



Copyright Law Updates

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Background

- Government introduced further amendments to the Copyright Ordinance in April 2001
 - One amendment was the provision for criminal sanctions against infringements of copyright works

- Why?

To combat what the copyright owners (i.e. software, publishing and recording industries) claimed were serious infringements of copyrighted works, especially:

 - Corporate computer copyright privacy activities
 - Bootlegging in places of public entertainment

Background: Reaction to Criminal Sanction

- Public uproar (particularly from the education sector)
- Government suspended end-user possession criminal liability provision in the Copyright Ordinance in April 2001, except for:
 - Computer programmes
 - Movies
 - Television dramas
 - Musical recordings.
- Six years later (6 July 2007) The Copyright (Amendment) Ordinance 2007 was passed by the LegCo

Rights of education sector before the amendment

Section 38

- Allows the use of copyright works, to a reasonable extent (fair dealing), for research and private studies.

Section 39

- Allows the use of copyright works, to a reasonable extent (fair dealing), for criticism, review and news reporting.

Section 40

- Allows the *incidental* inclusion in an artistic work of sound recording, film, broadcast or cable programmes.



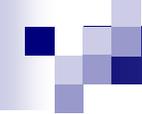
Rights of education sector before the amendment (Con't)

Section 41

- Allows teachers (but not students) to use copyright literary, dramatic, musical or artistic works in the course of giving instruction and for the purpose of examinations (e.g. setting questions).

Section 42

- Allows the inclusion of a short passage from a published literary or dramatic work in a collection for educational purposes, provided that the collection comprises mainly materials in which no copyright subsists and the copyright work is probably acknowledged.



Rights of education sector before the amendment (Con't)

Section 43

- Allows schools to use literary, dramatic or musical work in a school performance attended by teachers and students only.

Section 44

- Allows schools to record broadcast or cable programmes provided that there are no licensing schemes available.

Section 45

- Allows teachers to make photocopies of copyright printed works, to a reasonable extent, for the purpose of giving instruction provided that there are no licensing schemes available.

Constraints on education sector before the amendment

- The Ordinance provided no stipulations to assess reasonableness in reprographic copying for the purpose of instruction without having to obtain the consent of the copyright owners.
- No “rule of thumb”

Response to Problem of No Guidelines

September 2002 –

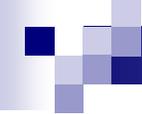
Government issued the *Guidelines for Photocopying of Printed Works by Not-for-Profit Educational Establishments* for the education sector.

March 2004 –

The Guidelines were revised to cover newspaper articles.

But.....still not very useful

1. The 'three-day rule' of the Guidelines renders the Guidelines almost useless because teachers cannot afford to prepare their teaching materials within three days before the lecture.
2. The Guidelines pre-empts the repetitive (or consecutive) use of the copyrighted work in the classrooms.



Main proposals of the Copyright (Amendment) Bill 2007:

(in force since 6 July 2007)

- Improve the copyright exemption system
- Relax legal provisions against parallel importation
- Strengthen enforcement efforts
- Subject of further discussion....
 - Strengthen the copyright protection system



Impacts of the Bill on Education Sector



Liberation in the Use of Parallel Imports

Section 35B

- Educational establishments (including their libraries) may now import or own parallel imported copies of copyrighted works
- No liability as long as the copies are only used by the educational establishments for their own internal educational or library purpose.

New Permitted Act for Persons with a Print Disability

Section 40C

- To allow the making of specially adapted copies of copyright works for persons with a print disability without infringing the copyright of the works concerned on condition that:
 - (a) the adapted copies cannot be obtained at a reasonable commercial price;
 - (b) the relevant copyright owner is notified within a reasonable time before or after the specially adapted copies are made or supplied to persons with a print disability.

“Fair Dealing” Provision

Section 41A

“Fair dealing” provisions added to allow teachers and students to use copyrighted materials, paying attention to these conditions:

- The purpose and nature of dealing (non-profit?)
- The nature of the work (what it is)
- The amount and substantiality of the portion compared to the work as whole (how much used?); and
- The effect of the use on the potential market for or value of the work.

“Fair Dealing” Provision (Con’t)

Section 41A

Further special restrictions apply **on placing copyright works on the school Intranet** when making use of the fair dealing provision:

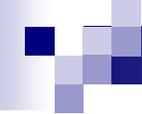
- **Access control and need-to-know**
 - password protected & only for the students of a particular class

- **Limited upload period**
 - not more than 12 consecutive months

Performance, or Playing of Audio and Video Recordings at Educational Establishments

Section 43

- Previously only teachers and students could watch or listen. The scope of the audience has now been extended to:
 - parents or guardians of the students
 - persons directly connected with the activities of the educational establishment.



Scanning and Photocopying by Teachers and Students

Section 45

- Students are now allowed to make copies of such works to a reasonable extent for learning purpose.
 - previously only teachers were allowed
 - but the availability of a licensing scheme still renders this provision useless for the education sector

Library Replacement Copies for Permanent Collection

Section 51

- Librarian or Archivist may make a copy from any item in the permanent collection
 - to preserve or replace that item; OR
 - to replace an item that has been lost, destroyed or damaged.

on condition that it is not reasonably possible to purchase a copy of that item in the market.

Strengthening Enforcement Efforts

Section 120A

- A change in time limit for prosecutions and affidavit provision, etc.
WAS: “One year from the date of discovery of the offence or three years from the date of commission of the offence, whichever is earlier.”
NOW: “Three years from the date of commission”

Why?

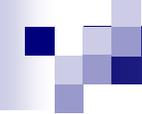
Because copyright owners frequently need to obtain evidence from overseas; increasingly complex copyright-related offences; and possible involvement of triad and syndicate elements in some cases.



Strengthening Enforcement Efforts (Con't)

Section 121

- To facilitate the proof of subsistence and ownership, an affidavit may be sworn stating on behalf of the copyright owner that the copyright owner has not licensed the defendants to do the offending acts.



Strengthening Copyright Protection

(to come into effect on a date to be appointed by
Secretary for Commerce & Economic Development)

New provisions to be introduced for **all**

1. Safe Harbour

2. Circumvention of Technological Measures

Safe Harbour

(to be made under proposed section 119B)

- A new offence against copying for distribution or distribution of infringing copies of copyright works in four types of printed works. This new offence will apply if –
 - The number of copies made or distributed exceeds the numeric limits (“safe harbour”);
 - The infringing acts are conducted on a frequent or regular basis; and
 - Financial loss is caused to the copyright owner concerned.

Safe Harbour (Con't)

- The Government will conduct public education activities to publicize these numeric perimeters of the "safe harbour" provisions before commencement of the relevant provisions:
 - Newspapers, magazines and periodicals:
1,000 copies within any 14-day period.
 - Books and academic journals:
Total retail value not exceeding \$8,000 within a 180-day period

This assumes that one infringing copy of more than 15% of the number of pages of the book concerned only will count for the purpose of calculating the retail value perimeter.

Safe Harbour (Con't)

- Even copying/distribution is done within the “safe harbour” limit, it may still constitute civil infringements.
- “Safe harbour” limit will also apply to the use of copyright works in the Intranet (but not Internet).
- Exemption for education sector:
To avoid adverse impact on classroom teaching, the Government has included in Section 119B provisions to provide exemption from criminal sanction to educational establishments which are non-profit making or subvented by the Government (but still subject to civil sanctions).

Circumvention of Technological Measures

Section 273

According to the existing Ordinance,

It may constitute a criminal offence for a person who makes for sale or hire, imports or exports for sale or hire, or deals in any circumvention tools or provides circumvention services on a commercial scale.

Proposed addition:

Very specific and limited exemptions to the civil and criminal liability for a number of activities, such as:

- ❑ Research into cryptography
- ❑ Security testing for a computer or computer system/network
- ❑ Copying for preservation and replacement purposes by the librarian or archivist of a specified library or archive.

References

A softcopy of this presentation is available at 'Copyright in Teaching and Learning' website, located at

www.hkbu.edu.hk/~gao/copyright/index.html

Government documents relating to the Bill including

- An Introduction to the Copyright (Amendment) Bill 2007
- Frequently Asked Questions on copyright protection, copyright exemptions and parallel importation are located at:
www.ipd.gov.hk/copyright.htm



Q & A Session

Safe Harbour – Magazines & Newspapers (Example 1)

A company makes for distribution 10 infringing copies each of the following news articles everyday:

- 1 news article from Newspaper A
- 2 news articles from Newspaper B
- 2 news articles from Newspaper C
- 3 news articles from Newspaper D

This company also makes for distribution 10 infringing copies each of the following feature articles within a 14-day period:

- 1 feature article from Magazine E
- 2 feature articles from Periodical F

Total number of infringing copies made for distribution within the 14-day period
= $(1+2+2+3)$ news articles x 10 copies x 14 days + $(1+2)$ feature articles x 10 copies
= 1120 + 30 copies
= 1150 copies

The extent of copying for distribution exceeds the “safe harbour”

Safe Harbour - Book or Academic Journal (Example 2)

Copies made on each occasion exceed 15% of the number of pages of a book

A company makes for distribution 10 infringing copies each of the following three reference books within a 180-day period (each book comprises 100 pages and costs HK\$300):

16 pages from Book A

16 pages from Book B

16 pages from Book C

The retail value of the infringing copies made by this company within the 180-day period

= 10 copies x 3 books x \$300

= \$9,000

Hence, the extent of copying for distribution exceeds the safe harbour.

Safe Harbour - Book or Academic Journal (Example 3)

Where copies made on each occasion do not exceed 15% of the number of pages of a book)

A company makes for distribution 10 infringing copies each of the following pages from a reference book within a 180-day period (the book comprises 100 pages and costs HK\$300):

- 10 pages from the Book on Day 1 (cumulatively 10% of the book)
- 10 pages from the Book on Day 2 (cumulatively 20% of the book)
- 10 pages from the Book on Day 3 (cumulatively 30% of the book)
- 10 pages from the Book on Day 4 (cumulatively 40% of the book)
- 10 pages from the Book on Day 5 (cumulatively 50% of the book)
- 10 pages from the Book on Day 6 (cumulatively 60% of the book)

The retail value of the infringing copies made by this company within the 180-day period

$$\begin{aligned} &= 10 \text{ copies} \times \$300 \\ &= \$3,000 \end{aligned}$$

Hence, the extent of copying for distribution **does not** exceed the safe harbour.