

Education Bureau Circular Memorandum No. 137/2010

From : Secretary for Education
To : Heads of Kindergartens, Primary and
Secondary Schools

Ref. : EDB(EI)/EdCity/IP/4/2(8)

Date : 1 September 2010

Note for Non-profit Making Educational Establishments relating to the Use of Copyright Works in the Course of Teaching and Learning

Summary

This Circular Memorandum informs schools that the Intellectual Property Department has issued the Note for Non-profit Making Educational Establishments relating to the Use of Copyright Works in the Course of Teaching and Learning, and reminds schools of the importance of compliance with copyright law when copying and distributing printed copyright works in the course of teaching and learning.

Details

2. The Intellectual Property Department issued the Note for Non-profit Making Educational Establishments relating to the Use of Copyright Works in the Course of Teaching and Learning in June 2010. The Note reminds schools that under the existing law, non-profit making educational establishments may, subject to certain permitted acts provided under the Copyright Ordinance (Cap 528), incur civil or even criminal liability if they make or distribute an infringing copy of printed works without obtaining proper licences. A copy of the Note is attached at Annex.

3. To guard schools against inadvertent piracy, the Note also suggested some good practices that schools may adopt to promote the awareness of and respect for copyright amongst staff members.

4. For further details, please visit the relevant webpage of the Intellectual Property Department at http://www.ipd.gov.hk/eng/intellectual_property/copyright/copy_edu.htm.

Enquiries

5. For enquiries, please contact the Information Technology in Education Section at 3698 3595.

(SHE Mang)
for Secretary for Education

c.c. Heads of Sections – for information

Note for Non-profit Making Educational Establishments Relating to the Use of Copyright Works in the Course of Teaching and Learning

Purpose

This note reminds non-profit making educational establishments of the importance of compliance with copyright law when copying and distributing printed copyright works in the course of teaching and learning. It also sets out some suggested good practices which would help avoid inadvertent piracy.

Background

2. Under the existing law, non-profit making educational establishments may, subject to certain permitted acts¹ provided under the Copyright Ordinance (Cap 528), incur **civil or even criminal liability**² if they make or distribute an infringing copy of printed works without obtaining proper licences.

3. To guard against inadvertent piracy, non-profit making educational establishments are advised to ensure compliance with the copyright law in copying and distributing printed copyright works in the course of teaching and learning. Below are some suggested good practices which they may adopt to promote awareness of and respect for copyright amongst staff members.

Good Practices

Licensing Agreements

4. For non-profit making educational establishments that need to copy and/or distribute copyright works contained in printed works, the responsible staff should ensure that (i) appropriate licences have been obtained from the relevant copyright owners or licensing bodies representing the owners (such as the *Hong Kong Reprographic Rights Licensing Society Limited* (HKRRLS) which grants licences for various publication including books, periodicals etc³, and the *Hong Kong Copyright Licensing Association* (HKCLA) which grants licences for works in a

¹ The statutory permitted acts include fair dealing for purposes of giving or receiving instruction, etc. Please refer to http://www.ipd.gov.hk/eng/intellectual_property/copyright/faqs_copyright_exemptions_e.pdf and http://www.ipd.gov.hk/eng/intellectual_property/copyright/workshop/clarifying/Eng_guidelines_040604.pdf for information.

² Under s.118(1)(g) of the Copyright Ordinance, a person (including a non-profit making educational establishment) may render himself liable to criminal prosecution if he distributes an infringing copy of a copyright work to such an extent as to affect prejudicially the copyright owner. Whilst the new criminal offence prescribed in s.119B(1) of the Copyright Ordinance (or what is more commonly known as the business end-users “Copying and Distribution Offence”) does *not* apply to non-profit making educational establishments, **civil liability** may still arise should they make or distribute an infringing copy of printed works without obtaining proper licences.

³ For the licences granted by HKRRLS, please refer to the Education Bureau’s webpage (<http://www.edb.gov.hk/index.aspx?langno=1&nodeID=7322>). The licences are applicable to primary and secondary schools.

number of local newspapers and magazines⁴); and (ii) the terms of each licence still in use remain appropriate for covering the copying and distribution activities in question.

School Policy and Staff Awareness

5. Upon obtaining appropriate licences, school management should clearly set out (preferably in writing and as a matter of school policy) that all staff members must duly comply with the terms of the licences in making and/or distributing copies of printed publications. The school policy as well as the terms of the licences should be publicised and made known to all staff members. This is important for facilitating observance of the **permissible limit under the licences**⁵ for copying/distribution.

Further Information

6. For further details, please visit the relevant webpages of the Intellectual Property Department via the following links -

http://www.ipd.gov.hk/eng/intellectual_property/copyright/copy_edu.htm

http://www.ipd.gov.hk/eng/intellectual_property/copyright/copyright_ordinance.htm

Commerce and Economic Development Bureau
Intellectual Property Department
June 2010

⁴ For the licences granted by HKCLA, please refer to the Education Bureau's webpage (http://www.edb.gov.hk/FileManager/EN/Content_5565/edbcm1582009-eng.pdf). The licences are applicable to kindergartens, primary and secondary schools.

⁵ For instance, in the licence granted by HKRRLS for subsidised primary schools, it is stated that each of the licensees shall not, in any academic year, (a) copy from more than three textbooks in relation to the same course and (b) with respect to each textbook, copy more than 5% of the number of pages of the textbook.