

**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

# Copyright in digital environment 在數碼環境中的版權

Benny Ho/Sandra Hui

Solicitor

Intellectual Property Department

何兆文/許麗珊

律師

知識產權署

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# Copyright in Digital Environment 在數碼環境中的版權

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- Copyright and the Internet  
版權法及互聯網
- Digital Agenda Review  
在數碼環境中保護版權事宜的檢討工作



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# Copyright and the Internet

## 版權法及互聯網



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# Current law on Copyright 現有的版權法

- Applicable to Internet  
同樣適用於互聯網
- Copyright law  
版權法例





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# Copyright - Infringement

## 版權法 — 侵權行爲

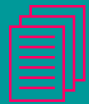
Includes:

包括：

- Copying  
複製
- Making available of copies of the work to the public through the Internet  
透過互聯網向公眾提供作品的複製品
- Showing of work in public  
公開播放

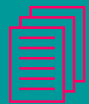


# Permitted acts 允許的行爲



“Fair dealing” for the purposes of research or private study

爲研究或私人研習而作“公平處理”



“Fair Dealing” for the purposes of giving or receiving instruction

爲教學或接受教學的目的而作“公平處理”

# Fair Dealing or not – factors to be considered (1) 是否公平處理 - 考慮的因素 (1)

- The purpose and character 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，包括是否為商業目的或非牟利的目的而處理該作品
- The nature of the work  
作品的性質



# Fair Dealing or not – factors to be considered (2) 是否公平處理 - 考慮的因素 (2)

- 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程度
- 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



# Permitted acts 允許的行爲



## Computer software - back-up copy

- copying or adapting for lawful use

電腦軟件 — 後備複製品

— 複製、改編作合法用途



## Internet Browsing - technical requirement

- transient and incidental copy

- where works made available to the  
public

互聯網上瀏覽 — 技術需要

— 短暫、附帶複製品

— 作品向公眾提供



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# Hyperlink 超連結

- Obtain consent from the owner of copyright  
獲取版權擁有人的同意
  - ◆ Different kinds of linking  
各種連結方法
  - ◆ Extracting from other websites  
節錄網站的精粹
  - ◆ Authorization from webmaster:  
伺服器上的系統資源管理員的批准
    - [trouble@mail.xyz.com](mailto:trouble@mail.xyz.com)
    - [www.whois.net](http://www.whois.net)





# Points to note

## 要點

- Applicable laws not restricted to laws of Hong Kong  
適用的法律不僅是香港法律
- Practical problems in conducting proceedings in a foreign jurisdiction  
外國興訴存在實際問題
- Consider whether Internet should be the selected medium of publication  
考慮應否選擇以互聯網為發表的媒介



# Criminal and Civil Liabilities(1)

## 刑事及民事責任(1)

- Knowingly possess infringing copies for use in business  
在知情下管有侵權品，作業務上使用
- Criminal liability & civil liability  
刑事責任及民事責任
  - computer program 電腦程式
  - movie 電影
  - TV drama 電視劇或電視電影
  - musical recording 音樂紀錄
- Civil liability - other types of works  
民事責任 – 其他類別的侵權品



# Criminal and Civil Liabilities (2)

## 刑事及民事責任 (2)

- Knowingly distribute infringing copies in the course of business  
在知情下，在業務的過程中，分發侵權品  
- Criminal liability & civil liability 刑事責任及民事責任
- Knowingly distribute (otherwise than for business) infringing copies to such an extent as to affect prejudicially the copyright owner, e.g. BT case  
在知情下，分發(並非為業務)，達到損害版權擁有人的權利的程度，例如BT案件  
- Criminal liability & civil liability 刑事責任及民事責任



# BitTorrent case

## BT案例

- Chan Nai Ming (Big Crook)
- 陳乃明(古惑天王)
  - The case reached the Court of Final Appeal in May 2007  
案件於2007年5月由終審法院審理
  - distribution of infringing copies of films using “peer-to-peer” file sharing system  
以“點對點”文件分享程式分發侵犯版權的電影複製品



# BitTorrent case

## BT案例

- Attempted to distribute infringing copies of copyright works to such extent as to affect prejudicially the rights of the copyright owners

企圖分發版權作品的侵犯版權複製品而達到損害版權擁有人的權利的程度

- Conviction and sentence upheld  
定罪及刑期維持原判  
(Sentenced to 3 months' imprisonment)  
(被判入獄3個月)





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# Case Study (1)

## 討論個案(一)



**Facts:** A teacher downloads materials from research findings done by overseas organizations which were published on the Internet for the purposes of giving instruction

**事實：** 某教師下載某海外機構於互聯網上發表的調查結果作為教學用途

**Law:** Infringement of copyright ?

**法律：** 侵犯版權？





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# Case Study (1)

## 討論個案(一)



Points to note:

注意

- (a) Restricted acts e.g. copying  
受版權所限的作為 - 例如複製
- (b) Exemptions from liability (sections 37, 38-88 of the Copyright Ordinance)  
版權條例第37, 38至88條之有關豁免
- (c) Terms of use of the websites  
有關網站之使用條款
- (d) Specific consent of copyright owner  
取得版權擁有人之同意



# Case Study (1)

## 討論個案(一)

(a) Is it an restricted act?  
這是否受版權所限制的作為?

Consideration: Whether a substantial part of the work has been taken?

考慮因素: 是否引用該調查結果的整項或實質部份?

- quantity and the quality  
質與量
- no hard and fast rules  
不能一概而論





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# Case Study (1)

## 討論個案(一)



Think:

Would there be infringement if a teacher only quotes one paragraph from the publication?

想一想：

如某教師只是引用該調查結果其中的一個段落，這會構成侵權行為嗎？

Maybe if that paragraph was a substantial part of the work  
有這樣的可能，如該段落屬該調查結果的主要部份。



# Case Study (1)

## 討論個案(一)

**(b): Will that act be exempted from liability?**

(b): 該行爲可否享有版權條例的豁免?

- Primary consideration - section 37(3):

基本考慮因素 - 第37(3)條

- not conflict with the normal exploitation of the work by copyright owner; and

該項作爲並不與版權擁有人對作品的正常利用有所抵觸，以及

- not unreasonably prejudice the legitimate interests of copyright owner

該項作爲並沒有不合理地損害版權擁有人的合法權益



# Case Study (1)

## 討論個案(一)

**(b): Will that act be exempted from liability?**

(b): 該行爲可否享有版權條例的豁免?

- Specific exemptions for education: sections 41 - 45  
關於教育方面的特定豁免:第41 至45 條
  - E.g. (1) “Fair Dealing” of copyright work for the purposes of giving instruction (section 41A)
    - (2) Reprographic copying of published works for instruction purposes (Section 45)
- 例如: (1) 爲教學目的而“公平處理”版權作品 (第41A 條)  
(2) 翻印複製已發表作品作教學目的 (第45條)



# Case Study (1)

## 討論個案(一)

(c): Is the proposed use permitted by **Terms of use of the websites** ?

有關網站之使用條款是否准許該作為？

(d): If (b) and (c) not applicable, should obtain **specific consent of the copyright owner**

如不屬(b)及(c)的情況，應取得版權擁有人之同意

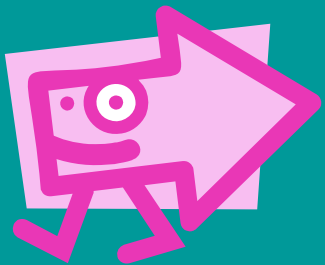


## Case Study (2) 討論個案(二)



Facts: Would there be infringement if a teacher wrote the article himself after digesting the findings, rather than quoting the materials directly?

事實：如某教師在參考過該些調查結果之後自行撰寫有關文章，而不是直接引用該些調查結果，這會構成侵權行為嗎？



If no copying, then no infringement  
若果沒有複製，便不構成侵權





## Case Study (3) 討論個案(三)



Facts: Can you make a hyperlink to the web sites where the research findings were published?

事實：可否使用超連結連結至發表該調查結果的網頁？

To be risk-free, any linking should be done upon the consent of the webmaster being sought

任何連結應先取得網頁管理員的同意以策安全



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# 在數碼環境中 保護版權事宜的檢討工作 **Digital Agenda Review**



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# 有關在數碼環境中保護知識產權的諮詢 Consultation on Copyright Protection in the Digital Environment

- 面對數碼科技日新月異帶來的挑戰，政府在2006年12月展開公眾諮詢，就以下問題，徵詢意見：
  - 應否（和如何）在數碼環境中加強版權保護？

In the light of advances in technology, the Government issued a public consultation document in Dec 2006 seeking public views on

- “Whether and if so how the copyright protection regime should be enhanced to provide for effective protection in the digital environment?”



# 主要內容 (1)

## Main Contents (1)

- 未獲授權而上載和下載版權作品的法律責任  
Legal liability for unauthorised uploading and downloading of copyright works
- 為透過各種傳送科技向公眾發放的版權作品提供保護  
Protection of copyright works transmitted to the public via all forms of communication technology
- 互聯網服務供應商在打擊網上盜版問題上扮演的角色  
Role of online service providers in relation to combating internet piracy



## 主要內容 (2) Main Contents (2)

- 協助版權擁有人對網上的侵犯版權行為提出民事訴訟  
Facilitating copyright owners to take civil actions against online infringement
- 侵犯版權的法定損害賠償  
Statutory damages for copyright infringement
- 為暫時複製版權作品提供版權豁免  
Copyright exemption for temporary reproduction of copyright works



# 公眾諮詢 Public Consultation

- 對於各項課題的最終處理方法，政府持開放態度  
The Government has an open mind on how the various issues should be addressed
- 諮詢期已於2007年4月30日完結  
The consultation period ended on 30 April 2007
- 收到超過600份意見書  
More than 600 submissions have been received
- 我們正在仔細研究是次諮詢收集到的意見，以期在2008年發表初步建議，藉此建立共識  
We are carefully considering the views received with a view to releasing preliminary proposals in 2008 for building up a consensus.



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Thank you  
謝謝



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# Q & A Session

## 問答時間