

Education Bureau Circular Memorandum No. 74/2023

From: Secretary for Education

Ref: L/M (22) in EDB(EID/ITE)/IT/IP/4/2

Date: 21 June 2023

To: Heads of Kindergartens,
Primary and Secondary
Schools

Note for Educational Establishments on Copyright (Amendment) Ordinance 2022

Summary

This Circular Memorandum informs schools that the Intellectual Property Department (IPD) has issued the Note for Educational Establishments on Copyright (Amendment) Ordinance 2022. It reminds educational establishments that the Copyright (Amendment) Ordinance 2022 (“Amendment Ordinance”) commenced on 1 May 2023.

Details

2. IPD issued the Note for Educational Establishments on Copyright (Amendment) Ordinance 2022 in June 2023. The Note highlights the relevant copyright exceptions under the Copyright Ordinance (Cap. 528) as expanded by the Amendment Ordinance which are applicable to educational establishments, in particular for the purposes of e-learning. It also suggests some good practices that educational establishments may adopt for compliance. A copy of the Note is attached at the Annex.

3. Since the existing Licence Agreements signed by the five Schools Councils (i.e. Subsidized Primary Schools Council, Hong Kong Subsidized Secondary Schools Council, Grant Schools Council, Caput Schools Council and Hong Kong Special Schools Council), acting on behalf of their respective member schools, and the Education Bureau (EDB) acting on behalf of Government schools, and Hong Kong Reprographic Rights Licensing Society (HKRRLS) for allowing schools to photocopy and scan printed copyright materials for instructional purposes will expire on 31 August 2023, EDB, the five Schools Councils and HKRRLS are negotiating a new set of Licence Agreements (please refer to point 6 of the Annex for details). Schools covered by the aforementioned existing Licence Agreements will be kept informed of the availability of the relevant licences in due course.

4. For further details on copyright issues concerning education and the Amendment Ordinance, please visit the following webpages of IPD and Hong Kong e-Legislation.

- Copyright and Education
<https://www.ipd.gov.hk/en/copyright/faqs-and-guidance-notes/copyright-and-education/index.html>
- Copyright (Amendment) Ordinance 2022
<https://www.ipd.gov.hk/en/copyright/legislative-proposals-and-amendments/copyright-amendment-ordinance-2022/index.html>
- Copyright Ordinance (Cap. 528) (updated)
<https://www.elegislation.gov.hk/hk/cap528>

Enquiries

5. For enquiries, please contact Mr KWAN Hoi-ching at 3698 3610 of the Information Technology in Education Section.

P W YAN
for Secretary for Education

c.c. Heads of Sections - for information

Note for Educational Establishments on Copyright (Amendment) Ordinance 2022

Purpose

In view of the commencement of the Copyright (Amendment) Ordinance 2022 (“Amendment Ordinance”) on 1 May 2023,¹ this note highlights the relevant information about the copyright exceptions under the Copyright Ordinance (Cap. 528) (“CO”) as expanded by the Amendment Ordinance which are applicable to educational establishments, in particular for the purposes of e-learning.

Expanded Copyright Exceptions for Educational Establishments

2. To tie in with the introduction of a new technology-neutral exclusive communication right for copyright owners to communicate their copyright works to the public through any mode of electronic transmission (including streaming), the Amendment Ordinance expands the existing scope of certain copyright exceptions² for the education sector³, with a view to affording educational establishments greater flexibility to communicate copyright works when giving instructions (especially for distance learning) in appropriate circumstances (“expanded exceptions”).

3. The expanded exceptions provide that a person authorized by an educational establishment may, without infringing copyright/performer’s rights, **communicate to an authorized recipient** (i.e. a teacher or pupil of the educational establishment as authorized by or on behalf of the establishment to receive the communication) (“authorized recipient”), for the educational purposes of the establishment,

(a) **a recording of a broadcast or cable programme** (or a copy of such a

¹ The Amendment Ordinance can be located at:-
English version: https://www.ipd.gov.hk/filemanager/ipd/en/content_318/es12022265016.pdf
Chinese version: https://www.ipd.gov.hk/filemanager/ipd/tc/content_318/cs12022265016.pdf
The CO currently in force is available at <https://www.elegislation.gov.hk/hk/cap528>, which has included the amendments introduced by the Amendment Ordinance which came into force on 1 May 2023.

² When a copyright exception applies to the use of a copyright work in a certain defined manner, the copyright work may be so used without its owner’s prior consent.

³ See sections 41A to 45 of the CO and their equivalence in Part III of the CO in relation to rights in performances (i.e. sections 242A to 245 of the CO), and the online reference materials at <https://www.ipd.gov.hk/en/copyright/faqs-and-guidance-notes/copyright-and-education/index.html>.

recording) made in accordance with sections 44(1)⁴ and 245(1) of the CO;⁵

(b) a copy of an artistic work, a passage from a published literary, dramatic or musical work, or an extract from a published sound recording or film⁶ made in accordance with section 45(1)⁷ of the CO;⁸ and

(c) a copy of part of a published sound recording or film made in accordance with section 245A(1)⁹ of the CO.¹⁰

4. The use of the expanded exceptions is subject to the conditions that the educational establishment should **take all reasonable steps to ensure that (i) only authorized recipients receive the communication, and (ii) the authorized recipients do not make any copy or further transmission of the communication.**¹¹

5. It is important to note that the expanded exceptions become inapplicable to educational establishments where (a) licences under licensing schemes are available authorizing the communication in question; and (b) the person making the communication has knowledge or ought to have been aware of (a) above.¹²

6. Five Schools Councils (i.e. Subsidized Primary Schools Council, Hong Kong Subsidized Secondary Schools Council, Grant Schools Council, Caput Schools Council and Hong Kong Special Schools Council), acting on behalf of their respective member

⁴ Section 44(1) of the CO provides that, subject to certain prescribed conditions, an educational establishment may make a recording of a broadcast or cable programme, or a copy of such a recording, for the educational purposes of that establishment without infringing the relevant copyright. Similar permitted act concerning rights in performances is provided in section 245(1) of the CO.

⁵ See the new sections 44(1A) and 245(1A) of the CO as introduced by the Amendment Ordinance.

⁶ The categories of works of which copies may be made have been extended to cover “extracts from published sound recordings or films” under the expanded exceptions.

⁷ Amended section 45(1) of the CO provides that, subject to certain prescribed conditions, an educational establishment for the purposes of giving instruction, or a pupil for the purposes of receiving instruction in a specified course of study provided by an educational establishment, may, to a reasonable extent, make copies of artistic works, passages from published literary, dramatic or musical works or extracts from published sound recordings or films without infringing the relevant copyright.

⁸ See the new section 45(1A) of the CO as introduced by the Amendment Ordinance.

⁹ New section 245A(1) of the CO allows an educational establishment to make a copy of part of a published sound recording or film for the educational purposes of the establishment without infringing the relevant rights in performances.

¹⁰ See the new section 245A(2) of the CO as introduced by the Amendment Ordinance.

¹¹ See the new sections 44(1A)(b), 45(1A)(b), 245(1A)(b) and 245A(2)(b) of the CO as introduced by the Amendment Ordinance.

¹² See the new sections 44(2), 45(2), 245(2) and 245A(3) of the CO as introduced by the Amendment Ordinance.

schools, and the Education Bureau (EDB) acting on behalf of Government schools, have entered into a set of Licence Agreements with the Hong Kong Reprographic Rights Licensing Society (HKRRLS) for allowing schools to photocopy and scan printed copyright materials for instructional purposes, on a licence fee which is paid by the EDB to the HKRRLS on a yearly basis. The aforementioned existing Licence Agreements which took effect from 1 September 2018 will expire on 31 August 2023 (Please refer to [EDBCM No. 149/2018](#) for details). The EDB, the five Schools Councils and the HKRRLS are negotiating a new set of Licence Agreements which will ensure coverage of communication of certain copyright materials for educational purposes under the scope of the expanded exceptions in point 3 above. In the interim, the EDB understands from the HKRRLS that no licensing scheme authorizing the acts of communication as described in point 3 above will be made available by the HKRRLS during the period from 1 May 2023 to 31 August 2023 pending the outcome of its negotiation with the EDB and the five Schools Councils for a new set of Licence Agreements. In this connection, schools covered by the aforementioned existing Licence Agreements may, where appropriate, rely on the expanded exceptions in point 3 above (in relation to copyright works under HKRRLS's administration) during the aforesaid period subject to their full compliance of the conditions set out in point 4 above. These schools will be kept informed of the availability of the relevant licences in due course.

Good Practice

7. After the commencement of the Amendment Ordinance on 1 May 2023, an educational establishment should, as a matter of good practice, notify (preferably in writing) all staff members that the latter, when applying the expanded exceptions, must observe their scope (per point 3 above) and also comply with their relevant conditions (per point 4 above). Such conditions do not set out what constitutes “reasonable steps” for compliance. Whether the steps taken by an educational establishment are “reasonable” or not have to be determined with reference to the actual circumstances, such as technological developments, resources and technical expertise available to the educational establishment in question.

8. As an illustration of good practice, an educational establishment should deploy suitable technical measures, such as disabling certain downloading or copying functions in the communication, restricting access by implementing login requirements, etc. (which are commonly adopted in the digital environment) to ensure that copyright

works may not be reproduced or disseminated outside the scope of the expanded exceptions.

Further Information

9. For further details on copyright issues concerning education and the Amendment Ordinance, please visit the following webpages of the Intellectual Property Department and Hong Kong e-Legislation.

Copyright and Education

<https://www.ipd.gov.hk/en/copyright/faqs-and-guidance-notes/copyright-and-education/index.html>

Copyright (Amendment) Ordinance 2022

<https://www.ipd.gov.hk/en/copyright/legislative-proposals-and-amendments/copyright-amendment-ordinance-2022/index.html>

Copyright Ordinance (Cap. 528) (updated)

<https://www.elegislation.gov.hk/hk/cap528>

Intellectual Property Department
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