

JOINT UNIVERSITY LIBRARIES ADVISORY COMMITTEE (JULAC)
FOCUS PAPER ON COPYRIGHT FOR
INTELLECTUAL PROPERTY DEPARTMENT
(18 September 2001)

A balanced copyright law will promote the advancement of society as a whole by giving reasonable access to knowledge and information, in order to encourage creativity, innovation, research, education and learning; as well as provide for the strong and effective protection of the interests of rightsholders. The necessity for a free exchange of ideas in society and the responsibility of libraries for information dissemination must be balanced against the rights of authors, publishers and copyright owners. The knowledge society and the knowledge economy are inter-dependent. Too much of a slant on the economic rights of the author or publisher can seriously damage society's right for information access, which is a very important nutrient for an information society.

The Hong Kong law needs to have a stronger sense of "fair use" as opposed to "fair dealing". "Use" puts the emphasis on the user and "dealing" leaves a great deal of interpretation in the hands of other parties. Although Hong Kong's legal heritage can be traced back to UK's legal system, we should not hold so tightly to that framework as to limit ourselves from the best and most thoughtful practices of other developed countries, such as Australia, Canada and the U.S. An overly restrictive copyright law stifles innovation and limits creativity. Overprotection of copyright could impact on social justice principles by unreasonably restricting access to information and knowledge.

The use of information for non-profit purposes by faculty, students, and staff at educational institutions should be recognized. If every time a faculty, student or staff uses information, they must first consider what are the economic impacts on the rightsholders, then this "dollar-sign" consideration will impact and detract from every research and teaching activity. Clearly recognized and defined rights will help the faculty, students and staff carry out their daily activity within the scope of the legal constraints.

Libraries collect, preserve and disseminate information. Traditionally, society has placed the responsibility for preserving information and culture on them. Copyright law should not prevent libraries from relying on new technologies to improve preservation techniques and speed dissemination. Legislation should give libraries and archives permission to convert copyright protected materials into digital format for preservation and conservation related purposes, as well as to make temporary electronic copies for Fair Use dissemination of information.

APPLICATIONS OF COPYRIGHT LAW

AUDIO-VISUAL MATERIALS

Copyright law should provide for the circulation and public viewing of AV materials for educational purposes. Restrictions placed at the front of videos by the publisher, seeking to limit the usage rights, should be secondary to Hong Kong law. For preservation and storage purposes, libraries should be permitted to store the content on campus servers and to convert present format into digital format.

ELECTRONIC or DIGITAL FORMATS

Digital copying is not different from photocopying. Libraries and educational institutions should be granted the same exemptions to make digital copies as they have for making photocopies. Such a practice is in the public interest and in line with fair practice for education and research. Without such an exemption, there is a danger that only those who can afford to pay will be able to take advantage of the benefits of the Information Society.

Transient or temporary copies which are incidental to the use of copyright material should be excluded from the scope of the reproduction right.

LIBRARY RESERVE

At the request of a faculty member, a library may photocopy and place on reserve excerpts of copyrighted works in its collection in accordance with the concept of Fair Use. The library may scan and create electronic copies of this material so long as the material is used for instructional purposes and access is limited to the institution's students.

Instructors may place examination papers on Library Reserve, even though they may contain excerpts from copyrighted material, such as formulas, maps, pictures, etc.

INTER-LIBRARY LOAN

Where the law permits libraries to provide copies of articles to individuals or to other libraries, they should be permitted to fax or provide electronic copies in lieu of photocopies. Where the law requires the requester of an

ILL to sign a declaration, a valid login and password or other form of electronic signature should be sufficient.

USE OF THE INTERNET

Academics use the Internet to speed the exchange and flow of information. Hong Kong law should not restrict this flow by requiring or implying that material on the Internet may only be linked to (hyperlinked) after gaining the copyright holders permission. If the copyright holder does not want people linking to their site, then they have an easy remedy by simply restricting access by IP address or password controls. The law should not seek to restrict access and it should clearly recognize, that while it is illegal to make an unauthorized copy of material from another's site, it is certainly legitimate to link to the site for viewing, and to encourage others to view, the material.

PHOTOCOPYING FOR CLASSROOM USE

The document *Copyright in Education in Hong Kong* distributed by the Intellectual Property Department, calls for a "create your own materials" approach as the preferred method to illustrate real-life material, such as art works or newspaper articles, for use in classroom teaching. It is unrealistic to suggest, as this booklet does, that teachers should attempt to draw their own 'cubist' picture, rather than copy a picture from an art book; or that teachers should write their own newspaper articles, rather than use the example of a polished professional news reporter. Fair Use provisions should clearly cover such copying, so that teachers may use the appropriate material for instruction, and are not called upon to create their own 'Mona Lisa' at the learning expense of the students.