

## **Comments and Suggestions for the Proposed Subsidiary Legislation under Copyright Ordinance (Cap.528)**

This paper demonstrates my views and suggestion on the specification of Libraries, Museums and Archives for the permitted acts under the captioned ordinance.

### ***For Section 47 and Section 50***

According to the consultation paper, the proposed specification for “specified libraries” which will have provision by Section 47 (i.e. copying articles in periodicals) or “recipient libraries” by Section 50 (i.e. receiving other library’s copies of copyright works) are those libraries that are

- not conducted for profit, **and**
- whose collection of copyright works are generally accessible to the public

My opinion: second condition “whose collection of copyright works are generally accessible to the public” is a bit problematic, especially for the wordings “accessible to the public”; because except public libraries, most of the libraries mainly serve the stakeholders of their parent institutions, e.g. university library serves students and staff of that university. Unless serving its own users (e.g student) is defined as a kind of “accessible to the public” , this condition may hinder those libraries to exercise this provision.

**Suggestion:** I believe that libraries which fulfill either one of the conditions should be covered in this provision of Section 47 and 50, in other words:

“specified libraries” are those libraries that are

- not conducted for profit, **or**
- whose collection of copyright works are generally accessible to the public

Or, providing access to collection to institution’s own users/members is also regarded as “accessible to the public”.

### ***For Secion 51***

The proposed specification for “recipient libraries, museums and archives” which will have provision by Section 51 (i.e. copying copyright work for preservation or replacement) are those libraries, museums and archives that are:

- not conducted for profit, **and**
- whose collection of copyright works are generally accessible to the public

My opinion: again, fulfilling two conditions is rather harsh for the sectors in this industry. Especially for some company archives, such as Hong Kong and Shanghai Bank Corporation Archives and Swire Group Archives, which are rather difficult to be regarded as “not conducted for profit” due to the business nature of their parent bodies (ie. bank and business corporation). While these company archives are greatly contributing to the

society by offering access services of their collection and other outreach works to the public. It will be unfair if they are excluded from the provision.

**Suggestion:** I believe that libraries, archives and museums which fulfill either one of the conditions should be covered in this provision of Section 51, in other words:

“recipient libraries, museums and archives” are those libraries/museums/archives that are

- not conducted for profit, or
- whose collection of copyright works are generally accessible to the public

By the second condition “generally accessible to the public” alone, those commercial archives whose are actively opening their collection and providing public services, could be rewarded by this provision. This will also encourage other private archives or museums to open up their collection and provide services to the public.

Finally, I would like to remind that nowadays the boundary between the definitions of “library”, “archives” and “museum” are growing blurred. It is common that some entities which carry out the name of “library”, are actually collecting archival resources (such as some special libraries) while some so-called “archives” are actually libraries in nature (simply collect general publication as collection). For fairness and for better protection for cultural heritage, it would be wise to enlarge the coverage of provision by easing the specification.