



# Copyright Issues Related to Teaching and Learning

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Note:

This presentation aims to give a very brief introduction to the HKSAR Copyright Ordinance in the areas of teaching and learning. Special attention is given to photocopying, licensing schemes and other related issues.

For details, please check the *HKSAR Copyright Ordinance (Cap 528)* at the website of the Department of Justice of the HKSAR Government: <http://www.justice.gov.hk/Home.htm>; or the website of the Intellectual Property Department at: <http://www.info.gov.hk/ipd/eng/index.htm>

You can also find other discussions on the website <http://www6.cityu.edu.hk/puo/CityUMember/Index.aspx>. (Search for the key word: “copyright” to choose the topics from the search results.)

For proper advice on copyright matters, you shall consult your legal consultant.

# HK Copyright Ordinance

## Protects 9 Categories of Works

- Original literary, dramatic, musical and artistic works  
(Computer software is regarded as literary work)
  - Creator's life + 50 years or 50 years after publication  
whichever is longer
- Sound recordings, films, broadcast and cable programmes
  - 50 years after publication
- Page image (Published Edition)
  - 25 years after publication

**The owner of the copyright in a work  
(whether it is in printed, electronic and other forms)  
has the exclusive rights to do the following acts in Hong Kong:**

- To copy the work;
- to issue copies of the work to the public;
- to rent copies of the work to the public;
- to make available copies of the work to the public;
- to perform, show or play the work in public;
- to broadcast the work or include it in a cable programme service;
- to make an adaptation of the work (abridgement, translation, etc.);

These are called “Acts Restricted by the Copyright”  
“受版權限制的行爲”.

## Infringement of Copyright

Copyright in a work is infringed by a person who without the licence of the copyright owner does, or authorizes another to do, any of the acts restricted by the Copyright.

## “Permitted Acts”

In the interests of users of copyright material and the public, the law provides “exceptions” to the rights of the authors.

## Three-part Test in the Berne Convention for the “Exceptions”

Must be observed by all parties to  
the Berne Convention.

- Operate only in “special cases”  
在特殊情況下;
- The reproduction “does not conflict with the normal  
exploitation of the work”  
不與版權擁有人對作品的正常利用有所抵觸;
- Such reproduction “does not unreasonably prejudice the  
legitimate interests of the author”  
沒有不合理地損害版權擁有人的合法權益

## “Exceptions”

A user can reproduce copyright works  
without licence

if the reproduction falls within the ambit of  
“fair dealing”

*or*

“permitted acts for educational purposes”.



# Making copies legally WITHOUT licence

Teacher

Student

Any Individual

**F1**  
**“Fair dealing”**

Make a single copy of a fair portion of a printed work for private study, research, review, criticism, news reporting

Yes

Yes

Yes

**F2**  
**“Classroom Guidelines”**

Make multiple copies of a reasonable extent of a printed work for classroom use in not-for-profit educational institutions

Yes

No!

No!

# Making copies legally WITHOUT licence

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## F1 “Fair dealing”

Make a single copy of a fair portion of a printed work for private study, research, review, criticism, news reporting

Yes

Yes

Yes

- What is “fair” ?
- How much can I copy?
- Who has the final say?
- HK Copyright Ordinance is very restrictive
- Easily infringe on copyright
- Can be engaged in civil court case involving huge sum of money

# Making copies legally WITHOUT licence

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Student

Any Individual

## F2 "Classroom Guidelines"

Make multiple copies of a reasonable extent of a printed work for classroom use in not-for-profit educational institutions

Yes

No!

No!

- Very strict conditions
  - Spontaneity (3-day rule)
  - Brevity
  - Cumulative effect
- Multiple copies of printed work, including newspaper
- Electronic works NOT included (even for password protected Intranet)
- Limited use to teachers only.

# Making copies legally UNDER licence

View

Print

Download

**L1**

**Electronic format**

**Subscription, Site Licence**

**Libraries, Departments;  
Individuals**

**Yes**

**??**

**??**

**L2**

**Printed format**

**Course Packs**

**Educational institutions,  
Organizations**

**Yes**

**No!**  
no further  
copying allowed

**No!**  
printed copies only

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**Libraries, Departments,  
Individuals**

**Yes**

**??**

**??**

- Can be expensive
- “Fair dealing” privilege lost
- Printing may not be allowed
- Download may not be allowed
- Digital Rights Management (DRM) system may be expensive

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**L2**  
**Printed format**

**Course Packs**

**Educational institutions,  
Organizations**

**Yes**

**No!**  
no further  
copying allowed

**No!**  
printed copies only

- Only one course pack for each course
- Maximum 30 articles allowed
- For each copyrighted work, only 10% or one article allowed
- Some materials excluded (Exclusion list)
- HK\$0.35 per page per copy
- Usually produced by print-on-demand
- Reporting/Payment can involve a lot of work
- Printed version only (no electronic format)

**U2**

**Printed format**

**Course Packs**

**Educational institutions,  
Organizations**

## **What can be included in a course pack?**

1. Materials with copyright owned by professors/ instructors themselves	No fees need to be paid to any licensing bodies
2. Materials from professors/instructors to students including course details, grading criteria, assignments, reading list, URLs for accessing online articles, examination dates, etc.	No fees need to be paid to any licensing bodies
3. Materials licensed from licensing bodies	Fees need to be paid to licensing bodies for distribution to copyright owners worldwide
4. Materials licensed from publishers or copyright owners other than licensing bodies	Fees need to be paid to the publishers/copyright holders

U2

## Course Packs

Educational institutions,  
Organizations

## Payment modes

### Blanket License

(including Course Pack and Casual Copying)

- Each user has to pay a fee,  
no need to apply for permission each time.
  - UK univ. student (2003)    ⇨    GBP5.23 per year (*photocopy only*)
  - UK pri. student              ⇨    GBP0.64 per year (*photocopy only*)
  - UK sec. student              ⇨    GBP1.06 per year (*photocopy only*)
  - Australia univ. student    ⇨    AUS\$25 per year  
  (*including digital copying*)

### Pay as you make copy

– USA



U2

Course Packs

Educational institutions,  
Organizations

## Overseas experience

	Estd.	2002-2003 total income	Pay mode
Australia	1974	AUD41.70 m (EUR23.36 m)	Blanket licence
UK	1982	GBP35.68 m (EUR52.48 m)	Blanket licence
US	1978	USD107.70 m (EUR98.43 m)	Pay-each-time
HK	1995		. . . Both

<http://www.ifrro.org/about/intro.html>

International Federation of Reproduction Rights Organizations

# 1

## New developments in HK Copyright Ordinance

- Parallel import for computer software allowed (effective 28 Nov 2003)
- Parallel import for other copyrighted materials **NOT** allowed (until after 18 months from date of first release in country of origin)
  - Educational CD-ROM titles
  - DVD/ Music/Sound Recording/Movie titles
  - e-books



# 2

## New developments in HK Copyright Ordinance

- It is a criminal offence for a person to possess, for the purpose of or in the course of a profit-making copying service business, **an infringing copy** of a copyrighted work.  
(effective 1 September 2004)



