



Intellectual Property Department
The Government of the Hong Kong
Special Administrative Region

Copyright and Education 版權與教學

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Objective 目標



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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

Scope 內容



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- What is copyright? - Subsistence, ownership and duration
何謂版權 - 版權作品、版權擁有權及期限
- Rights of copyright owner and infringement of copyright
版權擁有人的權利及侵權
- Acts permitted in relation to copyright works (in particular, education-related)
就版權作品而允許的作為(尤其是與教育有關)

Background 背景



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- Copyright protection began on 1 July 1912
版權保護始於1912年7月1日
- Localised, comprehensive and modernised copyright law came into operation on 27 June 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？



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- Private property right 私產權
- Exclusive right to do (and prohibit someone to do) certain acts in relation to a copyright work
專有權利就版權作品作出(及禁止他人作出)某些行為
- 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
- 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



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Copyright Works 版權作品	Annotations 註解
(1) Original literary works 原創文學作品	Include compilations of data and computer programs 包括資料的編彙及電腦程式
(2) Original dramatic works 原創戲劇作品	Include works of dance or mime 包括舞蹈作品或默劇作品
(3) Original artistic works 原創藝術作品	Graphic works, photographs, sculptures or collages, irrespective of artistic quality 平面美術作品、照片、雕 塑品或拼圖(不論其藝術質量) Works of architecture 建築作品 Works of artistic craftsmanship 美術工藝作品
(4) Original musical works 原創音樂作品	Exclusive of 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	Regardless of the medium on which the recording is made 不論該紀錄是記錄在甚麼媒體上

Copyright works (2)

版權作品 (二)



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Copyright Works 版權作品	Annotations 註解
(6) Broadcasts 廣播	For instance, 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	Inclusive of the sound tracks accompanying the films 包括影片所附同的聲帶
(9) Typographical arrangement of published edition of literary, dramatic or musical works 已發表版本的排印編排	For instance, in newspapers or magazines 如在報章雜誌中

Copyright duration (1)

版權期限 (一)



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Copyright Works 版權作品	Usual Period of Protection 一般有效期
Original literary, dramatic, musical and artistic works 原創文學、戲劇、藝術及音樂作品	until 50 years after the author of the work dies 作者在生之年 + 50 年
Sound recordings 聲音紀錄	until 50 years after production / release 製作 / 發行後50年
Broadcasts 廣播 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)



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Copyright Works 版權作品	Usual Period of Protection 一般有效期
Films 影片	until 50 years after the last to die of: - 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:- 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
Typographical arrangement of published edition of literary, dramatic or musical works 已發表版本的排印編排	until 25 years after first publication 首次發表後25年

Ownership 擁有權



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- 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)
 - ◆ 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 assigned to another party 版權可轉讓予他人

Restricted acts 受版權所限制的作為



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1. Copying the work 複製作品
2. Issuing copies of the work to the public 向公眾發放複製品
3. Renting copies of the work to the public 租賃複製品予公眾
4. Making available copies of the work to the public 向公眾提供複製品
5. Performing, playing or showing the work in public 公開表演、放映或播放作品
6. Broadcasting the work/inclusion of the work in a cable programme service 廣播、有線傳播作品
7. Adaptation of the work 改編作品

Primary infringement 直接侵權



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- 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
 - ◆ In relation to the work as a whole or any substantial part of it
就該作品的整項或其任何實質部分
 - ◆ Either directly or indirectly 直接或間接地
- And the act in question is not an act permitted by the law
而有關行為不屬法定允許的行為

Secondary infringement 間接侵權



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Including 包括:-

Knowingly or having reason to believe a copy is an infringing copy of work -

在知情或有理由相信複製品是侵犯版權複製品的情況下 –

- Importing or exporting an infringing copy (otherwise than for one's private and domestic use) 將該複製品輸入或輸出香港 (而並非供自己私人或家居使用)
- Possessing or distributing for the purpose of or in the course of any trade or business an infringing copy 為任何貿易或業務的目的或在任何貿易或業務的過程中管有或分發該複製品

Criminal offences

刑事罪行



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Including 包括:-

- Making for sale or hire an infringing copy 製作侵權複製品以作出售或出租之用
- Selling or letting for hire an infringing copy for the purpose of or in the course of any trade or business 為任何貿易或業務的目的或在任何貿易或業務的過程中，出售或出租侵權複製品
- Distributing an infringing copy for the purpose of or in the course of any trade or business which consists of dealing in infringing copies 為任何包含經銷侵權複製品的貿易或業務的目的或在任何該等貿易或業務的過程中，分發侵權複製品
- Distributing an infringing copy to such an extent as to affect prejudicially the copyright owner 分發侵權複製品達到損害版權擁有人的權利的程度

Remedies

侵犯版權的補救



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Civil remedy 民事法律補救

- Injunction 強制令
- Delivery up of infringing items 交付令
- Award of damages or account of profits 損害賠償或交出利潤

Criminal sanctions 刑事法律制裁

Statutory permitted acts (1)

法定允許行為 (一)



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A. Primary consideration - 基本考慮因素

- (1) Does not conflict with normal exploitation of work by copyright owner 沒有抵觸版權擁有人正常利用作品
- (2) Does not unreasonably prejudice legitimate interests of copyright owner 沒有不合理地損害版權擁有人的合法權益

(s.37)

Statutory permitted acts (2)

法定允許行為 (二)



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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

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



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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

(s.38(3))

Statutory permitted acts

Criticism, review & news reporting

法定允許行為: 批評、評論及新聞報道



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- 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

(s.39)

Statutory permitted acts

Education (1): For purposes of instruction

法定允許行為: 教育(一): 為教學目的



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- Copying by teachers or students in the course of instruction 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

(s.41)

Statutory permitted acts

Education (2): For purposes of examination

法定允許行為 - 教育(二)：為考試目的



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- 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)

(s.41)

Statutory permitted acts

Education (3): Educational establishments (performance)

法定允許行為 - 教育(三)：教育機構 (表演)



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- Performance by teacher(s) or pupil(s) in the course of the activities of the establishment or at the establishment by any person for the purposes of instruction
在教育機構的活動過程中由教師或學生表演或在教育機構中任何人為教學目的而表演
- 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

(s.43)

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)



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- Playing/showing at the establishment for purposes of giving or receiving instruction
在教育機構中為教學或接受教學的目的而放映
- Sound recording, film, broadcast, cable programme
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

(s.43)

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



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- 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

(s.44)

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)



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- By educational establishments for purposes of giving instruction
教育機構為教學目的
- By pupils for the purposes of receiving instruction 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 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

(s.45)

Major Licensing Bodies – Music Industry

主要特許機構 (1) - 音樂業界



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- 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



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- 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



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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

(s.41A)



What is “specified course of study”? 甚麼是「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” exception (1) 使用「公平處理」須注意事項 (一)



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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” exception (2)

使用「公平處理」須注意事項 (二)



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- 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



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- 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



Intellectual Property Department
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- 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!