



《2007年版權(修訂)條例》的概況及新 知

General Introduction to Copyright (Amendment) Ordinance 2007

23.1.2008



2007年版權（修訂）條例之背景

Background of the Copyright (Amendment) Ordinance 2007

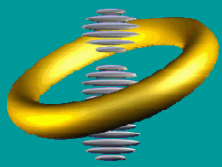
- 2004年底：檢討《版權條例》的若干條文諮詢文件
Late 2004 : Review of Certain Provisions of the Copyright Ordinance consultation document
- 2005年6月：有關版權事宜的初步建議
June 2005: preliminary proposals on various copyright-related issues
- 2005年11月：有關版權事宜的修訂建議
November 2005 : refined proposals on various copyright-related issues



背景

Background

- 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 take 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)

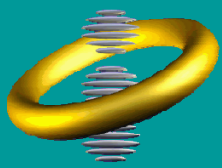
Employees' defence (1)

- 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



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

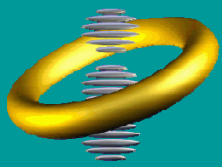


平行進口版權作品 (2)

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



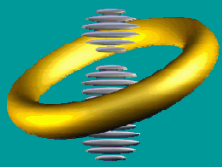
例子 (1) Example (1)

修訂後允許的行爲：

Act allowed after the amendment:

- 你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)，在業務上供你的職員作內部參考之用。

You may buy parallel imported copies of any copyright work (e.g. books) directly from an overseas supplier and use them in your business as internal reference material for your staff.



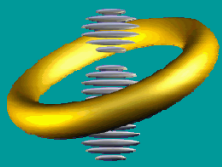
例子 (2) Example (2)

修訂後，仍被禁止的行爲：

After amendment, act still not allowed:

- 你不可輸入或管有任何平行進口電影、電視劇或音樂錄製品，在你的商店內放映或播放。

You must not import or possess any parallel imported copies of movies, television dramas or musical recordings for playing or showing in your shop.



尚未生效的修訂

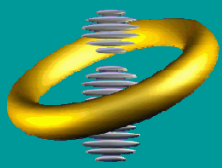
Amendments not yet take effect



有關印刷作品的新增刑責 (1) New criminal offence related to printed works (1)

- 在業務過程中或為業務的目的
複製／分發印刷作品的侵權複製品

New criminal offence against the act of copying with a view to distributing or the act of distributing infringing copies of copyright printed works in the course of or for the purpose of business



有關印刷作品的新增刑責 (2) New criminal offence related to printed works (2)

- 刑責適用於四類印刷作品：書本、雜誌、期刊及報章
criminal liability applied to four categories of printed works: books, magazines, periodicals and newspapers
- 定期或經常複製／分發
copying/distributing on a regular or frequent basis
- 以致版權擁有人蒙受財政損失
resulting in financial loss to copyright owner



有關印刷作品的新增刑責 (3) New criminal offence related to printed works (3)

- 引入數量界限 (稱「安全港」)
introduce numeric limits (called “safe harbour”)
- 不適用於某些分發方式
does not apply to certain manner of distribution
- 將以附屬法例的形式稍後訂立
will be prescribed by subsidiary legislation



可列為刑事罪行活動的事例

Examples of activities which may be criminalised

- 某貿易公司每日大量影印報章上的文章在公司內部分發
a trading company regularly making a large number of photocopies of newspaper articles for distribution within the company every day
- 每當某財經雜誌新一期出版，某公司即大量掃描雜誌文章，通過電郵分發給員工
a firm scanning and regularly e-mailing a large number of scanned copies of articles from financial magazines to other staff whenever new editions of the magazines are issued



豁免 Exemption

新增刑責不適用於：

New criminal liability does not apply to -

- 政府營辦和管制的學校

Educational establishments maintained or controlled by the Government

- 非牟利學校(即根據《稅務條例》第88條獲豁免繳稅的學校)

Non-profit making educational establishments (educational establishments which are exempt from tax under section 88 of the Inland Revenue Ordinance)

- 獲政府發放直接經常性補助金的學校

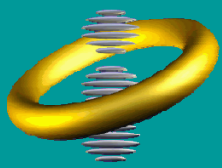
Educational establishments receiving direct recurrent subvention from Government



僱員的免責辯護(1) Employees' defence (1)

- 在受僱期間作出侵權行爲
他按照其僱主的指示作出該行爲

Employee did infringing act in course of his employment
Did the act according to instructions from employer

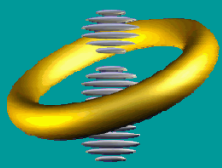


僱員的免責辯護(2) Employees' defence (2)

- 僱員免責辯護的條件：
僱員必須無權影響或決定
製作/分發侵權複製品

Condition for the employees' defence:

Employee should not be in a position to influence or decide the making or distribution of the infringing copies.



其他免責辯護 (1) Other defence (1)

- 已採取足夠和合理的步驟，向版權擁有人申請特許，但未能獲得版權擁有人及時回應
taken adequate and reasonable steps to obtain a licence from the copyright owner but failed to get a timely response
- 已作出合理努力，但仍不能透過商業途徑取得版權作品的複製品，而版權擁有人已拒絕按合理的商業條款批出特許
made reasonable efforts but failed to obtain commercially available copies of the copyright work and the copyright owner has refused to grant a licence on reasonable commercial terms



其他免責辯護 (2) Other defence (2)

- 不知道亦無理由相信所製作或分發的複製品是侵權複製品
did not know and had no reason to believe that copies made or distributed are infringing copies
- 已作出合理的查詢，但仍不能確定版權擁有人的身份和聯絡詳情
made reasonable enquiries but failed to ascertain the identity and contact details of copyright owner



董事／合夥人的刑責 (1)

Criminal liability of directors and partners (1)

- 引入新的刑責的目的：

加強機構的問責性和鼓勵負責任的業務管治，以防止在業務中發生侵權活動

Purpose of introducing this new criminal offence:

promote corporate accountability and responsible governance to prevent infringing activities in the course of business



董事／合夥人的刑責 (2)

Criminal liability of directors and partners (2)

- 修訂前:

凡法人團體/合夥人犯了罪行，而罪行經證明是在

- 該法人團體的任何董事、經理、秘書或其他相類高級人員；或
- 該合夥的其他合夥人或與該合夥的管理有關的人同意或縱容下犯的，則上述人士即屬犯相同罪行。

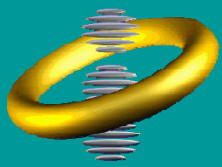
Before amendment:

Where a body corporate/a partner of a partnership commits an offence, which is shown to have been committed with the consent or connivance of,

- any director, manager, secretary or other similar officer of the body corporate, or
 - any other partner or person concerned in the management of the partnership,
- then the above persons commit the same offence

- 新訂條文：把援引證據的責任轉移至董事/合夥人

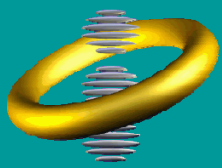
New provision: shift the evidential burden to the directors/partners



董事／合夥人的刑責 (3)

Criminal liability of directors and partners (3)

- 若法人團體或合夥機構的作為引致業務最終使用者的刑責(有關管有或複製/分發侵權作品)，董事／合夥人會被推定為亦曾作出該作為
If a body corporate or a partnership has done an act attracting business end-user criminal liability (relating to possession or copying/distributing of infringing copies), directors or partners shall be presumed also to have done the act
- 除非有證據證明董事／合夥人沒有授權任何人作出有關侵權作為
Unless evidence showing director(s)/partner(s) has not authorized the infringing act to be done
- 刑責只涵蓋負責機構內部管理的董事、合夥人或人士
The scope of the criminal liability covers only those directors, partners or persons who are responsible for the internal management of the organisation



董事／合夥人的刑責 (4)

Criminal liability of directors and partners (4)

- 證據證明董事／合夥人沒有授權侵權作為：
evidence showing that director(s)/partner(s) has not authorized the infringing act :
- 被告已安排有關機構撥出及使用財務資源或有關法人團體/合夥已支出款項，以取得足夠數量的正版版權作品或適當的特許 – 須視爲已舉出足夠證據
the defendant has caused organization to set aside financial resources and directed the use of such resources, or the body corporate/partnership to incur expenditure, for acquisition of sufficient number of genuine copies of copyright work or appropriate licence - shall be treated as having adduced sufficient evidence



董事／合夥人的刑責 (5)

Criminal liability of directors and partners (5)

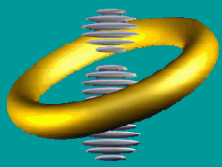
- 法庭亦可考慮其他證據證明：

the court may also take into account other evidence showing:

- 被告已引入政策或常規，以禁止機構使用/製作及分發侵權複製品；

e.g. the defendant has introduced policies or practices against the use/making and distribution of infringing copies by the organization;

- 被告已採取行動，以防止機構使用/製作及分發侵權複製品等
the defendant has taken action to prevent the use/making and distribution of infringing copies by the organization



董事／合夥人的刑責的生效日期 Criminal liability of directors and partners – commencement date

- 將會在憲報刊登生效日期公告
Will publish commencement notice in the Gazette



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)

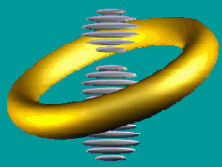


豁免 Exemptions

例如:

For example:

- 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
- 保安測試
security testing



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 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
<http://www.ipd.gov.hk/eng/copyright.htm>
- 諮詢期由2007年12月至2008年1月4日
Consultation period: from Dec 2007 to 4 Jan 2008



影片及漫畫書租賃權

Rental rights for films and comic books

- 為影片和漫畫書引進租賃權
To introduce rental rights for films and comic books
- 就違反有關租賃權提供民事補救
To provide civil remedies for violation of these rights
- “租賃” 涉及直接或間接的經濟/商業利益
“Rental” involves direct/indirect economic/commercial advantage



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/chi/intellectual_property/copyright/copyright_bill.htm
- 有關遵守《版權條例》的資料:
Information relating to compliance with Copyright Ordinance:
http://www.ipd.gov.hk/chi/intellectual_property/copyright/compliance_with%20copyright_ordinance.htm



香港特別行政區政府
知識產權署

謝謝

Thank you