



香港特別行政區政府
知識產權署

Copyright & Education

版權與教學

Intellectual Property Department
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Objective 目標

To understand the basic concept of copyright,
particularly in the context of education

瞭解版權(特別在教育範疇)的基本概念

Background

背景

- Copyright protection began on 1.7.1912
版權保護始於1912年7月1日
- Localised, comprehensive and modernised
copyright law came into operation on 27.6.1997
本地化及全面現代化的版權條例於1997年6月
27日生效

What is Copyright? 何謂版權?

- **Private property right** 私產權
- **copyright - (exclusive) right to copy**
版權 - 專有複製權
- **Protects creativity expressed in a “recorded form” (works) but not mere ideas**
保障創作表達形式(作品)，並非意念
- **HKSAR - open qualification protection system**
香港特區 - 開放保護制度
- **no formalities (e.g. registration) required** 毋須註冊

Copyright Works(1)

版權作品(一)

*Including works on the internet 包括互聯網上的作品

Copyright Works 版權作品	Annotations 註解
(1) Original literary works 原創文學作品	e.g. lyrics, computer programs 如歌詞、電腦程式
(2) Original dramatic works 原創戲劇作品	Including works of dance or mime 包括舞蹈作品及默劇作品
(3) Original artistic works 原創藝術作品	Including works irrespective of artistic quality 包括不論其藝術質量的作品 Including photos, sculptures, works of architecture and works of artistic craftsmanship 包括相片、雕塑品、建築作品及美術工藝作品
(4) Original musical works 原創音樂作品	Excluding words sung or spoken with the music 不包括隨音樂唱出或講出的文字
(5) Sound recordings 聲音紀錄	e.g. audio tapes, CD 如聲音錄音帶、鐳射唱片

Copyright Works(2) 版權作品(二)

Copyright Works 版權作品	Annotations 註解
(6) Broadcasts 廣播	e.g. Broadcasts by way of television or radio 如電視/電台廣播
(7) Cable programmes 有線傳播節目	Programmes included in a cable programme service sent by means of a telecommunication system 藉電訊系統傳送的有線傳播節目服務內的節目
(8) Films 影片	e.g. DVD/VCD inclusive of the sound tracks accompanying the films 如影碟 包括影片所附同的聲帶
(9) Typographical arrangement of published edition of literary, dramatic or musical works 排版	e.g. in newspaper, magazine, score 如在報章、雜誌、樂譜中

Copyright Duration(1)

版權期限(一)

Copyright Works 版權作品	Basic Period of Protection 基本有效期
(1) Original literary works 原創文學作品 (2) Original dramatic works 原創戲劇作品 (3) Original artistic works 原創藝術作品 (4) Original musical works 原創音樂作品	until 50 years after the author of the work dies 作者在生之年 + 50 年
(5) Sound recordings 聲音紀錄	until 50 years after production / 50 years after release 製作後50年 / 發行後50年
(6) Broadcasts 廣播 (7) Cable programmes 有線傳播節目	50 years after broadcast 廣播後50年

Copyright Duration(2)

版權期限(二)

Copyright Works 版權作品	Basic Period of Protection 基本有效期
(8) Films 影片	<ul style="list-style-type: none"> - until 50 years after the last to die of: - <ul style="list-style-type: none"> (a) the principal director; (b) the author of the screenplay; (c) the author of the dialogue; or (d) the composer of music specially created for and used in the film - 最長壽者 + 50 年:- <ul style="list-style-type: none"> (a) 主要導演； (b) 劇本的作者； (c) 對白的作者；或 (d) 特別為影片創作並用於影片中的音樂的創作人
(9) Typographical arrangement of published edition of literary, dramatic or musical works 排版	Copyright duration: until 25 years after first publication 版權期限: 首次發表後25年

Ownership 擁有權

- Author - first owner (subject to provisions in the Copyright Ordinance)
作者 - 第一擁有人（版權條例另有規定除外）
 - works of joint authorship 合作作品
 - Employee works - the employer is the 1st copyright owner subject to agreement to the contrary 僱員作品 - 僱主為版權第一擁有人(除協議有相反規定外)
 - Commissioned works – subject to parties’ agreement 委託作品 - (協議規定)
- * Copyright can be licensed / assigned to another party 版權可特許/轉讓予他人*

Restricted acts (1)

受版權所限制的作為(一)

- (1) Copying the work 複製作品
- (2) Issuing copies to the Public 向公眾發放複製品
- (3) Perform the work in public 公開表演作品
- (4) Renting copies to the public 租賃複製品予公眾
- (5) Adaption of the work 改編作品
- (6) Making copies available to the public by wire/wireless means (e.g. internet)
藉有線或無線的方式(如互聯網)向公眾提供複製品
- (7) Broadcasting the work/Inclusion of the work in a cable programme service 廣播、有線傳播作品

Restricted acts (2)

受版權所限制的作為(二)

- Including acts by electronic means
包括以電子方式進行的限制作為
Examples 例如：

“Copying” includes :
“複製”包括:

- Copying by hand or reprographic means
手抄或翻印
- fax, scan, download to hard disk, print
傳真、掃描、下載至硬磁碟、列印



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What portion of copying = Infringement ?

採用多少才算侵權？

- in whole or substantial part
整項作品或實質部份
- No prescribed % 沒有規定的比例
- Quality & Quantity 質與量

Copyright Infringement 侵犯版權

- without the licence of the copyright owner
未獲版權擁有人的特許
- does, or authorizes* anyone to do, any of the acts restricted by the copyright
自行或授權他人作出任何受版權所限制的作為
- not acts permitted by laws
不屬法例允許的行為

* a licence by the copyright owner/'s agent (e.g. licensing body)*
版權擁有人其代理人或特許機構授予特許

Secondary infringement 間接侵權

(1) importing, exporting, possessing, selling, letting for hire, exhibiting or distributing infringing copies in trade or business

進口、出口、於業務過程中管有、出售、出租、公開陳列或分發侵權品

(2) providing means for making infringing copies

提供製造侵權複製品的方法

Infringement Liability

侵權的法律責任

(1) Civil liability 民事法律責任

(2) Criminal liability 刑事法律責任

Statutory permitted acts (1)

法定允許行為 (一)

A. Primary consideration - 基本考慮因素

- (1) Do not conflict with normal exploitation of work by copyright owner 沒有抵觸版權人正常利用作品
- (2) Do not prejudice legitimate interest of copyright owner 不損害版權人的合法權益

Statutory permitted acts (2)

法定允許行為 (二)

B. Specific Purposes 特定目的 examples 例子—

- research & private study (fair dealing) 研究及私人研習 (公平處理)
- criticism & review (fair dealing) 批評、評論 (公平處理)
- education 教育
- public administration 公共行政

Statutory permitted acts

Research & private study - fair dealing

法定允許行為：研究及私人研習 – 公平處理

Whether any dealing is **fair** depends on all the circumstances, particularly -
處理是否公平須考慮整體情況，尤其 -

- (1) The purpose and nature of the dealing, including whether such dealing is of a commercial nature or is for non-profit making purpose -
處理的目的及性質，包括是否屬商業性質或是為非牟利的目的而處理該作品
- (2) The nature of the work - 作品的性質
- (3) The amount and substantiality of the portion dealt with in relation to the work as a whole - 就作品的整項而言，處理的部分所佔的數量及實質分量
- (4) The effect of the dealing upon the potential market for or value of the work -
有關處理作為對該作品的潛在市場或價值的影響

Statutory permitted acts

Criticism, Review & news reporting

法定允許行為: 批評、評論及新聞報道

- Fair dealing 公平處理
- Sufficient acknowledgement* 足夠的確認聲明*

* Except for reporting of current events by means of a sound recording, film, broadcast or cable programme
藉聲音紀錄、影片、廣播或有線傳播節目報導時事除外

Legislative Proposals under Copyright (Amendment) Bill 2011 《2011年版權(修訂)條例草案》立法建議

Criticism, review and news reporting 批評、評論及新聞報道

Only applicable to works that have been released or
communicated to public

只適用於已向公眾發行或傳播的作品

Statutory permitted acts

Education(1):For purposes of instruction 法定允許行為：教育(一)：為教學目的

- Copying by teachers or students in the course of instructions or preparation for instruction
老師或學生在教學或教學準備過程中複製
- To a reasonable extent 在合理範圍內
- Not by reprographic means 不能藉翻印複製

Statutory permitted acts

Education(2): For purposes of examination

法定允許行為 - 教育(二)：為考試目的

- Setting of questions or answering of questions
擬出試題或解答試題
- Reprographic process allowed except for making reprographic copy of a musical work for use by a candidate in performing the work
容許複印程序(不適用製作音樂作品的翻印複製品供考生表演該作品之用)

Statutory permitted acts

Education(3): Educational establishments (performance)

法定允許行為 - 教育(三)：教育機構 (表演)

- Performance by teacher(s) or pupil(s) in the course of the activities of the establishment
在教育機構的活動過程中由教師或學生表演
- literary, dramatic or musical work
文學、戲劇或音樂作品
- Audience - wholly or mainly teachers, pupils, parents/guardians of pupils, other persons directly connected with the activities
包括或主要包括觀眾 - 學生、教師、學生父母/監護人、與活動有直接關連人士

Statutory permitted acts

Education(4):Educational establishments (playing/showing of work)

法定允許行為 - 教育(四)：教育機構 (播放/放映)

- For purposes of giving or receiving instruction
為教學或接受教學的目的
- Playing/showing sound recording, film, broadcast, cable programmes
放映聲音紀錄、影片、廣播、有線傳播節目
- Audience - wholly or mainly teachers, pupils, parents/guardians of pupils, other persons directly connected with the activities
包括或主要包括觀眾 - 學生、教師、學生父母/監護人、與活動有關連人士

Statutory permitted acts

Education(5):Recording of broadcasts or cable programmes by educational establishments

法定允許行為 - 教育(五)：教育機構製作廣播或有線傳播節目的紀錄

- Educational purpose 為教育目的
- Acknowledgement of authorship 確認作者聲明
- Not for gain 非圖利

Not applicable if authorization for recording or copying available under licensing schemes

若有特許計劃授權記錄或複製，不適用

Legislative Proposals under Copyright (Amendment) Bill 2011 《2011年版權(修訂)條例草案》立法建議

Electronic communication by educational establishments: recordings of broadcasts or cable programmes 教育機構以電子傳播: 廣播或有線傳播節目的紀錄

also permitting electronic communication to an **“authorized recipient”** a recording of broadcasts or cable programmes for educational purposes

亦允許為教育目的向獲授權收訊人以電子傳播廣播或有線傳播節目的紀錄

*** a teacher or pupil authorized by or on behalf of the establishment to receive the communication***

*** 獲該機構授權(或已獲該機構的代表授權)接收傳播的教師或學生***

Not applicable if authorization for recording or copying available under licensing schemes

若有特許計劃授權記錄或複製, 不適用

Legislative Proposals under Copyright (Amendment) Bill 2011 《2011年版權(修訂)條例草案》立法建議

Conditions: taking reasonable steps to ensure

條件:採取合理步驟確保

(a) only authorized recipients receive the communication

只有獲授權收訊人接收該項傳播

(b) authorized recipients do not make any copy or further transmission of the communication

獲授權收訊人不會製作該項傳播的複製品，或將該項傳播作進一步傳送

Not applicable if authorization for communication available under licensing schemes

若有特許計劃授權傳播，不適用

Statutory permitted acts Education(6):Educational Establishments (Reprographic copying) 法定允許行為 - 教育(六)：教育機構(翻印複製)

- By educational establishments for purposes of giving instruction
教育機構 為教學目的
- By pupils for the purposes of receiving instructions in a specified course of study provided by an educational establishment
學生為在教育機構提供的指明課程中接受教學的目的
- Reasonable extent – 合理範圍
- Artistic works or of passages from published literary, dramatic or musical works
藝術作品或已發表的文學作品、戲劇作品或音樂作品的片段

Not applicable if authorization for copying available under licensing schemes
若有特許計劃授權複製，不適用

Legislative Proposals under Copyright (Amendment) Bill 2011 《2011年版權(修訂)條例草案》立法建議

Educational Establishments (copying) 教育機構(複製)

- Copying by educational establishments for purposes of giving instruction
教育機構 為教學目的複製
- Copying by pupils for the purposes of receiving instructions in a specified course of study provided by an educational establishment -
學生為在教育機構提供的指明課程中接受教學的目的複製
- Reasonable extent – 合理範圍
- artistic works, passages from published literary, dramatic or musical works,
extracts from published sound recordings or films
藝術作品或已發表的文學作品、戲劇作品或音樂作品的片段、**已發表的**
聲音紀錄或 **影片的摘錄**

Legislative Proposals under Copyright (Amendment) Bill 2011 《2011年版權(修訂)條例草案》立法建議

Educational Establishments (**electronic communication**)

教育機構(電子傳播)

- also permitting electronic communication of copies, passages or extracts from published works lawfully made to an ***“authorized recipient”*** for educational purposes
亦允許為教育目的以電子傳播已合法製作的複製本、已發表作品中的片段或摘錄
- * a teacher or pupil authorized by or on behalf of the establishment to receive the communication *
- * 獲該機構授權(或已獲該機構的代表授權)接收傳播的教師或學生 *

Legislative Proposals under Copyright (Amendment) Bill 2011 《2011年版權(修訂)條例草案》立法建議

Conditions: taking reasonable steps to ensure
條件:採取合理步驟確保

(a) only authorized recipients receive the communication
只有獲授權收訊人接收該項傳播

(b) authorized recipients do not make any copy or further transmission of the communication

獲授權收訊人不會製作該項傳播的複製品，或將該項傳播作進一步傳送

Not applicable if authorization for communication available under licensing schemes

若有特許計劃授權傳播，不適用

Major Licensing Bodies – Music Industry

主要特許機構 (1) - 音樂業界

- The Composers and Authors Society of Hong Kong Ltd. (CASH)
香港作曲家及作詞家協會

<http://www.cash.org.hk/>

- Phonographic Performance (South East Asia) Ltd
香港音像版權有限公司

<http://www.ppseal.com>

- Hong Kong Recording Industry Alliance Ltd. 香港音像聯盟有限公司

<http://www.hkria.com/>

Major Licensing Bodies – Publication Industry

主要特許機構 (2) - 出版業界

- Hong Kong Reprographic Rights Licensing Society (HKRRLS)
香港版權影印授權協會有限公司

<http://www.hkrrls.org/>

- The Hong Kong Copyright Licensing Association Limited
(HKCLA)
香港複印授權協會有限公司

<http://www.hkcla.org.hk/>

Statutory permitted acts - Education(7)

Fair dealing for purposes of giving or receiving instruction

法定允許行為 - 教育(七)：

為教學或接受教學的目的而作的公平處理

Fair dealing with a work for the purposes of giving or receiving instruction in a **specified course of study** provided by an educational establishment does not infringe copyright in the work

在教授或修讀教育機構開辦的指明課程中

為教授或修讀這些課程的目的公平處理某作品，不屬侵犯版權

* Factors for determining whether a dealing is fair are same as those for Research and private study above

處理是否公平的考慮因素與研究及私人研習所列相同

What is “specified course of study”?

什麼是「指明課程」？

Specified course of study - 指明課程

- course of study developed on the basis of curriculum guidelines issued/endorsed by Curriculum Development Council; or
根據課程發展議會發出或審批的課程指引而發展的研習課程；或
- course of study consisting of assessment of student’s competence in the area covered by the course and leading to award of qualification
包含對學員在有關課程所涵蓋的範圍內的能力的評核而令學員獲授予任何資格的研習課程

Points to be noted when using “fair dealing” exemption (1) 使用「公平處理」須注意事項 (一)

If dealing involves making available of copyright work through Intranet of educational establishment - 如處理涉及透過學校的內聯網提供版權作品 –

- Must adopt technological measures to restrict access to the work to
必須採用科技措施，限制可取用作品的人士：
 - persons who give or receive instruction in specified course of study
在有關指明課程中教學或接受教學的人
 - persons who maintain or manage the network
維持或管理該網絡的人
- Work should not be stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study, in any event, no longer than 12 consecutive months
作品備存於學校網絡系統的時間，不應超過為教學或接受教學的目的而需要保留的期間，在任何情況下，不得超過連續12個月

Points to be noted when using “fair dealing” exemption (2) 使用「公平處理」須注意事項 (二)

- If dealing involves the inclusion of any passage/excerpt from published literary or dramatic work in anthology, sufficient acknowledgment is required.
凡處理涉及在選集中收錄已發表的文學作品或戲劇作品的任何片段或摘錄，則必須附有足夠的確認聲明
- If dealing involves the recording of broadcast or cable programme, acknowledgment of authorship or other creative effort is required
凡處理涉及錄製任何廣播或有線傳播節目，則必須載有確認作者或被記錄的作品所蘊含的其他創作努力的聲明

Parallel importation of copyright works

平行進口版權作品

- Business end-users may import or possess parallel imported copies of copyright works for use in business, but not for the purposes of dealing in the copies (including selling, hiring or distributing for profit), or playing or showing in public movies, television dramas, musical sound/visual recordings, otherwise they may be liable for civil or criminal offences.

業務的最終使用者可輸入或管有平行進口版權作品作業務用途，但不包括經銷該作品(包括售賣、出租或分發作牟利用途)，或公開播放電影、電視劇、音樂聲音/視像紀錄，否則可負上民事甚至刑事責任。

- Educational establishment may also play or show parallel imported copies of movies, television dramas, musical sound/visual recordings for educational purpose or for use of its library

教育機構可播放經平行進口的電影、電視劇、音樂聲音/視像紀錄作教育用途或供圖書館使用

Reference 參考資料

- Website of Intellectual Property Department
知識產權署網頁
www.ipd.gov.hk
- Hotline 查詢熱線 2961 6901



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Thank you!

謝謝!