INTRODUCTION
Photocopying of reading materials, especially from the libraries is the common practices among the Malaysian university students. It is unusual to find a student without making any photocopy of reading materials from books or journals in their tenure as a student. Therefore, the photocopier, especially, has threatened publishers’ control over the works they published. A Canadian scholar once said; “Gutenberg made everybody a reader. Xerox makes everybody a publisher” (Wall, 1982).

Photocopying machines is easily found around the campus, especially in the libraries where the library itself often gives full cooperation to the machine operators. Hence, it is very hard to find a single library in the country without a machine. Usually, the librarians will appointed a machine operator company to provide photocopy services in the library. The users usually used the machine themselves or with the help of the company staffs. The charge per exposure is from five to ten cents, depends to the type of the materials photocopied and the amount of exposure.

The photocopying of copyrighted materials is now a common activity among students, educators, researchers, and indeed by people of

BOOK PHOTOCOPYING IN MALAYSIA: PROBLEMS AND PROSPECTS FOR PUBLISHERS

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Abstract
Rapid technological changes on reproduction have taken place since Second World War. However, it was only in the 1970s that the new innovations on reproduction have been introduced to the Malaysian market, and the demand is steadily increasing. This reprographic revolution brought the modern mimeograph machine, as well as microfiche, microfilm, and the photocopier. These technologies made the reproduction of printed materials faster and cheaper than it was before. However, this rampant photocopying is against the copyright law. This article will deals with the practice of book photocopying in Malaysia and issues surrounding it.

Key Words: Book publishing; photocopy; copyright
PHOTOCOPYING AND THE LAW IN MALAYSIA

All copyrights laws are designed to prevent copying except by ways of “fair use” or “fair dealing” or special provisions for educational institutions. Broadly speaking, copyright laws permit the copying of literary works, subject to controls but without special permission, as prescribed in the three sets of the following circumstances:

- Fair dealing for non-commercial research and private study and for criticism, review and news reporting.
- Copying for educational purposes.
- Copying for and in libraries.

These exceptions to the general rule of protection were illustrated in the Copyright Act 1987. However, our copyright law is too general, especially concerning with the reproduction of the copyrighted materials. While the laws prohibit “making of a reproduction of the typographical arrangement of the edition”, Section
9 (4) of the act gives exceptions that “reproduction of the typographical arrangement of a published edition for the purposes of research, private study, criticism, review or the reporting of current events does not infringe the copyright subsisting by virtue of this section if such reproduction is compatible with fair dealing (Copyright Act, 1987) provided that if such reproduction is made to the public is accompanied by an acknowledgement of the title of the work and its authorship.

Section 13 (2) of the same act even gives a long list of exceptions to the copyright holder’s exclusive right of control which include “any use made of a work by the National Archives or any State Archives, by the National Library, or any State Library, or by such public libraries and educational, scientific or professional institutions… provided that no profit is derived there from.” The section mentioned above gives a clear indication that all photocopying of books, journals, and magazines are illegal unless it is within the “fair dealing”.

The problem is to indicate the term of “fair dealing” or “fair use”, as the act does not give any definition or guidelines on the matter. What is a fair dealing? One definition tells us that it “… may be defined as a privilege in other than the owner of the copyright, to use the copyrighted material in a reasonable manner without his consent, notwithstanding the monopoly granted to the owner of the copyright” (Price, 1972)

Four criteria are set out in the USA to help determine whether a particular use of a work is or not a fair use. They are:

- The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.
- The nature of a copyrighted work.
- The amount and substantially of the portion used in relation to the copyrighted work as a whole.
- The effect of the use upon the potential market for or value of the copyrighted work.

Meanwhile, an American lawyer, Saul Cohen has been admirably summed up the criteria for determining whether a use is “fair”. He said that the fairness of any copying depends from the type of use involved, the intent with which it is made, its effect on the original work, the amount of the user’s labour involved, the benefit gained by
him, the nature of the works involved, the amount of material used, and the value of the materials taken in relation to the borrowed work as a whole (Barker, 1970).

Perhaps, one cannot avoid matters of opinion in deciding whether copying is “fair”. ASLIB in their proposal on photocopying and copyright in 1984 gives us guidelines from an ethical point of view on how to categorize certain actions as “fair use”. The assessment should be decided by answering the following questions:

- Does the portion to be copied exceed a reasonable part?
- Is the copy for the library stock is a separate item (not merely repairing damage)?
- Is the item to be copied itself a photocopy?
- Is the material a substantial part or a whole work?
- Is the copy (or copies) for unidentified individuals?
- Will the copy or copies be sold at a profit (greater than mere cost-recovery)?

If the answer to all six questions is “No”, then fair dealing should be assumed. If any answer is “Yes”, permission-seeking and/or royalty payment is necessary before copying. Still, the problem is: what is and what is not a fair use. Since our copyright act does not give guidelines or definitions regarding fair dealing, it is easily exploited by those who copied copyrighted materials beyond the limit. It will be easily used by anybody to cover his or her wrong doings. Indeed, there is assumption that any photocopying from any materials copyrighted is not against the in Malaysia unless it is done for profit financially.

There is clear indication that photocopying gave serious effects not only to the publishers but also to the country as a whole. So, the Copyright Act 1987 should be revising in order to give full guidelines and definitions of fair dealing consisted in Section 13 of the act.

A SURVEY

To find out the extent of individual photocopying practices in the local university libraries, a study has been done in August 2005 in five universities, namely the National University of Malaysia (UKM), the Technology University of Malaysia (UTM), the Science University of Malaysia (USM), and the Putra University of Malaysia (UPM). 206 respondents have been interviewed while they were photocopying in their respective university libraries. The details of the book copied together with the background of the respondents were recorded...
(Hamedi 2005).

422 items has been photocopied with 208 (49.28%) items were local publications while 214 (50.7%) items published abroad. 309 titles of books involved in this study with 128 (41.4%) titles in Malay language, 179 (57.9%) titles in English, and only 2 (0.7%) titles in Arabic. 3297 exposures have been recorded during the period of the survey. Among the main findings of the survey are as follows:

i. **The origins of the publications**
39.8% of the titles copied were local publications followed by titles from USA (31.7%) and UK (23.3%). Of the items copied, 49.3% were local publications, 27% USA, and 19% UK. In term of exposures, 40.8% were from local publications with the average of 11 exposures per titles. The average photocopied from the US publications is also 11 exposures and 10 exposures per titles from the UK publications.

ii. **The local publishers involved**
106 publishers from eight countries were involved with only nine local publishers. Among them, DBP is the most affected publisher with 93 (75.6%) titles and 982 exposures. These were followed by Federal Publications (9 titles and 81 exposures), Utusan Publications & Distributors (8 titles), Penerbit UKM (6 titles) and Longman Malaysia (2 titles).

iii. **The overseas publishers involved**
The most affected overseas publisher is Academic Press of USA with 19 titles copied, followed by Prentice-Hall (16 titles), Routledge and Addison-Wesley (10 titles respectively), McGraw-Hill (7 titles), PT Gramedia, Indonesia (6 titles), and Longman, Macmillan, and Oxford Univ. Press (4 titles) respectively.

iv. **The year of publication involved**
Most of the books copied in this study were published between 1980-1989 (153 titles or 49.5%) followed by books published in 1990-1995 (89 titles or 28.8%). Books published in 1980-1989 were also the most affected in terms of exposures of 53.8%.

v. **Amount of loss by the publishers**
The researcher made an estimation of losses by the publishers affected from these photocopying practices. Since the study was conducted in a day in university libraries and at only one machine, therefore this estimation is far from the real situation. Based from the average cost of five cents per exposure and with 3,297 exposures involved, the total amount of money spent during this
study is RM164.85. This implies that the students spend RM60, 175.25 per year to photocopy books. If every library has five active machines, it means that the amount spend to photocopy is RM300, 851.25.

From the survey conducted, many reasons were given by the students on why they make photocopy of reading materials, especially books. Some of the findings are:

i. The cost of photocopying is cheaper than buying books. The average cost of every exposure where they can copy two pages of a book is five cents. They can save almost 50 per cent of the buying cost of the local books and almost 75% of the imported books.

ii. The photocopy materials used for a certain period of time. When the examination season is over or the assignments they have to prepare were completed, the photocopied materials will no longer be needed. They will pass the materials to other students or simply destroy it. They will not buy the original books because it is cumbersome to store them. When the new semester opens they will use a different set of books (which they will photocopy them).

iii. Only certain pages of a book are needed by the students. It is easier and cheaper to copy the specific pages than to buy the original book.

iv. Insufficient funds purchase books especially that the scholarship at the loan they get will only in the final steps of the semester.

v. Difficulties to get a book of their choice in bookstores.

vi. Being urged by their lectures.

WAYS TO CONTROL THE PROBLEMS

Indeed, the photocopying of reading materials is one of the serious factors that affect the book trade, especially to the scholarly publishing. Unfortunately there was no serious effort taken by publishers in Malaysia to overcome this problem. They are even unaware of the existence of the copyright law regarding photocopying. All they have done so far is merely voicing out their grievances amongst themselves, relating to their books copied. However, no actions have yet to be taken.

The publishers in the West usually used three approaches to protect their works from infringement. There are educational efforts, litigation, and to find a copyright clearance center. Among efforts that the publishers can emulate to com-
bat this problem in Malaysia are:

**Educational efforts**
Like the seminar we have today. Most of the educational efforts should be focused to the librarian, i.e. to create greater awareness among them of the right and responsibilities under the law. They have a key role in creating awareness among their patrons and the library users. However, the effect of these efforts is very difficult to measure.

**Court actions or litigation**
This action will also promote awareness among the public besides complementing educational efforts and providing clear incentives for compliance with the law. Some of you may be aware that there were two pioneering efforts taken by the publishers in US towards these photocopying practices.

The first case is Addison-Wesley Publishers et al vs. New York University et al., which was filed in 1982. This case involved the publishers suing the university because some its faculty members were arranging with an off-campus copy shops to photocopy copyrighted works (intended for use by students) without requesting permission from, or making royalty payments to the copyright holders. The case was settled out of court when the publishers generally found the terms of the settlement satisfied them. However, universities and colleges started to set up photocopying policies and guidelines which favour the publishers.

The second case is American Geophysical Union et al vs. Texaco where six publishers jointly sued the plaintiff for alleged massive photocopying exceeding fair use. The decision notes that making copies of copyrighted scientific and technical journals violates fair use. The court found that Texaco’s copying was merely a substitute for the original text, a non-productive use, and its purpose in copying was purely commercial because of the profit motive of the company.

All the court actions marked a clear indication among publishers that while the copyright act permits the public to make photocopy within the fair use limit, a thoroughly investigations by authorities is needed to measure any possible infringement from those who used “fair use” as an escapism.

However, publishers have to bear in mind that the cost to bring those responsible in copying is expensive. The risk is relatively high since the copyright act has a special provision in “fair use” or “fair dealing” which can be easily exploited.
Unless the publishers have strong ground and evidence to litigate, it is unlikely they could achieve their objectives. It will also take years to settle the matter.

Copyright Clearance Center (CCC) Publishers in Malaysia could use the Copyright Tribunal established in Section 28 of the 1987 act or the authority could be vested to The National Book Development Council to act on behalf of them as copyright clearance center. Under this system, all organizations or firms that are likely to get involve in photocopying, such as universities, libraries, research institutions, and photocopy shops are given a statutory license to make copies within certain limits (according to the “fair dealing”), and all records should be kept. The right owner can then have access to the records and claim royalties accordingly. It is up to the Tribunals to fix such matters as terms, conditions, and rates of payment to those who are affected.

In the Malaysian context, the government should play a major role to organize this center. The Copyright Clearance Center in US is reported to be in financial difficulties. The center is facing financial constraints to keep it in business, and to overcome the problem, the publishers have to subsidize it. Unless the government gives a strong backup to the Center, the idea to establish CCC in Malaysia will be not successful. The objective of setting up the CCC here is not to acquire so much money from any photocopying practices. The bottom line is to educate the public to respect the authors and publishers right.

Installing photocopying monitoring devices within the machines. There is a possibility of installing certain tools of monitoring devices to record the type or quantity of exposures within the machines. Several copiers in the market have controller systems and have the capacity to provide the name of the person using the copier, the name of the document, as well as the number of copies being made.

All this information can be recorded individually and summarized. The authority or the collecting agencies then could use this record to make an estimation of losses by any photocopying practices. Based from the record they could also indicate the amount of money to be collected from the machine holder, and to distribute it to the affected publishers.

However, the cost to install such tools is expensive and impractical. The users need some kind of protection in using the machines.
because they may photocopy personal documents, such as financial statements, taxes, loans, license, and identity cards. Do the users feel confident that their right to privacy is protected when using such copiers? The other question is how could fair-use copying be separated from the infringing copying?

**Putting special tax on photocopiers to provide revenues to copyright holders**

The authority, especially those who are involved in the copyright matters (especially Ministry of International Trade and Consumers) could ascertain a special tax on photocopiers in order to provide revenues to the affected copyright holder. The tax should be managed separately with the other trade tax to ensure that it will be distributed fairly.

The problem, which may arise, is about whom will pay the tax. Will it be machines importer or the distributors or the photocopying shops or all of them. This could be done through the adjustments of the price of the machines? How many times should the tax be collected? Is it only once, that is when each machine imported or when the copy shop buys each copier from distributors or once a year? If the tax collected every year from the copy shops owner with the standard amount, is it fair to those who operated in small town where their volume of exposures is compared unfavourably with those who operates in the campuses.

I have yet to familiarize myself about the amount of tax fixed by the government on photocopiers. However, the retail prices of photocopiers in the Malaysian market ranges from RM4,500 to RM15,000 and for each copy the users will bear an average coat of five to ten cents (depending on the total exposures done and the type of paper and ink). The increase of machine tax means that the users will eventually bear the costs. It is unfair to users who made copies from materials within the fair use or from personal documents. Increased photocopying costs could also be disastrous for research of all kinds and could increase theft of library materials.

**To use certain techniques on the product to prevent clear or satisfactorily copying**

One of the preventive measures that could be used by the publishers is to use the light colour on some of the important pages or texts in a book—the colour will prevent the article from being copied by black and white photocopy machines. The students will be unsatisfied with the
find them difficult to read. This will result in students buying books rather than photocopying them.

To fix the price of books competitively to the cost of photocopying
The standard practices among publishers in Malaysia in fixing the published price to their book are to multiply the production costs by four to six times. For example, if the production costs of any particular book are RM2.00, the published price is around RM10.00. Every publisher has their own formula of fixing prices and it also depends on various factors, such as the type of books, the quantity of target audiences, the price of other books in the subject, and so on.

To fix the published price of a book competitive with the cost of photocopying is possible with general books with more than 5,000 copies print run. In doing this, the publishers have to calculate how many exposures does individuals needs in photocopying his book. If for example his book has 300 pages and the user to copy less than 6 x 9.5 inches, the cost needs the size the book is RM9.00 (six cents per exposure). He can put RM10.00 to the published price of the book. However, the production costs of the book should also need to be considered.

CONCLUSION
All photocopying as an alternative to buying books or periodicals, under any circumstances should not be permitted. Our laws should play a greater role to protect the book trade, and in order to play the role, it should be revised to give more in depth guidelines or definitions towards the photocopying issues.

Books, especially scholarly books in the national language are in short supply in this country. Therefore, it is the responsibility of the government to subsidies the publishing of such books. This will imply that the government is responsible in enhancing education to a greater extent. In other words it should not be left to the authors and publishers.
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