

Submission on
“Preliminary Proposals for Strengthening
Copyright Protection in the Digital Environment”
by
the Concern Group of the Education Sector on Copyright Law

30 Aug 2008

General comments

1. In the Copyright (Amendment) Ordinance 2007, fair dealing with a work for the purposes of giving or receiving instruction does not infringe the copyright. We do expect that the same rationale be continue to apply in the digital environment.

Comments on the proposals

- (a) **Introduce a right of communication covering all modes of electronic transmission for copyright works, with related criminal sanctions against the breach of this right**
2. In the digital era, there are much more technical means for the copyright owners to limit the rights of a user. For example, a user who bought a book can lend it to his friend anytime he likes. However, an e-book may be protected by some technical means and can only be read with a particular computer or mobile device. Extensive use of these protective measures, together with the copyright ordinance on anti-circumvention, may practically diminished the user rights under the existing copyright ordinance and the rights under fair dealing. Therefore, further establishing an all-embracing right for copyright owners without suitable balance on re-affirming the right of the public would be very biased and unsatisfactory.
 - (b) **Introduce a copyright exemption for temporary reproduction of copyright works by online service providers (“OSPs”), which is technically required for (or enables) the transmission process to function efficiently**
3. This provision is technically necessary for OSP to operate. The Concern Group agrees this proposal.
 - (c) **Facilitate the drawing up of a voluntary code of practice for OSPs in**

combating internet infringements, the compliance with which or otherwise will be prescribed in law as a factor that the court shall take into account when determining whether an OSP has authorised infringing activities committed on its service platform

4. The Concern Group agrees with the proposal to draw up a voluntary code of practice for OSPs.
5. School servers and school web sites may also provide online learning resources and being a platform for students and teachers to share their ideas and works. In this sense, a school may also play the role of OSP. However, it may be a huge burden (both financially and technically) if a school has to comply with the code of practice such as keeping access records.

(d) Continue to rely on the “Norwich Pharmacal” principles, as opposed to introducing an alternative infringer identity disclosure mechanism that is not subject to scrutiny by the court

6. The Concern Group agrees to continue to rely on the “Norwich Pharmacal” principles.

(e) Prescribe in law additional factors to assist the court in considering the award of additional damages, in lieu of introducing statutory damages for copyright infringement actions

7. The Concern Group agrees not to prescribe in law additional factors.

(f) Refrain from introducing new criminal liability pertaining to unauthorised downloading and peer-to-peer (P2P) file-sharing activities

8. The Concern Group agrees with the proposal.

New Issue: A Limited Copyright Exception for Digital Media Shifting

9. The Concern Group supports the government’s proposal to introduce copyright exception for digital media shifting.
10. School library might also need to do media shifting on video and audio works of obsolete format so as for easily accessible for learning and teaching.

11. As mentioned in para 2 above, the prohibition against activities to circumvent the technological measures applied by copyright owners may practically diminish the proposed copyright exception for digital media shifting. The Concern Group proposes that if an act of digital media shifting is legal, it should remain to be legal to circumvent the technological measures in order to do the media shifting.