distributing for profit. If an educational establishment deals in parallel imported copies, it could become liable to civil or even criminal sanctions.

For details of the Ordinance, please refer to the website of the Intellectual Property Department at www.ipd.gov.hk.