

# Frequently Asked Questions (FAQs) on Using Copyright Works for Teaching Purposes

(The questions and answers herein are provided for reference only and do not constitute as legal advice. Please read the questions and answers in conjunction with the publications of the Intellectual Property Department (IPD): “[Copyright in Education in Hong Kong](#)” and “[Hong Kong’s Amended Copyright Law: a Guide for Teachers and Students](#)”. Readers should seek independent legal advice for any queries.)

## **I. Preparing and sharing of Teaching Materials**

**Q1 According to the primary considerations relating to “fair dealing”, copies of teaching/learning materials for teaching purposes should not be stored in the intranet for more than 12 months. Do schools have to delete the teaching/learning materials concerned before the time limit is reached?**

**A** Under Section 41A(5) of the Copyright Ordinance, if schools wish to use the fair dealing exemption to store copies of teaching/learning materials in the intranet and provide them to teachers/students for instruction purposes, they should ensure that the copies of the work are not stored in the intranet for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study or, in any event, for a period longer than 12 consecutive months. Schools should follow the above requirements to protect the interests of copyright owners.

On the other hand, if schools have licence agreements with the relevant copyright owners or their agents, they can determine the period of storage according to the terms stipulated in the agreements.

**Q2 If teachers make reference to questions in textbooks to prepare worksheets and distribute them to students, does it constitute any copyright infringement?**

**A** Copyright only prohibits substantial copying of the copyright work and does not grant copyright owners a monopoly over the use of the underlying ideas or information. Thus, if teachers only incorporate the ideas or reproduce an insubstantial part of the questions in textbooks to prepare worksheets, it does not constitute copyright infringement.

However, if substantial part of the questions in textbooks has been reproduced, teachers should ensure that either the conditions under the relevant copyright exemption are met, or the copying has been authorised by the relevant copyright owners or their agents. Otherwise, it constitutes copyright infringement.

**Q3 If teachers make reference to the content of textbooks or storybooks and produce a similar work (e.g. making minor changes to wordings, pictures or names of characters) and distribute them to students to read or use, does it constitute any copyright infringement? (New)**

**A** It depends on whether there is substantial copying of the copyright work. For details, please refer to Q2.

Moreover, in determining whether a copyright restricted act may be done with reference to the copyright exemptions specified in the Copyright Ordinance, the primary consideration is that the act does not conflict with a normal exploitation of the work by the copyright owner and does not unreasonably prejudice the legitimate interests of the copyright owner. All copyright exempted acts do not and should not be used to avoid the purchase of legitimate copies of works available in the market, nor to save money for students or teachers.

**Q4 According to the licencing agreements between the schools and Hong Kong Reprographic Rights Licensing Society (HKRRLS), when teachers quote a copyright work, they are not allowed to edit or amend its contents. Suppose teachers input a small portion of a copyright work into the computer, make typographical changes to and excerpts from the work, and then distribute it to students for learning, does it constitute any copyright infringement? (New)**

**A** Since this act falls outside the scope specified in the licensing agreements between the schools and HKRRLS, if teachers want to do so, they must either seek prior consent from the copyright owners or their agents, or ensure that the act fulfils the relevant conditions under the various copyright exemptions, otherwise it will constitute copyright infringement.

According to Section 41A of the Copyright Ordinance - Fair dealing for purposes of giving or receiving instruction, teachers and students are allowed to use or deal with reasonable portions of copyright works in a fair manner for teaching and learning in a specified course of study. To decide whether an act of dealing with a copyright work is “fair”, all the circumstances of the case shall be taken into account and, in particular:

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
- (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 the dealing on the potential market for or value of the work.

The above exemption may apply when teachers copy a small portion of a copyright work for teaching purposes.

**Q5 To facilitate the access to the work by students with a print disability, suppose teachers adopt different ways to make specially adapted copies of books and textbooks (such as large-print, electronic version or sound recording). Does it constitute any copyright infringement? (Revised)**

**A** The Copyright Ordinance provides certain copyright exemptions for persons with a print disability. It is not a copyright infringement if a person with a print disability and specified bodies (such as non-profit making schools) make “accessible copies” (e.g. Braille, large-print, sound recording, or electronic version) to facilitate the access to the work by persons with a print disability, provided that the conditions specified in the Copyright Ordinance are fulfilled (such as making reasonable enquiries to be satisfied that accessible copies cannot be obtained at a reasonable commercial price).

For more details about this copyright exemption, please refer to

[http://www.ipd.gov.hk/eng/intellectual\\_property/copyright/copyright\\_exemption.htm](http://www.ipd.gov.hk/eng/intellectual_property/copyright/copyright_exemption.htm)

**Q6 If teachers make copies of Hong Kong currency notes with different face values and show them to students for teaching purposes, does it violate the law? (New)**

**A** Pursuant to Section 103 of the Crimes Ordinance (Cap 200 of the Laws of Hong Kong), anyone who wishes to reproduce the whole or any part of any Hong Kong currency note in any form must apply in writing to the Monetary Authority for approval. No reproduced images should be submitted with the application as such an action would amount to a breach of Section 103 of the Crimes Ordinance.

If the Monetary Authority gives approval for the reproduction, the views of the relevant note-issuing bank or the Information Services Department (for \$10 notes issued by the government) should also be sought, in case the reproduction would in any way infringe its copyright. The Hong Kong Monetary Authority (HKMA) has published the “New Hong Kong Bank Notes” leaflet, which introduces the design and security features of Hong Kong banknotes. The leaflet has been uploaded onto the HKMA website.

[http://www.hkma.gov.hk/eng/currency/2010\\_series/banknote\\_leaflet.pdf](http://www.hkma.gov.hk/eng/currency/2010_series/banknote_leaflet.pdf)

Teachers may also contact the HKMA to obtain copies of the leaflet (email address: [hkma@hkma.gov.hk](mailto:hkma@hkma.gov.hk))

When introducing the designs and security features of Hong Kong banknotes, teachers may explain to their students Section 103 of the Crimes Ordinance and remind them to observe this provision.

**Q7 If teachers download online newspapers or articles from the Internet and forward them to all students in the school through email, does it constitute any copyright infringement? Will there be any difference if teachers only upload / share / forward the articles via hyperlinks? (New)**

**A** If the teachers have obtained the authorisation from the relevant copyright owners to download, forward or share the articles, the act of forwarding the articles to students through email does not constitute copyright infringement. If the teachers have not been authorised by the relevant copyright owners, unless the downloading and sharing is for the purposes of giving and receiving instruction and has fulfilled the conditions of “fair dealing”, such as for teaching purposes in a specified course of study and only reasonable portions are downloaded etc, it may constitute copyright infringement.

If the link that the teachers share merely provides those who click on it a means to access materials on another website, and the teachers who share the link do not distribute an infringing copy of the copyright work (e.g. by uploading an infringing copy to a website for others to download), the mere act of sharing a link will not constitute copyright infringement.

**Q8 If schools have paid the Hong Kong Examinations and Assessment Authority (HKEAA) licence fees, can teachers make copies of the past HKCEE/HKALE question papers, the HKDSE Examination question papers, sample papers and practice papers for instruction purposes? (New)**

**A** Subject to the schools’ payment of licence fees and compliance with the terms and conditions of the licence, the HKEAA grants schools the right to make copies of the past HKCEE/HKALE question papers and HKDSE Examination question papers, sample papers and practice papers for instruction purpose within the licence period. The number of copies made must not exceed the number permitted under the licence.

For details of the licence terms and conditions on the use of examination materials, please refer to the HKEAA website:

<http://www.hkeaa.edu.hk/en/resources/publications/licence/>

**Q9 Can schools download question papers of Territory-wide System Assessment (TSA) from the HKEAA webpage and make copies to students for instruction purpose? (New)**

**A** Teachers who wish to use TSA question papers should apply to the HKEAA by post or through email and include details such as the name of the school, the subject and

the level of the question papers requested, the number of copies to be made and the purpose of use in the application. The HKEAA will reply and provide the enquirers with the points to note on using the question papers based on the information provided.

Postal address :

General Manager - Education Assessment Services  
Hong Kong Examinations and Assessment Authority  
9/F, Stelux House,  
698 Prince Edward Road East,  
San Po Kong, Kowloon

E-mail address:

[copyright@hkeaa.edu.hk](mailto:copyright@hkeaa.edu.hk)

**Q10 Suppose teachers want to forward an article extracted from a book, should they contact the publisher or the author to seek authorisation?**

**A** Teachers may first contact the publisher since most publishers own the copyright in their publications. In case the publisher is not the copyright owner, teachers may still reach the relevant copyright owner through the publisher.

**Q 11 If a school has obtained the authorisation from the copyright owner to allow it to make copies of his/her work, is there any statutory time limit for the authorisation? (New)**

**A** It depends on the terms and conditions of the agreement that the school and the copyright owner made. There is no fixed statutory time limit as such.

## **II. Tests and Examinations**

**Q12 According to the Copyright Ordinance, when teachers set questions for the purposes of an examination, it is an act permitted by the law. What if teachers set questions for the purposes of a test or classroom assessment? Will it be regarded as an act permitted by the law as well?**

**A** According to Section 41(3) of the Copyright Ordinance, copyright is not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to the candidates or answering the questions. Yet, the copyright exemption does not extend to the making of a reprographic copy of a musical work for use by candidates in performing the work.

The Copyright Ordinance does not provide a clear definition of “examination”. Teachers should be careful in dealing with assessment activities other than setting examination questions. If teachers use reasonable portions of copyright works in tests or classroom assessments, it would not be a violation of the Copyright Ordinance. There is however, no clear definition of “reasonable portions”, and it has to be determined on case by case basis.

**Q13 Are teachers permitted under the law to use copyright work (e.g. HKEAA past examination questions or textbook questions) in setting questions for the purpose of an examination? Is there any restriction on the portion of use? Can the examination questions be shared with other educational practitioners?**

**A** For details regarding the copyright exemption for the purpose of an examination, please refer to Q12.

Please note that a copy made under this exemption may not be sold, let for hire, or offered or exposed for sale or hire. Besides, in determining whether a copyright restricted act may be done with reference to the copyright exemptions specified in the Copyright Ordinance, the primary consideration is that the act does not conflict with a normal exploitation of the work by the copyright owner and does not unreasonably prejudice the legitimate interests of the copyright owner. All copyright exempted acts do not and should not be used to avoid the purchase of legitimate copies of works available in the market, nor to save money for students or teachers.

**Q14 Can schools arrange four mid-term examinations to replace the regular uniform tests so as to make use of the copyright exemptions specified in the Copyright Ordinance?**

**A** According to Section 41(3) of the Copyright Ordinance, copyright is not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to the candidates or answering the questions. This exemption mainly aims at allowing schools to set questions to assess students’ performance. Since the Copyright Ordinance does not provide a clear definition of “examination”, teachers should be careful in dealing with assessment activities other than setting examination questions. Please also note the copyright exemption does not extend to the making of a reprographic copy of a musical work for use by candidates in performing the work.

**Q15 Suppose teachers have adopted questions from textbooks in preparing exercises or quizzes for their students, and they have specified the sources in doing so. Can this practice exempt them from violation of Copyright Ordinance?**

**A** If teachers prepare the questions merely for daily exercises or quizzes, the copyright

exemption for the purposes of examination may not be applicable. If the exercise prepared is for teaching purpose in a specified course of study, the “fair dealing” exemption for educational purpose under the Copyright Ordinance may be applicable. To decide whether an act of dealing with the questions from the publisher is “fair”, all the circumstances of the case shall be taken into account and, in particular:

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
- (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 the dealing on the potential market for or value of the work.

### **III. Multi-media broadcast and production**

**Q16 If teachers/students play songs in a song dedication activity organised by the school, does it constitute copyright infringement?**

**A** A song usually incorporates several underlying copyright works (for example, the melody as a musical work, the lyrics as a literary work and the recording itself as a sound recording) and are all protected under the Copyright Ordinance.

Unless the activity is an act expressly exempted by law, the performing, showing or playing of a copyright work in public without the authorisation by the relevant copyright owners or their agents constitutes an act of copyright infringement.

If the song dedication activity is for the purpose of giving or receiving instruction, and the audience consisting wholly or mainly of teachers, pupils, their parents or guardians and other persons directly connected with the activities of the educational establishment, the copyright exemption under Section 43 of the Copyright Ordinance may apply.

Besides, according to Section 41A of the Copyright Ordinance, teachers and students are allowed to use or deal with reasonable portions of copyright works (including songs) in a fair manner for teaching and learning in a specified course of study. To decide whether an act of dealing with a copyright work is “fair”, all the circumstances of the case shall be taken into account and, in particular:

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
- (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 the dealing on the potential market for or value of the work.

**Q17 If teachers want to make use of songs on the Internet, but they are unable to locate information about the relevant copyright owners, or that the copyright owners of the songs are being known but cannot be reached due to various reasons. Does it constitute copyright infringement if the teachers use the work concerned?**

**A** Unless copyright exceptions apply, the use of any copyright work (including songs on the Internet) without the permission of the copyright owners is an act of copyright infringement, which may subject to civil claims from copyright owners.

**Q18 Suppose a school has booked an external venue for public performance which involves playing of songs, and the public can buy tickets to watch the performance. Does the school need to apply for an appropriate licence?**

**A** Yes. The fair dealing exception under the Copyright Ordinance is applicable only where copyright works are used for giving or receiving instruction in a “specified course of study”. Moreover, since the audience of the performance includes members of the public, the school should enter into licence agreements with the relevant copyright owners or their agents in advance (for example the Composers and Authors Society of Hong Kong Limited (CASH), Phonographic Performance (South East Asia) Limited (PPSEAL) and Hong Kong Recording Industry Alliance Limited (HKRIA)) when preparing for the event.

In addition, the school can consult the site manager to clarify the points to note in relation to copyright matters.

**Q19 If schools play English songs during lunch hour and require students to complete corresponding exercises in order to enhance their English standard, can it be a “specified course of study” under the “fair dealing” exception? If no, do the schools infringe any copyright?**

**A** The “fair dealing” exception for educational purpose applies to teachers and students who give or receive instruction in a specified course of study provided by an educational establishment only.

A specified course of study refers to

- (a) a course developed on the basis of curriculum guidelines issued or endorsed by the Curriculum Development Council; or
- (b) a course consisting of an assessment of a student’s ability and skills that leads to

an award of qualification.

In determining whether the act of playing English songs constitutes “fair dealing”, all the circumstances of the case shall be taken into account and, in particular-

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
- (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 the dealing on the potential market for or value of the work.

In addition, if the act of playing English songs is for the purposes of giving or receiving instruction, and the audience of the activity consists mainly of teachers, students, parents or guardians of the students and persons directly connected with the activities of the educational establishments, the copyright exemption under Section 43 of the Copyright Ordinance may also apply.

**Q20 If teachers lend their private copies of English CDs to their students to enhance their learning, does it constitute any copyright infringement?**

**A** So long as the CDs are legitimate copies, and there is no rental agreement involved, it does not constitute copyright infringement.

**Q21 Suppose students perform songs that are not in the public domain in a Karaoke competition organised by the school, will the school violate the Copyright Ordinance?**

**A** Whether this act serves educational purpose is questionable. Therefore, the copyright exceptions for the education sector under the Copyright Ordinance (Please refer to Q&A 16 for more details) may not be applicable.

If no copyright exemption is applicable, schools should consult the music licensing bodies such as the Composers and Authors Society of Hong Kong Limited (CASH), the Phonographic Performance (South East Asia) Limited (PPSEAL) and the Hong Kong Recording Industry Alliance Limited (HKRIA) or the relevant copyright owners to procure licences or reach an agreement with them.

**Q22 If schools use copyrighted music in the performance of a ceremony, and record the performance in CDs for distribution to parents or other school sponsoring bodies, does it constitute copyright infringement?**

**A** Even the schools have obtained permission from the copyright owners to use copyrighted music in the performance of the ceremony, the schools still have to seek

prior consent from the performers and the copyright owners of the music before recording or reproducing a fixation and issuing or making available copies of fixation to the public (e.g. through the Internet). Otherwise, it may infringe the rights of the copyright owners / performers.

**Q23 If teachers play YouTube videos in classroom for teaching purposes, will they violate the Copyright Ordinance?**

**A** Section 43 of the Copyright Ordinance allows schools to play or show a sound recording, film, broadcast or cable programme (including YouTube videos) before teachers, pupils and parents or guardians of pupils at the schools for the purposes of giving or receiving instruction and it will not constitute copyright infringement.

**Q24 If schools upload videos of students' performances with copyrighted music onto the school webpage or YouTube, do they need to bear any legal liability?**

**A** Using copyrighted music in a video and uploading the finished product onto the school webpage or YouTube involves copying of the copyrighted music and making available (e.g. through the Internet) copies of copyrighted music to the public, which are both copyright restricted acts. Unless copyright exceptions apply, the doing of any copyright restricted act in respect of a copyright work without the authorisation of the copyright owners or their agents is an act of copyright infringement.

On the other hand, schools should seek prior consent from the performers and the copyright owners of the music before recording or reproducing a fixation, issuing or making available (e.g. through the Internet) copies of fixation to the public. Otherwise, it may infringe the copyright of the copyright owners / performers.

Schools should avoid using copyright works as background music without seeking the consent of copyright owners. Schools may consult the copyright licensing bodies such as the Composers and Authors Society of Hong Kong Limited (CASH) to obtain permission to use and reproduce the copyrighted music concerned.

**Q25 To facilitate the smooth playing of the videos, teachers will download the YouTube videos in advance and the downloaded videos may be played without relying on any network connection. Is it acceptable if teachers shall delete the videos immediately after using it? If teachers upload the downloaded YouTube videos to the school intranet for students' self-learning, does it violate the Copyright Ordinance? (Revised)**

**A** The Copyright Ordinance does not contain any statutory exception on the downloading of videos from sharing websites such as YouTube. If such downloading is done for the purposes of giving or receiving instruction in a

specified course of study, whether the “fair dealing” exception for educational purposes under the Copyright Ordinance applies has to be determined on a case by case basis, taking into account different factors such as the amount of copyright work downloaded, the purposes for downloading, the treatment of the copies after downloading, as well as the potential economic loss to the copyright owner, etc.

For details of playing videos for education purpose, please refer to Q23.

Moreover, if the conditions listed on the fair dealing exception (Section 41A of the Copyright Ordinance) are fulfilled, teachers do not infringe copyright by storing videos on the school intranet.

**Q26 If libraries lend video discs to students, will they violate the Copyright Ordinance?**

**A** The Copyright Ordinance grants copyright owners the exclusive right to rent the copies of the following works to the public: (a) a computer programme; (b) a sound recording; (c) a film; (d) a literary, dramatic or musical work included in a sound recording. However, since libraries lending video discs to students do not involve any direct or indirect economic or commercial interest, such behaviour does not constitute a “rental activity” which is restricted under the Copyright Ordinance. Hence, it is not restricted under the Copyright Ordinance.

**Q27 To promote reading, teachers make video records of contents of books to share with students, which are played in schools during lunch hours and uploaded onto the school intranet. Do teachers violate the Copyright Ordinance in this case?**

**A** If the activity fulfils the conditions listed in Section 41A of the Copyright Ordinance, teachers and students are allowed to use or deal with reasonable portions of copyright works (including books) in a fair manner for teaching and learning in a specified course of study and will not constitute copyright infringement.

In addition, under the Copyright Ordinance, fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, if it is accompanied by a sufficient acknowledgement, does not infringe any copyright in the work.

**Q28 When producing videos for teaching purposes, the videos may involve students role playing cartoon characters which are subject to copyright protection as well as using products containing trademarks as props. Does it constitute any copyright or trade mark infringement?**

**A** The inclusion of a copyright work in a video recording involves copying of the copyright work. If such an act has not been authorised by the copyright owner and none of the copyright exceptions apply, there may be copyright infringement.

If the costumes worn by students are original legitimate items and the video is produced for teaching purpose in a specified course of study, the “fair dealing” exemption for educational purpose under the Copyright Ordinance may apply. In deciding whether a dealing with a copyright work is “fair”, all the circumstances of the case shall be taken into account and, in particular:

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
- (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 the dealing on the potential market for or value of the work.

In addition, generally speaking, if any person uses in the course of trade or business a sign which is identical or similar to the trade mark in relation to goods or services which are identical or similar to those for which it is registered, it may constitute an infringement of a registered trade mark. Even if the trade mark is not registered, such use may be subject to civil liabilities under the common law action of “passing-off”. However, the use of products containing trademarks as props in drama for teaching purpose does not involve the use of trademark to identify any particular good or service in the course of trade or business, as such it does not constitute trade mark infringement.

**Q29 Can teachers play the whole film in lesson to help students finish a film commentary assignment?**

**A** Section 43 of the Copyright Ordinance allows schools to play or show a sound recording, film, broadcast or cable programme (including YouTube videos) before teachers, pupils and parents or guardians of pupils at schools for the purposes of giving or receiving instruction. Since Section 43 of the Copyright Ordinance states that playing a film under the above condition is not a public performance, it does not constitute copyright infringement. However, in determining whether a copyright restricted act may be done with reference to the copyright exceptions specified in the Copyright Ordinance, the primary consideration is that the act does not conflict with a normal exploitation of the work by the copyright owner and does not unreasonably prejudice the legitimate interests of the copyright owner. All copyright exceptions do not and should not be used to avoid the purchase of legitimate copies of works available in the market, nor to save money for students or teachers.

**Q30 If schools or teachers purchase videos to play in lessons, does it constitute copyright infringement? Will there be any difference if a “not for public showing” (including in lessons) statement has been included in the videos? (New)**

**A** For details of playing videos in lessons, please refer to Q23.

Although the Copyright Ordinance contains several copyright exemptions for educational purpose, if the videos contain other terms of use that prohibit public showing (including in lessons), the playing of videos in lessons by teachers does not infringe copyright but may violate the contract agreement with the copyright owners.

**Q31 If schools show films with educational value during the post examination period, does it constitute any copyright infringement? (New)**

**A** According to the existing copyright exemptions on playing or showing copyright works, the relevant activity must serve the purpose of giving or receiving instruction. If the activity does not meet the conditions of any copyright exempted acts and the schools have not been authorised by the copyright owners or their agents to do so, it will constitute copyright infringement.

#### **IV. Rights and Liabilities / Ownership**

**Q32 If schools quote newspaper articles in their publications for the purposes of educating parents, does it violate the Copyright Ordinance?**

**A** The “fair dealing” exemption for educational purpose under the Copyright Ordinance applies to teachers and students who give or receive instruction in a specified course of study provided by an educational establishment only. Since parents are not students of the schools, the exemption does not apply.

On the other hand, schools may explore whether there is other copyright exemption applicable. For example, under Section 39(1) of the Copyright Ordinance, fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, if it is accompanied by a sufficient acknowledgement, does not infringe any copyright in the work.

If there is no copyright exemption applicable, schools should contact the relevant copyright owners or their agents (such as HKRRLS) to obtain permission from or reach an agreement with them.

**Q33 Since the copyright of works created by the employees belong to their employers, do the copyrights of teachers' works (e.g. teaching plans and art work demonstrations) belong to their school sponsoring bodies?**

**A** Unless there are contrary provisions in the employment contract, the copyright of the works created for teaching purpose will normally belong to the employer (e.g. the school sponsoring body)

For teachers who are not government employees, if a work is exploited by the employer (or any person with the employer's permission) in a way that could not reasonably have been contemplated by the employer and the teacher at the time of making the work, the teacher is entitled to a reasonable award.

**Q34 If a school has received a copyright infringement notification, who will be legally liable?**

**A** Copyright in a work is infringed by a person who does, or authorises another person to do any of the acts restricted by the copyright (such as copying) without the licence of the copyright owner, unless the act is expressly excepted by the law. The copyright owner can take civil legal action against any person(s) who infringes the copyright in the work, and seek all necessary relief against the infringer, such as an injunction to prevent further infringement, an award for damages as well as costs, etc.

In addition, under certain circumstances (such as distributing an infringing copy of a copyright work to such an extent as to affect prejudicially the owner of the copyright, knowingly possessing an infringing copy of a computer program for use in schools' activities etc), relevant persons may also be subject to criminal liabilities.

Remark : Section 119B of Copyright Ordinance Offence in relation to the copying and distribution offence is not applicable to government schools and non-profit making educational establishments..

**Q35 If serving or outgoing teachers of a school share teaching resources with teachers serving at other schools, will it infringe the copyright of the school?**

**A** With reference to Q33, generally speaking, the copyright of works created by teachers for teaching purpose normally belongs to their employer (e.g. the school sponsoring body). In other words, unless there are contrary provisions in the employment contract , or permission from the school has been obtained, there is an infringement of the school's copyright if serving or outgoing teachers copy or distribute the teaching resources concerned,.

On the other hand, if the school does not have special requirements, provided that no copyright restricted acts (e.g. copying or distributing) are involved, teachers can share the copy of teaching resources with other teachers.

**Q36 If a school wants to publish their students' literary/artistic works in school publications, will it infringe the copyright of the creators?**

**A** Students' literary/artistic works are protected under the Copyright Ordinance. If the school wants to publish their students' literary/artistic works, they should seek prior permission from the students or their parents / guardians.

**Q37 If a school want to upload photos or videos of students onto the school webpage or YouTube, is it necessary to obtain a letter of consent from all students concerned before doing so?**

**A** If the school wants to upload photos or videos of students onto the school webpage or YouTube, it is suggested to obtain permission from the students concerned or their parents / guardians.

**Q38 Suppose a school has obtained he copyright owner's permission to put his articles on the school intranet, but the intranet webpage is now being transformed into a mobile app. Is it necessary to ask for further permission from the copyright owner?**

**A** The school should check if the original agreement allows it to change the mode of use of the copyright work. If not, the school should seek further permission from the copyright owner.

**Q39 If schools have already purchased the original scores, do they have to obtain prior consent from the copyright owners before performing the music in public? Can schools record the performance in a CD and provide it as a gift to the performing students and sell the same for future school fund raising purposes?**

**A** Purchasing the physical copies of copyright works does not imply having the public performance rights. However, if the performance is for the purposes of giving or receiving instruction and it is conducted by a teacher or pupil in the course of the activities of the educational establishment, and the audience consists mainly of teachers and pupils at an educational establishment, parents or guardians of pupils at the establishment, and other persons directly connected with the activities of the establishment, the copyright exemption under Section 43 of the Copyright Ordinance will apply. However, such exemption does not apply to selling of CDs or other copies of fixation that include the performance of copyright works. The above principles should also be complied with for any future playing of recordings in the

schools or else may constitute copyright infringement.

## V. Others

**Q40** The parent-teacher associations of schools often receive promotional leaflets on educational discs and books from famous foreign brands. Since those books and discs are available at a considerably low price, teachers have doubts as to whether those products are legitimate copies or not. If schools assist parents in ordering the products, does it constitute any copyright infringement?

**A** If there are suspicions of infringing products, schools can report to the Hong Kong Customs for follow-up actions. (Enquiry Hotline : 2815 7711 ; Reporting Hotline : 2545 6182)

**Q41** If schools provide supplementary exercises or public examination questions in libraries for students to borrow, does it constitute any copyright infringement?

**(New)**

**A** So long as the copyright works provided for students' use are legitimate copies and there is no rental agreement involved, it does not constitute any copyright infringement.

**Q42** If teachers purchase books or dictionaries from bookstores in the mainland and provide the same in school libraries for students' reference, will it violate the Copyright Ordinance? **(New)**

**A** Schools can purchase legitimate copies of copyright works (including books, movies, television dramas, musical sound/visual recordings) from the mainland for educational purpose or for use in their libraries. It will not constitute copyright infringement.

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Education Bureau

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