

**NSS Enriching Knowledge for Information
and Communication Technology (ICT)
Curriculum Series (4): Intellectual Property,
Copyright and Internet Piracy**

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香港特別行政區政府
知識產權署

香港版權法例的最新修訂— 關於教育方面

Recent amendments to copyright law relating to education

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2007年版權(修訂)條例之背景 Background of the Copyright (Amendment) Ordinance 2007

- 2006年3月：向立法會提交《2006年版權(修訂)條例草案》
March 2006 : Copyright (Amendment) Bill 2006 submitted to Legislative Council
- 2007年6月27日：立法會通過《2006年版權(修訂)條例草案》
27 June 2007: Legislative Council passed Copyright (Amendment) Bill 2006
- 2007年7月6日：《2007年版權(修訂)條例》刊憲
6 July 2007: Copyright (Amendment) Ordinance 2007 published in the Gazette

條例的主要目標及修訂的生效日期

Main objectives of the Ordinance & commencement date of amendments

- 加強版權保護 (生效日期另行公布)
Strengthen copyright protection (commencement date to be announced)
- 就版權豁免制度引入靈活性 (2007年7月6日)
Introduce flexibility to our copyright exemption regime (6 July 2007)
- 放寬平行進口的使用限制 (2007年7月6日)
Relaxation of prohibitions against use of parallel imports (6 July 2007)
- 提高執法效率及效能 (2007年7月6日)
Improve enforcement efficiency and effectiveness (6 July 2007)



在2007年7月6日生效的修訂 Amendments that took effect on 6 July 2007

業務最終使用者 管有侵權複製品刑責 Business end-user possession criminal liability

- 維持現時的刑責適用範圍，即只涵蓋四類版權作品 (電腦程式、電影、電視劇、以及音樂聲音/視像紀錄)

To maintain the scope of existing criminal liability, which is confined to only four categories of copyright works, namely, computer programs, movies, television dramas and musical sound/visual recordings

僱員的免責辯護 (1)

Employees' defence (1)

- 在受僱工作期間管有侵權品

侵權品是其僱主提供讓他在受僱期間使用

Employee possessed infringing copy in course of employment

Infringing copy provided by his employer for use in course of employment

僱員的免責辯護 (2) Employees' defence (2)

- 僱員免責辯護的條件：
僱員必須無權影響或決定
獲取/移除/使用業務中所用的侵權複製品

Condition for the employees' defence:

Employee should not be in a position to influence or decide on the acquisition/removal/use of the infringing copies used in business.

不知情的免責辯護

“absence of knowledge” defence

- 保留現行的條文
retain the existing provision
- 不知道亦無理由相信有關的複製品是侵犯版權複製品
did not know and had no reason to believe that the copy in question was an infringing copy of copyright work

版權豁免 - 公平處理 (1)

Copyright exemption – Fair dealing (1)

- 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，將不屬侵犯版權

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

什麼是「指明課程」？

What is “specified course of study”?

指明課程 —

Specified course of study

- 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 developed on the basis of curriculum guidelines issued/endorsed by Curriculum Development Council; or

- 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

course of study consisting of assessment of student's competence in the area covered by the course and leading to award of qualification



是否公平處理 - 考慮的因素 (1)

Fair Dealing or not –

factors to be considered (1)

- 處理的目的及性質，包括是否為商業目的或非牟利的目的而處理該作品

The purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit making purpose

- 作品的性質

The nature of the work

是否公平處理 - 考慮的因素 (2)

Fair Dealing or not – factors to be considered (2)

- 就作品的整項而言，處理的部分所佔的數量及實質程度

The amount and substantiality of the portion dealt with in relation to the work as a whole

- 有關處理作為對該作品的潛在市場或價值的影響

The effect of the dealing upon the potential market for or value of the work

爲教育目的而「公平處理」的例子(1)

Examples of “fair dealing” for education (1)

下述個案會視作「公平」：

The following case would be considered “fair”:

- 教師在教材內加入一段非常短的影片，向學生闡釋某一課題的要點。老師利用有關的教材向學生介紹，當中已交代影片的名稱和作者

A teacher includes in teaching materials a very short excerpt of a film to illustrate certain important points. The title of the film and acknowledgment of its authors are included. The materials will be given by the teacher for giving instruction in a course of study to a class of students.

為教育目的而「公平處理」的例子 (2) Examples of “fair dealing” for education (2)

下述個案不會視作「公平」：

The following case would not be considered “fair”:

- 天氣惡劣，學生必須留在課室。教師播放一套正在上映電影的數碼影像光碟給學生觀看作為娛樂

Students are unable to go outside due to bad weather, their teacher plays a DVD of a current movie to entertain the class



使用「公平處理」須注意事項 (1)

Points to be noted when using “fair dealing” exemption (1)

如處理涉及透過學校的內聯網提供版權作品 –

If dealing involves making available of copyright work through Intranet of educational establishment -

- 必須採用科技措施，限制可取用作品的人士：
Must adopt technological measures to restrict access to the work to
 - 在有關指明課程中教學或接受教學的人
persons who give or receive instruction in specified course of study
 - 保養或管理該網絡的人
persons who maintain or manage the network
- 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
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

使用「公平處理」須注意事項 (2)

Points to be noted when using “fair dealing” exemption (2)

- 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 inclusion of any passage/excerpt from published literary or dramatic work in anthology, sufficient acknowledgment 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

If dealing involves the recording of broadcast or cable programme, acknowledgment of authorship or other creative effort is required



版權豁免 – 改善允許行爲 (1)

Copyright Exemptions – Improvement to the Permitted Act (1)

- 在教育機構內表演、播放或放映版權作品
Performance, playing or showing of a copyright work at the educational establishments
- 擴大觀眾或聽眾的涵蓋範圍 - 包括或主要包括教師、學生、學生父母或監護人，以及其他與該機構的活動有直接關連的人士
Expand the composition of audience – consist wholly or mainly of teachers and pupils, parents or guardians of pupils and other persons directly connected with the activities of educational establishments

版權豁免 – 改善允許行爲 (2)

Copyright Exemptions – Improvement to the Permitted Act (2)

- 有關教育機構翻印複製版權作品的允許行爲
Relates to the permitted act of reprographic copying of copyright works by educational establishments
- 豁免的範圍現已擴展至涵蓋學生為在指明課程中接受教學而作出的複製作爲
The scope of exemption is extended to cover the copying act of pupils who receive instruction in a specified course of study provided by educational establishments

版權豁免 – 為閱讀殘障人士增訂的允許作為 Copyright Exemptions – New permitted act for persons with a print disability

- 允許製作特別改造的版權作品複製品(如點字、大字體、電子版本或聲音紀錄)以供閱讀殘障人士使用

Allowing the production of specially adapted copies of copyright works (e.g. Braille, large-print, electronic version, or sound recording) for the use of persons with a print disability

- 注意豁免條件
Note the conditions for exemption

可使用這項允許作為的人士 (1)

Persons who can use this exemption (1)

(1) 閱讀殘障人士 Persons with a print disability :

– 失明 Blind

– 視力受到損害，而不能用矯正視力鏡片將視力改善至能在沒有特別強度或種類的光線下閱讀

Visually impaired to the extent that his visual function cannot be improved by use of corrective lenses to a level that would be acceptable for reading without a special level of kind of light

– 身體殘疾導致無能力手持或調弄書本

Physically unable to hold or manipulate a book

– 身體殘疾導致眼睛無法聚焦或移動以達至一般可接受作閱讀的程度

Physically unable to focus or move his eyes to the extent that would normally be acceptable for reading

可使用這項允許作為的人士 (2) Persons who can use this exemption (2)

(2) 指明團體 Specified body :

- 政府營運和管制的學校

School maintained and controlled by Government

- 非牟利學校（根據《稅務條例》第88條獲豁免繳稅的學校）

Non-profit making school (exempted from tax under s88 of Inland Revenue Ordinance)

- 獲政府發放直接經常性補助的學校

School receiving direct recurrent subvention from Government

- 非牟利、慈善性質的或是促進閱讀殘障人士福利的組織

Non-profit making organization which is charitable or concerned with the advancement of welfare for persons with a print disability

平行進口版權作品 (1)

Parallel importation of copyright works (1)

- 免除業務最終使用者因輸入或管有平行進口版權作品作業務用途而須負上的民事及刑事法律責任

Remove civil and criminal liability pertaining to importation and possession of parallel imported copyright works for use in business by business end-users

- 放寬不適用於輸入或使用平行進口版權作品作經銷(包括售賣、出租或分發作牟利用途)用途

The relaxation does not apply to importation and use of parallel imported copies for dealing in (including selling, hiring or distributing for profit) purpose

平行進口版權作品 (2)

Parallel importation of copyright works (2)

- 除了教育機構及圖書館為教育和圖書館用途以外，有關的放寬不適用於為公開播放目的而使用平行進口音樂聲音紀錄、音樂視像紀錄、電影及電視劇
- Other than for the educational and library uses by educational establishments and libraries, the relaxation does not apply to parallel imported musical sound recordings, musical visual recordings, movies and TV dramas used for public showing

平行進口版權作品 (3)

Parallel importation of copyright works (3)

- 把平行進口構成刑責的期限縮短至版權作品公開發表後的15個月為止

Reduce the period during which parallel imports would attract criminal liability to 15 months after publication

例子 (1)

Example (1)

修訂後允許的行爲：

Act allowed after the amendment:

- 學校可以直接從海外供應商購買任何平行進口的版權作品(例如書籍)，作內部教學、教育用途及供其圖書館使用。

A school may buy parallel imported copies of any copyright works (e.g. books) directly from an overseas supplier for internal teaching educational and library purposes.

例子 (2) Example (2)

修訂後，仍被禁止的行爲：

After amendment, act still not allowed:

- 你不可輸入任何平行進口版權作品(電腦軟件產品除外)作售賣、出租或分發作牟利用途。

You must not import any parallel imported copies of copyright works (except computer software products) into Hong Kong for the purpose of sale, hire or distribution for profit.



尚未生效的修訂

Amendments that have not yet taken effect



規避保護版權科技措施 (1)

Circumvention of Technological Measures for Copyright Protection (1)

- 增訂一項新的民事法律責任，以針對任何人規避用於保護版權的科技措施(包括防止複製及防止取用的保護措施)

New civil liability against any person who circumvents a technological measure (including copy protection measures and access control measures) used for copyright protection



規避保護版權科技措施 (2)

Circumvention of Technological Measures for Copyright Protection (2)

- 擴大針對任何人士經銷規避器件或提供規避服務(無論是否屬商業活動)以規避科技措施的民事法律責任
Extend civil liability against any person who deals in circumvention tools or provides circumvention services (whether or not in a commercial context) for the circumvention of technological measures
- 增訂一項新的刑責，以針對任何人商業經銷規避器件或在商業上提供規避科技措施的服務
A new criminal offence against any person who is engaged in commercial dealing of circumvention tools or provides circumvention services on a commercial basis for the circumvention of technological measures

可列為民事侵權活動的例子

Examples of activities that would attract civil liability

- 製作干擾數碼保護的器件，讓他人能在未獲授權的情況下複製網上電影
A person making a device designed to allow unauthorised copying of digitally-protected online movies
- 提供改裝遊戲機控制台的服務，或售賣可安裝於數碼遊戲機內的改裝晶片，讓他人能使用盜版電腦遊戲(不論有關服務或銷售是否為牟利的目的)
A person offering a service to modify game consoles or selling mod chips for insertion into digital game machines so as to enable others to play pirated computer games (whether the service or sale is for profit or not)

豁免 (1)

Exemptions (1)

- 研究密碼學
Research into cryptography
- 使獨立創作的電腦程式能夠互相兼容
Interoperability of an independently created computer program
- 識別某項科技措施在收集和發布個人資料的功能，或使其失效，以保障私隱
Identifying or disabling the personal data collection and dissemination function of a technological measure to protect privacy

豁免 (2) Exemptions (2)

- 保安測試
Security testing
- 使用平行進口的版權作品
Using parallel imported items of copyright works
- 防止未成年人士在互聯網上取用有不良影響的材料
Preventing access by minors to harmful materials on the Internet
- 採取執法行動
Law enforcement

額外豁免

Additional Exemptions

- 在有關打擊規避科技措施作為的條文正式生效前，政府會參考公眾的意見及其他司法管轄區的法律條文，以考慮是否以附屬法例訂定更多豁免

Before the prohibition against the act of circumvention of technological measures comes into operation, Government will consider, having regard to the public view and the laws of other jurisdictions, whether further exceptions should be provided through subsidiary legislation.

公眾諮詢

Public Consultation

- 就規避科技措施的作為提供額外豁免諮詢文件
Consultation paper on the provision of additional exemptions on circumvention of technological measure
- 諮詢期已於2008年1月4日完結
Consultation period ended on 4 Jan 2008
- 政府考慮過是次諮詢收集到的意見後，認為在實施有關禁止規避科技措施作為的條文之前，無需制訂任何額外豁免
After considering the views received, Government considers that there is no need to introduce any additional exemptions before the commencement of the provisions that prohibit the act of circumvention.
- 政府已向立法會工商事務委員會匯報諮詢的結果及建議給予額外豁免的程序
Government has reported to Legislative Council Panel on Commerce and Industry the result of consultation and proposed procedure for granting additional exemptions.

生效日期

Commencement date

- 政府已向立法會工商事務委員會匯報就有關條文所作出的宣傳及公眾教育活動，並在諮詢該事務委員會後才落實條文的實施時間表。
Government has reported to the Legislative Council Panel on Commerce and Industry the publicity and public education activities on the above provisions and will confirm the implementation date of those provisions after consulting the Panel.
- 政府的計劃是在2008年4月實施有關經銷規避器件及提供規避服務的條文，而有關規避行為的條文會在2008年7月才實施。
Government plans to commence (i) the provisions relating to dealing in circumvention devices and provision of circumvention services in April 2008, and (ii) the provisions relating to the act of circumvention in July 2008.

參考資料

Reference materials

- 有關《2007年版權(修訂)條例》的資料:
Information relating to Copyright (Amendment)
Ordinance 2007:

http://www.ipd.gov.hk/eng/intellectual_property/copyright/copyright_bill.htm



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謝謝

Thank you