

HUCOM Task Force on Copyright in Education (HUCOM)

Legitimate Use of Copyright Works under the Copyright Ordinance

What is Legitimate Use?

The Copyright Ordinance allows teachers and students to use copyright works up to a “reasonable amount” for education purposes on the condition that such usage is considered as fair dealing (see paragraph 6 below).

2. Examples of fair dealing include distributing a “reasonable amount” of photocopies of copyright materials in the classroom and uploading a “reasonable amount” of copyright works onto an intranet for the purpose of teaching and learning. Examples of fair dealing in distributing paper photocopies can be found in “[Guidelines for Photocopying of Printed Works by Not-for-profit Educational Establishments](http://www.ipd.gov.hk/eng/intellectual_property/copyright/workshop/clari_fying/Eng%20guidelines%202-Aug-04.pdf)”

(http://www.ipd.gov.hk/eng/intellectual_property/copyright/workshop/clari_fying/Eng%20guidelines%202-Aug-04.pdf)

When uploading onto an institution’s intranet, one must fulfill the following requirements:

- (1) Access control, such as login password, has been adopted and materials are disseminated on a need-to-know basis (i.e. only accessible to a specific group of staff/students intended for); and
- (2) The maximum uploading period of the materials does not exceed a consecutive period of 12 months.

Course Packs

3. From time to time, faculty members, and their students, may find it more convenient to produce a course pack which contains photocopies of copyright materials as course reference. To enable that such production is legal, all UGC-funded institutions have separately entered into a licence agreement with the Hong Kong Reprographic Right Licensing Society (“HKRRLS”), an alliance of local publishers. To learn more about course packs at your institution, go to the contact list at the end of this Circular.

Warning by HKRRLS

4. Recently, the HKRRLS wrote to HUCOM institutions to draw their attention to the risk of faculty members committing copyright infringement by scanning and uploading copyright works onto the university intranet. HKRRLS has indicated that they may pursue legal action against offenders if sufficient evidence is gathered.
5. As educational establishments, member institutes of HUCOM have an obligation to uphold the protection of copyright and urge their staff members to observe the Copyright Ordinance. The above notwithstanding, we would like to point out that uploading copyright works onto the university intranet does not necessarily constitute copyright infringement if the amount of works falls within the scope permitted by the “fair dealing” provisions of the Copyright Ordinance.

Fair Dealing Provision for Educational Sector

6. Under the current Copyright Ordinance, the court will take reference to the “fair dealing” provisions in Section 41A when judging whether teachers and students have used copyright works up to a “reasonable extent” for the purpose of teaching and learning. The four conditions under the “fair dealing” provision are:
 - (a) The purpose and nature of such 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; and
 - (d) The effect of such dealing on the potential market for or value of the work.

Enquiries

7. Further enquiries on the subject can be directed to Mr. Tommy Yeung (email: tyeung@ln.edu.hk, phone 2616 8566), your institution’s representative on the HUCOM Taskforce on Copyright in Education.