

COMM 2035
Communication, Ethics and Law
Lecture 9
Restrictions on Media Freedom :
The Copyright Law and Other
Issues

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Copyright

Ethical Principles concerning Copyright :

- Respect to intellectual Property
- Honesty



Copyright Context in Hong Kong

In Hong Kong copyright is a private property rights that gives exclusive rights to the author/creator of an original work to do the following acts :

1. to copy the work;
2. to issue copies of the work to the public (publishing);
3. to rent copies of the work to the public;
4. to make available copies of the work to the public on the Internet;
5. to perform, show or play the work in public;
6. to broadcast the work or include it in a cable programme service;
7. to make an adaptation (e.g. translating a work or altering a computer program) of the work.

It is governed by the **Copyright Ordinance (Cap. 528)** and the **Copyright (Amendment) Ordinance 2007 & 2009.**

What is Intellectual Property ?

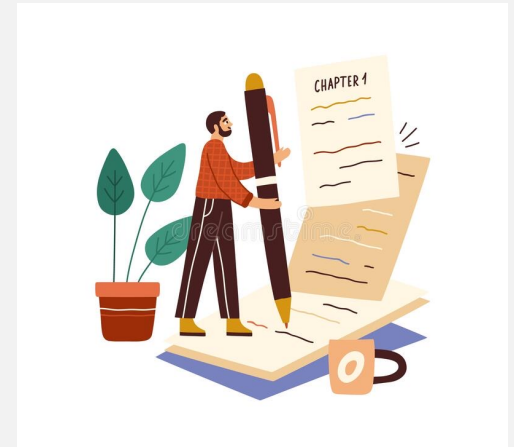
- Intellectual property is an umbrella term that covers a group of separate intangible property rights including copyright plus others such as trademarks, patents, designs, plant varieties and the layout design of integrated circuits.

Details can be referred to

http://www.ipd.gov.hk/eng/intellectual_property/ip_hk.htm.

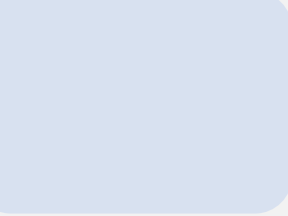
What is the difference between copyright and patent and trademark ?

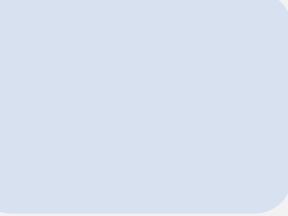
- Copyright protects the expression of ideas of the author/creator, not the underlying ideas.



- A patent protects invention of the patent owner.

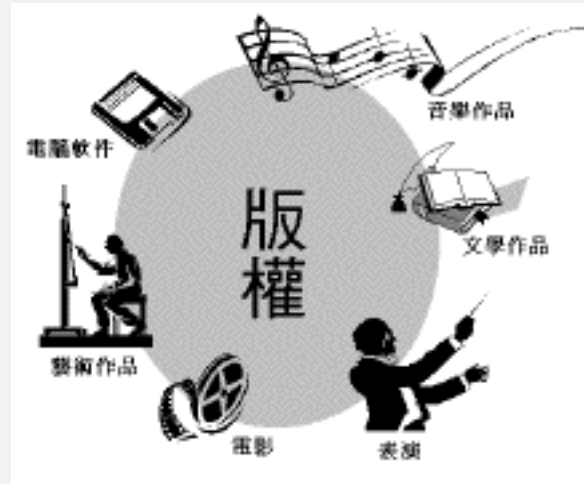


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- A trademark protects words (including personal names), indications, designs, letters, characters, numerals, figurative elements, colors, sounds, smells, the shape of the goods or their packaging or any combination of these that distinguish goods and services of one trader from those of others.

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- Copyright does not require registration, it is automatic. Patents and trademarks require formal registration to obtain the rights.

What does copyright protect ?

- Hong Kong's Copyright Ordinance protects creativity and the expression of ideas in a work, but not the underlying ideas.



There are 9 categories of works, including works transmitted over Internet, radio, television, that are copyright-protected:

1. Literary works such as books and computer software
2. Dramatic works such as plays
3. Musical works such as musical compositions
4. Artistic works such as drawings, paintings, and sculptures
5. Sound recordings
6. Films
7. Broadcasts
8. Cable programmes
9. Typographical arrangement of published editions of literary, dramatic or musical works, as well as performers' performances.

- Copyright applies to all works even if they originate outside Hong Kong.
- Copyright is automatic, no formal registration is required to claim copyright, and it can be licensed/assigned to another party.

Details can be referred to

http://www.ipd.gov.hk/eng/pub_press/publications/cpr_ed_e.pdf.

What isn't protected by copyright ?

- Copyright protects the authorship of an original work including the skills and labour of an author.

Therefore, the following is not protected:

1. Works which are trivial or involve little skill and labour of an author such as titles, names, and short phrases
2. Mere ideas in a work
3. Works in public domain.

Who owns copyright ?

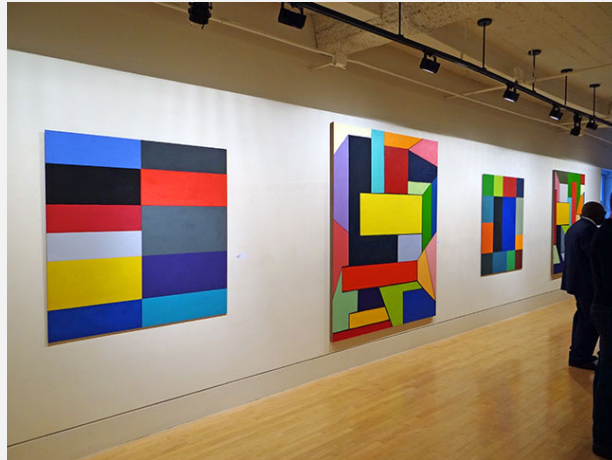
- The author of a work owns the copyright.
- If it is a joint work, then all the joint authors own the copyright.
- If a work is created in the course of his employment, his employer is the first copyright owner subject to any agreement to the contrary.

Details refer to the **copyright context and policies at CUHK.**

- For commissioned works, the ownership of copyright depends on the agreement between the parties.

Details refer to

http://www.ipd.gov.hk/eng/pub_press/publications/hk.htm#cp4.





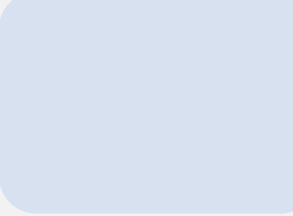
How long does copyright last ?

- Copyright is time limited, and in Hong Kong how long copyright lasts depends on the format of the work, but in most cases it will last for 50 years after the death of the author/creator.

Fair Dealing -- Copyright Exemption

- In Hong Kong, there are some exceptions in the Copyright Ordinance, such as ***fair dealing***, that allow some copying for educational establishments.
- There are no prescribed percentages on what can be copied; however this is not a blanket license to copy.



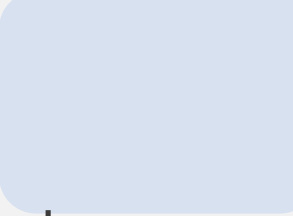
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- Educational establishments are permitted to copy by a teacher or a student to a reasonable extent artistic works or passages from published literary, dramatic, or musical works, or recording of broadcast or cable programmes, in a fair manner for the purposes of giving or receiving instruction.

In deciding what constitutes a fair manner, the court shall take into account all the circumstances, in particular:

- the purpose and nature of the dealing, including whether such dealing is for non-profit making purpose and whether it is of a commercial nature;
- the nature of the work;
- the amount and substantiality of the portion dealt with in relation to the work as a whole; and
- the effect of the copying on the potential market for or value of the work.

- To enjoy “fair dealing” exemption, you must properly acknowledge the title and authorship of the work and deal with the work in a fair manner.

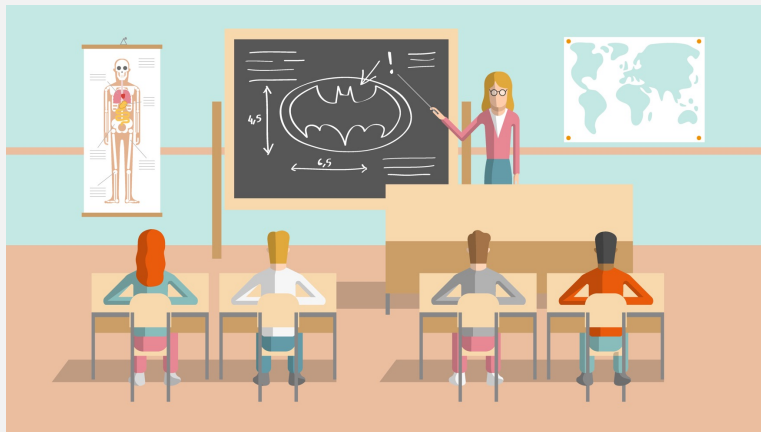
Examples of what would be considered fair or unfair for dealing with a copyrighted work can be found at http://www.ipd.gov.hk/eng/intellectual_property/copyright/edu_guide.pdf.

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- Subject to the above conditions, copying for research and private study is permitted.
 - Copying a work for the purpose of setting or answering examination questions is also permissible, except for musical works for use in performance by a candidate.
 - However the minimum amount of copied material required to set the question should be used.

- It should be noted that a qualitative rather than a quantitative approach will be adopted in assessing whether there has been substantial taking; so the copying of a substantial part of the original work, albeit not of a significant proportion of the work, may still fall outside the fair dealing exception and thereby constitute an infringement of copyright.

Hong Kong's Copyright-Related Ordinances

- Hong Kong's copyright laws has a lot of implications on educational institutions.



The following covers all the related ordinance, regulations and guidelines relating to the practice of copyright in educational sector.

- **Copyright Ordinance (Cap. 528)**
- **Copyright (Amendment) Ordinances 2007 & 2009**
- **Copyright exemptions on Copyright (Amendment) Ordinance 2007**

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- **Copyright (Amendment) Bill 2011**
 - **Copyright (Amendment) Bill 2014**
 - **Booklet on Copyright & Education in Hong Kong**
 - **Hong Kong's Amended Copyright Law: A Guide for Teachers and Students**



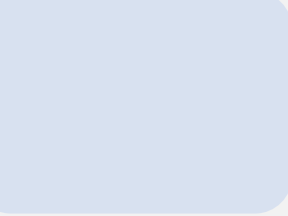
Copyright & Education ([video](#))

- **Presentation on Education and Copyright by Intellectual Property Department, 28 November 2014**
- **Guidelines for Photocopying of Printed Works by Not-for-profit Educational Establishments**
- **FAQ on Guidelines for Photocopying of Printed Works by Not-for-profit Educational Establishments**

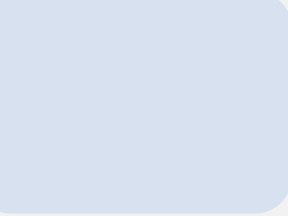
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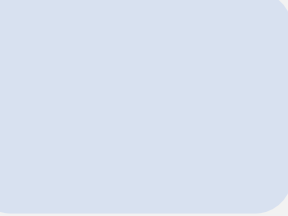
Copy Basics, The Chinese
University of Hong Kong Library.

<https://www.lib.cuhk.edu.hk/en/research/copyright/basics/>

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- In Hong Kong , copyright is governed by the Copyright Ordinance (Cap. 528 of the Laws of Hong Kong) under which only the following nine categories of works enjoy copyright.

Category of Work	Examples
Literary Works	Written works, such as poems, novels, essays, letters, lyrics, computer programs, design specifications, user manuals, tables, and compilations.
Dramatic Works	Works intended to be performed, such as works of dance and mime, film scripts, and screenplays.
Musical Works	Musical scores.
Artistic Works	Graphic works (paintings, drawings, diagrams, maps, charts, plans, engravings, etchings, lithographs, and woodcuts), photographs, sculptures, collages, buildings (and models for buildings), and works of artistic craftsmanship (e.g. jewelries).
Sound Recordings	Recordings of sounds regardless of medium e.g. gramophone records, tapes, CDs, MP3 files stored on memory chips.
Films	Recordings of moving images regardless of medium e.g. tapes, VCDs, DVDs, MPEG files stored on memory chips.
Broadcasts	Wireless transmissions of sounds and/or visual images e.g. TV broadcasts and radio broadcasts.
Cable Programmes	Items included in a service via cable e.g. cable TV programmes.
Typographical arrangements of published editions	Layouts and typographies of published works (e.g., newspapers, books or magazines).

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- It is important to note that an item may be protected by more than one copyright as it may consist of more than one copyright work.
 - A good example is a book, which may contain the following copyright works: written words (literary works), drawings (artistic works), photographs (artistic works), and the overall layout of the book (typographical arrangement).

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- Similarly, a musical CD may comprise the following copyright works: underlying music (musical works), lyrics (literary works), and the CD as a record (sound recording).
 - Thus if a person makes a copy of a book or musical CD without permission, the person will infringe not just one copyright but all of the copyrights embodied in the book or CD.

FAQ

1. HOW DO I OBTAIN COPYRIGHT?

- Generally, to enjoy copyright protection, a work must be original and be recorded in a material form. If these conditions are satisfied, copyright will arise automatically, and **there are no requirements for registration or other formalities.**
- Under the Copyright Ordinance, works by authors from anywhere in the world, or works first published anywhere in the world, are all eligible for copyright protection in Hong Kong.

- In the context of copyright, "original" simply means that the work originates from the author (i.e. not copied from elsewhere) and that it involves the author's skill and labour.
- Copyright does not require a work to be of high quality or aesthetic value.
- Nor does it require a work to be creative or new. However, works which are trivial or involve little skill and labour will not be protected.
- Thus titles, names, and short phrases are generally not protected by copyright (but can be protected as trade marks). Mere ideas also do not enjoy copyright.

3. WHAT IS A COPYRIGHT NOTICE? IF I AM THE COPYRIGHT OWNER, IS IT NECESSARY TO HAVE A COPYRIGHT NOTICE ON MY WORK?

- A copyright notice is a notice placed on a copyright work which consists of three parts: (i) the symbol " ©" or the word "Copyright"; (ii) the year of first publication; and (iii) the name of the copyright owner. An example of a copyright notice is " © 2005 ABC Company".
- As copyright does not require any formalities, such a notice is not necessary in order for the work to enjoy copyright protection.

- However, there are good reasons for including a copyright notice on your copyright work.
- First, a copyright notice informs the whole world who the copyright owner is, and when the copyright is created.
- Secondly, the notice prevents an infringer from claiming to be an "innocent infringer" (i.e. did not know, and had no reason to believe, that copyright subsisted in the work in question) and thereby avoiding liability for damages (compensation) by virtue of section 108(1) of the Copyright Ordinance.

5. HOW DO I OBTAIN PERMISSION TO USE A COPYRIGHT WORK?

- The basic rule is to ask for permission from the copyright owner. If you know who the copyright owner is, you may contact the owner directly.
- If you do not know who the copyright owner is, you may start with the collecting societies that represent copyright owners.

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- Currently, there are a few collecting societies in Hong Kong representing authors, publishers, composers, lyricists, and record producers.
 - The main function of these collecting societies is to negotiate licensing terms, grant licences and collect licence fees on behalf of the copyright owners for the use of their copyright works.

At present, the major collecting societies are as follows.

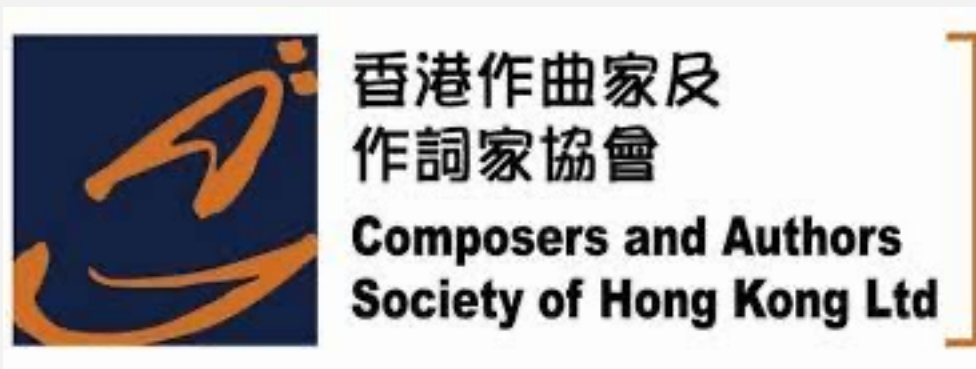
- Hong Kong Reprographic Rights Licensing Society (HKRRLS), representing authors and publishers of printed works (books, magazines, newspapers, journals, and periodicals).
- Hong Kong Copyright Licensing Association (HKCLA), representing authors and publishers of 12 local newspapers and 19 local magazines.

HKCLA

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



- Composers and Authors Society of Hong Kong Limited (CASH), representing composers and lyricists of musical works.



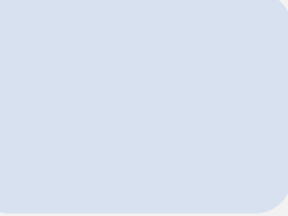
- Phonographic Performance (South East Asia) Limited (PPSEAL) , representing producers of musical sound/visual recordings

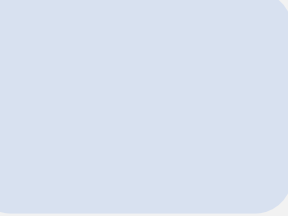
PPSEAL is a wholly-owned subsidiary of International Federation of the Phonographic Industry (Hong Kong Group) Limited , an affiliated industry association of International Federation of the Phonographic Industry (IFPI) , the collecting society for recording companies worldwide.

The representation of these collecting societies and the types of licence granted by them can be found from their websites.

6. ARE THERE ANY WORKS THAT I CAN USE FREELY WITHOUT HAVING TO OBTAIN PERMISSION IN RESPECT OF COPYRIGHT?

- Yes, works that are said to be in the "public domain" may be used freely.
- These works include works which are out of copyright (i.e. the copyright period has expired), or which fail to meet the requirements for copyright protection (e.g. names, titles, or short phrases — they may, however, be protected as trade marks).

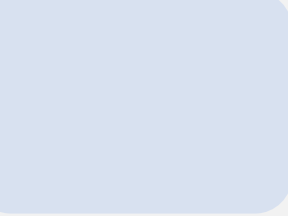
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- Note that the fact that a work is made freely available (e.g. posted on a website) does not imply that the work is in the public domain. It only means that the public are given free access to the work, but they are not given the right to copy the work or commit any act which infringes the copyright of the work.

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- If a work is not in the public domain, one can only use it without the permission of the copyright owner if one's act is a "permitted act" under the Copyright Ordinance (see "permitted acts" on section II).
 - In cases of doubt, it is recommended that permission of the copyright owner be obtained.

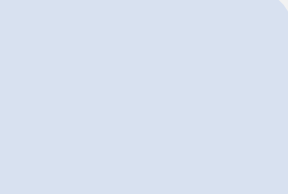
14. A FREE-LANCE PROGRAMMER HAS WRITTEN A PROGRAM TO KEEP TRACK OF MY COMPANY'S INVENTORY.

I HAVE PAID HIM IN FULL BUT WE HAVE NEVER DISCUSSED THE OWNERSHIP OF THE PROGRAM.

AM I THE COPYRIGHT OWNER OF THE PROGRAM? IF NOT, DO I HAVE ANY RIGHTS IN THE PROGRAM?

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- In the absence of an agreement on ownership, the basic rule applies i.e. the author of the program is its copyright owner.
 - Thus it is the free-lance programmer, rather than you, who owns the copyright in the program.

- However, by virtue of section 15(2) of the Copyright Ordinance, you have an exclusive licence to exploit the program for all purposes that could reasonably have been contemplated by you and the free-lance programmer at the time the program was commissioned.

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- This should include at least the following: installing the program on your computer, using the program to keep track of your company's inventory, and making a backup copy of the program.
 - In addition, you have the right to restrain any exploitation of the program for any purpose, which you can reasonably object to, such as forbidding the free-lance programmer to sell the program to another party or your competitor .

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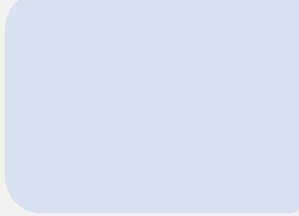
Copyright, by Community Legal Information Center (CLIC) , Law and Technology Center, The University of Hong Kong, last revision date : 27 February 2020.

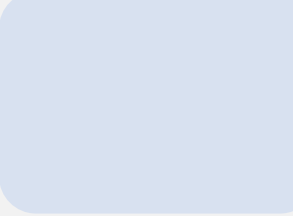
[https://www.clic.org.hk/en/topics/intellectual
Property/copyright](https://www.clic.org.hk/en/topics/intellectualProperty/copyright)

INFRINGEMENT OF COPYRIGHT AND PERMITTED ACTS (EXCEPTIONS TO COPYRIGHT INFRINGEMENT)

Under the Copyright Ordinance, copyright owners have the exclusive right to carry out the following acts in relation to their works (see sections 22-29 of the Copyright Ordinance).

- To copy the work on to a tangible medium (e.g. paper or any digital medium).
- To put into circulation (i.e. to distribute) copies of the work not previously put into circulation anywhere in the world.

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- To rent copies of computer programs and sound recordings to the public for economic or commercial advantage.
 - To make copies of the work available to the public via the Internet.

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- To perform, show or display the work in public (it does not apply to artistic works and typographical arrangements of published editions).
 - To broadcast or include the work in a cable programme service (it does not apply to typographical arrangements of published editions).

- To make an adaptation of a literary, dramatic or musical work, which includes:
 - translating a work into another language;
 - converting a dramatic work into a non-dramatic work, and vice versa;
 - conveying a story by pictures;
 - arranging or transcribing a musical work;
 - converting a computer program into another computer language or code.
- To carry out any of the above acts in relation to an adaptation (e.g. to photocopy a Chinese translation of an English book, or sell copies of the translation etc.).

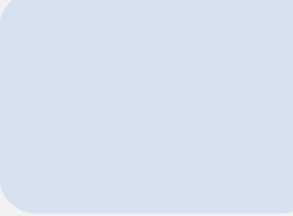
Civil liability

- If a person, without the consent of the copyright owner, carries out or causes or requires another party to carry out any of the above acts, that person will infringe the copyright of the works in question.
- Such infringement is referred to as "**primary infringement**", and does not require proof of guilt in the infringer's mind.
- Thus, even if the infringer does not know that his act infringes a copyright, that infringer will still be liable.

There are other two important points in relation to the primary infringement of a copyright.

i. Infringement exists even when the infringing act is done indirectly (such as copying from a source which is in turn a copy of the original) (see section 22(3)(b) of the Copyright Ordinance).





ii. To constitute infringement, all that is required is that the infringing act is done in respect of a "substantial part" of a work (see section 22(3)(a) of the Copyright Ordinance).

The test for substantiality is qualitative and not quantitative.

- Thus there are no fixed quantitative measures (e.g. number of words or pages for a book) for determining whether a part of a work is a substantial part of the work.

- Primary infringement incurs only civil liability.
- The only exception is when the infringing copies are made for sale or hire, as this is a criminal offence in addition to civil liability .



Apart from primary infringement, a person may also incur civil liability for "**secondary infringement**" if that person carries out, among other things, any of the following acts without the consent of the copyright owner (see sections 30 and 31 of the Copyright Ordinance).

- To import into or export from Hong Kong, otherwise than for his private and domestic use, infringing copies of a work.
- To possess, sell, distribute or otherwise deal with infringing copies of a work for the purpose of trade or business.

- To distribute, otherwise than for the purpose of trade or business, infringing copies of a work to such an extent as to affect prejudicially the copyright owner (e.g. loss of income or business opportunities, etc.).



Comic Series on IP Education
Secondary Infringement

Big Brother, what is "secondary infringement"?



For example, when infringing works are imported into Hong Kong knowingly



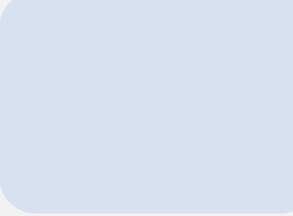
and copies of which are used for sale or distribution. That's secondary infringement. Understand?



Oh, I see. Big Brother, you really know a lot.

Shut up! Mere understanding is not enough.



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- However, the person will only be liable if, at the time he committed the act, he knew or had reason to believe that he was dealing with infringing copies.
 - If such knowledge or guilty state of mind cannot be proved, that person will not be liable for secondary infringement.

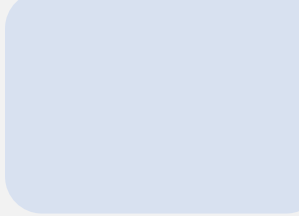
In addition to the above, a person may also incur civil liability because of secondary infringement if he commits, among other things, any of the following acts without the consent of the copyright owner.

- To provide an article specifically designed or adapted for making infringing copies of a work (see section 32(1) of the Copyright Ordinance).

- To transmit a work by a telecommunications system enabling infringing copies to be made by reception of the transmission anywhere in the world (see section 32(2) of the Copyright Ordinance).

- To permit a place of public entertainment to be used for an infringing performance (see section 33 of the Copyright Ordinance).
- To provide apparatus/equipment or premises to host apparatus, or supply a copy of a sound recording or film for an infringing performance (see section 34 of the Copyright Ordinance).

- To provide a device specifically designed or adapted to circumvent the copy-protection of a work, or to publish information intended to assist such circumvention (see section 273 of the Copyright Ordinance).

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- In a short summary regarding civil liability, if the copyright of an item is being infringed, the relevant copyright owner can institute legal action against the infringer in order to get compensation/recover losses.
 - Also, the copyright owner may seek an injunction order from the court to prevent further infringement.

Criminal Offences

Criminal offences for copyright infringement are set out in sections 118, 119A and 120 of the Copyright Ordinance. Under section 118(1), a person commits an offence if he does, among other things, any of the following.

- To make infringing copies for sale or hire.
- To import into or export from Hong Kong, otherwise than for his private and domestic use, infringing copies of a work.

- To possess, with a view to committing further acts of infringement, sell, distribute or otherwise deal with infringing copies of a work for the purpose of trade or business.
- To distribute, otherwise than for the purpose of trade or business, infringing copies of a work to such an extent as to affect prejudicially the copyright owner (e.g. loss of income or business opportunities).

If convicted for any of the above acts, the offender is liable to a fine of \$50,000 per infringing copy and to imprisonment for 4 years.

Other criminal offences include the following:

- Providing an article specifically designed or adapted for making infringing copies of a work (see section 118(4) and (8) of the Copyright Ordinance). Maximum sentence for this offence is a fine of \$500,000 and imprisonment for 8 years.

- Possessing an infringing copy of a work in a copying service business (see section 119A of the Copyright Ordinance). Maximum sentence for this offence is a fine of \$50,000 per infringing copy and imprisonment for 4 years.

- Making infringing copies of a work outside Hong Kong for export to Hong Kong (see section 120(1) of the Copyright Ordinance). Maximum sentence for this offence is a fine of \$500,000 and imprisonment for 8 years.

- Making an article outside Hong Kong specially designed or adapted for making infringing copies of a work and intended to be so used in Hong Kong (see sections 120(2) and (3) of the Copyright Ordinance). Maximum sentence for these offences is a fine of \$500,000 and imprisonment for 8 years.

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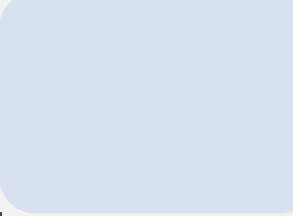
Infringement of Copyright and Permitted Acts, by
Community Legal Information Center (CLIC) ,
Law and Technology Center, The University of
Hong Kong, last revision date : 27 February 2020.

<https://www.clic.org.hk/en/topics/intellectualProperty/copyright>

Copyright protection

- Copyright protection is available for various types of creative works, including what are known as derivative works.



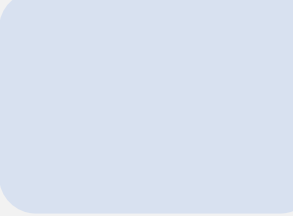
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- A derivative work is based on a work that has already been copyrighted. The new work arises—or derives—from the previous work.
 - If you own the copyright to a work, you need to be aware that you also have rights to derivative works.
 - If you're considering incorporating someone else's work into your new work, you need to be aware that you may be violating the copyright to the original work.

What Are Derivative Works ?

- For an official legal definition of derivative works, the United States Copyright Act of 1976, 17 U.S.C. Section 101 states: A "derivative work" is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted.

- A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a "derivative work."



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- However, there have been numerous court cases interpreting the law, which complicate things and render this definition incomplete.
 - There must be major or substantial new material for a work to be considered copyrightable as a derivative work.
 - The new material must be sufficiently original and creative to be copyrightable by itself.

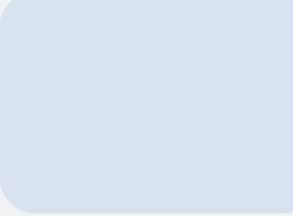
Common examples of derivative works are:

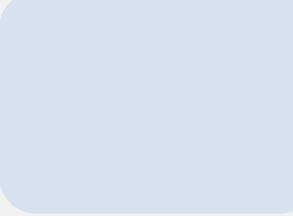
- A new, updated or revised, edition of a book
- A translation of a book into another language
- A sequel to a novel or motion picture
- A novel adapted to a screenplay, stage production, or motion picture
- A new musical arrangement of a composition

Copyright Protection of Derivative Works

- There are two ways that derivative rights are protected under copyright law.

- First, the derivative work has protection under the copyright of the original work.
- Copyright protection for the owner of the original copyright extends to derivative works.
- This means that the copyright owner of the original work also owns the rights to derivative works.
- Therefore, the owner of the copyright to the original work may bring a copyright infringement lawsuit against someone who creates a derivative work without permission.

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- Second, the derivative work itself has copyright protection.
 - The creator of the derivative work owns the copyright to the derivative work.
 - This can either be the creator of the original work, or someone else who has obtained a derivative work license from the holder of the original copyright.

- 
- The copyright of a derivative work is separate from the copyright to the original work.
 - Therefore, if the copyright holder gives someone a license to create a derivative work, the holder retains the copyright to the original work. In other words, only the derivative rights are being licensed.

Exceptions to Copyright Protection

- Copyright doesn't protect against all use of the work or use of derivative works.
- There are a few exceptions that fall under what's commonly known as the fair use doctrine:

Parodies

- A parody is when a work is modified to criticize or make fun of the original work.
- Weird Al Yankovic has made a career out of writing and performing parodies of famous popular songs.
- Some painters have also taken paintings by famous artists and modified them in a humorous manner.



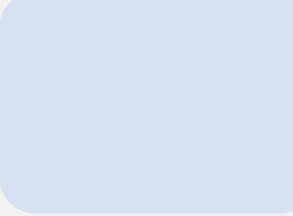
- It's important not to confuse **parody and satire**.
- A parody criticizes or makes fun of the original work itself, whereas satire uses the original to criticize or make fun of something else.

Reviews

- Someone writing a book review may quote small segments from the book being reviewed.
- Similarly, a review of a musical album may quote song titles and small segments of their lyrics.

Scholarly Works

- The author of a scholarly work may use small portions of a copyrighted work.

- 
- It's not always easy to determine whether a work is a derivative work or whether it comes under the fair use doctrine.
 - To be safe, it's best to obtain the original copyright holder's permission or seek professional legal advice.

From :

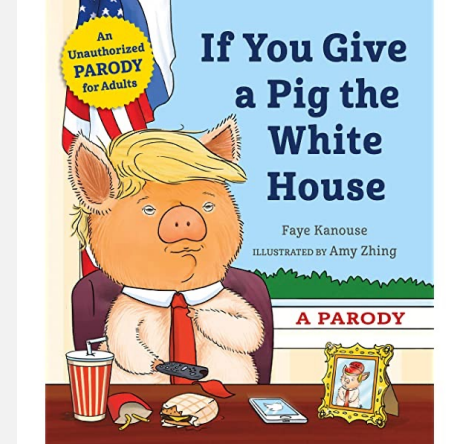
What Are Derivative Works Under Copyright Law ? by Edward A. Haman, LEGALZOOM, updated : 2 May 2022.

<https://www.legalzoom.com/articles/what-are-derivative-works-under-copyright-law>



**Why is the Government
consulting the public on “parody”
but not on “secondary creation” ?**

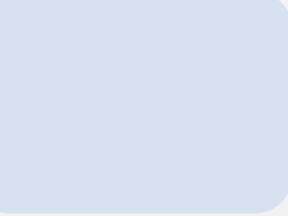
- “Parody” is used by the Government as a collective term to refer to a wide scope of works such as “parody”, “satire”, “caricature” or ‘pastiche” which include an element of imitation or incorporate certain elements of an underlying copyright work for the purposes of creating comic or critical effects. The coverage is very broad.



- “Secondary creation” is not a term commonly used in copyright jurisprudence and it is difficult to ascertain its actual coverage.



- For instance, there are views suggesting that “secondary creation” should include translations and adaptations, or should be treated as “derivative works”.
- However, the concepts of translation and adaptation, both being derivative works, are clear under international copyright treaties and copyright laws in different jurisdictions.
- Although there may be original elements in the later work itself, it may not be appropriate to take this as the sole basis in considering any copyright exception.

- 
- The provision of a copyright exception solely based on the rather ambiguous concept of “secondary creation” may blur the line between infringing and non-infringing works, create uncertainty and increase opportunities for abuse.

From :

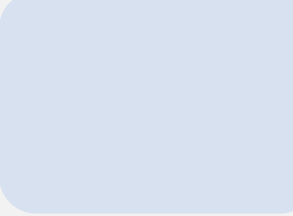
Why is the Government consulting the public on “ parody ” but not on “ secondary creation ” ? , Intellectual Property Department, HKSARG.

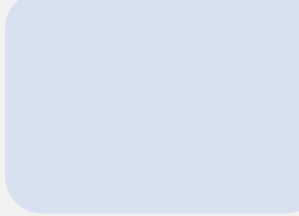
https://www.ipd.gov.hk/eng/intellectual_prope_rty/copyright/Q_A1.htm

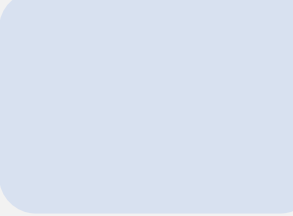
Parody Defence

- Parodies can be an effective means of contributing to free speech and public debate precisely because of their imitative and humorous nature.
- The issue has not been the subject of judicial consideration in Hong Kong.



- 
- Overseas cases have argued that parodies and remixes contain enough original thought and creativity to be recognized as works in their own right but that, in itself, does not necessarily absolve the derivative work from infringement if it is, in fact, a substantial copy of another work.
 - The position in Hong Kong for creators of derivative works is still unclear.

- 
- The Government has said that introducing a copyright exception for parody would potentially be controversial as it is liable to change significantly the existing balance of interests between right holders and users.
 - No legislative proposals will be introduced without a thorough assessment and public consultation.

- 
- Whether it is necessary to define “parody” and “satire”, and whether these should be regarded as different for user-generated content, are all questions that need careful consideration.
 - Finding an appropriate balance between the interests of parodists and copyright owners will clearly not be easy.

Reference :

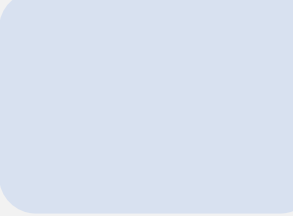
Does Hong Kong need a “parody defence”
? DEACONS , 1 September 2014.

<https://www.deacons.com/tc/2014/09/01/does-hong-kong-need-a-parody-defence/>

Copyright (Amendment) Bill 2022

- Hong Kong is resurrecting a bill expanding intellectual property protections that opposition lawmakers have blocked twice before, with officials saying it is high time the city catches up with the rest of the world in updating its copyright regime.



- 
- The government on Wednesday launched a three-month public consultation on the proposal to update the Copyright Ordinance, which is expected to be submitted to a newly elected Legislative Council in 2022.

- Secretary for Commerce and Economic Development Edward Yau Tang-wah noted that three rounds of major consultations on strengthening copyright protections had been carried out since 2006, and previous efforts to pass the bill were met with filibustering by opposition lawmakers.



- The government's proposal, based on the Copyright (Amendment) Bill 2014, is again offering exemptions to the education sector, libraries, museums and archives to use protected materials for the purposes of learning.
- It also allows the use of protected content for the creation of parody, satire, caricature, pastiche, commenting on current events, and quotation of copyrighted work. It also permits the reproduction of audio recordings in different formats.

From :

Hong Kong to revive bill bolstering copyright law as minister warns satire, parodies must toe national security line, by Denise Tsang and Kathleen Magramo, SCMP, 24 November 2021.

<https://www.scmp.com/news/hong-kong/hong-kong-economy/article/3157218/hong-kong-revive-bill-bolstering-copyright-law>

Reference Reading :

Why are online users so wary of the new bill ? by Stuart Lau, SCMP , 9 December 2015.

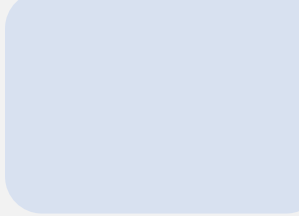
- Some fear they will be guilty of a crime if their derivative works do not fall under the exemption categories.
- He said the government did not explain in detail the potential legal traps in crediting the source of an original copyrighted work.

https://www.scmp.com/news/hong-kong/politics/article/1888931/hong-kong-copyright-bill-explained-why-are-people-so?module=hard_link&pgtype=article

Copyright (Amendment) Bill 2022 gazetted

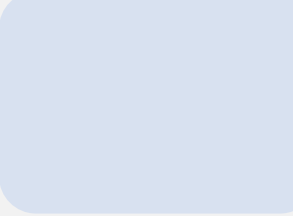
- The intellectual property (IP) regime has all along been very important to Hong Kong as an international trade centre.



- 
- Updating Hong Kong's copyright regime and strengthening copyright protection in the digital environment are important parts of the strategy to develop Hong Kong into a regional IP trading centre under the National 14th Five-Year Plan.
 - Hong Kong's IP regime must keep abreast with the times and international norms, as well as meet its social and economic needs.

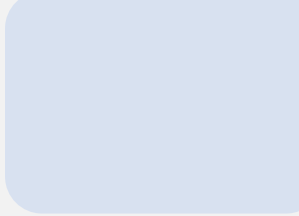
- The copyright system is an important part of the IP regime. On the one hand, it effectively protects private property rights arising from original works.
- On the other hand, it allows the public to make reasonable use of copyright works.



- 
- This is crucial to encouraging creativity, technological development, as well as the dissemination and advancement of knowledge, underpinning the development of a knowledge-based economy.

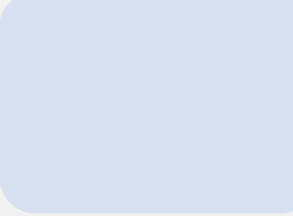
- The key legislative proposals of the Bill, using the Copyright (Amendment) Bill 2014 as the basis, are the result of years of consultations and deliberations since 2006, representing the consensus and balance of interests of different stakeholders.



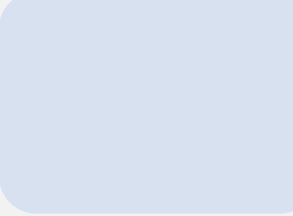
- 
- The relevant legislative proposals cover the following five key areas:

1. To introduce an exclusive technology-neutral communication right for copyright owners in light of technological developments;

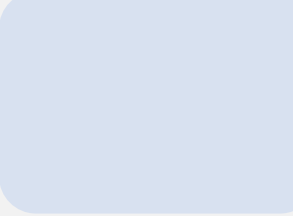
2. To introduce criminal sanctions against infringements relating to the new communication right;



3. To revise and expand the scope of copyright exceptions to allow use of copyright works in certain common Internet activities; facilitate online learning and operation of libraries, archives and museums; and allow media shifting of sound recordings, etc;



4. To introduce "safe harbour" provisions to provide incentives for online service providers to co-operate with copyright owners in combating online piracy and to provide reasonable protection for their acts; and



5. To introduce two additional statutory factors for the court to consider when assessing whether to award additional damages to copyright owners in civil cases involving copyright infringements.

Copyright (Amendment) Bill 2022 gazetted

<https://www.info.gov.hk/gia/general/202205/27/P2022052700222.htm>

Reference :

《2014年版權(修訂)條例草案》 - 事實與真相 知識
產權署

https://www.ipd.gov.hk/chi/intellectual_property/copyright/Q_A_FAT_2014.htm

2014 版權(修訂)條例草案 對各界的好處！



使用者

- ✓ 戲仿、諷刺、營造滑稽和模仿 / 評論時事 / 引用版權作品可獲豁免
- ✓ 聲音紀錄的媒體轉換 (如將CD歌曲轉至手機方便聆聽)
- ✓ 教育界可以電子方式為授課傳播版權作品 (如遙距學習方面)
- ✓ 圖書館、檔案室及博物館可在館內以電子方式向公眾提供版權作品
- ✓ 可在「安全港」條文下提出異議通知，防止作品被無理移除



版權擁有人

- ✓ 可在數碼環境中獲得清晰明確的版權保護
- ✓ 可打擊大規模的串流盜版行為，避免侵權者以技術理由逃避法律責任
- ✓ 可在「安全港」條文下迅速有效地處理網上的侵權行為



互聯網 /
聯線服務提供者
(包括網上服務平台)

- ✓ 快取處理數據可獲豁免
- ✓ 有「安全港」的保障，只需要對其平台上的侵權行為承擔有限的法律責任

對香港整體很重要！

- ✶ 能更新香港的版權制度，緊貼科技發展，與國際接軌
- ✶ 能有效打擊大規模的非法串流
- ✶ 維持香港的聲譽，令投資者有信心
- ✶ 促進本地的創意產業和連帶產業的發展，帶動香港經濟

YES



為何政府不引入泛民所倡議的額外豁免？

- 自2006年已三度諮詢公眾，並增加了六大版權豁免回應使用者的訴求
- 大律師公會和香港律師會亦認為現行方案已經充分保障市民的言論和創作自由，支持盡快通過
- 泛民的建議影響深遠，不應在未經正式公開諮詢的情況下倉卒採納

NO



政府建議按《2014年條例草案》涵蓋的五個範疇作為基礎，更新香港的版權制度。

- 明白科技日新月異，網上創作及分享的渠道及技術比起七年或10年前已經變化了許多，串流平台、電子傳送和直播科技的迅速發展，對於版權擁有人、版權使用者及服務提供者的保障都有需要提升。
- 根據政府新聞公報及是次諮詢文件內容，政府建議按《2014年條例草案》涵蓋的五個範疇（見附表）作為基礎，更新香港的版權制度。

《版權條例》修訂建議涵蓋的五個範疇

資料來源：商務及經濟發展局

範疇

內容重點

A. 傳播權利

賦予版權擁有人科技中立的專有傳播權利，確保他們的作品以任何電子傳送模式向公眾傳播都會得到保護。

B. 刑事法律責任

配合引入上述專有傳播權利訂定相關侵權行為的刑事法律責任。

C. 經修訂和新增的版權豁免

新增為戲仿、諷刺、營造滑稽及模仿；評論時事，以及引用版權作品三大類別的目的而使用版權作品提供版權豁免；並修訂和擴闊豁免，便利網上學習、圖書館、檔案室和博物館的運作，以及聲音紀錄的媒體轉換等使用版權作品模式，以期在保護版權與合理使用版權作品之間維持合適的平衡。

D. 安全港

增訂「安全港」條文，訂明聯線服務提供者在符合若干條件下，包括在獲告知其服務平台上出現侵權活動後採取合理措施限制或遏止有關活動，只須對用戶在其服務平台上所犯的侵權行為承擔有限的法律責任，以鼓勵聯線服務提供者與版權擁有人合作打擊網上盜版活動，並為他們的作為提供合理的保護。

E. 民事案件的額外損害賠償

增訂兩項法定因素，供法庭在決定是否在涉及侵權的民事案件中判予版權擁有人額外損害賠償時考慮，一是侵權者獲悉其侵權行為後的不合理行為，二是因該侵權行為而令侵權複製品廣泛流傳的可能性，以加強對版權擁有人在數碼環境的保障。

- 對於認真翻唱歌曲「以抒發個人感情或展示才華」不被豁免，但如果版權持有人沒有反對，政府便無從提控。
- 不過，一旦涉及經濟利益，情況就會變得複雜。

- 翻唱作品除了可上載於**YouTube**平台，翻唱者也可以在其他地方翻唱或播放影片，如果他曾從中獲利，如收取廣告費、歌唱報酬，版權持有人應可以向他追究，如是者似乎提控的決定權在版權持有人手中，但他究竟要經網上播放平台追究，或向政府哪個部門投訴？
- 案件屬民事或是刑事？由知識產權署或由警方處理？

- 此外，政府雖說法庭處理案件時要以造成的經濟損害、侵權行為會否代替原作品為主要的考慮因素，但作品放在網絡上，結果又是否上載者可以預期得到？

- 其中一個因翻唱而意外爆紅的例子，是藝人陶大宇早前於商場騷翻唱了《倒轉地球》，他意外爆紅，其唱腔和台風成為城中熱話，他的作品是否代替了原唱者劉德華的《倒轉地球》？
- **YouTube**的片段不是陶先生自己拍的，廣告收益是歸網民和網絡**KOL**，但陶先生又因著這些評論及短片的廣傳而接到更多翻唱這歌曲的演出機會，這個情況如按照《版權條例》，又應如何理解和跟進？



參考：

版權條例修訂捲土重來, 郭卓靈, 燭光網絡 142 期, 明光社, 2022年1月20日。

<https://www.truth-light.org.hk/nt/article/%E7%89%88%E6%AC%8A%E6%A2%9D%E4%BE%8B%E4%BF%AE%E8%A8%82%E6%8D%B2%E5%9C%9F%E9%87%8D%E4%BE%86>

END

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