
**Briefing for
The Hong Kong Council of Social Service
on Copyright**

**香港社會服務聯會
版權簡介
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**Intellectual Property Department
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Objective 目標

To understand the basic concept of copyright

瞭解版權的基本概念

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	- 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
(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



What portion of unauthorized copying/use = Infringement ?

在未獲授權下複製/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)

法定允許作為 (一)

A. Primary consideration of determining whether an act may be done 決定作為是否可作出時的基本考慮因素

- (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: performance, showing or playing of works for purposes of club, society, etc. 法定允許行為:會社或社團等表演、放映或展示或播放作品

- **performing, showing or playing a copyright work (other than a broadcast or a cable programme)** as part of the activities of, or for the benefit of, a club, society or other organization is permitted subject to compliance with prescribed conditions
- 在符合訂明條件下，某會社、社團或其他組織的活動的一部分或為該會社、社團或其他組織的利益而**表演、放映或展示或播放作品(廣播或有線傳播節目除外)**

Statutory permitted acts: performance, showing or playing of works for purposes of club, society, etc.

法定允許行為：會社或社團等表演、放映或展示或播放作品

- Prescribed conditions
 - (a) the club, society or organization is not established or conducted for profit;
 - (b) the main objects of the club, society or organization are either charitable or concerned with the advancement of religion, education or social welfare; and
 - (c) the proceeds of any charge for admission to the place where the work is to be performed, shown or played are applied solely for the purposes of the club, society or organization.
- 訂明條件
 - (a) 該會社、社團或組織並非為牟利而成立或經營；
 - (b) 該會社、社團或組織的主要宗旨屬慈善性質，或是關於宣揚宗教，或推廣教育或社會福利的；及
 - (c) 表演、放映或展示或播放該作品的地方的入場費的收益，純粹是運用於該會社、社團或組織的目的。

Statutory permitted acts: Free public showing or playing of broadcast or cable programme

法定允許行為 - 免費公開放映或播放廣播或有線傳播節目

- The **showing or playing in public of a broadcast or cable programme (other than an encrypted broadcast or cable programme)** to an audience who have **not paid for admission** to the place where the broadcast or programme is to be seen or heard does not infringe any copyright in-
 - (a) the broadcast or cable programme; or
 - (b) any sound recording or film included in it.
- 如向任何觀眾或聽眾**公開放映或播放**任何**廣播或有線傳播節目(不包括經編碼處理的廣播或有線傳播節目)**，而該等觀眾或聽眾並**沒有支付**進入某地方觀看或聆聽該廣播或有線傳播節目的**入場費**，則該項放映或播放並不屬侵犯—
 - (a) 該項廣播或有線傳播節目的版權；或
 - (b) 包括在其內的聲音紀錄或影片的版權。

Statutory permitted acts: Free public showing or playing of broadcast or cable programme

法定允許行為 - 免費公開放映或播放廣播或有線傳播節目

- Having paid for admission to a place-
 - (a) if the audience has paid for admission to a place of which that place forms part; or
 - (b) if goods or services are supplied at that place (or a place of which it forms part)-
 - (i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast or programme; or
 - (ii) at prices exceeding those usually charged there and which are partly attributable to those facilities
- 已支付進入某地方觀看或聆聽廣播或有線傳播節目的入場費—
 - (a) 觀眾或聽眾已支付進入某一地方的入場費，而觀看或聆聽廣播或有線傳播節目的地方構成該某一地方的一部分；或
 - (b) 在該地方(或觀看或聆聽廣播或有線傳播節目的地方構成其一部分的地方)有貨品供應或服務提供，而該貨品或服務的價格—
 - (i) 實質上可歸因於提供觀看或聆聽該廣播或節目的設施；或
 - (ii) 高於通常在該地方收取的價格，並且可部分歸因於上述設施。

Statutory permitted acts: Free public showing or playing of broadcast or cable programme

法定允許行為 - 免費公開放映或播放廣播或有線傳播節目

- Persons Not regarded as having paid for admission to a place -
 - (a) residents or inmates of the place which is operated by a charitable organization and the facilities therein are not provided for profit;
 - (b) members of a club or society whose main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare and where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts or programmes is only incidental to the main purposes of the club or society.
- 不視為已支付入場費
 - (a) 由慈善組織營辦的地方，而在其內提供設施並非為牟利的
 - 以該地方的居民或住客身分入場的人；
 - (b) 某會社或社團的主要宗旨屬慈善性質，而所支付的費用只是該會社或社團的會籍費用，且提供觀看或聆聽有關廣播或有線傳播節目的設施，亦只是為該會社或社團的主要目的而附帶地提供的
 - 以該會社或社團的會員身分入場的人

Statutory permitted acts: persons with a print disability 法定允許行為：閱讀殘障人士

- print disability —
 - (a) blindness;
 - (b) an impairment of his visual function which cannot be improved by the use of corrective lenses;
 - (c) inability, through physical disability, to hold or manipulate a book; or
 - (d) inability, through physical disability, to focus or move his eyes;
- 閱讀殘障 —
 - (a) 失明；
 - (b) 該人的視力受到損害，以致該人不能依靠矯正視力鏡片；
 - (c) 由於身體殘疾以致無能力手持或調弄書本；或
 - (d) 由於身體殘疾以致無能力使其眼睛聚焦或移動其眼睛

Statutory permitted acts: persons with a print disability 法定允許行為：閱讀殘障人士

- **A specified body may make specially adapted copies of copyright works** (e.g. Braille, large-print, electronic version or sound recording) for persons with a print disability without infringing the copyright of the works concerned.
- **指明團體**可為閱讀殘障人士**製作特別版本**(例如採用點字、大字體、電子版本或聲音紀錄等形式)的版權作品複製品，而不屬侵犯有關作品的版權。

Statutory permitted acts: persons with a print disability 法定允許行為：閱讀殘障人士

- **Specified bodies** include any organization which is not established or conducted for profit and whose main objects are charitable or are otherwise concerned with the advancement of welfare for persons with a print disability
- **指明團體**包括非為牟利而成立或營辦的、主要宗旨屬慈善性質的或是在其他情況下以促進閱讀殘障人士的福利為務的組織

Statutory permitted acts: persons with a print disability 法定允許行為：閱讀殘障人士

- Prescribed conditions –
 - (a) before making the specially adapted copies, the specified body should make reasonable enquiries to satisfy itself that specially adapted copies cannot be obtained at a reasonable commercial price;
 - (b) the specified body must notify the relevant copyright owner within a reasonable time before or after the specially adapted copies are made or supplied to persons with a print disability
- 訂明條件
 - (a) 指明團體在製作特別版本的複製品前，應先作出合理查究以確定無法以合理的商業價格取得特別版本的複製品；
 - (b) 指明團體須在製作或向閱讀殘障人士提供特別版本的複製品之前或之後的合理期間內，通知有關版權擁有人。

Statutory permitted acts: persons with a print disability 法定允許行為：閱讀殘障人士

- A specified body entitled to make accessible copies **may possess an intermediate copy** which is necessarily created during the production of the accessible copies
- 有權製作便於閱讀文本的指明團體，可**管有任何在製作該便於閱讀文本的過程中必然產生的中間複製品**

Statutory permitted acts: persons with a print disability 法定允許行為：閱讀殘障人士

- A specified body may **lend or transfer an intermediate copy** possessed to another specified body which is also entitled to make accessible copies of the relevant copyright work
- 指明團體可將管有的**中間複製品**，借予或轉移予另一同樣有權製作有關版權作品的便於閱讀文本的指明團體

Statutory permitted acts: persons with a print disability 法定允許行為：閱讀殘障人士

- Prescribed conditions –
the specified body must notify the relevant copyright owner within a reasonable time before or after lending or transferring the intermediate copy unless the specified body cannot, after making reasonable enquiries, ascertain the identity and contact details of the relevant copyright owner
- 訂明條件 -
指明團體在借出或轉移中間複製品之前或之後的一段合理時間內，通知有關版權擁有人，除非指明團體在作出合理查究後，仍不能確定有關版權擁有人的身分及聯絡方法的詳細資料

Statutory permitted acts: persons with a print disability 法定允許行為：閱讀殘障人士

- A welfare organization can **charge for**
 - (a) the specially adapted copies in providing the copies to persons with a print disability, or
 - (b) lending or transferring an intermediate copy provided that the sum charged must not exceed
 - (i) the actual cost incurred in making and supplying the copy, or
 - (ii) the cost incurred in lending or transferring the copy.
- 向閱讀殘障人士提供特別版本的複製品或借出或轉移中間複製品時，福利機構可**收取費用**，但款額不得超過 -
 - (i) 製作和供應該複製品所需的實際成本，或
 - (ii) 為借出或轉移該中間複製品而招致的成本

Statutory permitted acts: Provision of sub-titled copies of broadcast or cable programme

法定允許行為：提供附有字幕的廣播或有線傳播節目的複製品

- A body (which is not established or conducted for profit) designated by Secretary for Commerce and Economic Development may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, with copies which are sub-titled or otherwise modified for their special needs, make copies of television broadcasts or cable programmes and issue and make available copies to the public, without infringing any copyright in the broadcasts or cable programmes or works included in them.
- 商務及經濟發展局局長可指定並非為牟利而設立或經營的機構，為了將附有字幕或在其他方面經變通以切合失聰或聽覺有問題的人或身體上或精神上有其他方面殘障的人的特殊需要的電視廣播或有線傳播節目的複製品提供予該等人士，可製作該等複製品並向公眾發放及提供該等複製品，而不屬侵犯該等廣播或有線傳播節目或其所包括的作品的版權

Statutory permitted acts: Provision of subtitled copies of broadcast or cable programme

法定允許行為：提供附有字幕的廣播或有線傳播節目的複製品

- This permitted act is not applicable if, or to the extent that, licences under licensing schemes are available authorizing the act in question and the person so acting knew or ought to have been aware of that fact.
- 如有特許計劃下的特許授權作出有關的作為，而如此作出有關的作為的人已知道或應已知道該事實，則本允許行為並不適用，或並不在該特許授權作出有關的作為的範圍內適用。

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/>

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
- IPD Hotline 知識產權署查詢熱線 2961 6901
- IPD E-mail address 知識產權署電郵地址
enquiry@ipd.gov.hk

Thank you!

謝謝!