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AUTOMATED RIGHTS MANAGEMENT SYSTEMS  
AND COPYRIGHT LIMITATIONS AND EXCEPTIONS

自動化權利管理系統與著作權限制及例外規定

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為

世界智慧財產權組織

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BACKGROUND INFORMATION BY THE SECRETARIAT  
秘書處所準備之背景資訊

The 1996 WIPO Internet Treaties have rapidly become the international standard for the development of copyright in the digital environment. The Internet Treaties contain the basic rules for technological adjuncts to copyright protection, composed of technological protection measures and rights management information.

對於數位環境下的著作權發展，二件 1996 年 WIPO 網際網路條約<sup>1</sup>已經迅速成爲國際標準。這些網際網路條約包含了著作權保護的科技輔助品基本規則，其中包括科技保護措施(technological protection measures)及權利管理資訊(rights management information)。

The protection of these key elements of a digital rights management (DRM) system appears as crucial for a secure and balanced distribution of content in the electronic environment. Under a variety of forms the general principles that regulate technological measures and rights management information have found wide acceptance in national legislation. On the other hand the Internet Treaties also establish principles for the development of limitations and exceptions in national legislation, laying the ground work for adaptation of limitations and exceptions to the digital environment.

在電子化環境下，這些數位權利管理(digital rights management, DRM)系統要素的保護，對於內容散布的安全與平衡至關緊要。對於這些技術措施與權利管理資訊的一般性管制原則，已經以不同形式由各國立法廣泛採納。在另一方面，這些網際網路條約也建立了國內立法在限制與例外規定(limitations and exceptions)上的原則，使因應數位環境的限制與例外規定留有調整餘地。

The compatibility between limitations and exceptions, on the one hand, and technological protection measures, on the other, has proven to be one of the more complex areas in the implementation of the Internet Treaties. It is only natural that Member States of WIPO seek greater clarity at the time of implementing new rules in this area, or when trying to improve, by non normative means, the balance inherent in the copyright system.

這些限制與例外規定，和科技保護措施之間的相容性問題，已經成爲這些網際網路條約在執行上更加複雜的領域之一。在這個領域內執行這些新規則的時候，或是嘗試以非規範性手段改進著作權體系內在平衡的時候，WIPO 的會員自然會想要尋求更加明確的規定。

Technological measures of protection and limitations and exceptions to copyright and related rights in the digital environment have been thoroughly discussed in different WIPO fora, including: the WIPO Workshop on Implementation Issues of the WCT and the WPPT, held in 1999, and the International Conferences on Electronic Commerce, held in 1999 and 2001. In November 2003, WIPO organized an Information Meeting on Digital Content for the Visually Impaired in order to provide an overview of the present situation regarding access to works by visually impaired people. WIPO has also fostered debate on a range of issues related to the interests of certain beneficiaries such as libraries, educational institutions and users in general. Recently, the Member States of WIPO examined the impact of the copyright

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<sup>1</sup> WIPO Copyright Treaty (WCT) and WIPO Performance and Phonogram Treaty (WPPT)

system on the use of protected works for educational purposes, particularly in developing countries.

數位環境下科技保護措施，以及著作權與相關權利的限制與例外規定，已經先後在不同的 WIPO 論壇中有過詳盡討論，包括 1999 年 WCT 與 WPPT 執行議題工作會議 (the WIPO Workshop on Implementation Issues of the WCT and the WPPT)<sup>2</sup>，以及 1999 年與 2001 年電子商務國際會議(the International Conferences on Electronic Commerce)。在 2003 年 11 月，爲了對視覺障礙者取用著作的現況提供概觀，WIPO 舉行了一場視覺障礙者數位內容的資訊會議<sup>3</sup>。關於圖書館、教育機構與一般使用者等特定受益者利益的議題，WIPO 也促成了一系列的討論。<sup>4</sup>在最近，WIPO 會員檢討了著作權系統對於爲教育目的使用受保護著作的衝擊，尤其是在發展中國家。<sup>5</sup>

With the assistance of its Member States WIPO has already produced conspicuous research in the two areas under scrutiny. In 2003, the Secretariat published a Survey on Implementation Provisions of the WCT and the WPPT and a Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment. WIPO also commissioned the Study on Current Developments in the Field of Digital Rights Management (DRM), which covers the technologies upon which DRM is based, the legal framework in which it operates and the business processes that are being deployed in different countries.

在會員的協助之下，WIPO 已經在這二個檢討領域中有了顯著研究成果。在 2003 年，秘書處出版了一份 WCT 與 WPPT 執行條款的調查報告<sup>6</sup>，以及數位環境下著作權與相關權利之限制與例外規定的研究報告<sup>7</sup>。針對數位權利管理(DRM)領域的當前發展，WIPO 也委託進行了一項研究<sup>8</sup>，其中包含 DRM 的基礎科技，DRM 運作的法律架構，以及不同國家所運用的商業程序。

While this rich background bears witness to the importance that WIPO and its Member States attach to both the issue of limitations and exceptions and that of DRM, it appears increasingly necessary to focus attention on the interplay between them. The present Study represents a specific and pragmatic approach, focusing on certain limitations and specific countries. In fact, two groups of beneficiaries are considered: the subset of the educational community involved in distance learning, on the one hand, and visually impaired persons, on the other. To illustrate the state-of-the-art in the relevant fields, the law and practice in five countries is described, namely, Australia, the Republic of Korea, Spain, the United Kingdom, and the United States of America. These countries were selected based on criteria which included the presence in national legislation of relevant exceptions in the two subject areas; the existence of statutory and/or voluntary licensing practices, including private-sector initiatives, in the two subject areas; and the state of their national technological infrastructure

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<sup>2</sup> <[http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=3944](http://www.wipo.int/meetings/en/details.jsp?meeting_id=3944)>

<sup>3</sup> <[http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=5035](http://www.wipo.int/meetings/en/details.jsp?meeting_id=5035)>

<sup>4</sup> <[http://www.wipo.int/aspac/en/meetings/2003/pdf/wipo\\_cr\\_sel\\_03\\_inf1.pdf](http://www.wipo.int/aspac/en/meetings/2003/pdf/wipo_cr_sel_03_inf1.pdf)>

<[http://www.wipo.int/aspac/en/meetings/2004/pdf/wipo\\_cr\\_hkg\\_04\\_inf1.pdf](http://www.wipo.int/aspac/en/meetings/2004/pdf/wipo_cr_hkg_04_inf1.pdf)>

<sup>5</sup> The meeting took place at the Standing Committee on Copyright and Related Rights (SCCR) which took place in Geneva from November 21 to 23, 2005. The program and presentations can be found at: <[http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=9462](http://www.wipo.int/meetings/en/details.jsp?meeting_id=9462)>

本會議舉行於 2005 年 11 月 21 至 23 日著作權與相關權利常設委員會，地點爲日內瓦。議程與報告資料可見於: <[http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=9462](http://www.wipo.int/meetings/en/details.jsp?meeting_id=9462)>

<sup>6</sup> <[http://www.wipo.int/documents/en/meetings/2003/sccr/pdf/sccr\\_9\\_6.pdf](http://www.wipo.int/documents/en/meetings/2003/sccr/pdf/sccr_9_6.pdf)>

<sup>7</sup> <[http://www.wipo.int/documents/en/meetings/2003/sccr/pdf/sccr\\_9\\_7.pdf](http://www.wipo.int/documents/en/meetings/2003/sccr/pdf/sccr_9_7.pdf)>

<sup>8</sup> <[http://www.wipo.int/documents/en/meetings/2003/sccr/pdf/sccr\\_10\\_2.pdf](http://www.wipo.int/documents/en/meetings/2003/sccr/pdf/sccr_10_2.pdf)>



for digital content delivery. In order to promote an informed debate in this respect, the WIPO Secretariat has commissioned the present Study from Mr. Nic Garnett, Principal Consultant, Interight.com. It takes a proactive, yet neutral and descriptive stance, aimed at examining cases in which DRM could serve as an effective means to implement limitations and exceptions in the digital environment. Finally, the Study identifies future avenues of work towards facilitating the coexistence of limitations and technological measures.

這個豐富的背景證明了，WIPO 與其會員對於限制與例外規定以及 DRM 這二個議題的重視，而集中注意力在這兩者之間的互動，其必要性則是日漸增加。當前的這項研究，代表了一種特定、實用的取向，而集中於探討某些限制規定與特定的國家。事實上，有二個受益者群體被列入了考慮：涉及遠距學習的教育界，以及視覺障礙者。爲了顯示相關領域的技術現況，因此描述了五個國家的法律與實務，這些國家是澳洲、韓國、西班牙、英國與美國。選擇這些國家是基於以下的考量基準：在這二個主題領域有相關例外規定的國內立法；法定與自願性授權實務，包括在這二個主題領域的私部門先行性計畫；且針對數位內容傳遞的國家技術基礎建設現況。爲了促進這方面的討論，WIPO 秘書處委託 Interight.com 公司首席顧問 Nic Garnett 先生進行目前這項研究。這項研究採取了前瞻性、中立性以及描述性的立場，旨在於檢討數位環境下 DRM 能作為執行例外與限制規定有效手段的例子。最後，這項研究指出了促進例外規定與技術措施共存的未來工作途徑。

## INTRODUCTION BY THE AUTHOR

## 作者導論

There is growing tension in the field of copyright law. The recognition given to the role of technical protection measures by the 1996 WIPO Treaties has given copyright owners new powers to protect and manage the rights in the works they create. These new powers, the copyright owners argue, are essential to their survival and the continuing production of new works. Digital technology and the Internet offer ever more efficient ways to perfectly reproduce and distribute copyright works – without, in many cases, the necessary authorisation—the new powers are a logical and essential response to this reality.

著作權法領域之中的緊張情勢正在升高。1996年WIPO條約所認可的技術保護措施，賦予著作權人新的權力，以保護與管理他們著作當中的權利。著作權人主張，對於他們的生存與新著作的持續生產，這些新權力至關緊要。對於受著作權保護著作，數位科技與網際網路提供了更有效率的方法進行完全重製與散布，然而其中許多情形並沒有獲得必要的授權，對於這種現況，這些新權力是合邏輯與必要的回應。

Many users disagree with this proposition. Instead they see the denial of established “free use” privileges in accessing and using copyright works; they stress the unfairness of what they call “digital-lock-up”; they argue that the combination of technical protection measures and unilaterally imposed contractual terms will remove the balance between protection and access that copyright law should always maintain. Some argue that lack of access to existing works will impede the innovation and creativity that drives culture.

許多使用者並不同意這項主張。在他們看來，這項主張否定了取用受著作權保護著作上確立的「自由使用」優惠(“free use” privileges)；他們強調所謂「數位鎖定」(digital-lock-up)的不公平性；他們主張，技術保護措施與單方擬定契約條款的結合，將會使保護與取用失去平衡，而著作權法則應該一直維護這個平衡。某些人主張，無法取用既有著作，將會阻礙推動文化的創新與創意。

At the heart of this debate is a complex issue but one which can be simply stated: how are the consequences of using technical measures for the protection of copyright works to be managed in a manner which is consistent with the established principles and practices of copyright law.

這場爭論的核心，是一項複雜但是可以簡單陳述的議題：關於使用技術措施保護受著作權保護著作，應當如何管理其後果，而能夠與著作權法確立的原則與實務協調一致。

In this study we do not attempt to deal with the issue in a general sense. We focus instead on two particular areas of interest: access to protected works by people with visual and print disabilities, and the use of protected works in virtual learning environments.

在本研究當中，我們並不試圖全面處理這項議題。我們集中於討論二個特定利害關係的領域：視覺障礙者與閱讀印刷本障礙者(people with visual and print disabilities)取用受保護著作，以及虛擬教學環境下受保護著作之使用。

These areas of study share at least two general characteristics. Developments in both areas in recent years have made increasing use of advanced technology. Similarly, this harnessing of technology has been premised in part on the idea of inclusion: fully integrating people with disabilities into the work and play of the community; giving access to education

to all, regardless of age, means or location. The concept of “Universal Design” and the principle of “Life long learning for all” are key reference points in these areas.

這些研究領域至少有二個相同的一般特徵。在這二個領域近年來的發展，使用先進科技的情形日漸增多。同樣地，利用科技已經成爲融合(inclusion)這個觀念的前提預設之一：使有障礙的人士能充分融入社會中的工作與遊樂，對全民提供教育管道，而不受年齡、財富與地區所限制。「全方位設計」(Universal Design)的概念，以及「全民終身學習」(Life long learning for all)的原則，是這些領域當中的關鍵參考點。

Copyright, especially as reinforced by the application of technical protection measures, is seen by many as exclusionary, denying access unless the price of admission is paid in full. Hemmed in on the one side by the general application of the so-called three-step test and on the other by the process of digital lock-up, exceptions long established in the public interest seem to many to be under increasing threat.

在運用技術保護措施強化之下，如果沒有支付全部的許可費用，著作權會阻礙取用，因而被許多人視爲具有排他性。以所謂「三步驟檢驗」(three-step test)的廣泛應用，加上數位鎖定的過程，在這二者的包圍之下，長期以來所建立的公益例外規定，對許多人來說似乎是受到越來越多威脅。

This study attempts to navigate the issues and the positions of the opposing parties in an objective manner. The quest is to identify practical ideas that could help to reconcile the interests of creators and users in the new technological and legal environment.

針對這些議題與對立的各方立場，本項研究嘗試以客觀方式進行導覽。在新興的科技與法律環境下，這項探討將指出能夠調和創作者與使用者利益的實用觀念。

Two other considerations are worthy of reference at the start of this study.

在本研究的開始，有二個考量因素值得一提。

The first of these is the realization that the use of technology not only in the protection of content, but also in the management of rights, introduces a profound change in the way that copyright works. Traditionally, a considerable use of copyright works has occurred without direct authorisation of the copyright owner or pursuant to a privilege granted by law. This occurs where for example the medium of delivery of a work facilitates a use which is either impliedly licensed or in respect of which the copyright owner is, in practice, unable to exercise a right to control the use. We argue later in this study that to a certain extent this marginal activity is an important part of the traditional copyright balance.

第一個考量因素是了解到，科技不僅使用於保護內容，也使用於權利管理，這爲著作權運作方式帶來了深遠的變遷。傳統上，數目可觀的受著作權保護著作，在使用上不需要得到著作權所有人的直接授權，或者得依據法律賦予的優惠而使用。這種情形發生於，例如著作的傳遞媒介促成了默示授權，或是著作權人實際上無法控制使用。在本研究裡，我們稍後會主張，在某種程度上，這種邊緣性活動(marginal activity)是維持傳統著作權平衡的重要部分之一。

The binary nature of digital technology effectively negates the possibility of such marginal activity. When content is made available exclusively in a technically protected form, it can only be accessed and used where explicit machine-executable instructions are constructed and delivered for that purpose. Take away the traditional marginal use, however, and many users denounce the denial of privileges. Whether or not their claim is justified, a very different order potentially pertains in the technology-regulated world.

數位科技的二元性(binary nature)，有效地消除了這種邊緣性活動的可能性。當內容只存在於技術保護的形式時，惟有建立與發送明確的機器執行指令，才能取用這些內容。然而，失去了傳統的邊緣性使用之後，使用者便譴責優惠被剝奪。不論他們的主張是否正當，在科技所調節的世界中，一種非常不同的秩序將會應運而生。

Of course, very little if any content is made available at present exclusively in protected digital formats and even when it is, it is always subject to hacking or capture through analogue or unprotected circuits. But although that reality complicates matters still further, it does not alter the paradigm shift which the capability of technical protection measures bring to rights management.

當然，著作內容只有數位保護格式，在目前即使是有，也為數稀少，甚至於在這些情形下，著作內容也會遭受破解，或是經由類比式或未保護的電路而擷取。雖然這種現況讓事情更加複雜，但這並不會改變技術保護措施對權利管理帶來的典範轉移(paradigm shift)。

The second consideration is the relationship between technology and the market for copyright works. This has at least two dimensions.

第二個考量因素是科技與著作權著作市場的關係。這部分至少有二個層面。

First, the natural fears of copyright owners which lead them to maximise protection of their works in the face of digital technology would seem to be reinforced by the uncertain state of the new markets into which they are required to launch their works. Secondly, as digital formats and systems dramatically reduce both marginal and transaction costs, so renewed attention has to be paid by both copyright owners and regulators as to where potential markets may exist. And that means identifying the normal field of exploitation of a particular work could become a much more complex process with significant potential to impact on the scope, if not the very nature, of particular limitations and exceptions.

首先，當著作權人面臨數位科技時，在著作新市場不確定狀態下，驅使他們極大化保護著作的恐懼感似乎會強化。第二，當數位格式與系統急遽降低邊際成本與交易成本(marginal and transaction costs)時，著作權人與管制者，必定會投注新的注意力到可能的潛在市場。而這就意味著，指出某一個特定著作的正常運用領域，將會成為更加複雜的過程，這對於特定的限制與例外規定來說，即使在性質上不受影響，但是在範圍上將會受到影響。

The principal exceptions and limitations relevant to this study are those relating to the use of protected works and other subject matter in education, and use by persons with visual and print disabilities. In both these areas, technology is playing an increasing part in the way protected materials are used. Virtual learning environments employ sophisticated combinations of learning tools and content to advance the educational process, increasingly outside the traditional classroom context. Visual and print disabled persons make extensive and increasing use of advanced technologies such as electronic braille, computer screen readers and text-to-speech synthesisers.

本研究所討論的例外與限制規定，主要是關於受保護著作的使用與其他教育事項，以及視覺障礙者與閱讀印刷本障礙者的使用。在這二個領域，對於受保護材料的使用方式，科技所扮演的角色正在增加。虛擬學習環境運用了學習工具與內容的精密組合，使教育過程有所進步，而越來越脫離了傳統的教室情境。視覺障礙者與閱讀印刷本障礙者日益廣泛使用了先進科技，例如電子盲人點字(electronic braille)、螢幕讀取程式(screen reader)，以及文書語音合成器(text-to-speech synthesisers)。

Focusing on specific exceptions and limitations in these areas is not sufficient however. Educators and students alike will want to invoke other established exceptions and limitations in order to accomplish their respective assignments: exceptions for the conduct of private research or criticism are obvious cases in point. Likewise, people with visual and print disabilities should have every right and possibility to avail themselves of all the exceptions and limitations which are used by people without such disabilities.

不過，在這些領域中，關注於特定的例外與限制規定並不足夠。教育者與學生們都會想要引用其他已確立的例外與限制規定，以完成他們的作業：對於私人研究或評論行為的例外規定，則是明顯的相關例子。同樣地，視覺障礙者與閱讀印刷本障礙者應當與沒有這些障礙的人一樣，能夠享有任何權利與機會適用這些例外與限制規定。

In short, the application of exceptions and limitations is not always a discrete, linear process. It is often multi-dimensional, particularly in the new technological environment, involving a combination of exceptions and cutting across a number of different exclusive rights. The challenge of devising technical protection measures which are able to respond to these requirements is correspondingly heightened.

總而言之，例外與限制規定的應用，並不都是一個斷續、直線的過程。它往往是多層面的過程，尤其是在新科技環境下，會涉及各種例外規定的組合，並且貫穿一些不同的專屬權。為了因應這些要求，將導致技術保護措施的設計面臨更高度挑戰。

Technology, of course, adds yet another layer of complexity both in terms of protection measures employed and in the growing body of law regulating the protection of such measures. As we discuss in detail elsewhere in this study, technology without the aid of (artificial) intelligence can only function to implement precise, predetermined rule sets and cannot, *per se*, accommodate *ex post facto* determinations such as the “fair use” mechanism in United States copyright law. A critical safety valve of the traditional copyright system does not work in an environment regulated by automated rights management technologies.

當然，對於被運用的保護措施，以及管制如何保護這些措施的法律而言，科技增添了另一個複雜層面。在本研究中的相關段落中，我們將會討論到，在沒有（人工）智慧的協助下，科技只能執行精確、事先決定的規則集合，而本身並不能夠事後判斷如美國著作權法之下的「合理使用」機制。在自動化權利管理科技管制下的環境，這一個傳統著作權體系的關鍵性安全閥無法作用。

Later in this study we review and in essence adopt the arguments of leading technology experts that no technical protection measure can replicate the richness of the way exceptions and limitations function as a part of traditional copyright law and practice. We have therefore to pose the question: if we have condoned the use of technical protection measures in copyright legislation, do we in effect discard the exceptions and limitations that such measures are unable to implement? Presumably not, but it then becomes necessary to define the terms upon and modality by which a user or use qualifying for an exception may circumvent the technical measure as applied.

在本研究中，我們審視並且基本上採納了有領導地位的科技專家論點，亦即，在傳統著作權法律與實務中，例外與限制規定在運作方式上的豐富性，是技術保護措施所無法企及。我們因此提出這個問題：如果我們在著作權立法中允許使用技術保護措施，我們是否實際上放棄了這種措施所無法執行的例外與限制規定？如果不是的話，則為了規避技術措施的應用，就必須界定使用者或使用的合格例外條件與態樣。

To provide a further element of focus for this study we have confined our research into national laws and practices to five territories:

- Australia
- Republic of Korea
- Spain
- United Kingdom
- United States of America

[Study follows]

爲了提供本研究進一步的焦點內容，我們將研究限縮在五個主權領域的國內法與實務：澳洲、韓國、西班牙、英國、美國。[本研究內容如下]

STUDY  
研究

CHAPTER 1  
第一章

A REVIEW OF RELEVANT INTERNATIONAL LAW  
相關國際法之回顧

In this section of the study we provide an overview of the relevant provisions of international law which define permissible limitations and exceptions to copyright.

關於可允許的著作權限制與例外規定，我們在本研究的這個單元提供相關國際法規定的概觀。

Two major issues have to be addressed as part of this preliminary review of the law. The first of these is the application of the so-called “three-step test” to the areas of study; the second is the relationship between the anti-circumvention measures and the implementation of specific exceptions and limitations.

關於法律的初步回顧，在內容上必須處理二個主要議題。第一個議題是所謂「三步驟檢驗」在這些研究領域上的適用；第二個議題是反規避措施與實施特定例外與限制規定的相互關係。

A. Exceptions and limitations at international level  
國際層面的例外與限制規定

In examining the international law on exceptions and limitations of copyright, extensive reference is made to the Study prepared by Professor Sam Ricketson for the WIPO Standing Committee on Copyright and Related Rights, meeting in its Ninth Session from June 23 to 27, 2003.

關於此處對於著作權例外與限制規定的國際法檢討，是廣泛參考了 Sam Ricketson 教授的研究報告，這份報告是爲了 2003 年 6 月 23 日至 27 日 WIPO 著作權與相關權利常設委員會第九次會期的會議所準備。<sup>9</sup>

Exceptions and limitations as embodied in international (and in national copyright law) can be broken down into three categories:

規定於國際法（以及國內法）的例外與限制規定，可以分成以下三類：

- Limitations of copyright which expressly remove particular categories of works or material from the field of protection.  
- 將特定種類的著作或資料，明文排除於保護範圍之外的著作權限制規定。
- Exceptions to copyright protection which allow for specific acts to occur in relation to otherwise protected works without the actor incurring any liability for copyright infringement in respect of that act.  
- 對於受保護的著作，允許某些特定行爲，而使行爲人免於著作權侵權責任的著作權例外規定。

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<sup>9</sup> Ricketson, Sam: WIPO Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment, WIPO Document SCCR/9/7, April 5, 2003.

- Compulsory licensing mechanisms which guarantee permission to perform an otherwise restricted act in relation to a protected work, provided some form of fee is paid to the right holder in respect of that use.
- 在對於權利人支付某種費用的條件下，對於受保護的著作，許可從事某種原本被限制行為的強制授權機制。

From hereon in this study for ease of reference we use the term “exception” to cover all three categories on a general basis. Where the context requires specificity, the precise terminology is used.

在本研究此處以下，爲了引述方便，我們概括性地使用「例外規定」(exception)一詞包含所有的三個種類。當上下文要求用字精確時，則會採用精確的術語。

The international norms in this area can be summarized as follows:

這個領域的國際規範可摘要如下：

1. *The Berne Convention for the Protection of Literary and Artistic Works (The Berne Convention)*

保護文學及藝術著作之伯恩公約 (伯恩公約)

Permitted limitations are as follows:

受許可的限制規定如下：

- Official texts: Article 2(4)
- 官方文書：第 2 條第 4 款
- News of the day and press information: Article 2(8)
- 日常新聞與新聞資訊：第 2 條第 8 款
- Political speeches, and speeches delivered in the course of legal proceedings: Article 2bis(1)
- 政治演說及司法程序進行時所爲之演說：第 2 條之 2 第 1 款

Permitted exceptions are as follows:

受許可的例外規定如下：

- Lawful rights of quotation: Article 10(1)
- Utilisation for teaching purposes: Article 10(2)
- Exceptions made for the benefit of the press: Article 2(8)
- General exception concerning reproduction rights: Article 9(2)
- Contributions to the making of a cinematographic work: Article 14bis(2)(b)
- 合法引用權：第 10 條第 1 款
- 爲教學目的而利用：第 10 條第 2 款
- 爲新聞媒體利益而制訂的例外規定：第 2 條第 8 款
- 關於重製權的一般例外規定：第 9 條第 2 款
- 參與電影著作之製作：第 14 條之 2 第 2 款(b)

The permissible compulsory licences are as follows:

許可的強制授權如下：



- Compulsory licenses with respect to the recording of musical works
- Compulsory licenses in respect of the broadcasting of works: Article 11bis(2)
- Ephemeral recordings of broadcast works: Article 11bis(3)
- Compulsory licenses in relation to developing countries: Appendix to the Paris Act
- 關於音樂著作錄音之強制授權
- 關於著作廣播之強制授權：第 11 條之 2 第 2 款
- 廣播著作之暫時錄製物：第 11 條之 2 第 3 款
- 關於開發中國家之強制授權：巴黎修正案附錄

## 2. *The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (The Rome Convention)*

保護演出者、錄音物製作人暨廣播機構國際公約（羅馬公約）

This Convention deals with three kinds of neighboring rights or rights related to copyright: those of performers, phonogram producers and broadcasting organizations. Permissible exceptions are contained in Article 15 and are of two kinds:

本公約處理三種著作鄰接權或相關著作權：演出者、錄音物製作人與廣播機構之權利。許可的例外規定有二種，規定於第 15 條：

### Specific Exceptions: Article 15(1)

特定例外規定：第 15 條第 1 項

- Private use Article 15(1)(a)
- Use of short excerpts in connection with the reporting of current events: Article 15(1)(b)
- Ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts: Article 15(1)(c)
- Use solely for the purposes of teaching or scientific research: Article 15(1)(d)
- 個人之使用：第 15 條第 1 項第 1 款
- 時事報導之片斷的使用：第 15 條第 1 項第 2 款
- 傳播機構利用自己之設備，就自己之傳播所為簡短之錄音：第 15 條第 1 項第 3 款
- 專門為教育或科學研究目的之使用：第 15 條第 1 項第 4 款

### Limitations contained in domestic laws: Article 15(2)

國內法規定之限制：第 15 條第 2 項

- These must correspond to the protection of copyright in literary and artistic works.
- 這些規定必須與文學及藝術著作之保護一致。

3. *The Agreement on Trade-Related Aspects of Intellectual Property Rights (the “TRIPS Agreement”)*  
與貿易有關之智慧財產權協定 (TRIPS 協定)

As a mandatory requirement under Berne

在伯恩公約之下的強制要求

Article 9(1) of TRIPS requires that members will comply with Articles 1-21 of Berne, regardless of whether the country in question is a Berne member. Members must therefore provide for exceptions for quotations under Article 10(1) of Berne. With respect to the others, there is no compulsion for any of these limitations or exceptions to be recognized, but, if they are, then the conditions contained in the relevant Berne Articles will need to be observed.

TRIPS 第 9 條第 1 項要求，不論會員是否為伯恩公約會員，會員應遵守伯恩公約第 1 條至第 21 條之規定。會員因此必須制訂伯恩公約第 10 條第 1 項的引用例外規定。關於其餘部分，並未有強制要求承認這些限制或例外規定，不過，如果有這種情形，則應遵守相關伯恩公約條文所規定的條件。

As a specific TRIPS obligation under Article 13 of TRIPS

TRIPS 第 13 條的特定 TRIPS 義務

Article 13 of TRIPS provides as follows:

TRIPS 第 13 條規定如下：

“Members shall confine limitations and exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right-holder.”

「會員就專屬權所為限制或例外之規定，應以不違反著作之正常利用，且不至於不合理損害權利人之正當利益之特殊情形為限。」

This has to be interpreted as part of the TRIPS Agreement, rather than as part of Berne but as Ricketson states, “the better view must be that Article 13 applies to all the exclusive rights listed in Berne, including that of reproduction, as well as the rental right in TRIPS.”

這必須解釋為 TRIPS 協定的一部分，而不是伯恩公約的一部分，但是誠如 Ricketson 教授所說：「比較妥善的觀點是，第 13 條適用於所有伯恩公約列舉的專屬權，包括重製權，以及 TRIPS 當中的出租權。」<sup>10</sup>

There is no obligation under TRIPS for members to apply the provisions of the Rome Convention to performers, phonogram producers and broadcasting organizations: under Article 3(1) members are required only to apply rights accorded under TRIPS itself. These are contained in Article 14(1)-(5) that parallel, and in some respects go beyond, the requirements under Rome. In relation thereto, members can only provide for limitations and exceptions within the categories listed in Article 15(1) and (2) of the Rome Convention.

針對演出者、錄音物製作人與廣播機構，TRIPS 會員並沒有義務適用羅馬公約：依第 3 條第 1 項，會員義務僅及 TRIPS 協定本身規定之權利。這些義務見諸於 TRIPS 第 14 條第 1 款至第 5 款與羅馬公約相當的規定，而在某些方面超過了羅馬公約的要

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<sup>10</sup> See Ricketson *supra*, p. 44.

求。關於該部分，會員只能在羅馬公約第 15 條第 1 項與第 2 項列舉的範圍內，制訂限制與例外規定。

#### 4. *The WIPO Copyright Treaty (WCT)*

*世界智慧財產權組織著作權條約*

Exceptions are dealt with in two provisions:

有二個條款處理例外規定：

- Article 1(4)
- 第 1 條第 4 項

This provision requires Contracting Parties to comply with Articles 1-21 and the Appendix of the Berne Convention. Thus, regardless of whether a Contracting Party is a member of Berne, it must apply the three-step test to the reproduction right as provided in Article 9(2) of Berne.

本條款要求締約各方應遵守伯恩公約第 1 條至第 21 條及其附錄之規定。因此，不論訂約者是否為伯恩公約會員，都必須將三步驟檢驗適用於伯恩公約第 9 條第 2 項所規定的重製權。

- Article 10
- 第 10 條

Article 10 provides as follows:

第 10 條規定如下：

“10(1) Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

第 10 條第 1 項：「締約各方得在未與著作之正常利用相衝突，以及不致於不合理地損害著作人正當利益之相關特定情形下，以其國內法對於本條約所賦予文學及藝術著作之著作人之權利為限制或例外之規定。

“10(2) Contracting Parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided therein to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.”

第 10 條第 2 項：「締約各方於適用伯恩公約而對其所定權利為任何限制或例外時，僅限於未與著作之正常利用相衝突，以及不致於不合理地損害著作人正當利益之相關特定情形下。」

Article 10(1) applies to the rights provided for in WCT, namely the rights of distribution (Article 6), rental (Article 7) and communication to the public (Article 8).

第 10 條第 1 項適用於 WCT 規定之權利，亦即散布權（第 6 條）、出租權（第 7 條）與對公開傳播權（第 8 條）。

An Agreed Statement relative to Article 10 that was adopted by the 1996 Diplomatic Conference provides:

1996 年外交會議採納了一項關於第 10 條的共同聲明(Agreed Statement)：

“It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment.

「根據了解，第 10 條許可締約各方，在伯恩公約可接受的範圍內，在將來以適當方式，以國內法將限制與例外規定適用於數位環境。同樣地，這些條款應當被理解為，在數位環境下，許可締約各方設計適當的新例外與限制規定。」

“It is also understood that Article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention.”

「也了解到，關於伯恩公約所許可的限制與例外規定，第 10 條第 2 項並未減少或增加其適用範圍。」

#### 5. *The WIPO Performances and Phonograms Treaty (WPPT)*

*世界智慧財產權組織表演及錄音物條約*

Article 16 of WPPT provides as follows:

WPPT 第 16 條規定如下：

“(1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of performers and producers of phonograms as they provide for in their national legislation, in connection with the protection of copyright in literary and artistic works.

締約各方得以其國內法對於表演人或錄音物製作人之保護，為相同於其國內法對於文學及藝術著作之著作權保護之限制或例外。

“(2) Contracting parties shall confine any limitations or exceptions to rights provided for in this treaty to certain special cases which do not conflict with a normal exploitation of the performance or phonogram and do not unreasonably prejudice the legitimate interests of the performer or of the producer of the phonogram.”

締約各方於就本條約所定權利為任何限制或例外時，應侷限於未與表演或錄音物之正常利用相衝突，以及不致於不合理地損害表演人或錄音物製作人正當利益之相關特定情形下。

These provisions also need to be read subject to the following agreed statements that were adopted at the 1996 Conference. The first relates to Articles 7 (right of reproduction for performers) and 11 (right of reproduction for producers of phonograms) as well as Article 16:

關於這些規定的解釋，應當依據 1996 年會議所採納的共同聲明。第一項共同聲明涉及第 7 條（表演人之重製權）、第 11 條（錄音物製作人之重製權）以及第 16 條：

“The reproduction right as set out in Articles 7 and 11, and the exceptions permitted thereunder through Article 16, fully apply in the digital environment, in particular to the use of performances and phonograms in digital form. It is understood that the storage

of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles.”

「第 7 條及第 11 條規定之重製權，以及第 16 條規定所許可之例外規定，完全適用於數位環境，尤其是數位形式表演與錄音物之使用。根據本聲明之了解，將受保護的數位形式表演與錄音物儲存於電子媒體，構成了這些條文意義下的重製行為。」

The second Agreed Statement relates only to Article 16, and provides:

第二項共同聲明只有涉及第 16 條，規定如下：

“The agreed statement concerning Article 10 (on Limitations and Exceptions) of the WIPO Copyright Treaty is applicable *mutatis mutandis* also to Article 16 (on Limitations and Exceptions) of the WIPO Performances and Phonograms Treaty.”

「關於世界智慧財產權組織著作權條約第 10 條（限制與例外規定）之本項聲明，亦適用於世界智慧財產權組織表演及錄音物條約第 16 條（限制與例外規定）。」

## B. Issues with exceptions

### 例外規定之議題

Following this summary of the provisions in the international treaties dealing with exceptions, we proceed to examine two specific areas in more detail:

在這些處理例外規定的國際條約摘要之後，我們接下來更深入檢討二個特定領域：

- Specific exceptions related to the needs of the visually impaired and to the use of copyright works in education
- The impact of Article 9(2) of the Berne Convention: the three-step test
- 關於視覺障礙者之需要及教育上使用著作權著作的特定例外規定
- 伯恩公約第 9 條第 2 項的衝擊：三步驟檢驗

### 1. *Specific exceptions*

#### *特定例外規定*

There are no specific provisions in international copyright and neighbouring rights law dealing with the needs of visually impaired people. There are however provisions relating to education.

關於處理視覺障礙者之需要，在國際著作權與臨接權法中，並未有特定的規定。然而有教育方面的規定。

The relevant provision is Article 10(2) of the Berne Convention, which provides as follows:

相關規定是伯恩公約第 10 條第 2 項，規定如下：

“(2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided that such utilization is compatible with fair practice.”

「教學用之發行者、傳播內容或聲音或影像錄製物，是否准許得為講示說明之目的，在該目的之正當範圍內，利用文學著作或藝術著作，依本聯盟各會員國之法律，或各會員國間現在或將來締結之特別協議定之，但所為利用應符合合理慣例。」

Ricketson's comments on this provision include the following:

關於本條規定，Ricketson 教授的評論包含以下幾點：

- What is the “utilization [of works] for teaching” is a matter to be determined by national legislation, or by bilateral agreements between Union members.
- 何謂「為教學利用[著作]」，係會員國法律或聯盟會員國雙邊協定所決定之事項。
- No quantitative limitations are contained in Article 10(1), apart from the general qualification that the utilization of works should only be “to the extent justified by the purpose (...) by way of illustration (...) for teaching, provided that such utilization is compatible with fair practice.” The words “by way of illustration” impose some limitation, but would not exclude the use of the whole of a work in appropriate circumstances, for example, in the case of an artistic work or short literary work.
- 除了「為講示說明之目的，在該目的之正當範圍內...所為利用應符合合理慣例」這項利用著作的一般定性規定之外，第 10 條第 1 項並無數量上的限制。「講示說明」的措辭課予了某些限制，但是並不排除於適當情形下使用整份著作，例如，藝術著作或短篇文學著作。
- The utilization must be “by way of illustration” for the purpose of “teaching.” Reference in the Committee’s Report of the Stockholm Conference indicates the scope of the term “teaching”:
- 利用必須為「教學」目的而「講示說明」。斯德哥爾摩會議委員會報告的參考資料，指出了「教學」一詞的範圍：

“The wish was expressed that it should be made clear in this Report that the word ‘teaching’ was to include teaching at all levels—in educational institutions and universities, municipal and State schools, and private schools. Education outside these institutions, for instance general teaching available to the general public but not included in the above categories, should be excluded.”

「在報告中所應清楚顯示的意圖則是，『教學』一詞」包括所有層級的教學—含教育機構與大學，地方與國立學校，以及私人學校。這些機構以外的教育，如對於前述範圍以外的一般公眾進行一般性教學，則應排除在外。」
- There is no evidence that the term “teaching” is intended to be interpreted so as to exclude virtual learning environments.
- 並無證據顯示，「教學」一詞解釋為排除虛擬學習環境。
- The requirement that the utilization be “compatible with fair practice” involves an objective appreciation of the situation, and the criteria referred to in Article 9(2)[of Berne]would provide a useful guide (see further below).

- 所為利用「符合合理慣例」的要求，涉及了對於情境的客觀評價，而[伯恩公約]第 9 條第 2 項將會提供一個有用的指引（詳後）。
- Although the range of utilization's permitted by Article 10(2) includes broadcasting it does not include distribution of a work either as part of an original programme or as part of a broadcast over a cable system.
- 即使第 10 條第 2 項所許可的利用範圍包含傳播，它並未包含在有線系統上以原節目一部分或以傳播內容一部分而散布著作。
- No limitation is imposed in respect of the public which is reached by a broadcast intended for teaching purposes. Likewise, there is no limitation on the number of copies that can be made for the same purpose.
- 關於教學目的所及的傳播對象公眾，並未有所限制。同樣地，關於為教學目的所為的重製物數量，並未有所限制。<sup>11</sup>

## 2. *General exception concerning reproduction rights - the “three-step test”*

### *關於重製權的一般性例外規定 – 「三步驟檢驗」*

The relevant provision is Article 9(2) of the Berne Convention, which provides as follows:

相關規定為伯恩公約第 9 條第 2 項，其規定如下：

“(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.”

「上開著作得重製之特定特殊情形，依本聯盟各會員國之法律定之，惟所為重製，不得抵觸著作之正常利用，亦不得不當損害著作人正當利益。」

Article 9(2) stipulates three distinct conditions that must be complied with before an exception to the reproduction right can be justified under national law:

以會員國法律正當化重製權例外規定之前，應先滿足第 9 條第 2 項所規定的三個不同條件：

- Limitation of application to “certain special cases”;
- “Does not conflict with the normal exploitation of the work”;
- “Does not unreasonably prejudice the legitimate interests of the author”.
- 限於「特定特殊情形」；
- 「不得抵觸著作之正常利用」；
- 「不得不當損害著作人正當利益」。

<sup>11</sup> See Ricketson *supra* at 14-15.

Given the general application of this test in international law and the range of rights which it covers, the construction of the test is of major importance. There is however a paucity of case law on its interpretation; a summary of the leading case follows.

鑑於這項檢驗標準在國際法當中的普遍適用性，以及其包含的權利範圍，這項檢驗標準的解釋事關重大。然而關於其解釋的案例法卻少見；這些重要案例摘要如下：

In June 2000 the World Trade Organization (WTO) ruled on a dispute initiated by the European Union on behalf of the Irish performing rights organization. The complaint asserted that the United States of America was in contravention of its obligation under Article 13 of the TRIPS Agreement to “confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.” The subject of the complaint was section 110(5) of the United States Fairness in Music Licensing Act of 1998. This provision purported to exclude a broad range of retail and restaurant establishments from the need to obtain authorization for the public performance of musical works on their premises via radio and television transmissions. The European Union asserted that the section 110(5) exemptions violated the United States’ TRIPS obligations because they conflicted with Articles 11(1)(ii) and 11*bis* (1)(iii) of the Berne Convention (incorporated through Article 9(1) of TRIPS).

於 2000 年 6 月，世界貿易組織(WTO)對於歐洲聯盟代表愛爾蘭表演權利組織所提出的爭端作出了決定。本案指控主張美國違反了 TRIPS 協定第 13 條的義務「就專屬權所為限制或例外之規定，應以不違反著作之正常利用，且不至於不合理損害權利人之正當利益之特殊情形為限」。本案指控標的是美國 1998 年音樂公平授權法(Fairness in Music Licensing Act of 1998)第 110 條第 5 項。據稱，該條規定對於範圍廣泛的零售業與餐飲業，使其在場所範圍內不須取得授權，而以收音機與電視公開播放音樂著作。歐洲聯盟主張，第 110 條第 5 項的這些例外規定違反美國的 TRIPS 義務，因為這些例外規定抵觸了（TRIPS 第 9 條第 1 項所納入的）伯恩公約第 11 條第 1 項第 2 款及第 11 條之 2 第 1 項第 3 款。

According to the Panel’s decision, in order for a member of the WTO to avoid having an exception invalidated under TRIPS Article 13, the member must establish:

根據爭端解決小組的決定<sup>12</sup>，WTO 會員為避免其例外規定抵觸 TRIPS 第 13 條而無效，該會員必須確立：

(1) That the exception is limited to a narrow and specifically defined class of uses. (However, the member does not need to explain the local policy upon which the exception is based);

(1) 該例外規定僅限於狹窄而特定的使用種類（不過，該會員無須解釋該例外規定的當地政策依據）；

(2) That the use conducted pursuant to the exception does not compete with actual or potential economic gain that the right holders would derive from normal exercise of the right in question; and

(2) 根據該例外規定所為之使用，不影響權利人正常行使系爭權利可得之實際或潛在經濟收益；且

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<sup>12</sup> WTO Panel on United States-Section 110(5) of the US Copyright Act: Report of the Panel, WT/DS/160/R, June 15, 2000.



(3) That the use conducted pursuant to the exception does not unreasonably damage an interest of the right holder, such interest being derived from and compatible with general copyright objectives; the provision by the member of a compulsory license or other compensation mechanism could be instrumental in defeating a finding of unreasonableness.

(3) 根據該例外規定所為之使用，不至於不合理損害權利人之利益，而此等利益來自於且符合於著作權之一般性目的；會員所提供的強制授權或其他補償機制，有助於推翻不合理之認定。

The WTO dispute resolution panel determined that the United States had, in respect of section 110(5) (B), failed to establish any of the above.

關於第 110 條第 5 項，WTO 爭端解決小組決定美國未能確立以上任何一點。

The case is of importance in the context of this study in relation to at least two questions: 在本項研究中，本案至少在二個問題上具有重要性：

- How are exceptions in national law to be applied to new uses and practices facilitated by technology and which *prima facie* fall within the scope of established exceptions?
- 國內法之例外規定，如何適用於科技帶來的新興使用與實務？何種例外規定初步屬於被確立的範圍？
- Does the impact of digital reproduction and distribution technology – e.g. low marginal and transaction costs – support a reduction in the scope of exceptions where the uses they cover might conflict with a new potential market opportunity for the rights holder?
- 數位化重製與散布科技所帶來的衝擊—例如邊際成本與交易成本降低—是否足以支持例外規定範圍減少？這些例外規定所包含的使用情形，是否與著作權利人的新興潛在市場機會有所衝突？

The Panel Decision does not provide definitive answers to these questions but does provide some clues as to how they might be resolved. Within the context of the case in issue, the Panel conducted an extensive review of the elements of the three-step test.

對於這些問題，本案爭端解決小組的決定並未提供確定答案，不過提供了解決問題的某些線索。在系爭本案中，對於三步驟檢驗的內容，爭端解決小組進行了廣泛的審查。

It is noted that the three-step test is a hierarchical proposition in that compliance has to be found with each of the elements in order:

應注意的是，三步驟檢驗是一種階層性的陳述命題，是否符合必須依序認定。

- Is there a “special case” exception?
- 例外規定是否為「特殊情形」？
- If so, does the use contemplated by the exception conflict with normal exploitation?
- 若是，該例外規定的使用情形是否抵觸了正常利用？

- If not, does the use unreasonably prejudice the legitimate interests of the rights holder?
- 若否，則該使用是否不合理傷害著作權利人的正當利益？

“Certain special cases”

「特定特殊情形」

The Panel held that the scope of the exception must be well-defined (“certain”), and narrowly limited (“special”). The Panel considered whether “special” also involved a requirement that the exception relate to some worthy public purpose, but declined to undertake the evaluation of local public policy that such an interpretation requires. The Panel “rejected interpretative tests based on the subjective aims of the national legislation.”

爭端解決小組認為，例外規定的範圍必須明確界定（特定性），且必須狹窄限制（特殊性）。關於「特殊性」要件，該小組曾經考慮，例外規定所牽涉的公共目的是否應當具有相當的價值，然而該小組並不願從事此等解釋所要求的當地公共政策評價工作。該小組「拒絕以國內法主觀目的為基礎的檢驗標準解釋」。

The Panel referenced specific business statistics in determining that the exception in question could not be regarded as “narrow”: e.g. in the United States of America, 73 % of all eating establishments, 70% of all drinking establishments, and 45% of all retail establishments, fall below section 110(5)(B)’s size limits, and therefore benefit from the exemption.

爭端解決小組參考了特定的商業統計資料，以認定系爭例外規定可否被視為「狹窄」：例如在美國之中，73%的進餐場所，70%的飲料場所，以及 45%的零售場所，屬於第 110 條第 5 項規範之下的場地規模，因此由這項免除規定而受益。

The Panel acknowledged the possibility that new technologies could impact determination of what constituted “certain special cases,” but restricted its assessment of the exception in the particular case by reference to the capabilities of current technology.

對於新科技影響認定「特定特殊情形」的可能性，爭端解決小組加以承認，但是在本案關於例外規定的評估，卻侷限於參考當前的科技能力。

“Does not conflict with a normal exploitation of the work”

「是否抵觸著作的正常利用」

The Panel considered the term “normal” from the perspective of both actual use and potential use.

爭端解決小組由實際使用與潛在使用的觀點考量「正常」一詞。

In respect of the actual use, the Panel rejected the United States’ argument that the Panel should have regard to the bundle of rights in the work as a whole, as opposed to individual rights in isolation. The Panel stated that “possible conflict with a normal exploitation of a particular exclusive right cannot be counterbalanced or justified by a mere fact of the absence of conflict with a normal exploitation of another exclusive right, even if the exploitation of the latter right would generate more income.”

關於實際使用，爭端解決小組拒絕接受美國的論點，美國主張爭端解決小組應當將著作的各種權利組合視為一個整體加以觀察，而非以個別權利孤立觀察。爭端解決小

組表示：「在某一項特定排他權利用上的可能抵觸情形，不因另一項排他權正常利用未受抵觸的事實，而得以平衡或正當化，即使後者權利的利用會產生更多收益。」

As to the relationship between potential use and “normal exploitation,” the Panel referenced preparatory materials for the 1967 Stockholm Revision Conference which formulated Article 9(2) of the Berne Convention. Here it found support for the proposition that the disputed exception “should not enter into economic competition” with the right holder: according to a report of the Swedish government and BIRPI (Bureau for the Protection of Intellectual Property, the predecessor organization to WIPO), “all forms of exploiting a work, which have, or are likely to acquire, considerable economic or practical importance, must be reserved to the authors.” The Panel went further: “Thus it appears that one way of measuring the normative connotation of normal exploitation is to consider, in addition to those forms of exploitation that currently generate significant or tangible revenue, those forms of exploitation which, with a certain degree of likelihood and plausibility, could acquire considerable economic or practical importance.”

關於潛在使用與「正常利用」之關係，爭端解決小組引用了制訂伯恩公約第 9 條第 2 項的 1967 年斯德哥爾摩修正會議預備資料。爭端解決小組在此發現支持系爭例外規定與著作權利人「不得有經濟競爭」的主張：根據一份瑞典政府與智慧財產保護局（Bureau for the Protection of Intellectual Property, WIPO 組織前身）的報告，「具有或可能有相當經濟利益的一切利用著作方式，應保留予作者。」爭端解決小組進一步表示：「因此顯示，除了目前產生顯著或實質收益的利用方式之外，考慮在一定程度機會與可能性時能獲得相當經濟上或實務上重要性的利用方式，是衡量正常利用規範內涵的一個方式。」

The Panel then concluded on this point as follows: “We believe that an exception or limitation to an exclusive right in domestic legislation rises to the level of a conflict with a normal exploitation of the work (...) if uses, that in principle are covered by that right but exempted under the exception or limitation, enter into economic competition with the ways that right holders normally extract economic value from that right to the work (...) and thereby deprive them of significant or tangible commercial gains.”

關於這一點，爭端解決小組結論如下：「如果原本由某個排他權所涵蓋的使用情形，因例外或限制規定而受到免除，以致與權利人由該著作權得正常收取的經濟利益有經濟競爭...因此使權利人喪失顯著或實質商業收益，則我們認為，國內法中對於某個排他權的一項例外或限制規定抵觸了該著作的正常利用。」

Professor Ginsburg comments on this finding as follows:

針對這項認定，Ginsburg 教授<sup>13</sup>評論如下：

“The panel indicated that current licensing practices do not necessarily define the normal extraction of economic value. These practices would not afford a “sufficient guideline” if, for example, the law of the country at issue does not confer exclusive rights in a particular use, or where, “due to lack of effective or affordable means of enforcement, right holders do not find it worthwhile or practical to exercise their rights.” This caveat suggests that a “normal exploitation” may be an idealized one: if the exploitation falls within the scope

<sup>13</sup> Ginsburg, Jane C: Toward Supranational Copyright Law? The WTO Panel Decision and the “Three-step Test” for Copyright Exceptions, *Revue Internationale du Droit d’Auteur (RIDA)*, issue 187, January 2001.

of the copyright, and no copyright or related cultural policies undergird the right holder's disability from exercising the right, then the exploitation may, as a normative matter, be "normal."

「爭端解決小組指出，目前的授權實務並不必然能夠界定經濟價值的正常利用。如果，例如，該系爭國家法律在某一種特定使用上並未賦予排他權，或者在『缺乏有效或可行的執行方法，以致權利人認為行使其權利不具有價值或不切實際』，則這些實務無法提供『充分指導方針』。這項告誡表示，「正常利用」可以用理想化的方式加以認定：如果這項利用屬於該著作權的範圍，而著作權政策或相關文化政策並未使權利人不得行使該權利，則在規範上，該項利用可能會被認為屬於「正常」利用。

“And that do not unreasonably prejudice the legitimate interests of the right holder”  
「不至於不合理損害權利人之正當利益」

According to the Panel three terms required definition: “interests,” “legitimate,” and “unreasonable.” The Panel determined that “interests” need not be “limited to actual or potential economic advantage or detriment.”

根據爭端解決小組，有三個用詞需要界定：「利益」、「正當」與「不合理」。爭端解決小組認為，「利益」不只「限於實際或潛在經濟利益或經濟損害」。

As to “legitimate,” the Panel adduced both a “legal positivist” perspective (authorized or protected by law), and “a more normative perspective, in the context of calling for the protection of interests that are justifiable in the light of objectives that underlie the protection of exclusive rights.”

關於「正當」，爭端解決小組引用了「法律實證主義」觀點(“legal positivist” perspective) (為法律所授權或保護)，以及一種「在保護排他權基本目的下，應受保護利益情境中，一種更加規範性的觀點」。

With regard to tolerable levels of “prejudice,” the Panel noted that the text's formulation, “not unreasonably prejudice,” “connotes a slightly stricter standard” than “reasonable.” While acknowledging that the treaty text permits copyright owners' interests to undergo some prejudice, the Panel determined that the prejudice would reach an “unreasonable” level “if an exception or limitation causes or has the potential to cause an unreasonable loss of income to the copyright owner.”

關於「損害」的可容忍程度，爭端解決小組注意到了法律本文的措辭，「不至於不合理」意指一種比「合理」略微嚴格的標準。雖然爭端解決小組承認條約本文允許著作權人的利益承受某些損害，然而爭端解決小組認為，如果一項例外或限制規定造成或可能造成著作權人在收益上的不合理損失，則構成了「不合理」程度的損害。

As stated above, the decision of the WTO Panel does not provide a conclusive basis for answering the questions to which the three-step test gives rise in the new electronic environment. Similarly the European Union Copyright Directive of 2001, while underlining the need to construe the test in line with capabilities of the new environment, gives no indication as to how this is to be done. Recital 44 of the preamble provides thus:

如前所述，對於三步驟檢驗在新型態電子環境下引發的問題，WTO 爭端解決小組的決定並未提供決論性的解答基礎。同樣地，雖然歐洲聯盟 2001 年著作權指令強調需要將這項檢驗標準的解釋符合於新型態環境下的能力，然而卻未提出如何完成這項工作的指示。該指令前言第 44 句表示：

“When applying the exceptions and limitations provided for in this Directive, they should be exercised in accordance with international obligations. Such exceptions and limitations may not be applied in a way which prejudices the legitimate interests of the rightholder or which conflicts with the normal exploitation of his work or other subject-matter. The provision of such exceptions or limitations by Member States should, in particular, duly reflect the increased economic impact that such exceptions or limitations may have in the context of the new electronic environment. Therefore, the scope of certain exceptions or limitations may have to be even more limited when it comes to certain new uses of copyright works and other subject-matter.”

「適用本指令之例外與限制規定時，應符合國際義務。此等例外與限制規定之適用，不得傷害權利人正當利益，或抵觸其著作或其他客體之正常利用。尤其是，會員國此等例外與限制規定之條款，應適當反映此等例外與限制規定在新型態電子環境下可能日益增加的經濟衝擊。因此，對於著作權與其他客體之特定使用情形，特定的例外與限制規定在範圍上可能需要更加限縮。」

A number of member States in implementing the Directive make a specific connection between the exception in question and the three-step test. The United Kingdom takes a different approach, as explained in the consultative document issued in anticipation of implementation:

於執行本指令，有一些會員國將系爭例外規定與三步驟檢驗進行特定的連結。英國採取了另一個不同的方法，而這在一份預備執行本指令的諮詢性文件中有所解釋：<sup>14</sup>

“Article 5(5)

第 5 條第 5 項

This provision confirms that all exceptions are subject to the so-called three-step test found in international treaties (see, for example, Article 13 of the TRIPS Agreement and Article 10 of the WIPO Copyright Treaty). Recital 44 is relevant. It is not proposed to introduce the test as such into the United Kingdom law as a general constraint on exceptions; rather, it is proposed to continue with the existing practice in the Act of using the test as a standard in framing exceptions to rights. It follows that the exceptions amended as proposed, as well as other unamended exceptions to copyright and related rights in the Act, are considered to comply with the three-step test.”

本條規定確認了一切例外規定均應符合國際條約中所謂的三步驟檢驗（例如，見 TRIPS 協議第 13 條，以及 WIPO 著作權條約第 10 條）。指令前言第 44 句與此有關。它並非將這個檢驗標準引進英國法成為對例外規定的一般性限制；而是延續了本法的既有實務，將這個檢驗標準作為權利例外規定的架構標準。

While this approach would seem to provide clarity in terms of the current situation, it begs the question as to how changes are to be developed in response to the inevitable inroads that technology will make on the status quo.

雖然這個方法似乎在目前局勢下提供了明確性，但是科技對於現狀將造成不可避免的影響，對於如何改變以因應這個問題，它並未回答。

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<sup>14</sup> The Copyright Directive (2001/29/EC) - UK Implementation, Consultation Paper of the Patent Office, available at <<http://www.patent.gov.uk/about/consultations/eccopyright/impact.htm>>.

### 3 *Protection of technical measures* *技術措施之保護*

Article 11 of the WCT, entitled “Obligations Concerning Technological Measures,” provides:

標題為「有關科技措施之義務」的 WCT 第 11 條規定：

“Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.”

「締約各方應有適當之法律保障及有效之法律救濟規定，以對抗規避著作人所使用於行使本條約或伯恩公約所定權利，或供作制止未經著作人授權或法律所允許對其著作所為行為之有效的科技措施。」

Article 18 of the WPPT contains a similar provision:

WPPT 第 18 條包含了類似規定：

“Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers or producers of phonograms in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances or phonograms, which are not authorized by the performers or the producers of phonograms concerned or permitted by law.”

「締約各方應有適當之法律保障及有效之法律救濟規定，以對抗規避表演人或錄音物製作人所使用於行使本條約所定權利，或供作制止未經表演人或錄音物製作人授權或法律所允許而對其表演或錄音物所為行為之有效的科技措施。」

Contracting Parties will meet their obligations in respect of these provisions where the protection they enact is “adequate” and the legal remedies “effective”. Furthermore, Contracting Parties are not prevented from introducing exceptions and limitations to the legal protections and remedies, provided they are consistent with the general protection of “effective technological measures.”

當締約各方所制訂的法律保障為「適當」，而且法律救濟為「有效」，便可符合關於這些規定的義務。此外，對於這些法律保障與救濟，締約各方並非不能制訂例外與限制規定，只要這些例外與限制規定符合關於「有效科技措施」的一般性保障即可。

The non-specificity of this provision has given rise to considerable debate as to its precise scope. For the purposes of this study however, a number of basic propositions can be assumed.

這個規定的不具體性，已經引起了關於其精確範圍的相當多討論。不過，基於本研究的目的，可以預設一些基本的命題。

First, while a number of countries have introduced provisions relating to controlling the act of circumvention itself, others have combined the prohibition to circumvent with prohibition of so-called preparatory acts, such as the trafficking in circumvention devices and

services. A third group of countries has simply focused on the prohibition of preparatory acts. From the viewpoint of those that advocate the latter position, prohibiting technologies alone could prove to be an effective way to prevent acts of circumvention.

第一，雖然有一些國家已經有了關於控制規避行為本身的規定，其他國家則是結合了禁止規避與禁止所謂預備行為，例如關於規避性設備與服務的非法交易。第三類的國家則單純集中於禁止預備行為。由支持後一種立場的觀點來看，禁止科技本身得以是一種預防規避行為的有效方法。

Second, Article 11 references circumvention of “effective” technological measures. From a technical point of view, the term “effective” seems illogical in this context: a technical protection measure which is compromised by a circumvention device can no longer be considered “effective.” (It is worth noting in this connection that while the DVD Video encryption standard – CSS – remains in place, a quick search with Google reveals 11.5 million references to DVD copy systems employing the DCSS hack). “Effective” therefore has to be understood in this context as a legal construct underpinning a deterrent provision, rather than a reference to real technological capability.

第二，第 11 條提到了規避「有效」科技措施。由技術觀點來看，「有效」一詞在這個情境下似乎不合邏輯：一項被規避設備所破壞的科技措施不能被認為「有效」。（關於此值得一提的是，即使 DVD 影像加密標準 CSS 依然存在，不過在 Google 上快速搜尋，即顯示出使用 DCSS 破解法的 DVD 複製系統多達一千一百五十萬。）因此「有效」應當被理解為，是一種法律建構的嚇阻規定，而不是指涉真正的科技能力。

Third, Article 11 references measures used in connection with authors’ exercise of their copyright rights under the Berne Convention and the WCT; Article 18 references measures used in connection with the exercise of rights under the WPPT by performers and producers of phonograms. Nothing, however, precludes Contracting Parties from enacting measures going beyond the minimum requirement. However, to the extent that a technological measure is used by an author to control uses of a work which ordinarily fall within an exception to copyright, then arguably Article 11 would not require a Contracting Party to prohibit circumvention in connection with such a use. Neither the WCT nor the WPPT provide any definitive answer on this issue, leaving the difficult task of reconciling the provisions to national law. As we discuss later in the study, even where the attempt is made at reconciliation the implementation of the intended solution becomes a complex proposition both as a matter of law and technology.

第三，關於作者依據伯恩公約與 WCT 行使其著作權，第 11 條提到了所使用的措施；關於表演人與錄音物製作人依據 WPPT 行使其權利，第 18 條提到了所使用的措施。不過，在以上條約規定中，並不禁止締約各方制訂超過最低要求的措施。然而，在作者使用科技措施，以控制通常屬於著作權例外規定的使用情形，可以說第 11 條並未要求締約方在關於這種使用情形時禁止規避。對於這個問題，WCT 與 WPPT 都未規定明確答案，而將調和這些規定的困難工作留給國內法處理。如我們在本研究後面所討論，甚至於連企圖調和這些解決方案的執行，都成為法律上與科技上的複雜問題。

The WIPO Treaties also introduce comparable provisions for protection of rights management information. Rights management information is defined as information that identifies the work, the author of or the owner of any rights in the work, or information about the terms and conditions of use of the work, as well as any numbers or codes that represent such information.

這些 WIPO 條約也引進了關於保護權利管理訊息的相類規定。在定義上，權利管理資訊是標示著作、作者、著作權利人的資訊，或著作使用條件的資訊，以及表現這些資訊的任何數字或代碼。



## CHAPTER 2

## 第二章

## DIGITAL RIGHTS MANAGEMENT (DRM)

## 數位權利管理(DRM)

It is commonplace for studies and reports about DRM to attempt to provide an all-encompassing definition of DRM. That is not necessary here. This section aims to explain the concept of DRM in the context of this study.

在關於 DRM 的諸多研究與報告中，對於 DRM 提供全面性的定義，是一項通常的作法。然而這個作法在此處並不必要。本文這部份旨在於以本研究情境下解釋 DRM 概念。

As this study is about the relationship between legal and technical mechanisms for the definition and implementation of rights and exceptions thereto, it follows that the reference to DRM in this context is to information technology (IT) tools and systems which function to define and enforce rights. DRM should therefore in this context be understood simply as a generic term for IT tools and systems which perform that function.

在權利及例外規定的定義與執行上，本研究討論其法律與技術機制相互關係，因此在這情境下，所謂 DRM 即是具有定義與執行權利功能的資訊科技工具與系統 (information technology tools and systems)。在這情境下，DRM 應當被單純理解為一個一般名詞，表示執行該功能的資訊科技工具與系統。

Accordingly, DRM should not be thought of – at least in the present context – as a specific item or configuration of technology. Indeed, much of the concern about the impact of the use of DRM could be allayed by adopting a broader and more analytical perspective to the subject matter; that is the intent here.

因此，至少在當前的情境下，DRM 不應被認為是特定的科技物品或裝置。實際上，如果在網際網路的主題上採取更加廣泛性與分析性的觀點，則可以減輕對於 DRM 所帶來衝擊的諸多顧慮。

DRM as an area of technology and approach to rights management in a digital environment is essentially a neutral proposition. It carries no more predisposition to the implementation rights in a particular way than, say, the technology and process of machine-based word-processing does to the content of documents produced thereby.

在數位環境下，DRM 作為一個科技領域，以及管理權利的方式，本質上屬於中性。在執行權利上，與機械式的文字處理科技與程序對於所產生的文件內容相比，DRM 並未更傾向於某種特定方式。

A. DRM: The conceptDRM：概念1. *The distinction between content management and rights management*  
*內容管理與權利管理(content management and rights management)之區別*

It is suggested that to better understand DRM it is helpful to distinguish between the processes and technologies which are used for managing content in a machine-based

environment and the technologies used for managing the rights in that content. The processes may well be closely integrated in both structure and operation, but they can be seen as quite distinct from an analytical perspective. Being able to recognize and apply that distinction is fundamental to the approach of this study.

爲了有助於妥善理解 DRM，有建議區分用於機械式環境下管理內容的程序與科技，以及用於管理內容權利的科技。這些程序可能在結構上與運作上緊密結合，但是以分析性觀點來看，它們得以被視爲相當不同。承認並應用這個區分，是本研究的根本取向。

The expression “content” is one which, although justifiably disliked by many in the creative community, has come to be widely used in discussion and description of media and communications technology. The reference covers many kinds of information, some of which attracts intellectual property protection, some of which is governed by other kinds of legal regulation, and some of which enjoys no legal protection. The expression “content” certainly encompasses the kind of matter traditionally the subject of copyright or neighbouring rights protection and that is how the term is used here. The term “information” is used to reference any kind of data, whether or not it is the subject of copyright protection in the traditional sense.

雖然許多創意界人士有理由厭惡「內容」一詞，這個詞在媒體與通訊科技領域的討論描述中已經廣爲使用。其指涉的範圍包含了許多種資訊，其中某些資訊引發智慧財產的保護，某些資訊被其他種法律管制所規範，而某些資訊不受任何法律保護。當然，「內容」一詞包含了著作權與鄰接權保護的傳統客體，而這就是這個詞用於此處的原因。「資訊」一詞用於指涉任何種類資料，不論該資料是否屬於傳統上著作權的保護客體。

There is another important clarification which needs to be explained in detail at the outset. In this study there will be frequent reference to “content management” and to “rights management”. The two expressions are intended to be understood in the following way:

在開始之初，有另一個重要的說明有待詳細解釋。在本研究中，將會經常參照「內容管理」與「權利管理」。這二個詞以如下方式理解：

- “Content management” means all activity conducted in relation to items of content by a device and/or a human actor including creating, manipulating (modifying, adapting), fixing, storing, transferring, performing, rendering (playing, displaying, etc; in a device), and disposing of the content. Content management is used to describe these activities whether or not they occur in a machine-based, digital environment.
- 「內容管理」意指以設備與 / 或人工在內容項目上所爲之一切行爲，包括創造、操作（修改、調整），固著、儲存、移轉、執行、播放（在設備中播放、顯示等等），以及處分。不論是否發生於機械式、數位環境下，內容管理皆用於描述這些行爲。
- “Rights management” means all activity conducted in relation to the rights governing the content management activity in respect of an item of content. The rights in question are the product of legislation or contract or a combination of the two.
- 「權利管理」意指在內容項目上，關於規範內容管理行爲的權利所爲之一切行爲。系爭權利來自於立法或契約，或是這二者的組合。

Modern IT has made it possible to generate, store, manipulate, transfer and search for data in ways that have made more information available to a greater number of users than could ever have been imagined a mere generation ago. Digitisation of data, storage capacity, processing power, networks, metadata systems, search technologies, rendering applications: all these are features of relatively basic computing systems which many people now take for granted. Together they have made it possible for people to find and use in a huge variety of ways many diverse forms of content.

對於資料的生產、儲存、操作、移轉與搜尋，現代資訊科技以僅僅一個世代前所無法想像的方式，使更多資訊提供予更多使用者。資料數位化、儲存能力、處理能力、網路、後設資料(metadata)系統、搜尋科技、播放程式：這些是運算系統的基本特徵，而現在許多人已經視為理所當然。這些特徵合在一起，便使得人們能以許多方法發現並使用多種形式的內容。

For many users of technology, the principal benefit is access to infinite content resources and advanced content management processes. An example from recent times of the rich user experience of content made possible by advanced content management systems is that of Napster. Launched in 1999, this was the first generally available implementation of content (file) sharing technology. It quickly became one of the fastest growing on-line subscription systems ever seen. By the height of Napster's popularity the number of subscribers was reported to be in the region of 60 million, a vast population of users built up in little more than a year. Users were attracted by the novelty of the system, by the excitement of its use but above all by the richness of the content experience the system delivered.

對許多科技使用者而言，主要利益是取用無限的內容資源以及先進的內容管理程序。關於先進的內容管理系統造就的豐富使用經驗，Napster 是近來的一個例子。Napster 在 1999 年推出，是第一個普遍可取用的內容（檔案）分享科技工具。它迅速成為僅見的成長最快線上註冊系統。在 Napster 全盛期，據報導註冊人數有六千萬，而這個龐大使用人口的建立，僅僅用了一年多一點的時間。其吸引使用者的地方在於，系統的新穎性、使用上的刺激性，尤其是該系統所提供的內容經驗豐富性。

What Napster in its original form lacked, however, was the form of rights management system necessary for the kind of content being made available and the use for which it was being made available. Most of the file sharing which the Napster system facilitated was done without the authorisation of the content providers and was found to constitute an infringement of their copyrights. That fact led ultimately to the demise of Napster in its original form as the owners of the rights in the content available through its system successfully took action through the law to enjoin further operation of the system in the absence of an adequate rights management process.

然而，Napster 原初型態所欠缺的是，對於所提供內容以及使用上所必須的權利管理系統。大多數 Napster 所促成的檔案分享，並未獲得內容供應者的授權，而構成侵害著作權。該事實最終導致了 Napster 原初型態的式微，在該系統缺乏適當權利管理程序之下，內容權利人循法律途徑起訴禁止了該系統的運作。<sup>15</sup>

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<sup>15</sup> It is worth noting that rightsholders have the choice whether or not to engage in rights management; if they elect not to, content management processes such as the blocking of network traffic in content files becomes the sole recourse.

The relationship between content management and rights management processes is a complex one. As will be seen in the sections that follow, the ability to effectively manage that relationship has been seen for some time as a major challenge in developing automated systems with the capability of replicating traditional authorisation processes for the use of content. Traditionally, of course, the rights management system as applied through legal process used in the organization of the rights to property has been able to function largely independently of the content management process. The sale and delivery of a CD or a DVD does not serve to assign the underlying copyright to the purchaser or preclude the subsequent licensing of different elements of that copyright. To give digital content and rights management processes a corresponding functional independence from each other is a highly complex endeavour.

內容管理與權利管理程序的相互關係複雜。如下一個章節中所見，在發展具備傳統授權程序能力的自動化系統時，有效管理這個相互關係的能力，有時被視為一項重大挑戰。當然，傳統上在財產權組織的法律程序中所應用的權利管理系統，在以往大都能獨立於內容管理程序而運行。一片 CD 或 DVD 的銷售及運送，並不需要對買方進行著作權授權，或排除該著作權不同部分的後續授權。針對數位內容與權利管理程序，分別給予相互上的功能獨立性，是一件高度複雜的工作。

## 2. *The content management/rights management distinction in practice*

### *內容管理 / 權利管理區分之實踐*

In examining if and how certain generally accepted rules of copyright law might be implemented through automated, machine-based rights management systems, the approach must be, of necessity, as much a practical one as it is theoretical.

關於檢討著作權法上普遍接受的特定規則，如何以由自動化、機械式權利管理系統加以執行，其研究取向必須能夠兼顧理論與實務。

Consider first of all how a technologist might view the functioning of copyright law. For the most part copyright law provides general indications – in the form of a specific right or set of rights – as to the scope of rights management available to the rightsholder in relation to a particular unit of content and then leaves it to the rightsholder to define specific usage rules in favour of specific users, usually via contractual mechanisms. In some instances copyright law carves out exceptions and limitations to certain of the rightsholder's normal rights thus inserting a basic statutory or regulatory framework for the rights management process as between the rightsholder and user.

首先考慮一下一位技術人士如何看待著作權法的運作。著作權法大致上規定了一般性的指示，以特定權利或權利集合的型態，指定了權利人對於特定內容單元的權利管理範圍，之後則是任由權利人對特定使用者界定特定的使用規則，而這通常經由契約機制完成。在某些情形下，對於權利人的某些正常權利，著作權法創設了例外與限制規定，因此在權利人與使用者之間的權利管理程序，加入了一個基本上屬於法定或管制性的架構。

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[Footnote continued from previous page]

值得注意的是，權利人可選擇是否進行權利管理；如果他們選擇不進行，諸如網路交易封鎖等內容管理程序，便成為他們唯一僅存的途徑。

In both cases, but particularly in the latter, what is specified as a matter of law in terms of the rights management process, whether on a statutory or contractual basis, often does not circumscribe the full extent of the content management activity which occurs. An example of this is the case of private copying: in most circumstances, without the authorisation of the rightsholder, private copying of protected works is, under the United Kingdom copyright law, an infringing act. And yet, of course, private copying of protected works is as prevalent in the United Kingdom as it is anywhere else in the world.

在以上二種情形，而尤其是後者，在權利管理程序中的法律問題，不論是基於法定或契約基礎，通常不會限制所發生內容管理行為的完整範圍。這種情形的一個例子是私人複製：根據英國著作權法，在大多數情形下，私人複製受保護著作構成了侵權行為。當然，針對受保護著作的私人複製，不論在英國或世界其他地區都是一樣廣泛。

In the traditional content and rights management world, accommodations are made where content management activity occurs beyond the reach of the rights management process. In some instances the law responds to this process with *ex post facto* adjudication: the fair use mechanism in the United States copyright law illustrates that approach. These are important response mechanisms which enable the system overall to function.

在傳統的內容與權利管理領域，當內容管理行為超出了權利管理程序的範圍，便會有調整作法。在某些情況下，法律以事後裁判回應這個過程：美國著作權法的合理使用機制表現了這個取向。這些是使得著作權整體系統得以運行的重要回應機制。

In the digital environment the situation is entirely different. The content management process and the rights management process, while capable of functioning independently of each other, have to remain synchronized. There can be no significant legitimate content management activity without corresponding rights management activity; the “tolerated” content activities which occur beyond the reach of the rights management process in the traditional world are simply not possible in the digital, machine-based environment.

在數位環境下，局面則是全然不同。內容管理程序及權利管理程序，雖然能夠互相獨立運行，卻必須加以同步化。如果沒有相對應的權利管理活動，則不會有多少正當的內容管理行為，傳統上能發生於權利管理程序範圍之外的「可容忍」內容行為，在數位、機械式環境下卻不可能發生。

The balance between the interests of rightsholders and users which every traditional rights management (copyright) system strives for is arguably supported in part by the marginal content management activity which occurs, for whatever reason – absence of control mechanisms, high transactions costs – beyond the practical reach of the rights management process. The binary nature of the environment in which digital content management processes occur render all unauthorised uses of content intolerable. Accordingly, in that environment the copyright balance must be established exclusively through codified rights management propositions. This in turn requires a closer examination of both the policies and mechanisms establishing that balance. It also explains the divide between proponents of DRM mechanisms and those attacking the so-called “digital lock-up” of content: now that rightsholders are able to reclaim the areas of unauthorised (yet tolerated) content management activity, users protest what they consider to be an expropriation of their rights.

每一個傳統式的權利管理（著作權）系統，都在追求權利人與使用者的利益平衡，不論是出於缺乏控制機制或高交易成本，這個平衡在某部分上來自於超出權利管理程序實際範圍的內容管理行為。數位內容管理程序所發生的環境具有二元性，使得

一切未經授權的內容使用不被容忍。而這回過頭來要求針對建立平衡的政策與機制進行更密切檢討。這也解釋了 DRM 機制支持者與所謂內容「數位鎖定」攻擊者之間的分裂：現在權利人能夠收回未經授權（但被容忍）的內容管理行為區域，使用者認為他們的權利被沒收而加以抗議。

The arguments against digital lock-up are often based on different views of non-specific privileges claimed by users in the area of unauthorised but previously uncontrollable content management activity. The issue is just as critical, however, in areas where the law is specific about the user's privileges. In respect of limitations and exceptions Article 6(4) of the European Union Copyright Directive of 2001 essentially provides that where, in the digital environment, a particular DRM mechanism restricts access to and use of content in a way which is inconsistent with a rights management proposition embodied in the law – i.e. a DRM mechanism denies a user the ability to perform some content management activity guaranteed by an express exception or limitation – then some process has to be found allowing the user to perform the content management activity provided for in the exception or limitation.

在原先未經授權但不受控制的內容管理行為領域，使用者主張他們有優惠 (privileges)，而通常將反對數位鎖定的論點建立在這些看法之上。然而，在法律明文規定使用者優惠的領域中，這個議題便具有關鍵性。關於限制與例外規定，2001 年歐洲聯盟著作權指令第 6 條第 4 款基本上規定了，在數位環境下，當特定 DRM 機制限制了內容的取用與使用，以致於不合法律中的權利管理規定，例如 DRM 機制讓使用者無法從事限制或例外規定所明文認可的內容管理行為，則必須有某些程序能讓使用者從事例外或限制規定所許可的內容管理行為。

One approach, of course, would be simply to force the release of the content in question from the DRM mechanism in question. The “non-digital” rights management process, as ordained by the law could then come into play facilitating a “non-digital” content management activity to occur.

當然，方法之一可能是強制系爭 DRM 機制釋出系爭內容。如法律所規定的「非數位」權利管理程序，將可派上用場，以促成「非數位」內容管理行為發生。

This approach would seem generally unsatisfactory, because the availability of the content in a non-digital format means that the possibility of sustaining a digital rights management process in relation to that content in respect of other uses, not the subject of exceptions or limitations, is greatly reduced if not eliminated. While traditional and machine-based rights content and rights management systems will continue to coexist for many years to come, there will be an increasing reliance on the latter in respect of commercially produced content. Like it or not, technically-protected content will become the norm.

一般而言，這個方法並不令人滿意，因為取得非數位格式內容意味著，關於其他使用的內容，而非例外或限制規定的客體，維持數位權利管理程序的可能性，即使沒有消失，也會大幅縮減。即使傳統式與機械式權利內容與權利管理系統將持續並存多年，但是關於商業性生產的內容，將會日益倚賴於後者。不論喜歡與否，受技術保護的內容將會是常態。

The alternative approach, therefore, is to provide ways in which the law can impose an alternative digital rights management proposition in respect of the content management activity which the exception or limitation is intended to allow.

因此，關於例外或限制規定所意圖允許的內容管理行為，另一個替代方案則是提供法律能夠制訂另一種數位權利管理規定的方法。

With this approach, the complexity lies not, of course, in the *definition* of the imposed digital rights management proposition from a legal perspective: it lies almost entirely in the effective *implementation* of the imposed rights management proposition:

當然，使用這個替代方案時，複雜性就不在於由法律觀點對數位權利管理規定加以「定義」：而幾乎完全在於所制訂的權利管理規定有效「執行」。

- How is the imposed rights management proposition expressed in a way which can be applied in an automated environment?
- 應如何表達權利管理規定，而能夠適用於自動化環境？
  
- How is the content to which it is applied, identified?
- 如何識別所適用的內容？
  
- How are the uses to which the content can be put expressed?
- 如何表達內容上的使用？
  
- How are the users to whom the benefit of the imposed rights management proposition is applied, identified?
- 如何識別權利管理規定所適用的使用者？
  
- What are the necessary content management controls?
- 必要的內容管理控制為何？
  
- What are the mechanisms for ensuring that content is made available by the rightholder, and is made available in accordance with the imposed rights management position?
- 確保權利人供應內容的機制為何？以及內容供應如何符合權利管理規定？
  
- What are the implications in terms of infrastructure and cost in organizing and operating systems which are able to implement the imposed rights management proposition?
- 關於執行權利管理規定，其組織與運作系統的基礎建設及成本，將有何問題？
  
- What are the risk management considerations that arise in relation to the implementation of the imposed rights management proposition?
- 關於執行權利管理規定，將發生哪些風險管理考量？

To answer these questions we must first look in more detail at how DRM tools and systems work.

爲了回答這些問題，首先我們必須針對 DRM 工具與系統的運作進行深入觀察。

## B. How DRM works?

### DRM 如何作用？

One way of organising rights management in a digital environment is to attach the usage rules permanently to the content, either as part of the metadata defining the content or by incorporating the usage rules in the encrypted package in which the content resides. Locking content to a particular machine to enforce a fixed set of usage rules is another possible implementation of a digital rights management system. This is the approach which has been used to date in many so called “thin client” devices such as mobile telephones.

在數位環境下，組織權利管理的一個方法，是將使用規則永久附著於內容上，這些使用規則或者是界定使用內容的後設資料(metadata)之一部分，或者是連同內容一起合併於加密包裹(encrypted package)之中。將內容鎖定於特定機器，以實施特定的使用規則集合，則是另一個數位權利管理系統的可能作法。截至目前，這個方法曾經用於許多所謂的「精簡型」(thin client)設備，如行動電話。

The rights management system used for DVD Video discs is another example of the basic approach: the usage rules applied to the content of the DVD Video disc are fixed and cannot be varied regardless of the usage context or identity of the user. The undoubted success of the DVD Video format as a vehicle for the delivery of high quality home entertainment (as well as many other possibilities) illustrates clearly that for some content management environments, fixed rights management systems are perfectly adequate.

用於 DVD 影像碟片的權利管理系統，則是這個基本方法的另一個例子：適用於 DVD 影像碟片的使用規則屬於固著性，不會因為使用情境或使用者身分而有差別。DVD 影像格式成功地成爲了高品質家庭娛樂（以及其他可能性）的載體，清楚顯示了在某些內容管理環境下，固著性的權利管理系統相當完美。

The challenge to find dynamic rights management systems remains, however, because there is an infinite number of instances where the nature of the content or the usage context demand flexibility.

不過，尋求動態性權利管理系統的挑戰依然存在，因為在無數情形下，內容的性質或使用情境需要具有彈性。

That flexibility is also essential to developing the kind of rights management system required for the security of more sensitive or valuable forms of content. The encryption system used in the DVD Video disc rights management process has already been compromised and cannot be repaired without reconstituting the entire format – a commercial impossibility – (Compromising the security, however, has had minimal impact on the success of the DVD Video disc as a consumer format).

對於更敏感或高價型態的內容，需要開發這種動態權利管理系統，因此彈性也是不可或缺。用於 DVD 影像碟片權利管理程序的加密系統已經遭到破解，而且若沒有還原全部的格式則無法修復－這在商業上不具有可行性（不過，對於 DVD 影像碟片作爲一種消費者格式而言，安全性遭破解對於 DVD 的商業成功衝擊微小）。

Furthermore, as will be discussed in more detail shortly, the rich rights management processes which copyright law and practice support also posit that flexibility as a basic requirement of an effective interface between legal and technical regulation of content management.

此外，如稍後將會多加討論，在著作權法律與實務所支持的多種權利管理程序下，對於內容管理之法律與技術管制介面，彈性也是一項基本要求。



This challenge to achieve flexibility in automated rights management was first taken up by a number of researchers. The most usually cited in this respect is Mark Stefik who, in his work at the Xerox Palo Alto Research Center, identified the need for a dynamic capability in machine-based rights management processes and advanced a number of ideas as to how this might be achieved. There were others, however, who were engaged in the same search, notable amongst whom was Victor Shear and his team of scientists in what became InterTrust Technologies. Yet other researchers, both in the United States and in Japan, were exploring the possibilities of superdistribution, the process of applying and enforcing usage rules in a distributed content management environment. They saw a need for such systems where users of music content wanted to exchange content between each other.

在自動化權利管理中達成彈性是一項挑戰，而這挑戰首先是由一批研究者所承擔。在這方面最受所用的是任職於全錄公司 Palo Alto 研究中心的 Mark Stefik，他指出機械式權利管理程序下對於動態能力的需求，並且提出一些如何達成動態能力的想法。<sup>16</sup>然而，也有其他人投入相同研究領域，最著名的是後來成立 InterTrust 科技公司的 Victor Shear 與他的團隊科學家。而同時在美國及日本，其他研究者正在探索超級散布(superdistribution)程序的可行性，在分散式內容管理環境下，這項程序能適用與執行使用規則。他們發現，當音樂內容使用者想要彼此交流內容時，就有需要用到這種系統。

The key breakthrough in DRM technology came when systems emerged which could deliver rules for the use of content independently of that content. Starting in the early 1990s InterTrust technologies began developing an extensive patent portfolio relating to inventions to that end. Once the capability of delivering rules independently of but associated with particular items of content is established, the range of uses which can be authorised through technology increases dramatically.

當內容使用規則的下達能獨立於內容之外，這就出現了 DRM 科技的關鍵突破。始於 1990 年代初期，InterTrust 科技公司開始發展關於這項目的的廣泛專利組合。一旦能夠針對特定內容項目下達具有獨立性與關聯性的規則，藉由科技進行授權的使用規則便會大幅增加。

In a useful article on the subject of DRM John Erickson, principal scientist in the Digital Media Systems Program at Hewlett-Packard Laboratories, describes the process of enforcing rules in a DRM system as follows:

在一篇關於 DRM 主題的有用文章中，HP 實驗室數位媒體系統計畫首席科學家 John Erickson，將 DRM 系統中執行規則的程序描述如下：<sup>17</sup>

“The problem of controlling use [of content] can be broken down into four areas:  
控制[內容]使用的問題，可以分為四個部分：

- Use or action against an information resource by a user or an external system. Typically, uses are defined by an application's functions (such as view, print, and copy) that must be bound to policy-level terms [rules], either directly or through some contextual filter. To control use, functions within an application

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<sup>16</sup> Stefik, Mark: Letting Loose the Light: Igniting Commerce in Electronic Publication, 1993, published in Internet Dreams, Stefik/ Cerf, MIT Press, 1997.

<sup>17</sup> Erickson, John S.: Fair use, DRM and Trusted Computing, Communications of the ACM, Vol. 46, No. 4, April 2003.

must be forced to obtain authorization from policy-evaluating system components before proceeding.

- 由某一使用者或外部系統，針對資訊資源的使用或動作。通常使用是由應用程式的功能（如閱讀、列印與複製）所界定，而這些功能則是直接受制於政策層面的條件[規則]，或是間接透過情境式過濾器(contextual filter)而受制於政策層面的條件[規則]。為了控制使用，在進行使用之前，應用程式內的功能必須取得政策評估系統單元的授權。
- Implementing control. A virtual machine may be a combination of system components that implement the control specified by policies. The virtual machine functions as an intermediary among user applications (such as viewers, rendering tools, printer drivers, and Web services) and policy-setting authorities; the virtual machine evaluates all applicable policies and permits or denies use.
- 執行控制。執行控制政策的系統單元，可以組成一部虛擬機。在使用者的各種應用程式（如閱讀程式、播放工具、印表機驅動程式與網路服務程式）與設定政策的有權機關之間，這部虛擬機具有中介功能；由虛擬機評估所有的可適用政策，並允許或拒絕使用。
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- A governing set of policies. For any given action against a resource, there may be a set of applicable policies that determine the conditions under which the requested application is authorized. These policies may take the form of conditions precedent or concurrent obligations; conditions typically include the presence of a particular identifying credential or environmental attribute.
- 治理政策的組合。針對某一資源的特定動作，可能會有一組得適用的政策，這些政策決定了所請求應用能否授權的條件。這些政策的型態，可以是先決性條件或同時性條件的義務；這些條件通常包含了特定的識別資料或環境屬性。
- Fixed or built-in policies. Policies may be fixed or built into the virtual machine; they may also be embedded or otherwise attached to the resource. Each method sets limitations; in the case of fixed policies, the originator cannot change the policies once the interpreter is distributed; in the case of embedded policies, a policy cannot be changed once the resource is deployed. The most flexible architecture calls for the policies to be managed, since such management is external and separated (in time and space) from the virtual machine and deployed content.
- 固定式或內建式的政策。這些政策可以固定於或內建於虛擬機當中，也可以內嵌或附著在資源上。每一種方式設下了限制；在固定式政策的情形，當直譯器(interpreter)被分配出去之後，送件者(originator)就無法變更政策；在內嵌式政策的情形，當資源被運用之後，政策就無法變更。由於這種管理是外在於並且分離於虛擬機與所運用的資源，所以最彈性的架構是需要這些政策能夠被管理。

DRM systems may implement a combination of embedded and external policy models; for example, when certain default or generic policies are attached to the deployed resource, a recipient may supplement them through a separate transaction. Policies may be written for groups of resources and principals, possibly relating to roles within an

institution, and may be issued in advance of use; most are available in the rights expression languages.”

DRM 系統可以執行內嵌式或外部式組合的政策模型；例如，當特定預設性或種類性的政策被配於所運用資源，收件者(recipient)可以經由分離式交易執行這些政策。可以針對資源與資本的種類撰寫政策，可以依據機構內的人員角色撰寫政策，並可以在使用前發布政策；這些大多數都可以在權利表達語言(rights expression languages)當中進行。」

Erickson then goes on to describe the process flow by reference to a typical DRM enabled system:

Erickson 接下來參照典型 DRM 系統而描述流程：

“A generalized DRM system can grant usage rights based on originator-controlled policies. Since this model describes most commercially viable DRM solutions (the DRM reference model), it assumes the availability of standardized or proprietary infrastructure for identification, metadata, authentication, and cryptography. The model’s process flow covers nine steps:

「一般性的 DRM 系統可以基於送件者所控制的政策，而賦予使用權利。由於這個模式描述了大多數商業上可行的 DRM 解決方案（DRM 參照系統），它預設了在識別、後設資料、認證與密碼上的標準化或財產權基本建設。這個模式的流程包含九個階段：

- The user obtains a resource via, say, file transfer or streaming. If the resource is requested from a remote service by the user, it may be cryptographically individualized to the user’s environment.
- 使用者經由檔案傳輸或串流獲得資源。如果使用者的遠端服務請求資源，得根據使用者的環境，以個別化方式針對資源進行加密。
- The user attempts some use of the resource; the rendering application determines that the requested action requires authorization.
- 使用者想要對資源進行某種使用；由播放程式決定被請求的動作需要授權。
- If the applicable policies are not found within the user’s environment, attributes of the user’s request (such as usage context) are packaged in a message and sent to a license server by a DRM client component.
- 如果在使用者的環境找不到可適用的政策，則由 DRM 用戶端元件將使用者請求的屬性（如使用情境）封裝於訊息，而送到授權伺服器。
- The license server determines the applicable policies for the resource based on the submitted request attributes.
- 授權伺服器根據送來的請求屬性，針對該資源決定適用的政策。
- A financial transaction may be conducted to satisfy the policies if no satisfactory evidence of such a transaction is on record.
- 如果沒有交易記錄上的充分證據，則會進行財務交易以符合政策。

- The license package is assembled, including: a rights specification or set of usage policies; identifiers or attributes; revocation information; and cryptographic keys to the content. They may be specific to the content and context of use.
- 組合授權包裹，包含權利規格或使用政策集合；識別號(identifiers)或屬性(attributes)；撤回資訊；且對於內容的解密鑰匙。它們可以依據內容或使用情境加以個別化。
- The license is securely packaged and transferred to the client.
- 安全封裝授權，並移轉到用戶端。
- The DRM client authenticates the received policies, evaluates applicable policies, decrypts the content, and issues an authorization to the viewing component for the requested action.
- DRM 用戶端認證所收到的政策，評估得適用的政策，對內容解密，並針對所請求的動作發出一項授權到閱讀元件。
- Finally, the content is rendered or otherwise used, as requested.”
- 最後，依據請求而播放或使用內容。」

The DRM model Erickson references in his article is well illustrated by the Windows Rights Manager System which is structured and functions as follows:

Erickson 文章中所參照的 DRM 模式，可用視窗權利管理系統的結構與功能圖示如下：

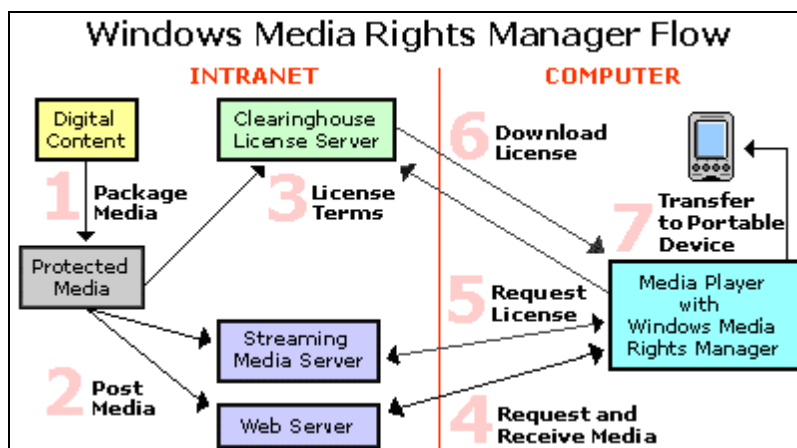


Figure 1 圖一

The structure illustrated in Figure 1 supports the following processes:  
圖一所圖示的結構支援以下程序：

#### Step 1: Packaging 步驟一：封裝

The content provider employs the Windows Media Rights Manager to package the content file. The packaged content file is encrypted and locked with a “key.” This key is stored in an encrypted license, which is distributed separately. Other information is added to the content file, such as the URL where the license can be acquired.

內容供應者運用視窗媒體權利管理者封裝內容檔案。封裝內容檔案經由一把「鑰匙」而加密封鎖。這個鑰匙儲存於加密後的授權，而分別加以發送。內容檔案附加了其他內容，例如取得授權的 URL 地點。

#### Step 2: Distribution 步驟二：散布

The packaged content file can be placed on a Web site for download, placed on a media server for streaming, distributed on a CD, or e-mailed to consumers.

封裝內容檔案可放置於網站提供下載，或放置於媒體伺服器提供串流，或以 CD 發送，或用電子郵件寄給消費者。

#### Step 3: Distributing the licence 步驟三：散布授權

The content provider chooses a license clearing house to store and subsequently deliver the licence containing the specific rights or rules governing the use of the corresponding content file. Part of the role of the clearing house is to authenticate the consumer's request for a license.

授權中包含了特定權利或相關內容檔案的使用規則，而內容供應者選擇授權交易中心(license clearing house)儲存並寄送該項授權。交易中心扮演的角色，有一部分在於認證消費者的授權請求。

#### Step 4: Content Acquisition 步驟四：獲得內容

The consumer will obtain the desired content file by downloading it from a website, having it streamed from a streaming server, perhaps through an FTP transfer or via e-mail from a friend. The content file will be received in an encrypted form.

經由網站、串流伺服器、FTP 傳輸站，或是來自朋友的電子郵件，消費者可以獲得所需的內容檔案。所獲得的內容檔案，則是加密的型態。

#### Steps 5 & 6: 步驟：五、六

To play an encrypted content file, the consumer must first acquire a license key to unlock the file. The process of acquiring a license begins automatically when the consumer attempts to access the protected content or use the content in the file for the first time. Windows Media Rights Manager either sends the consumer to a registration page where information is requested or payment is required, or "silently" retrieves a license from a clearing house.

為了播放加密的內容檔案，首先消費者必須獲得解開檔案的授權鑰匙。當消費者想要初次取用受保護的內容，或使用檔案中的內容，就會自動開始獲得授權的程序。視窗媒體權利管理者會對消費者送出一份註冊頁面，其中記載請求提供的資訊或付款要求，不然就是「沈默地」由授權交易中心(clearing house)提取授權。

#### Step 7: Using the Content File 步驟七：使用內容檔案

To use the content file, the consumer needs a media player that supports Windows Media Rights Manager. The consumer can then play the content file according to the rules that are included in the license. Licenses can also be subject to certain conditions such as start times and dates, duration, and counted operations. For instance, default rules may allow the consumer to play the digital media file on a specific computer and copy the file to a portable device. Licenses, however, are not transferable. If a consumer sends a packaged digital media file to a friend, this friend must acquire his or her own license to play the file. This PC-by-PC licensing scheme ensures that the

packaged digital media file can only be played by the computer that has been granted the license key for that file.

爲了使用內容檔案，消費者需要支援視窗媒體權利管理者的媒體播放程式。根據包含在授權中的規則，消費者便能播放內容。授權能夠限制於特定的條件，諸如起始日期與時間、期間以及次數。例如，預設規則可以允許消費者在特定電腦上播放數位媒體檔案，以及將檔案複製到可攜式設備。不過，授權並不能移轉。如果一位消費者將封裝的數位媒體檔案傳給朋友，這位朋友必須獲得自己的播放檔案授權。這種 PC 個別授權的架構(PC-by-PC licensing scheme)，能確保封裝的數位媒體檔案只能在獲得授權的電腦上播放。

### C. DRM: Operational considerations

#### DRM：運作考量

The objective of a dynamic DRM enabled rights management system is to provide the ability to:

動態性 DRM 權利管理系統的目標，在於提供以下能力：

- express rules in relation to a content management activity
- 表達關於內容管理行爲的規則
- enforce the rules
- 實施規則
- revoke the rules
- 撤回規則

Numerous processes and mechanisms are involved in achieving these objectives. These are described in detail in the WIPO Study entitled “Current Developments in the Field of Digital Rights Management. It is not intended to revisit here that exhaustive treatment.

這些目標的達成涉及了許多程序與機制。這些細節描述於標題爲「權利管理系統領域的當前發展」的 WIPO 研究文件。<sup>18</sup>此處不擬重新回顧該項詳盡的研究。

There are, however, a number of factors that need to be taken into account in order to get a clearer picture of the development and deployment of DRM enabled rights management systems. These are as follows:

不過，爲了獲得 DRM 權利管理系統在發展及運用上的清晰圖像，有一些因素需要加以考慮。這些因素如下：

- Trust
- 信賴性
- Security
- 安全性
- Usability
- 優使性
- Scalability
- 延展性

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<sup>18</sup> Barlas, Chris Cunard, Jeffrey and Hill, Keith: Current Developments in the Field of Digital Rights Management, WIPO Document SCCR/10/2, August 2003.

- Interoperability
- 互通性

### 1. *Trust* 信賴性

This is a key concept in DRM and can best be understood as the capacity of a system to deliver a predictable result. A machine or system combining a number of machines is programmed to perform a particular task: the degree to which the operator of the machine is able to rely on the machine delivering the desired result is commensurate with the level of trust within the system.

這是一個 DRM 當中的關鍵概念，最適當的理解則是，一個系統傳達可預測結果的能力。由一些機械所結合的一部機械或系統，透過程式化以實行一項工作：機械操作者能夠依賴機械傳達所需結果的程度，就相當於系統內的信賴性水準。

Many factors can interfere with the predicted result: a mechanical flaw in the operation of the system, a programming flaw, a breach in the security of the system. The more complex the system environment so obviously becomes the process of establishing its trustworthiness. Just as human beings have mechanisms for developing trusted relations amongst themselves, so the components and devices in a complex system environment have to be equipped to establish a trusted relationship with each other and with users connected to and employing the system.

許多因素會干擾預期結果：系統運作當中的機械性瑕疵、程式化瑕疵、系統安全性漏洞。越是複雜性的系統環境，建立可信度程序的重要性就更明顯。如同人類爲了發展相互信賴關係所擁有的機制，複雜系統環境中的單元與設備，也配置了各種機制，以建立彼此間，以及與所連結使用者與系統使用者之間的信賴關係。

(It is important to note that in this context “user” may mean a human being or another device which interacts with the system).

(在這個情境下，此處的重要說明是，「使用者」可以指一個人或與該系統互動的另一個設備。)

To understand this concept better, consider the use of automated teller machines (ATM) which are becoming the way many people with bank accounts obtain cash from their account from diverse locations. Cash is dispensed to a user pursuant to a instruction sent by that user – provided the instruction is approved by the bank from which the user wishes to draw the cash. For the instruction to be implemented, numerous trusted relationships have to be called into play. There has to be a trusted relationship between the user and the external interface of the ATM system (achieved using a Personal Identification Number), between the different parts of the networked system that deliver information about the user’s instructions to the approving bank, between the bank and the system. Any failure in these relationships – a break in the chain of trust – will result in the denial of the user’s – or the bank’s – desired or predicted result.

爲了更好地理解這個概念，思考一下自動交易機(ATM)的使用，ATM 正在成爲大眾於各處取得銀行帳戶現金的方式。當使用者提領現金的銀行認可了使用者送出的指令，便可以根據指令發放現金。爲了執行這項指令，必須使用許多信賴關係。信賴關係必須存在於使用者與 ATM 系統外部介面之間（經由使用個人識別號碼達成），以及

傳達使用者指令資訊到認可銀行之間的不同網路系統部分。這些關係當中的任何一個失敗，就是信賴環節當中的斷裂，將導致使用者或銀行所需或所期待的結果被拒絕。

DRM-enabled systems have to work in the same way if they are to be used for managing rights in content of significant value.

如果 DRM 系統被用於管理具有相當價值的內容，則必須以同樣方式運作。

## 2. *Security* 安全性

The first reaction of many people to the proposition that rights and content management systems can function securely is that the security will always be compromised. The reality of security systems and technology is much more complex.

關於權利與內容管理系統的安全運作，許多人的第一個反應是安全性總是會被破壞。安全系統與科技的真相，卻是更加複雜得多。

Security experts have long known that the security of a particular environment is not an absolute proposition. It has to be established in relation to the foreseeable risk within that environment, and as that is not a static proposition, so must the security solution be capable of revision.

安全專家早已知道特定環境的安全性並非絕對。安全性必須取決於該環境內的可預見風險，而由於風險並不是靜態性，因此安全方案必須能夠修正。

Renewability of the security solution is therefore essential to keeping it effective when attacked, but providing that flexibility brings its own complexities and problems. It may actually serve to heighten the security threat. On the one hand, locking content to a machine or a piece of plastic only provides security until the encryption systems is cracked. On the other, providing an environment where security is renewable lays the content management process open to other forms of attack. Having those systems function in the distributed, heterogeneous environment of the Internet increases the security challenges still further.

因此，安全方案的可更新性，是安全性能夠有效面對攻擊所不可或缺，但是這種彈性引起了它自身的複雜性及問題。它可能實際上增高了對安全的威脅。一方面，將內容封鎖在一部機械或一片塑膠，只有在加密系統被破解之前才能提供安全性。<sup>19</sup>另一方面，當環境中的安全性能夠更新，卻使內容管理程序面臨其他型態的攻擊。使這些系統運作於分散性、異質性的網際網路環境下，進一步增加了安全上的挑戰。

A balance has to be found between the level of security and the usability of the system. Leading security expert Bruce Schneier proposes a five step test for evaluating the security needs in a particular context:

在安全層級與系統優使性之間，必須尋求一個平衡。針對特定情境下對於安全需求的評估，居領導地位的安全專家 Bruce Schneier 建議了一項五階段檢驗。<sup>20</sup>

### Step 1: What assets are you trying to protect?

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<sup>19</sup> Security may not prove to be the overriding concern. As noted, DVD Video has flourished notwithstanding the fact that the format is no longer secure.

安全可能不是最優先的顧慮。如先前所述，即使 DVD 格式不再安全，DVD 依然盛行。  
<sup>20</sup> Schneier, Bruce: *Beyond Fear*, Copernicus Books, 2003.



步驟一：你想要保護的資產為何？

Step 2: What are the risks to these assets?

步驟二：這些資產面臨的風險為何？

Step 3: How well does the security solution mitigate those risks?

步驟三：安全方案降低風險的效果如何？

Step 4: What other risks does the security solution cause?

步驟四：安全方案造成的其他風險為何？

Step 5: What costs and trade-offs does the security solution impose?

步驟五：這項安全方案的成本與效益為何？

The security within a DRM enabled system has to be able to protect not only the content and the rights; it also has to be able to protect the corresponding management processes and the consequences of those processes (e.g. the capture and processing of usage data, the billing and collection of payment for use).

DRM 系統內的安全性，不僅必須保護內容與權利，也必須保護相對應的管理程序及這些程序的結果（例如使用資料的取得及處理，使用費用的列帳與收集）。

### 3. Usability

#### 優使性

Step 5 of the test proposed by Schneier concerns the costs and trade-offs involved in adopting a particular security solution which he describes as follows:

在 Schneier 所提議的第五個檢驗步驟，關於採用特定安全方案所涉及的成本與效益，他描述如下：

“Every security has costs and requires trade-offs. Most security costs money, sometimes substantial amounts; but other trade-offs may be more important, ranging from matters of convenience and comfort to issues involving basic freedoms like privacy. Understanding these trade-offs is essential.”

「每一種安全性都有成本與效益。大多數的安全性會花費金錢，有時候是很大的數目」；但是其它的效益也許會更加重要，例如便利性與舒適性，乃至於像隱私這樣的基本自由。了解這些效益是不可或缺。」

The first victim of an overly secure system is the element of usability: the functional complexity makes it very difficult to use the system or perhaps, very expensive. The content and rights are secure but as they cannot be accessed with ease or at low cost they are seldom used.

過度安全系統的首位受害者就是優使性因素：功能複雜性使得系統難以使用，或者非常昂貴。當內容與權利無法以便利或低成本方式取用，則它們即使安全也不會常用。

There are many things that have to be done to make a system operationally secure and, inevitably, some of these things involve the users of the system, whether using the system to make content available or to gain access to and use the content. Content providers need simple processes and interfaces in order to package content efficiently; end users need to be able to input the necessary information to access the content.

為了使系統在運作上安全而便利，必須完成許多事情，某些事情涉及使用者與系統，例如使用系統提供內容，或取用及使用該內容。內容供應者需要簡單的程序與介面，以便有效率地封裝內容；終端使用者需要能夠輸入必要的資訊，以取用該內容。

Striking the right balance between the security and the usability of the system is therefore a critical element in the design and operation of a DRM-enabled content and rights management system. The aim is to provide, at least for the end-user, an experience in which the rights management processes are virtually invisible.

關於內容與權利管理 DRM 系統，在系統安全性與優使性之間定位平衡，是一項設計上及運作上的關鍵因素。至少對於終端使用者而言，其目標在於使權利管理成為使用者在經驗上無法察覺的程序。

#### 4. Scalability

##### 延展性

Another aspect of the security/usability conundrum is the issue of whether the system solution settled upon is capable of being deployed across the necessary range of networks, devices and users. It is clearly one thing to design a system which can function effectively within a relatively confined area – internally, within say a government agency or a school. It is quite a different proposition to deploy a system to users across the globe connected via the Internet.

關於安全性 / 優使性難題的另一個面向，是所採用的系統解決方案能否跨越網路、設備與使用者的範圍。很明顯的是，設計出能在相對侷限範圍內完善運作的系統是一回事，例如政府機關或學校內部。但是，運用一個系統跨越網際網路聯繫的全球使用者，則是另一回事。

Early implementations of dynamic DRM enabled systems – the InterTrust Commerce System was a case in point – failed, in part, because of its complexity and the heavy price it extracted in terms of operational management and support. More recent systems aim for the highest degree of automation and a minimal requirement for extraneous support.

以 InterTrust 商務系統為例，早期的動態 DRM 系統的執行失敗了，部分原因在於它由外部運作管理與支援所引起的複雜性與沉重代價。更新近的系統則是將目標放在最高度的自主運作，以及最低度的外部支援要求。

## 5. *Interoperability*

### *互通性*

The final issue that has to be considered at a general level in discussion of DRM enabled systems is the complex issue of interoperability. The area of DRM is one where although some standardisation of some system components is occurring, the leading commercially available systems are for the most part proprietary. By their very design therefore the different systems are rarely able to interoperate with each other because they use different encoding and encryption systems; use different authentication mechanisms; different file formats; different metadata structures; different rights expression languages.

關於 DRM 系統的總體性討論，最後一個有待考量的議題是互通性的複雜議題。在 DRM 領域，某些系統單元的標準化還正在產生當中，商業上可行的領導地位系統大部分已經屬於私人財產。這些不同系統在設計上很少能夠相互協調，因為它們使用了不同的編碼與加密系統、認證機制、檔案格式、後設資料結構，以及權利表達語言。

This poses problems for content providers and users alike. To reach a desired consumer base the content provider may have to make content available and develop the corresponding rights and content management systems for a variety of different systems. Conversely, the end-user may have to use a range of different devices to obtain all the content sought.

這造成了內容供應者與使用者的問題。為了達到所需的消費基礎，內容供應者必須使內容能夠被取得，並且針對許多不同系統發展出相對應的權利與內容管理系統。反之，終端使用者必須使用一些不同的設備，以獲得尋求的內容。

However, while the problem is obvious, the solution is not. There are complex commercial, legal and technical issues involved in establishing a basis for interoperability between different systems. Open standards in key areas of DRM remain to be developed while open source technologies are as yet not widely available.

不過，雖然問題很明顯，但是解決方案卻不盡然如此。建立不同系統之間的互通性基礎，涉及了複雜的商業、法律與技術議題。DRM 關鍵領域的公開標準仍有待發展，而公開原始碼科技還不是廣泛可得。

## CHAPTER 3

## 第三章

## THE TARGET FIELDS

## 目標領域

A. Visually impaired people視覺障礙者1. *The perspective of visually impaired people**視覺障礙者的觀點*

It is estimated that there are some 180 million blind and partially-sighted people in the world.

在世界上，估計有大約一億八千萬名全盲者與部分視力者。

The World Blind Union (WBU) has adopted a manifesto regarding access to the resources of the information society by visually impaired people. The governing principle of that manifesto is as follows:

關於資訊社會當中的資源取用，世界盲人聯盟(World Blind Union, WBU)曾經採行一項宣言<sup>21</sup>。該宣言的主要原則如下：

“The World Blind Union believes that in the information age access to information is a human right that must be enjoyed by all as a precondition for equal participation in society. This means that socially and economically disadvantaged people in general should be included and blind and partially sighted people in particular. The right to access to information is explicitly recognised by the international community in the UN standard rules on the Equalisation of Opportunities for Persons with Disabilities.”

「世界盲人聯盟認為，在資訊年代中，取用資訊是一項所有人必須享有的人權，是滿足社會平等參與的先決條件。這意味著，社會與經濟弱勢者總體，以及全盲與部分視力者，應當受到接納。聯合國身心障礙者機會平等化標準規則，已經明文承認這項資訊取用權。」

The reference to the UN standard rules is to the Standard Rules on the Equalization of Opportunities for Persons with Disabilities adopted by the General assembly in 1993: they are currently being revised. Although not a legally binding instrument, the Standard Rules represent a strong moral and political commitment on the part of Governments to take action to attain equalization of opportunities for persons with disabilities. The rules serve as an instrument for policy-making and as a basis for technical and economic cooperation.

此處引用的聯合國標準規則，是聯合國總會 1993 年決議採行的身心障礙者機會平等化標準規則(Standard Rules on the Equalisation of Opportunities for Persons with

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<sup>21</sup> World Blind Union Manifesto for the World Summit on the Information Society, 2003, available at <[http://www.euroblind.org/fichiersGB/news9\\_soc.htm](http://www.euroblind.org/fichiersGB/news9_soc.htm)>.

Disabilities)<sup>22</sup>：這些規則目前正在修訂當中。雖然這些標準規則不是法律上有拘束力的文件，但是仍然代表了一種強烈的道德與政治承諾，使政府應當採取行動促成身心障礙者的機會平等化。這些規則可作為制訂政策的引用文件，以及技術與經濟合作的基礎。

The Standard Rules consists of 22 rules incorporating the human rights perspective which had developed during the decade preceding their adoption. The 22 rules concerning disabled persons consist of four chapters - preconditions for equal participation, target areas for equal participation, implementation measures, and the monitoring mechanism - and cover all aspects of life of disabled persons.

這些標準規則包含了 22 條規則，體現了採行決議前近十年來所發展的人權觀點。這 22 條規則包含關於身心障礙者的四個章節－平等參與之先決條件、平等參與之目標領域、執行措施，以及監督機制－而含括了身心障礙者的所有生活層面。

Rule 5 provides in part as follows:

第 5 條規則的部分規定如下

“Rule 5: Accessibility

第 5 條規則：取用

States should recognize the overall importance of accessibility in the process of the equalization of opportunities in all spheres of society. For persons with disabilities of any kind, States should (a) introduce programmes of action to make the physical environment accessible; and (b) undertake measures to provide access to information and communication.”

在社會當中所有領域的機會平等化過程，國家應當承認取用的全盤重要性。對於任何種類的身心障礙者，國家應（一）提出使物理環境可接近的行動方案；且（二）推行取用資訊與傳播的措施。

#### “Access to information and communication

##### 取用資訊與傳播(access to information and communication)

- “Persons with disabilities and, where appropriate, their families and advocates should have access to full information on diagnosis, rights and available services and programmes, at all stages. Such information should be presented in forms accessible to persons with disabilities.
- 「對於診斷、權利及可得服務與計畫之資訊，身心障礙者，以及適當情形下與其家屬及支持者，應在所有階段均能完整取用。此等資訊應以身心障礙者可取用之形式表達。」
- “States should develop strategies to make information services and documentation accessible for different groups of persons with disabilities. Braille, tape services, large print and other appropriate technologies should be

<sup>22</sup>

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1993, available at <<http://www.un.org/esa/socdev/enable/dissre00.htm>>.

used to provide access to written information and documentation for persons with visual impairments.

- 「國家應發展使各種身心障礙者團體得以取用資訊服務與文件之策略。應使用點字、磁帶服務、大型字體與其他適當科技，使視覺障礙者能取用書面資訊與文件。」
- “States should encourage the media, especially television, radio and newspapers, to make their services accessible. States should ensure that new computerized information and service systems offered to the general public are either made initially accessible or are adapted to be made accessible to persons with disabilities.
- 「國家應獎勵媒體，尤其是電視、廣播與新聞，使其服務得以取用。對於供應於大眾之新型態電腦資訊與服務系統，國家應確保其自始得為身心障礙者所取用，或調整為身心障礙者得取用。」
- “Organizations of persons with disabilities should be consulted when measures to make information services accessible are being developed.”
- 「資訊服務取用措施之發展，應徵詢身心障礙者組織。」

These rules are underpinned by provisions of the Universal Declaration of Human Rights:

這些規則受到世界人權宣言(Universal Declaration of Human Rights)規定所支持：

“Article 19

第 19 條

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

「人人有權享受主張和發表意見的自由；此項權利包括持有主張而不受干涉的自由，和通過任何媒介和不論國界尋求、接受和傳遞消息和思想的自由。」

“Article 27

第 27 條

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”

「人人有權自由參加社會的文化生活，享受藝術，並分享科學進步及其產生的福利（第 1 項）。人人對由於他所創作的任何科學、文學或美術作品而產生的精神的和物質的利益，有享受保護的權利（第 2 項）。」

In a presentation given to the Information Meeting which preceded the WIPO Standing Committee on Copyright and Related Rights on 3 November 2003, David Mann of the WBU stated as follows:

在 2003 年 11 月 3 日 WIPO 著作權與相關權利常設委員會之前的資訊會議，世界盲人聯盟 David Mann 有如下演說：

“If we accept that access to information is a right, then it follows that any impediment to access to information is a denial of that right. Barriers can be economic; they can be technological, and they can be legal.”

「如果我們同意取用資訊是一項權利，則對於取用資訊的任何阻礙則是妨礙該權利。障礙可能來自經濟、科技與法律。」<sup>23</sup>

Blind and partially sighted people can only access the written word, whether originally displayed on paper or on computer screen, if the presentation of that material is adapted in some way. Adaptations include enlarging, altering features such as colour or font, transferring into a tactile code or into an audio format. The result may be hard copy Braille, large print, tape or CD, or it may take the form of temporary output from computer peripherals such as synthetic speech or enlarged screen display. Accordingly, providing access to content whether in traditional formats or with advanced access technologies implicates acts controlled by rights of reproduction, adaptation and, perhaps, communication. That of course means that such acts must be authorised by the right holder or fall within the scope of an exception to copyright.

不論是原本顯示於紙張或電腦螢幕的書面文字，惟有在文字材料的展現經過某種調整之後，全盲與部分視力者才能取用。調整措施包含放大、改變顏色或字體特徵，轉換為觸覺符碼或聲音格式。調整結果則可能是點字實體重製物、大字印刷、錄音或 CD，或者是電腦周邊設施暫時性輸出的型態，如合成語音或螢幕放大顯示。因此，對內容提供取用，不論是以傳統格式或先進取用科技，都涉及重製權、改作權，以及或者傳播權。當然，這就意味著，這些行為不是必須獲得權利人授權，就是屬於著作權例外規定範圍。

The WBU accepts that copyright is in itself a legitimate form of moral and economic protection for creators of content and for those who add value to creative work. WBU asserts however that the ability to restrict acts in respect of works and other subject matter protected by copyright law should be balanced against the right of blind and partially sighted people to read the same material as their fellow citizens, at the same time and at no additional cost to the individual.

世界盲人聯盟同意，對於內容創作者與創作加值者，著作權本身是正當的精神上與經濟上保障。不過，世界盲人聯盟主張，關於著作權法所保護的著作與其他客體，對於利用行為的限制，必須與全盲及部分視力者權利相平衡，這個權利是在相同時間、相同成本下與公民同胞閱讀相同的資料。

<sup>23</sup>

Mann, David: Presentation by the World Blind Union (WBU), Information Meeting on Digital Content for the Visually Impaired, WIPO, November 3, 2003, available at <[http://www.wipo.int/documents/en/meetings/2003/digvi\\_im/pdf/digvi\\_im\\_03\\_mann.pdf](http://www.wipo.int/documents/en/meetings/2003/digvi_im/pdf/digvi_im_03_mann.pdf)>.

## 2. *The issues for publishers* *出版商的議題*

Publishers are the principal group of rightsholders and content providers concerned with the question of access. They are for the most part commercial entities and their first responsibility necessarily lies to their authors and other creative contributors, to their customers and to their shareholders. Their enterprise and investment is defined by the scope of the rights they enjoy under copyright law. And while they recognize the needs of users with certain disabilities, they have an overriding and justifiable concern regarding the impact of information society technology.

關於取用問題，出版商是權利人與內容供應者的主要團體。他們大多數是商業實體，而他們首要的負責對象是作者與其他創作貢獻者，以及他們的消費者及股東。他們在著作權法所享有的權利範圍，界定了他們的產業與投資。雖然他們承認特定身心障礙使用者的需要，他們更高的合理關注，則是資訊社會科技的衝擊。

Digital publishing is in its infancy and to date the various electronic book formats have failed to make the inroads on the market that the MP3 format has made in the audio content sector. That situation will undoubtedly change, and already pirated versions of popular works – often created with advanced Optical Character Recognition (OCR) technology – are finding their way onto the Internet.

現在數位出版處於嬰幼兒階段。像 MP3 格式對於聲音內容市場部門的影響，目前的許多電子書格式還未能做到。這個情況無疑會改變，而流行著作的盜版（通常由先進的光學辨識(Optical Character Recognition, OCR)<sup>24</sup>科技所製作）早已在網際網路上尋找出路。

As technology opens up new channels of exploitation for authors and their publishers, so the situation with rights becomes more complex. It is already common practice in the publishing industry for different deals to be struck, sometimes with different publishers, in respect of alternative publishing methods: print, audio, electronic.

當科技為作者與出版商開啓新的獲利管道，權利的情況就變得更加複雜。在出版業中，對於印刷、聲音及電子等不同出版方式分別洽談交易，早已經是通行作法，有時這些出版方式是與不同出版商洽談交易。

Although, as noted, electronic formats are not yet the predominant format for the printed word, the publishing industry was one of the first to embrace DRM as a way of securing content and managing rights. Various systems are used ranging from simple, protected access mechanisms to full blown DRM systems of the kind described above.

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<sup>24</sup> OCR involves computer software designed to translate images of typewritten text, (usually captured by a scanner) into machine-editable text, or to translate pictures of characters into a standard encoding scheme representing them. Information available at <[http://en.wikipedia.org/wiki/Optical\\_character\\_recognition](http://en.wikipedia.org/wiki/Optical_character_recognition)>.

OCR 是一種電腦軟體，可將文字影像轉換為機器可編輯的文件（通常使用掃描器擷取影像），或是將文字圖片轉換為標準編碼架構加以呈現。相關資訊見 <[http://en.wikipedia.org/wiki/Optical\\_character\\_recognition](http://en.wikipedia.org/wiki/Optical_character_recognition)>.



如先前所述，電子格式還不是出版界的主要格式，然而，以 DRM 作為確保內容與管理權利的方法，出版業是最早的擁護者之一。有許多的系統受到使用，包括簡單的取用保護機制，乃至於先前描述過的完整性 DRM 系統。

Publishers on the whole are sympathetic to the special needs which exist within communities, be they in respect of access for the disabled or in respect of educational needs. They cannot however ignore the imperatives of the market economy. In the case of educational use of content, for example, many publishers derive the majority if not all of their revenue from the sector and thus seek to limit the scope of exceptions to copyright.

出版商整體上同情特定群體的特殊需要，如身心障礙者的取用或教育需要。不過他們不會忽視市場經濟的要求。以教育上使用內容的情形為例，許多出版商的收入，即使不是全部，大多數來自這個部門，因此他們會想要限制著作權例外規定的範圍。

Providing access to content has numerous risks and costs attached to it, notwithstanding the extensive work that has been put into developing a standardised format for accessible texts – the DAISY format. Formatting of texts for ease of access – adding tags for navigation, providing alternative text for graphics – is time consuming and expensive. Developing security and rights management mechanisms for accessible versions of documents requires significant investment. Publishers argue that if the investment cost falls on their shoulders they are only able to bear it if it carries the promise of a worthwhile return on that investment.

儘管已有大量工作投入於發展可取用文本的 DAISY<sup>25</sup>標準化格式，對於內容提供取用，伴隨而來的是許多風險與成本。將文本進行格式化以便於取用－添加導覽標籤、提供替代圖表的文字等等－會大量耗費時間。針對文件的可取用版本發展安全性與權利管理機制，需要重大的投資。出版商主張，如果投資成本落在他們肩上，則只有在可望回收投資時，他們才會願意投資。

This concern can be expressed through two propositions:

這項關切能夠由二段話加以表達：

First, the ease of reproduction and distribution made possible by technology is as much a threat in the publishing sector as it is in other, more publicised areas. On-line piracy afflicts

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<sup>25</sup> DAISY: Digital Accessible Information System. The DAISY standard is based on several recommendations of the World Wide Web Consortium (W3C). Currently, these include the Extensible Markup Language (XML) and the Synchronized Multimedia Integration Language (SMIL). Both of these are internationally recognized standards accepted in the technology industry. The versions in use may vary, depending upon available technology and other factors. Hardware and software in use today implement the DAISY 2.02 standard; however, over the next year or two, product and service providers will be transitioning in order to comply with specifications as outlined in DAISY 3, adopted as the ANSI/NISO Z39.86 2002 Digital Talking Book standard.

DAISY：數位取用資訊系統(Digital Accessible Information System)。DAISY 標準是基於幾項全球資訊網組織(World Wide Web Consortium, W3C)的建議。在目前，這些建議包含了可延伸標記語言(Extensible Markup Language, XML)及同步多媒體整合語言(Synchronized Multimedia Integration Language, SMIL)。在科技產業，這兩者都是國際公認接受的標準。至於使用版本，則根據可資運用的科技及其他因素而定。現今使用的硬體與軟體，所執行的是 DAISY 2.02 版本標準；然而，過一、二年之後，產品及服務供應者將會改版，以符合 DAISY 3 規格，亦即 ANSI/NISO Z39.86 2002 數位有聲書標準(Digital Talking Book standard)。

publishers in much the same way as it afflicts music and film companies; OCR technology coupled with the ready availability of efficient scanning devices means that many top selling literary works are made available illegally via the Internet.

首先，科技促成了重製與散布的便利，而出版部門因此所受的威脅程度，與其他受矚目的領域相同。線上盜版對於出版商的危害，如同線上盜版對於音樂與影片公司的危害；光學辨識科技伴隨早已存在的有效率掃描設備，意味著高銷路的文學性著作得以經由網際網路不法流通。

Second, once a literary text is made available in digital form, strict control must be maintained over it so that it does not become the source of illegally produced and distributed copies. And that consideration applies whatever the justification for original access to the digital file.

第二，一旦文學性的文本成為數位形式，就必須加以嚴格控制，以免其成為不法生產與散布的重製物來源。不論原先取用數位檔案的理由為何，這項考量依然適用。

### 3. *The contribution of technology*

#### *科技的貢獻*

For their part, technology companies are anxious to be part of the process of enabling users with visual and print disabilities to access information on the same basis as those without such disabilities. Two companies in particular are often cited in this connection.

就科技公司而言，對於視覺障礙者與閱讀印刷本障礙者，以及沒有這些障礙的人，他們都一樣想要在協助取用資訊的過程中佔有一席之地。在這方面尤其經常被提到的是二家公司。

Adobe, the creator of the Portable Document Format or PDF format has applied considerable effort to ensuring that its ebook reader are compatible with access technologies. A partial list of accessibility features would include:

創造可攜式文件格式(Portable Document Format, PDF)<sup>26</sup>的 Adobe 公司，為了使其電子書閱讀程式(ebook reader)相容於取用科技，已經投入了可觀的努力。取用功能的部分清單包括：

#### Read Out Loud Feature

#### 朗讀功能

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<sup>26</sup> Portable Document Format (PDF) is a file format developed by Adobe Systems for representing documents in a manner that is independent of the original application software, hardware, and operating system used to create those documents. A PDF file can describe documents containing any combination of text, graphics, and images in a device independent and resolution independent format. These documents can be one page or thousands of pages, very simple or extremely complex with a rich use of fonts, graphics, color, and images. PDF is an open standard, and anyone may write applications that can read or write PDFs royalty-free. 可攜式文件格式(Portable Document Format, PDF)是 Adobe Systems 公司所發展之檔案格式，能在創造文件的軟體、硬體及作業系統之外，獨立呈現該文件。PDF 檔案能夠不受限於設備與解析度，而顯示出包含圖文、影像的文件。這些文件可以是一頁或千頁的文件，可以是非常簡單，或是廣泛使用各種字形、圖形、顏色或影像的非常複雜文件。PDF 是一種開放性標準，任何人得免付權利金，而撰寫讀取或寫入 PDFs 的應用程式。

Read Out Loud makes PDF files more accessible to people who are unable to access a PDF with their regular screen reader. It may also be useful for individuals who do not use a screen reader, but who still would benefit from having a PDF file read out loud. For example, a person with certain cognitive disabilities might benefit from both reading and hearing information. It may also give developers an idea for how a PDF file would be read by a full-featured screen reader.

對於無法以正常螢幕讀取程式取用 PDF 檔案的人，朗讀使他們更容易取用 PDF 檔案。對於不使用螢幕讀取程式的人，也能夠由大聲讀出 PDF 檔案而獲益。例如，一位有某種認知障礙的人，可以由閱讀與聽到資訊而獲益。對於如何透過全功能螢幕讀取程式讀取 PDF 檔案，它也可以使開發者獲得想法。

### Accessibility Quick Check

#### 取用性快速檢查

The Accessibility Quick Check cannot always correctly identify whether a PDF file is accessible or not, but it can alert the user whether the PDF is tagged or not or if there are glaring accessibility errors, and this may be helpful to know.

取用性快速檢查無法總是正確辨認 PDF 檔案是否能夠取用，不過它可以提醒使用者 PDF 檔案是否附加標籤，或是否有明顯的取用性錯誤，而知道這些可能會有所幫助。

Quick check can, however, only detect the presence of tags, not their quality. It is therefore possible for an inaccessible PDF to pass this check. If there are no tags present, the message reads “This document is not structured so the reading order may not be correct. Try different reading orders using the Reading Preferences panel.” There are other messages, like an alert if there is missing text, but these are the two messages that usually appear.

不過，快速檢查只能偵測標籤的存在，而無法偵測標籤的品質。因此一個不具有取用性的 PDF 檔案能會通過這項檢查。如果沒有標籤存在，則會讀出如下訊息：「此文件無結構，因此閱讀順序可能不正確。請嘗試使用「閱讀」偏好設定面板來設定其他閱讀順序。」如果有文本缺漏，則會出現其他類似提醒訊息，不過經常出現的訊息是這兩種。

### Reflow

#### 回流

There are two main advantages to reflowing a document:

回流文件有二項主要優點：

- It eliminates the need for horizontal scrolling.
- 不需要進行水平捲動。
  
- It changes the reading order to reflect either the order of the PDF tags or, if the document is untagged, Adobe Reader tries to infer the correct reading order. Although this is usually an advantage, the reading order in Reflow view can sometimes be more confusing, especially if it has multiple columns or complex tables.

- 針對 PDF 標籤順序，或文件沒有標籤時，Adobe 閱讀程式(Adobe Reader) 會嘗試推測閱讀順序而變更閱讀順序。雖然這往往是一項優點，回流觀看的閱讀順序有時可能會更加混淆，尤其是多重欄位或複雜表格的情形。

Reflow can be a very helpful feature, especially for people who need to enlarge the text, either within Acrobat Reader or using an external screen magnifier.

不論是在 Adobe 閱讀程式或使用外部螢幕放大鏡，回流得以是一項非常有用的功能，尤其是對於需要放大文本的人。

#### Save as (accessible) text

儲存為（可取用）純文字格式

A PDF file can be saved as plain text which can then be printed as braille. As with other accessibility features, this only works if the reading order is clear and if there are no complex tables.

一份 PDF 檔案可儲存為純文字格式(plain text)，而列印成點字。如同其他取用功能，只有在閱讀順序清晰而沒有複雜表格時，這項功能才能運作。

#### Reading order

閱讀順序

Normally, Acrobat Reader tries to guess the best reading order for a document, but there are times when the default reading order is incorrect. Where this occurs, it is possible to change the reading order of a document by selecting Edit > Preferences > Reading, or by using the Accessibility Setup Assistant. There are two main changes that can be made to the reading order of a document:

通常 Acrobat 閱讀程式 (Acrobat Reader)會嘗試猜測一份文件的最佳閱讀順序，但有時預設的閱讀順序會不正確。出現這項情況時，可以選擇：編輯(Edit) > 偏好設定(Preferences) > 朗讀(Reading)，或使用取用設定助手(Accessibility Setup Assistant)，以變更文件閱讀順序。對於文件閱讀順序，有二種主要的變更方式：

*Reading Order.* There are three options.

閱讀順序 有三種選項。

- Infer reading order from document. Leaving this as the default setting usually produces the best reading order.
- 從文件推導閱讀順序。將這個選項訂為預設，通常可以產生最佳閱讀順序。
- Left-to-right, top-to-bottom reading order. Every word will be read in this order, even if it is divided into columns, or there is a sidebar. Selecting this option seldom helps because reading order problems usually occur when the PDF is already being read left to right instead of some other way.
- 從左至右，從下至下的閱讀順序。即使文件分欄或是有邊條，每一個字都將以這個順序閱讀。由於閱讀順序問題經常發生在 PDF 早已是從左至右閱讀而非其他閱讀方式，所以這個選項很少會有助益。

- Use reading order in raw print stream. This reflects the order that the original document was converted into the PDF.
- 使用原始列印流的閱讀順序。這是原始文件轉換為 PDF 的文字順序。

### *Override the reading order in tagged documents*

在標籤化文件中取代閱讀順序

If a document is incorrectly tagged, the reading order might be incorrect. Selecting this option will disable the tagged reading order and Adobe Reader will try to infer a better reading order.

如果文件的標籤化不正確，則閱讀順序可能會不正確。選擇這個選項將取消閱讀順序，而 Adobe 閱讀程式將會嘗試推導較佳的閱讀順序。

For more information on the accessibility features of the Adobe Acrobat Reader, refer to an article by Jon Whiting published on the WebAIM website in February 2005.

關於更多 Adobe Acrobat Reader 的取用功能，請參照 Jon Whiting 於 2005 年 2 月在 WebAIM 網站上發表的一篇文章。<sup>27</sup>

Microsoft places high importance on the improvement of access to information resources through the use of technology. At its headquarters in Redmond, Washington in November 2004, the Microsoft Accessible Technology Group (ATG) hosted a three-day international forum called, "Libraries for the Blind and Print Disabled: Moving Toward a Digital Future," which attracted library representatives from around the world and featured a keynote address by Bill Gates, Microsoft chairman and chief software architect.

對於透過使用科技以改善取用資訊，微軟(Microsoft)公司投入了高度重視。於 2004 年 11 月，微軟可取用科技集團(Microsoft Accessible Technology Group, ATG)在華盛頓州雷蒙市總部舉行了一場為期三天的國際論壇：「盲人與閱讀印刷本障礙者圖書館：邁向數位未來」。這場論壇吸引了來自世界各地的圖書館代表，並由微軟公司總裁與首席軟體工程師比爾蓋茲(Bill Gates)發表主題演說。

Gates talked about the advantages of digital technology over traditional analog formats, such as audio tapes, explaining how digital technology can lower the costs of converting and distributing content, enable libraries to share information more easily, and make more information available to more people. Gates also pointed out that digital formats often provide a better user experience for people who are blind or have print disabilities, allowing many different people to access the same information online simultaneously and making it easy for individual users to locate specific information within texts.

蓋茲談到了數位科技優於傳統類比格式如錄音帶的優點，並說明為何數位科技能降低內容轉換與散布的成本，使圖書館更便於分享資訊，以及使更多人獲得更多資訊。蓋茲也指出，對於盲人與閱讀印刷本障礙者，數位格式往往提供了更好的使用者經驗，使得許多人同時在線上取用相同資訊，並使個別使用者更容易在文本中定位特定訊息。

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<sup>27</sup> Accessibility Features in Acrobat Reader 7, available at <<http://www.webaim.org/techniques/acrobat/reader.php>>.

Many other technology companies are of course engaged in exploring and developing different kinds of access technologies. The World Wide Web Consortium (W3C), for example lists upwards of 30 different companies offering technologies facilitating access to resources via the World Wide Web: <<http://www.w3.org/WAI/References/Browsing>>. The list is divided into five sections as follows:

當然，許多其他科技公司也投入了不同取用科技的探索與發展。<sup>28</sup>例如，關於藉由全球網路提供促進取用資源科技，全球資訊網組織(World Wide Web Consortium, W3C)列出了三十家以上的公司：<<http://www.w3.org/WAI/References/Browsing>>。這份名單分成下列五類：

- browsers which have been specially developed for people with disabilities.  
- 專門為身心障礙者發展的網路瀏覽器。
- screen-readers, which allow visually impaired people to navigate with standard applications, and are therefore most often used in conjunction with mainstream browsers such as Netscape Navigator, Microsoft Internet Explorer, Opera, etc.  
- 螢幕讀取程式，使視覺障礙者藉由標準應用程式瀏覽網路，因此最常與主流瀏覽器程式如 Netscape Navigator, Microsoft Internet Explorer, Opera 等合併使用。
- browsers not specifically designed for disabled people but which have features that have allowed them to be used in combination with adaptive systems.  
- 並非專門為有障礙者設計的瀏覽器，但具有與調整性系統組合使用的功能。
- voice browsers which give spoken Web access, e.g. by telephone using voice input or dialed commands and speech output.  
- 聲音瀏覽器，經由電話聲音輸入或撥號指令及語音輸出，而提供網路口語取用。
- a “catch-all” section intended to cover any access methods not covered by the previous categories.  
- 「其他」類，包含以上類別以外的所有取用方法。

#### 4 DRM and accessibility

##### DRM 與可取用性

Problems however remain, particularly where DRM mechanisms are employed by content providers. In a leading article on the subject, George Kerscher and Jim Fruchterman describe the problems that occur at the intersection of access technologies and technical protection measures:

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<sup>28</sup> The World Wide Web Consortium (W3C) develops interoperable technologies (specifications, guidelines, software, and tools) to lead the Web to its full potential. W3C is a forum for information, commerce, communication, and collective understanding.

全球資訊網組織(World Wide Web Consortium, W3C)發展出了各種互通性科技（規格、指針、軟體及工具），使導網路能充分發揮潛能。W3C 是資訊、商務、通訊與共識的論壇。

不過問題依然存在，尤其是內容供應者運用 DRM 機制的情形。在一篇關於這項議題的領導性文章中，George Kerscher 與 Jim Fruchterman 描述了取用科技與技術保護措施交會所產生的問題：

“The personal computer is the information access tool of choice for many persons who are blind. The computer is made accessible through a screen reader program. Screen readers use a text-to-speech synthesizer (TTS) to speak aloud the information that a sighted person would visually read on the computer screen. These screen readers intercept the text being written to the display and keep track of it, so that it can be vocalized in response to the user’s control. For example, pressing certain keys will cause the screen reader to read the current word, line or paragraph. Screen readers also permit the use of dynamic braille displays instead of, or in addition to, the TTS.

「對於許多盲人，個人電腦是資訊取用的選擇工具。藉由螢幕讀取程式，可使得電腦具有可取用性。對於具有視力者在電腦螢幕上閱讀的資訊，螢幕讀取程式使用了文書語音合成器(text-to-speech synthesizer, TTS)唸出資訊。這些螢幕讀取程式擷取書面文本並維持軌跡，因而能夠以有聲化方式回應使用者的控制。例如，按下特定按鍵，就能使螢幕讀取程式閱讀目前的文字、行列或段落。螢幕讀取程式也能夠容許使用動態點字顯示，以取代 TTS，或與 TTS 並用。

The screen readers are external applications to the PC-based eBook reading software. The DRM wrappers are designed to work with reading applications that present the text visually without allowing the text to be copied, to prevent the illegal distribution of the book. Unfortunately, these anti-copying provisions also prevent the screen reader from providing access with TTS or braille. The secure reading application views these external applications as security threats and blocks their access. As a result, persons who try to use their screen reader with eBook reading systems find that their screen reader is not allowed to do its job and leaves the person who is blind with no access to the ePublication, unless the reading application builds access directly into the user interface.”

螢幕讀取程式是個人電腦上電子書閱讀軟體的外掛應用程式。DRM 包裝器(DRM wrappers)是設計用來與閱讀應用程式一同顯示文本，但是不讓文本受到複製，以避免該書的不法散布。不幸的是，這些反複製作法也讓螢幕讀取程式無法以 TTS 或點字提供取用。這些安全閱讀應用程式將這些外掛應用程式視為安全威脅，並阻擋其取用。結果，除非閱讀應用程式直接在使用者介面上內建取用管道，不然在電子書閱讀系統下使用螢幕讀取程式的人會發現，螢幕讀取程式不被允許完成工作，而使盲人無法取用電子出版品。」<sup>29</sup>

As Kerscher and Fruchterman acknowledge, the problem lies not so much in the configuration of the technology; it lies more in the way that the technology is employed by the rightsholders:

如 Kerscher 與 Fruchterman 所認為，這個問題並不主要在於科技的裝置，而主要在於權利人運用科技的方式：

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<sup>29</sup> Kerscher, George and Fruchterman, Jim: The Soundproof Book: Exploration of Rights Conflict and Access to Commercial eBooks for People with Disabilities, available at <<http://www.benetech.org/resources/talks/soundproof.shtml>>.

“Microsoft and Adobe, which have implemented the use of TTS in their eBook reading systems, have heard from publishers that the audio rights to their eBooks may have been sold. Therefore a feature has been added that allows the use of TTS to be turned off. This means that at the time of creation, a decision can be made by the publisher to disable the use of TTS for this particular eBook.”

「微軟與 Adobe 公司在電子書閱讀系統中使用了 TTS，而他們曾經由出版商們告知電子書上的聲音權利可能已經出售。因此電子書閱讀系統中加入了關閉 TTS 的新功能。這意味著，在製造電子書的時候，出版商可以決定取消特定電子書上的 TTS 功能。」<sup>30</sup>

While the standoff between certain rightsholders and visually impaired users is clear, neither side can be faulted for the position they maintain. As the representatives of visually impaired users have often made perfectly clear, their objective is simply to secure the same access to information and entertainment resources as those without such disabilities, within the same time frame and at similar price levels. They affirm the importance of copyright and emphasise that market-based solutions are appropriate.

雖然某些權利人與視覺障礙者之間的平衡很清楚，任何一方都不應爲了他們的立場而受指責。視覺障礙者代表們經常明白表示，他們的目的只是想確保，在相同時程與相近價格水準上，能與一般人取用相同資訊及娛樂資源。他們肯定著作權的重要性，並強調市場本位的作法適當。

Only a very small percentage of commercially published books and periodicals are made available by publishers in formats accessible by visually impaired readers. There is in some countries a commercial market for a limited range of “accessible” material, but large print books and unabridged audio books almost always cost more than the “standard” version. Most accessible material is today still created by specialist agencies operating on charitable funds or social subventions. This means in practice that only a small proportion of the material published currently becomes available in accessible formats. In the United Kingdom, for example, it is estimated that only around 5% of published titles ever become available in accessible formats, and it is rare indeed for the accessible version to come out until months or years after the original.

由出版商提供視覺障礙者能取用的格式，目前只限於非常少部分的商業性出版書籍與期刊。某些國家中，在範圍有限的「可取用」資料上具有商業市場，不過，大字體印刷書本與未刪減的有聲書，幾乎總是比「標準」版本更高價。目前大多數的可取用資料，依然來自於慈善基金或社會福利機構。這意味著，在當前的出版資料中，只有一小部分屬於可取用格式。例如在英國，據估計只有大約 5% 出版品屬於可取用格式，而實際上，通常只有在原版本出版後幾個月或幾年之後，才會推出可取用版本。

Commercial publishers whether of best sellers or text books have a responsibility to maximize the return from the market. They have to maintain rigorous control over their assets and carefully analyse which sectors of the market are capable of delivering an adequate return on their investment in product development, marketing and distribution.

不論是暢銷書或教科書，商業性出版商的職責是極大化市場收益。他們對於資產必須嚴格控制，並且在產品開發與市場行銷上，仔細分析哪一個市場部門能夠帶來適當收益。

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<sup>30</sup>

*Ibid.*



They have a duty to their creative partners and shareholders to ensure that works are not made available in a way which increases the risk of unauthorised reproduction and distribution, a risk which is of course much greater in the digital domain. Accordingly, the uncontrolled availability of works in digital formats which are open to reproduction and format conversion (adaptation) to meet the needs of visually impaired readers carries with it, in the perception of many rightsholders, the risk of unauthorised reproduction and distribution.

對於創作伙伴與股東，他們的職責是確保著作的提供方式不會增加未授權重製與散布的風險，當然，這項風險在數位領域中則是更高。因此，在許多權利人的觀感中，爲了滿足視障讀者的需要，這些得以進行重製與格式轉換（調整）的數位型態著作，如果在取得上不受控制，就會是未授權重製與散布的風險。

In short, at present, neither the market nor technology appears to be supporting a basis for facilitating the access to information by visually impaired people in a way that is consistent with the general standards for the full social and economic integration of people with disabilities.

簡而言之，以身心障礙者在社會與經濟上充分整合的總體標準來看，目前的市場與科技都不足以成爲促成視覺障礙者取用資訊的基礎。

## 5 *Legal solutions* 法律解決方案

While they recognise the role of copyright law, visually impaired people have very specific needs in terms of access to information. Advanced technology goes further than ever before in meeting those needs. Yet many of the needs remain unmet.

雖然視覺障礙者承認著作權法的角色，他們對於取用資訊有非常特定的需要。先進科技在滿足這些需要的落差更勝於從前。許多需要依然沒有受到滿足。

For their part, publishers are required by the economics of their business and the markets within which they operate to carefully weigh risks and economic opportunities.

對於出版商來說，商業經濟與他們運作其中的市場，則要求他們仔細衡量風險與經濟機會。

An important question is therefore whether current law provides a means for reconciling these different positions or, at least, bringing them into better alignment. The obvious conclusion – given that there are no specific provisions in international law dealing with the needs of visually impaired people – is that it does not.

因此一個重要的問題是，當前法律是否提供協調這些不同立場的方法？或者至少改善這些立場之間的關係？由於國際法對於視覺障礙者需要沒有特定的處理規定，因此結論顯然是沒有。

The WBU argues for the standardisation of exceptions and limitations to meet the needs of visually impaired people as follows:

針對滿足視覺障礙者的需要，世界盲人聯盟主張的例外與限制標準化規定如下：

“We believe [the] exceptions should have the following features:

「我們認爲[這些]例外規定必須有以下特徵：

(a) They should achieve general acceptance and recognition of the principle that creation of alternative format versions from lawfully acquired originals on a non-profit basis with controlled distribution does not constitute an infringement of copyright and therefore requires no permission.

(a) 這些規定應接受並承認以下原則，亦即以非營利方式，由合法取得之著作物原本創造其他格式版本，以受控制方式進行散布，不構成侵害著作權，因此不需取得許可。

(b) They should enshrine rights rather than merely improving procedures for permission.

(b) 這些規定應包含權利，而不僅是改進許可程序。

(c) They should avoid restriction to particular formats or technologies.”

(c) 這些規定不應侷限於特定的格式或科技。」<sup>31</sup>

It is debatable whether this approach would actually lead to an increase in the amount of accessible content available unless some third party with sufficient resources was prepared to take on the task of format conversion. In any event, attempts to change existing law in this way would more than likely be forcefully opposed by many content owners.

如果沒有具備足夠資源的第三者進行格式轉換工作，則這個方向能否增加可取用內容的數量，仍然有待商榷。無論如何，以這個方式改變現行法，很可能會受到許多內容所有權人強烈反對。

So what would the appropriate legal framework contain in this respect? Hopefully, answers to the following:

關於這方面的適當法律架構內容會是如何？但願法律能回答以下問題：

- What kind of exceptions or compulsory licence mechanisms can be devised in relation to the rights of rightsholders that on the one hand facilitate access to information by the visually impaired and on the other hand enable rightsholders to exploit fully the markets for their works?
- 關於權利人的權利，可以設計何種例外規定或強制授權機制，一方面能促成視覺障礙者取用資訊，而另一方面能使權利人充分利用著作市場？
- What rights are implicated by the processes – technological or otherwise – used in facilitating access?
- 用於促成取用的科技或其他程序，涉及何種權利？
- Technological protection measures are now protected by both international and national laws against circumvention. What are the most efficient requirements, including derogations to that protection that can be applied to supporting both the access needs of the visually impaired and the market needs of the rightsholders?
- 目前的國際法與國內法保護了科技保護措施不受規避。為了支持視覺障礙者的取用需要以及權利人的市場需要，對於該法律保護的最有效率要求，包括但書規定，其內容為何？

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<sup>31</sup> See Mann *supra*.

- What are the best ways of administering the solutions provided within the law?
- 關於法律提供的解決方案，最佳的管理方式為何？

## B. Distance education

### 遠距教育

#### 1. *The concept of open and distance learning*

##### *開放式遠距學習之概念*

The needs of visually impaired people have been succinctly encompassed within the objective expressed by the WBU: the right to the same material, at the same time and on the same terms as those enjoyed by people without such impairment. Equally the concept of access through technology is relatively easy to grasp.

關於視覺障礙者的需要，可以用世界盲人聯盟所陳述的目標簡要涵蓋：在資料內容、時間與條件上，和不具有這種障礙者享有相同權利。同樣地，藉由科技而取用的概念，也是相當容易掌握。

Not so with the idea of distance learning. While generally understood to be a relatively new concept, the term is applied to a range of educational and learning processes that is extremely diffuse. The term distance learning and a number of variants thereof are applicable to very different education structures. A full analysis of the field far exceeds the scope of this study. What will be attempted here is an introduction to some of the terminology and features of education as facilitated by technology to illustrate some of the changes from the traditional publicly funded classroom environment.

不過，遠距學習的觀念則不是這麼容易掌握。雖然大體來說這是一個相當新的概念，但是這個詞彙被運用在一些極為不同的教育及學習過程。遠距學習的詞彙與許多衍生詞彙，被用於非常不同的教育結構。對於這個領域的完整分析超出了本研究範圍。此處所要處理的是，針對科技所促成的教育方式，提供某些術語及特徵的導論，以顯示與傳統公立教室環境的差異。

The term “open and distance learning” and its definition are relatively new in the field of education, having gained prominence only in the past 15 to 20 years. The language and terms used to describe distance learning activities can still be confusing, and geographical differences in usage — for example, between North America and Europe — can add to the confusion. The following are examples of learning structures that are commonly referred to under the general heading of distance learning:

「開放式遠距學習」的詞彙及其定義，在教育領域上相當新穎，在過去十五至二十年間才開始具有重要性。用於描述遠距學習活動的語言及詞彙依然混亂，而用法上的地區差距—如北美與歐洲之間—更增添了混亂。以下例子，是在遠距學習大標題下所通常指涉的學習結構：

“Correspondence education,” “home study” and “independent study” are terms and distance learning methods that are well over a century old, based on stand-alone, often print-based self-study materials. Learners do not have to leave their homes to study. They can use a variety of means for tutor-learner contact, including the postal system, telephone, video and audio cassettes, electronic mail and television and radio broadcasts.

「通訊教育」(correspondence education)、「在家學習」(home study)及「獨立學習」(independent study)，都是超過百年以上的遠距學習詞彙與方式，以單機式且往往是印刷式的自習教材為基礎。學習者不需要離家學習。他們可以使用一些管道進行師生接觸，包含郵政、電話、影片、錄音帶、電子郵件、電視與廣播。

Many university programmes in North America have, in the last 15 years, renamed their correspondence programmes to more current titles such as “open and distance learning” or “independent study.”

在過去十五年間，許多北美大學課程將他們的通訊課程改為更新潮的名稱，例如「開放式遠距學習」或「獨立學習」。

The term “external studies” applies to instruction that takes place somewhere other than on a central campus, such as a classroom remote from campus and includes a variety of delivery options like audio, video or computer conferences or home study.

「外部學習」(external studies)的詞彙用於中心校園以外場所的教導，例如校園偏遠地區的教室，並包括一些傳送方式，如錄音、影片或電腦會議，或在家學習。

The term “continuing education” usually applies to non-credit education, and refers to courses that can be delivered on campus or at a distance and has varied meanings.

「繼續教育」(continuing education)的詞彙通常用於無學分的教育，而可以指稱校園內或遠距課程，並且有各種不同含意。

The term “self-instruction” refers to a process in which materials take learners step-by-step through an instructional process. Self-assessment exercises are a central feature; instruction can be paper-based or computer-based. As an example of this, many language schools offer self-instructional packages that consist of print materials and audio cassettes.

「自我教學」的詞彙指稱學習者在教學過程中使用階段性教材的程序。自我評量習題是一項核心特點；教導可以是紙本式或電腦式。這種例子之一是，許多語言學校提供含有印刷教材與錄音帶的自我教學套件。

The term “adult education” emphasises the principles of adult learning, often known as “andragogy,” as compared to “pedagogy,” or child-centred learning.

「成人教育」(adult education)的詞彙強調成人學習的原則，通常稱為「成人教育學」(andragogy)，而有別於「教育學」(pedagogy)或以兒童為主的學習。

The term “technology-based education” refers to systems of teaching and learning in which a technology other than print has a major role and takes two major forms: stand-alone (for example, computer-assisted learning and computer-managed learning) and conferenced (for example, audio, video or computer).

「科技式教育」(technology-based education)的詞彙指稱以科技而非印刷品為主的教學與學習系統，主要有二種型態：單機式（如電腦輔助學習與電腦管理學習）及會議式（如視聽或電腦會議）。

In “learner-centred education,” integrity and freedom of the individual is primary. Therefore, the teaching and learning process provides:

在「學習者為中心的教育」(learner-centred education)，個人的人格完整性與自由是首先要務。因此，教學與學習程序提供了：

- flexible sequences of study;
- 彈性學習次序；
- negotiated objectives and content;
- 自訂目標與內容；
- negotiated learning methods;
- 自訂學習方法；
- negotiated methods of assessment; and
- 自訂評量方法；且
- a choice of support mechanisms.
- 有支援機制可供選擇。

The educational philosophy of open learning emphasises giving learners choices about:  
開放式學習的教育哲學強調由學習者選擇：

- medium or media, whether print, on-line, television or video;
- 媒介或媒體，如印刷品、線上、電視或影片；
- place of study, whether at home, in the workplace or on campus;
- 學習地點，如家庭、職場或校園；
- pace of study, whether closely paced or unstructured;
- 學習步調，如密集式或鬆散式
- support mechanisms, whether tutors on demand, audio conferences or computer-assisted learning;
- 支援機制，如輔導教師、音訊會議或電腦輔助學習；
- entry and exit points.
- 入學與離開時點。

The term “flexible learning” emphasises the creation of environments for learning that have the following characteristics:

「彈性學習」(flexible learning)的詞彙強調創造具有以下特點的學習環境：

- convergence of open and distance learning methods, media and classroom strategies;
- 集合開放性遠距教學的方法、媒體與教室策略；
- learner-centred philosophy; recognition of diversity in learning styles and learners’ needs;
- 學習者為中心的哲學；承認學習風格與學習者需要的多樣性；
- recognition of the importance of equity in curriculum and pedagogy;
- 承認課程與教法因個案而定的重要性；
- use of a variety of learning resources and media;
- 使用各種學習資源與媒體；
- fostering of lifelong learning habits and skills in learners and staff
- 促進學習者與教員的終身學習習慣與技巧

The term “distributed learning” emphasises the learning itself rather than the type of technology used or the separation between teacher and learner. It makes learning possible beyond classrooms and when combined with classroom modes, becomes “flexible learning.”

「分散式學習」(distributed learning)的詞彙強調學習本身，而非所使用的科技類型，或是強調教師與學習者的分隔。分散式學習使教室外學習成為可能，而當它合併了教室模式之後，就變成了「彈性學習」。

As can be seen from the above, there is no one definition of “open and distance learning.” Rather, there are many approaches to education which can be referenced under the single term. Most of these approaches, however, have certain common characteristics including:

如以上所見，「開放式遠距學習」並沒有一個定義。毋寧是，有許多教育方式可以歸於這個單一詞彙之下。不過，這些方法大部分具有共通的特徵，包括：

- separation of teacher and learner in time or place, or in both time and place;
- 教師與學習者在時間上或空間上的分隔；或時間與空間二者都分隔；
  
- institutional accreditation, that is, learning is accredited or certified by some institution or agency. This type of learning is distinct from learning through one's own effort without the official recognition of a learning institution;
- 機構認證，亦即由某機構或機關進行認證或認可。這種學習類型，有別於個人自行努力，而沒有學習機構的正式承認。
  
- use of mixed-media courseware, including print, radio and television broadcasts, video and audio cassettes, computer-based learning and telecommunications. Courseware tends to be pre-tested and validated before use;
- 使用混合媒體課程資料，包括印刷品、無線電與電視廣播、視聽磁帶、電腦式學習與電信。課程資料通常是在使用前已經完成有效測試；
  
- two-way communication allows learners and tutors to interact as distinguished from the passive receipt of broadcast signals. Communication can be synchronous or asynchronous;
- 雙向溝通使學習者與輔導教師有所互動，有別於被動接收廣播訊號。溝通可以是同步性或非同步；
  
- possibility of face-to-face meetings for tutorials, learner-learner interaction, library study and laboratory or practice sessions;
- 可能安排與輔導教師面對面會談、學習者彼此互動、圖書館研習與實驗室或實作課程；
  
- use of industrialised processes; that is, in large-scale open and distance learning operations, labour is divided and tasks are assigned to various staff who work together in course development teams.
- 使用產業化程序；亦即大規模的開放式遠距學習作業，在課程發展團隊中，勞力得以分攤，而任務可分派給一起工作的各個人員。

### Time and place continuum

#### 時間與空間連續性

Open and distance learning programmes fall somewhere along two continua: the continuum of time and the continuum of place. The place continuum has at one end all learners and their tutor or instructors gathered at the same place, and at the other end all learners and their tutor or instructor in different places. The time continuum has at one end all learners and their tutor or instructor interacting in 'real time', that is, at the same time, and at the other end all learners and their tutor or instructor interacting at different times.

開放式遠距學習課程處在二個連續性上的某一點：時間連續性與空間連續性。空間連續性的一端是所有學習者與輔導教師或教導者在同一地點集合，而另一端則是所有學習者與輔導教師或教導者在不同地點。時間連續性的一端是所有學習者與輔導教師或教導者「即時」亦即同時互動，而另一端則是所有學習者與輔導教師或教導者在不同時間互動。

## 2. *The advantages of open and distance learning*

### *開放式遠距學習之優點*

Distance learning offers a number of advantages to both learners and to providers of opportunities for learning. The advantages include the following:

對於學習者與學習機會供應者二者來說，遠距學習具有一些優點。這些優點包括以下：

- Overcoming physical distance
- 克服實體距離
  
- Solving time or scheduling problems
- 解決時間或行程安排問題
  
- Making best use of the limited number of teachers available
- 充分運用人數有限的教師
  
- Dealing with cultural, religious and political considerations
- 可處理文化、宗教及政治考量

We can see from this brief outline of various modes of distance learning and their common features that the basis for establishing specific copyright regimes for educational purposes is becoming extremely complex. Any distinction drawn between the publicly - funded physical classroom environment and everything else would seem somewhat outdated. As noted above, Ricketson has observed that there appears to be nothing in Article 10(2) of Berne which precludes its application to virtual learning environments. He also points out however that it was noted in the Committee Report of the Stockholm Conference:

由這些遠距學習的各種模式及共通特點的概觀可以看出，為教育目的而建立特定著作權體制的基礎變得極為複雜。在公立實體教室環境與其他環境之間，任何區分都會顯得不合時宜。如前所述，根據 Ricketson 觀察，伯恩公約第 10 條第 2 項的適用並未排除虛擬學習環境。他也指出，斯德哥爾摩會議委員會報告提到了：

“The wish was expressed that it should be made clear in this Report that the word ‘teaching’ was to include teaching at all levels—in educational institutions and universities, municipal and State schools, and private schools. Education outside these institutions, for instance general teaching available to the general public but not included in the above categories, should be excluded.”

「在報告中所應清楚顯示的意圖則是，『教學』一詞」包括所有層級的教學—含教育機構與大學，地方與國立學校，以及私人學校。這些機構以外的教育，如對於前述範圍以外的一般公眾進行一般性教學，則應排除在外。」

This construction of the term “teaching” provides little help for understanding the scope of educational copyright exceptions in the modern world. Nor, it should be said, does it provide any obvious support for using the distinction between the commercial and non-commercial nature of an educational institution or process as a basis for demarcating the field of application for exceptions.

在現代世界裡，對於理解著作權教育性例外規定的範圍，解釋教學一詞的幫助不大。應該一提的是，這種解釋也不能明顯支持區分商業性與非商業性的教育機構或程序，以作為例外規定適用領域的界定基礎。

What is apparent from even the most cursory examination of modern education systems is that the increasing use of technology and digital resources creates a complex matrix of rights issues which the formulation of copyright policy and law has to take into account.

即便隨意檢視現代教育系統，顯然可見的是，科技與數位資源的使用增加，創造了權利議題的複雜基底，而必須由著作權政策與法律加以考量。

These issues include the following:

這些議題包含下列：

- the creation of resources
- 資源創造
- the digitisation of resources
- 資源數位化
- the storage of digital resources
- 數位資源之儲存
- the adaptation of digital resources
- 數位資源之調整
- the communication of digital resources
- 數位資源之傳播
- the sharing of resources (between institutions, users)
- (機構、使用者之間) 資源分享
- the re-use of resources
- 資源再使用

### 3. *Economics*

*經濟學*

These developments are occurring in a sector which is of enormous economic significance in terms of both public and commercial investment. Annual spending on



education of all forms worldwide is over \$2 trillion; in the United States of America alone spending amounts to \$750 billion.

在公共與商業投資上具有龐大經濟重要性的部門，正在出現以下這些發展。全世界所有型態的年度教育支出超過二兆；單只美國一地，支出金額達到七千五百億。

Globally, 84 million students of higher education attend 20,000 colleges and universities. 66 million adults and more than 50% of all employed persons participate in some form of continuing education.

全球有八千四百萬名高等教育學生，分別就讀於二萬個學院與大學。有六千六百萬名成人與超過全體 50% 的受僱人，參加了某種型態的繼續教育。

The Republic of Korea spends more on education than any other member of the Organization for Economic Cooperation and Development (OECD). In 2003 expenditures on public education amounted to 7.1 percent of its gross domestic product (GDP). This figure includes spending on hardware infrastructure such as school buildings and computers, as well as spending on teachers' salaries and facilities management. During the same year, spending on private education totaled 9.4 trillion won (US\$8.11 billion).

在經濟合作發展組織(Organization for Economic Cooperation and Development, OECD)會員中，大韓民國比其他會員有更多教育支出。韓國 2003 年公共教育經費相當於國內生產毛額(gross domestic product,GDP)的 7.1%。這個數目當中，包含了學校建築與電腦等方面的硬體基礎建設支出，以及教師薪資與設施管理的支出。同一年間，在私人教育上的支出總數達到九點四兆韓圓（八十一億一千萬美元）。

In each of the territories covered in this study, commercial publishing of educational materials is a major business. The United States textbook market is a large, growing, and fragmented business. Textbooks are written and marketed primarily for use in formal educational settings. Much of the demand for graduate level textbooks depends on growth in the population attending institutions of graduate study. The United States textbook market overall has an annual volume of approximately USD 5.3 billion, and forecasters predict that around 40-50% of all textbooks will be available electronically in five years' time.

在本研究中所包含的每一個國家地區中，商業性出版的教材是一件大生意。美國教科書市場是一個龐大、成長當中的分區市場。教科書的撰寫及行銷，基本上用於正式教育場合。對於研究所教科書的需求，大部分取決於研究所教育機構的就讀人數。美國教科書市場的年度總體金額將近五十三億美元，而預測人員認為，在五年後，約全部教科書中的 40-50% 會有電子化版本。

The Australian market for books of all kinds was worth USD 1.5 billion in 2003. The Professional/Education/Academic book sector remained the largest sector in 2003 with USD 356 million, a slight fall of 0.1% from 2002, accounting for 21% of the market. The size of South Korean book market was worth USD\$1.875 billion in 2003, having decreased by 16.9% over 2002. The United Kingdom market for books reached a value of over \$5.6 billion in 2003. Professional and Scholarly books commanded the largest market share in 2003, accounting for 18.3% of the total market, a 7.9% increase from 1999.

在 2003 年，澳洲的所有書籍市場總值是十五億美元。專業性 / 教育性 / 學術性書籍依然是最大的市場部門，在 2003 年的市場比重較前一年略微下降 0.1%，而佔市場 21%，金額是三億五千六百萬美元。2003 年南韓的書籍市場總值一百八十七萬五千美元，比 2002 年減少了 16.9%。2003 年英國書籍市場價值超過五十六億。在 2003 年，

專業性及學術性書籍佔有最大市場比重，在全體市場中佔有 18.3%，比 1999 年增加了 7.9%。

#### 4. *Heterogeneity* 異質性

Coupled with the enormous economic dimensions of the education sector and its accelerating migration to technology-based systems is its diversity. The “lifetime learning for all” is in many countries a very real proposition whether on a voluntary basis or as part of employment related training programs.

與龐大經濟面向及科技式系統的加速發展相伴，則是教育部門的多樣性。無論是自願性基礎或是就業相關訓練課程，「全民終身學習」在許多國家當中是一個非常真實的命題。

The different features and varieties of distance learning systems described above are being adopted for any number of different educational and training programmes and environments. Many of these are state-funded programmes and strictly non-profit; many others are entirely profit-based whether in the educational process itself or via the enterprise to which it is directed.

在各種教育性、訓練性課程與環境中，正在採用先前所述遠距學習系統的各種特徵與種類。其中許多課程是國家所提供，因此屬於非營利性；許多其餘課程，無論是教育過程本身或其對象企業，則是全然營利性質。

There are growing examples where the line between commercial and non-commercial educational programmes is becoming much harder to discern. Worldwide, particularly in the higher education sector, institutions have very active programmes recruiting overseas students on an essentially commercial basis.

有越來越多例子顯示，區分商業性或非商業性的教育課程更加不易。尤其是高等教育部門，全球各地機構正在以商業性方式積極招收海外學生。

Likewise the resources being developed in the sector are becoming difficult to classify in categories which fall neatly into established demarcations between the commercial and non-commercial. The enormous impact of university education and research on the technology revolution is an obvious case in point.

同樣地，由教育部門所發展的資源，更難以明確區分屬於商業性或非商業性。大學教育及研究對於科技革命的龐大衝擊，是一個相關的明顯情形。

## CHAPTER 4

## 第四章

## NATIONAL LAW &amp; PRACTICE

## 國內法與實務

We now turn to examine the state of laws in each of the target territories in two specific areas:

我們現在轉而檢討各目標國家內的二個特定領域現況：

- Provisions of copyright law relating to the needs of visually impaired people
- 關於視覺障礙者需要的著作權法規定
  
- Provisions of the copyright law relating to the use of copyright materials in education
- 關於有著作權教材的著作權法規定

Our enquiry is not concerned with the policy responsible for each provision as they relate to the particular purpose for which they were formulated. Rather we are interested to explore how far each provision embodying an exception to copyright is susceptible to effective implementation, and whether the use and protection of technical protection measures interferes with that implementation.

我們的研究並非關注每一個條款的特定目的政策。我們所感興趣的是，探討個別著作權例外條款的有效執行範圍，以及使用技術保護措施是否妨礙了執行。

Our enquiry therefore breaks down into various channels:

我們的研究因此分為以下幾個管道：

- What is the scope of each exception?
- 每一個例外規定的範圍為何？
  
- How is the exception implemented?
- 這項例外條款如何執行？

To assist in this review a detailed analysis of each national law was made, the results of which are contained in Annex A hereof.

為了協助這項法律回顧，將針對每一國家的法律進行詳細分析，而分析結果則收錄於附錄 A。

#### A. Provisions relating to visually impaired users

##### 關於視覺障礙使用者的條款

#### 1. *Australia*

##### *澳洲*

The first statutory scheme to assist people with disabilities was inserted into the Copyright Act by the Copyright Amendment Act 1980. The statutory licence permitted

multiple copying by institutions assisting persons referred to as “print handicapped.” It followed recommendations by the Copyright law Review Committee (CLRC) on Reprographic Reproduction to facilitate equitable access to information. Both the Government and the CLRC received representations regarding the difficulties experienced by certain institutions seeking to obtain permission of copyright owners to reproduce published works in Braille and the extent to which this affected the ability of print disabled students to complete study requirements.

關於協助有障礙者的第一套法律架構，是由 1980 年著作權增修法引進了著作權法當中。針對「無法閱讀印刷本殘障者」(print handicapped)的協助機構，該法規定的法定授權(statutory licence)允許進行多重複製。之後關於促進衡平取用資訊，則有著作權審議委員會(Copyright law Review Committee, CLRC)的建議。關於特定機構尋求獲得著作權人許可重製已出版著作點字版的困難經驗，以及這影響了閱讀印刷本障礙學生完成學業的能力，政府與 CLRC 都接獲了相關代表意見。

The resulting statutory scheme was accompanied by provisions allowing for the payment of equitable remuneration to copyright owners. The word “equitable” was intended to mean fair, just and reasonable. The provisions enabled parties to negotiate the level of remuneration and required records to be kept as the basis of the copyright owner’s claim to payment.

法律架構則隨之規定，允許對著作權人支付衡平報酬。「衡平」(equitable)這個字的用意則是公平、公道與合理。這些規定使各方得以協議報酬水準，並保存記錄以作為著作權人請求支付的基礎。

The Copyright Amendment Act 1986 established a statutory licence scheme for “radio for the print handicapped.” Again the scheme was established because of the difficulties and delays experienced by radio licensees seeking permission to read published texts on air. The scheme contained similar provisions relating to equitable remuneration and record keeping.

對於「為無法閱讀印刷本殘障者廣播」(radio for the print handicapped)，1986 年著作權增修法建立了法定授權(statutory licence)架構。這個架構的建立，同樣是因為無線廣播被授權者尋求許可空中朗讀已出版著作的窒礙難行經驗。這個架構包含了關於衡平報酬與記錄保存的類似條款。

The Copyright Amendment Act 1989 widened the subject matter of the statutory licence schemes and streamlined the systems used to collect equitable remuneration for copyright owners. The old scheme for institutions assisting the print handicapped in Part III Division 5B was repealed and a number of new provisions inserted into the Copyright Act including:

1989 年著作權增修法擴張了法定授權的客體範圍。並且簡化了為著作權人收取衡平報酬的流程系統。在 Part III Division 5B 關於無法閱讀印刷本殘障者協助機構的舊架構被廢除，而在著作權法加入了一些新規定如下：

- A new Part VA providing a statutory licence scheme for institutions assisting intellectually handicapped persons to copy broadcasts;
- 關於智障者協助機構複製廣播，新規定了 Part VA 的法定授權架構；
- A new Part VB implementing a revised scheme for copying by institutions assisting handicapped readers and intellectually handicapped persons; and
- 關於閱讀殘障者與智障者協助機構的複製，新規定了 Part VB 的修正執行架構；且

- A new Section 200AA providing that copyright was not infringed by the making of a copy of a sound broadcast if the copy was made for the purpose of assisting persons with an intellectual handicap.
- 新的第 200 條 AA 條規定，為協助智障者而複製聲音廣播，不構成侵害著作權。

The streamlined administration provisions established a mechanism for the collection and payment by a single collecting society of remuneration for the copyright owner, calculated on the basis of either full record keeping and payment per copy or sampling and payment of annual amount per student at the relevant institution relying on the statutory licence.

簡化行政流程條款，規定了收取及支付著作權人報酬的單一收取團體機制，費用計算是以完整保存記錄按件計價，或是由依賴法定授權的相關機構依抽樣計價方式按學生人數支付年費。

The introduction of the sampling system was an important innovation operating as an alternative to full record keeping. Under this system, remuneration is assessed on a per student per annum basis, rather than an amount per copy (as under the records system). The system was considered to have many benefits. The Explanatory Memorandum to the 1989 Act stated that it was “far more flexible, less costly to operate and less administratively burdensome on all parties (...) than the records system.” Despite these benefits, the single collecting society and sampling system provisions were not extended to apply to broadcasts by radio for the print disabled.

抽樣系統的引進，是替代完整記錄保存的一項重要創新作法。在該系統下，報酬以每年每學生為估計基礎，而不是（依記錄系統）按複製件數計價。這個系統被認為有許多好處。1989 年法律的解釋備忘錄表示它「比記錄系統更加彈性、運作成本更低，對於各方在行政上更簡便。」儘管有這些好處，這套單一收取團體及抽樣系統規定，並不適用於為了閱讀印刷本障礙者的無線廣播。

Additional amendments to the statutory licence provisions were later made:

對於這些法定授權條款，之後有進一步的增修條款：

- Simplifying the administration of the schemes and replacing the word “handicapped” with “disabled”; and
- 簡化行政架構，並以「障礙」取代「殘障」；且
- The Copyright Amendment (Digital Agenda) Act 2000 extended the statutory licences under Parts VA and VB to include the “communication” of works and subject matter in addition to the pre-existing licence to copy. This covered the making available on-line and electronic transmission of works and subject matter.
- 2000 年著作權（數位議程）增修法擴張了 Parts VA 與 VB 的法定授權，以包含著作之「傳播」，以及既有複製授權之外的客體。這涵蓋了著作與客體的線上提供與電子傳輸。

Under the current provisions, certain organizations are allowed to copy and communicate material protected by copyright to help people with a print disability or with an intellectual disability.

依據現行規定，為協助閱讀印刷本障礙者或智障者，特定機構得複製並交流受著作權保護的資料。

An organization may reproduce and communicate material for people with a print disability if it is:

得為閱讀印刷本障礙者重製並交流資料的機構為：

(a) an educational institution, as defined by the Copyright Act, (for example, a school, Institution of Technical and Further Education (TAFE) or university); or

(b) any other institution that wants to provide written material such as books or articles to people with a print disability as one of its principal functions, and which has been declared by the Commonwealth Attorney-General to be an institution assisting people with a print disability for the purposes of the Act.

(a) 著作權法所定義之教育機構（如學校、技術與進修機構，或大學）；或

(b) 以對閱讀印刷本障礙者提供書籍或文章等書面資料為主要業務之一的任何機構，並經法務部長宣告為合乎著作權法目的之閱讀印刷本障礙者協助機構。

Before an organization can use copyright material, it must give the copyright collecting society. Copyright Agency Limited (CAL) a written undertaking to pay for the copies or communications made.

在一個組織使用著作權資料之前，為複製與傳播，必須向著作權收取團體著作權仲介有限公司(Copyright Agency Limited, CAL)提出書面承諾書。<sup>32</sup>

A person with a print disability is:

閱讀印刷本障礙者為：

(a) a person without sight;

(a) 盲人；

(b) a person whose sight is severely impaired;

(b) 重度弱視者；

(c) a person unable to hold or manipulate books or to focus or move his or her eyes; or

(c) 無法掌握或操持書籍者，或視線無法集中或移動眼球者；或

(d) a person with a perceptual disability.

(d) 知覺障礙者。

The definition does not include slow learners or people learning English – for example, as a second language. However, the definition does seem to apply to people with dyslexia.

這項定義並不包含學習遲緩者或學習英文者－例如，以英語為第二語言者。不過，這項定義的確似乎適用於有閱讀障礙 (dyslexia)者。

One or more copies of a literary or dramatic work may be made by recording the work onto “a disc, tape, paper or other device in which sounds are embodied.”

關於文學或戲劇著作，得以錄製一件或一件以上重製物於「碟片、磁帶、紙張或其他錄音設備」。

<sup>32</sup> It should be noted that CAL operates a zero rate tariff for these uses.

應注意的是，CAL 對這些使用者的收費標準是零。

Additionally, one or more Braille, large-print or photographic versions of a published literary or dramatic work may be made. A “photographic version” is a copy of a work produced as a film strip, or series of separate transparencies designed to meet the needs of disabled readers. The copy can only be made however if it is not possible to buy a suitable copy in the relevant format. Equally, it is only permissible to make and communicate an electronic version of the work if it is not possible to purchase that work in electronic form.

此外，關於已發表的文學或戲劇著作，得製作一件或一件以上的點字、大字印刷或照相版本。所謂「照相版本」是為滿足障礙讀者需要的著作膠捲重製物，或連續的單張幻燈片。不過，惟有無法購買相關格式的合適版本時，才能製作重製物。同樣地，惟有無法購買電子型態著作時，才能針對著作製作並交流電子版本。

Sound recordings of works and communications of copyright material must be accompanied by notice alerting users to the fact that the works have been reproduced or communicated under particular provisions of the Copyright Act. In addition, it may be necessary to mark copies and some organizations may need to keep records of copies made.

關於著作的錄音以及著作權資料的交流，必須附有對使用者的警告聲明，以告知根據著作權法哪一特定條款，而對該著作進行重製或交流。此外，也可能必須標示重製物，而某些組織可能必須保存複製記錄。

It is also permissible to make a copy of a published literary or dramatic work solely for the purpose of enabling the creation of the version of the work to be made available or communicated to a person with a print disability. Notice must be given to CAL within three months of the making of the copy. The notice must specify the name of the institution, the work reproduced and the date the copy was made.

關於已發表的文學或戲劇著作，得單獨為閱讀印刷本障礙者製作重製物版本。必須在製作重製物三個月內通知 CAL。通知中必須註明機構名稱、所重製著作，以及製作重製物日期。

### The print disability radio licence

#### 閱讀印刷本障礙無線授權

A radio station which holds a print disability radio licence may broadcast published literary or dramatic works (for example, newspaper articles, or readings from plays). A print disability radio licence is a licence which is granted under the Broadcasting Services Act 1992 or the Radiocommunications Act 1992:

擁有閱讀印刷本障礙授權的無線電台，得廣播已出版的文學或戲劇著作（如報紙文章或劇本讀本）。閱讀印刷本障礙授權的核發，則是依據 1992 年廣播服務法或 1992 廣播通信法：

“For the purpose of authorising the making of sound broadcasts to persons who by reason of old age, disability or literary problems are unable to handle books or newspapers or to read or comprehend written material.”

「針對老年、障礙或文字能力問題而無法閱讀書籍或報章，或閱讀或理解書面資料者，為其製作聲音廣播之授權目的。」

The current legislation governing broadcasting does not grant licences on any basis as specific as this. It is therefore difficult to know which (if any) stations may rely upon the section. It is also not known whether any such amendments will allow community stations generally to rely upon the exception, or whether only specific stations will be entitled to rely upon it.

規範廣播的現行法並未基於這個特定規定而核發授權。因此難以得知（萬一有）哪一電台可以適用這條規定。關於此等增修條款是否允許社區電台適用這項例外規定，或只有特定電台才能適用這項例外規定，也是不得而知。

The station must keep a record of certain information for four years from the date of the broadcast, including:

自廣播之日起四年內，電台必須保存特定資訊的紀錄，包含：

- the time and date of the broadcast; and
- 廣播日期與時間；且
- the numbers of the pages which are broadcast (or a description allowing the pages to be identified if the pages are not numbered).
- 所廣播之頁數（如無頁數標記時，以敘述方式指示頁數）。

## 2. *The Republic of Korea*

韓國

The Copyright Law of 1989 as amended provides exceptions in respect of format conversion for the benefit of blind people. Article 30 of the Law provides as follows:

1989 年著作權法為盲人福利而增訂了格式轉換的例外規定。該法第 30 條規定如下：

“Article 30

「第 30 條

(1) It shall be permissible to reproduce in Braille for the blind a work already made public.

(1) 已發行之著作，得為盲人製作點字書。

(2) It shall be permissible to make sound recordings of a work already made public, exclusively for the purpose of providing such recordings for the use of the blind at the facilities established for the promotion of the Welfare of the blind as prescribed by the Presidential Decree.”

(2) 已發行之著作，得由總統命令許可之盲人福利機構，製作專供盲人於機構內使用之錄音。」



**Case study: the Republic of Korea****案例研究：韓國**

As part of the research for this study a fact finding mission was conducted in the Republic of Korea. Meetings were held with a number of Government agencies including the Copyright Division of the Ministry of Culture and Tourism and the Copyright Deliberation and Transmission Rights Committee; with a number of technology companies developing DRM solutions; with organizations representing visually impaired people.

本研究在韓國進行了一項事實調查工作。在參與會議者中，包含文化旅遊部著作權局，著作權諮議與傳播權利委員會等政府單位，發展 DRM 解決方案的科技公司，以及視覺障礙者代表組織。

As is well known, the Republic of Korea has one of the most advanced technology infrastructures in the world with very high levels of high speed broadband penetration.

眾所周知的是，韓國以其高度的高速寬頻普及率，而擁有世界最先進的科技基礎建設。

The Republic of Korea is also a leader in the development of advanced wireless technology.

韓國也是先進無線科技的發展領導者。

While the rapid deployment of these technologies has brought obvious benefits to the country, it has also involved the inevitable disruption to established media practice including, of course, enforcement of the copyright law. The Government recognises this situation and is actively studying ways to maintain the necessary protections for the rights of creators in a way which is consistent with the overall industrial and technological objectives of the country.

這些科技的迅速發展，為該國帶來了顯著的利益，但是對於既有的媒體實務也造成不可避免的破壞，而這當然包含了著作權法的執行。政府體認到這種情況，而正在積極研究維護創作者必要權利保護的方法，以符合國家整體產業與科技目標。

One of the purposes of researching the situation in the Republic of Korea was to see how far its rapid advances in technology have improved the access to services and materials for the Republic of Korea's population of visually impaired people. With one exception, the conclusion at present appears to be that benefits for visually impaired derived from the new technology are, at best, limited.

研究韓國情況的目的之一，在於發現科技迅速進展對於韓國視障人口取用服務與資料的改善程度。除了一項例外，目前的結論顯示，新科技頂多對於視覺障礙者帶來有限的利益。

The Republic of Korea has a highly educated and literate population and a correspondingly active publishing industry. Although still relatively small (turnover in 2004 was USD20 million), according to the Korean Electronic Publishing Association, the electronic book industry is growing rapidly.

韓國擁有高教育水準及閱讀能力的人口，並有相對應的活躍出版業。根據韓國電子出版協會，雖然電子書產業依然在規模上相對微小（2004 年總金額為二千萬美元），但是成長迅速。

Meetings were held with three organizations representing the interests of visually impaired people.

在舉行的會議中，有三個視覺障礙者利益代表組織。

The Korean Welfare Foundation for the Visually Handicapped was founded in 1973 and is funded entirely by the Government. Its main services include the provision of materials in braille and talking books. It runs a basic rehabilitation and computer training centre for the visually impaired. It also publishes a bi-weekly braille magazine.

韓國視覺障礙者福利基金會成立於 1973 年，是由政府全額出資設立。其主要服務包含提供點字書及有聲書資料。該基金會為視覺障礙者經營基本的復健與電腦訓練中心，並出版雙週性點字雜誌。

The material made available is of all kinds of literary works other than newspapers. The conversion into braille and talking books is done under the provisions of Article 30 of the Copyright Law and does not require the permission of the copyright owner.

盲人資料是各種文學性著作，而非新聞著作。點字書與有聲書的轉換，是根據著作權法第 30 條，而不須獲得著作權人同意。

Inevitably, some problems are encountered in converting digital formats to which technical protection measures have been applied.

不可避免的是，對於應用技術保護措施的數位格式進行轉換時，遭遇到了一些問題。

The Korean Blind Union is another leading organization for the visually impaired. It brings together a number of different organizations including specialised schools and rehabilitation centres. There are some 45 of these organizations in total. The Korean Blind Union has 16 branch offices throughout the country and numbers another 140 associate offices. Again, the organization is funded by the Government.

韓國盲人聯盟是另一個視覺障礙者領導組織。其聯合了一些包含特殊學校與復健中心的各種組織。這些組織的總數有 45 個左右。韓國盲人聯盟在全國有 16 個分部，並有 140 個合署辦公室。同樣地，這個組織是由政府所出資成立。

The main tasks of the Korean Blind Union include promoting the interests of visually impaired people generally (including lobbying for necessary legislation); maintaining rehabilitation and training centres (including training in information technology); providing social welfare and support for residential users of accessible materials – this includes promotion and support for the use of access technologies such as screen readers and text to speech synthesisers.

韓國盲人聯盟的主要任務包含促進整體視覺障礙者利益（含遊說必要立法）；維持復健與訓練中心（含資訊科技訓練）；對居民使用者提供可取用資料的社會福利及支援—包含推廣支援使用螢幕讀取程式及文書語音合成等取用科技。

Like other organizations in the field it encounters numerous difficulties in an area where digital technology should greatly facilitate its work. The availability of source text in digital formats should greatly expedite the process of conversion into accessible formats. Too often however the use of technical protection measures such as encryption impede the process. Even where the source text is not encrypted the original digital formatting and structuring of the text may not be conducive to efficient format conversion.

如同這個領域的其他組織，在數位科技應大幅便利業務的範圍中，它遭遇了諸多困難。數位格式的來源文件，應可大幅促進可取用格式的轉換過程。不過，如加密等技

術保護措施的使用，往往阻礙了這個過程。即使來源文件並未加密，原初文件的數位格式化及結構化，也可能不利於格式轉換的效率。

As an organization, the Korean Blind Union is constantly exploring relevant assistive technologies. It also places great importance on copyright law and lobbies extensively to promote provisions in the law to support the interests of its members.

身為一個組織，韓國盲人聯盟經常在探索相關的輔助性科技。它也極為重視著作權法，並且廣泛遊說推動支持會員利益的著作權法律規定。

The Korean Braille Library was established by a private individual in 1969; it receives some financial support from Government. Traditionally, its function has been to make literary works available in braille for print disabled readers in the Republic of Korea: approximately 10% of the population.

韓國點字圖書館是在 1969 年由一位私人所創立；它接受了政府某些財務補助。傳統上，它的職能是為韓國無法閱讀印刷本讀者將文學性著作製成點字書；而這些人佔總人口約 10%。

The use of braille for the Korean language is a complex process and many visually impaired people do not like to use it. The Korean Braille Library is therefore at the forefront of efforts to adopt alternative technologies. It is the leading promoter of the DAISY format in the Republic of Korea. It is seeking to employ technologies for converting traditional formats into the DAISY format which supports effective navigation of documents as well as compatibility with access technologies such as screen readers and text to speech synthesis tools.

使用韓文點字書是一個困難的過程，而許多視覺障礙者並不樂於使用。韓文點字圖書館因而成為採用替代性科技的前鋒。在韓國，它是 DAISY 格式的領導推動者。它正在尋求運用科技將傳統格式轉換為 DAISY 格式，以支援有效率的文件導覽，並相容諸如螢幕讀取程式及文書語音合成工具等取用科技。

The Korean Braille Library is concerned that current provisions of the copyright law do not support these advanced uses of conversion technology; it is lobbying to introduce appropriate amendments.

韓國點字圖書館所關心的是，當前的著作權法規定並不支持這些先進轉換科技的使用；它正在遊說引進適當的修訂條款。

The one exception to the general non-application of advanced technology in the interests of visually impaired people is the development of access technology. One example is the Voiceye Technology developed by the ADTrust Company. The technology works by converting digital files of text or, for example, music scores, into graphic representations with similar characteristics to bar codes. These graphic representations can then be scanned and stored in dedicated playback devices which can then deliver audible output of the text. Further information about this technology is available at <<http://www.adinc.co.kr/eng-products/main.asp>>.

關於整體上無法使用先進科技造福視覺障礙者，其唯一例外是取用科技的發展。一個例子是 ADTrust 公司所發展的 Voiceye 科技。這項科技的作用，是將數位文件檔案或樂譜轉換為類似條碼的圖形。以專用的播放設備掃描並儲存這些圖形，便能輸出文件的聲音。關於這項科技的進一步資訊，可見 <<http://www.adinc.co.kr/eng-products/main.asp>>.

3. *Spain*  
西班牙

The current Spanish Copyright Law, approved by Royal Legislative Decree 1/1996 of April 12 1996, provides in Article 31(3) as follows:

當前的西班牙著作權法，是由 1996 年 4 月 12 日的皇家立法命令所頒佈，其第 31 條 3 項規定如下：

“Published works may be reproduced without the author’s authorisation in the following cases:

「於以下情形，得未經作者授權而重製已出版之著作：

3. for the private use of visually impaired people provided that the reproduction makes use of the Braille system or another specific process and that the copies are not used for profit generating purposes.”

3. 為視覺障礙者私人之用，使用點字系統或其他特定程序進行重製，且非以營利為目的使用該重製物。」

The European Union Copyright Directive of 2001 permits Member States to provide an exception to the reproduction right, to the communication right and the distribution right in the case of uses for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability.

在為了障礙者利益而使用的情形，於特定障礙所需範圍內，與障礙直接相關且非商業性時，2001 年歐洲聯盟著作權指令許可會員國針對重製權、傳播權及散布權制訂例外規定。<sup>33</sup>

Draft legislation amending the Copyright Law in order to implement the Copyright Directive is currently being debated in the Parliament.

為執行著作權指令的著作權法修訂草案，目前正在國會討論中。

A proposed new version of Article 31 provides in part as follows:

著作權法第 31 條的草案版本部分內容如下：

“Article 31bis(2). Communication to the public, reproduction and distribution are not subject to authorization when these acts are undertaken for the benefit of people with a disability and are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability.”

第 31 條之 2. 為障礙者之利益，於特定障礙所需範圍內，與障礙直接相關且非商業性時，向公眾傳播、重製及散布等行為不須獲得授權。

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<sup>33</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society available at <[http://europa.eu.int/information\\_society/eeurope/2005/all\\_about/digital\\_rights\\_man/doc/directive\\_copyright\\_en.pdf](http://europa.eu.int/information_society/eeurope/2005/all_about/digital_rights_man/doc/directive_copyright_en.pdf)>.

ONCE (National Organization of Spanish Blind Persons) is the only agency that produces materials for blind and visually impaired persons in Spain. Its service is centralised and co-ordinated by two production centres, one in Madrid, and another one in Barcelona.

西班牙盲人全國組織(National Organization of Spanish Blind Persons, ONCE)<sup>34</sup>是西班牙唯一生產盲人與視覺障礙者資料的機構。它的服務是由二個生產中心集中協調辦理，其一位於馬德里，另一位於巴塞隆納。

ONCE is a non-governmental organization, self-funded by the selling of an exclusive lottery. None of the ONCE services (like book production) are funded in any form by the government.

ONCE 是一個非政府組織，財源來自於銷售獨家彩券。ONCE 的服務（如生產書籍）都未受到任何形式的政府補助。

#### 4. *United Kingdom*

##### *英國*

The Copyright (Visually Impaired Persons) Act 2002, which came into force on 31 October, 2003, amends the Copyright Designs and Patents Act 1988. Its purpose was to remove the key difficulty experienced by those seeking to make information accessible whilst preserving the legitimate rights of authors and others. The Act introduces an exception to copyright law which, in general terms, removes the need for anyone to obtain permission from the rights holder to produce an “accessible copy.”

自 2003 年 10 月生效的 2002 年（視覺障礙者）著作權法，修訂了 1988 年著作權、設計暨專利法。該法目的在於消除製作可取用資訊者曾經歷的主要困難，並同時維持作者與其他人的正當權利。該法引進了著作權法的一個例外規定，以一般性的條款使任何生產「可取用重製物」者不須獲得權利人的許可。

The new law contains a functional definition of visual impairment.

這項新法包含了對於視障的功能性定義。

“A visually impaired person” is defined broadly, as a person

「視覺障礙者」採廣義定義，即

(a) who is blind;

(a) 盲人；

(b) who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without a special level or kind of light;

(b) 視覺功能受損，使用矯正鏡片仍無法回復至不需特殊程度或種類光線而正常閱讀者；

(c) who is unable, through physical disability, to hold or manipulate a book; or

(c) 因生理障礙無法掌握或操持書籍者；或

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<sup>34</sup> Information available at <<http://www.once.es/vocacion/webenglish/default.htm>>.

(d) who is unable, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading.”

(d) 因生理障礙視線無法集中或移動眼球正常閱讀者。」

The Act focuses on accessibility rather than specific formats. “An accessible copy” is defined as “a version which provides for a visually impaired person improved access to the work.” Furthermore, “an accessible copy may include facilities for navigating around the version of the copyright work.” It therefore covers hard and soft copies – i.e., Braille, audio, e-text, large print, etc.

該法的焦點在於可取用性，而非特定的格式。「可取用重製物」(An accessible copy)之定義為「改善視覺障礙者取用著作的版本」。此外，「可取用重製物」得包含受著作權保護著作之相關導覽設施。因此包含了實體與軟體重製物－例如點字書、有聲書、電子書、大字體書等等。

The Works Covered include any literary, dramatic, artistic or musical work not accessible to a visually impaired person in its original form. “Musical work” refers to sheet music, not to performed or recorded music. Databases are expressly excluded.

所涵蓋之著作，包含任何視覺障礙者原本無法取用的文學、戲劇、藝術或音樂著作。「音樂著作」指的是紙張樂譜，而非演奏或錄音。資料庫則受到明文排除。

There are three core provisions to the exception:

這項例外規定有三個核心規定：

- A provision enabling a visually impaired person to make an accessible copy of a work;
- 使視覺障礙者得製作一件著作可取用重製物之規定；
- A provision enabling certain approved bodies to make multiple accessible copies of a work for visually impaired persons;
- 使特定受核准者得為視覺障礙者製作著作多數可取用重製物之規定；
- A provision enabling such approved bodies to hold intermediate copies of works, being copies necessarily created during the making of accessible copies.
- 使此等受核准者得持有可取用重製物製作過程中必要中間重製物 (intermediate copies)之規定。

“A complicated and poorly drafted regime” governs the creation and use of accessible versions by individuals. A visually impaired person can make, or ask anyone to make for her, a single accessible copy of any work in her “lawful possession” for “lawful use.” This can cover any work purchased, given or lent, or that is held in a library that the visually impaired person is eligible to use. It covers material published commercially but also other material made public, such as dissertations lodged in a library.

「一個繁複而制訂不良的體制」<sup>35</sup>規範了個人製作及使用的可取用版本。一位視覺障礙者得為「合法使用」而製作、或請人代為製作一件個人「合法持有」的可取用重製物。這涵蓋了任何經由購買、贈與或租賃而持有的著作，或圖書館中視覺障礙者有資格使用的著作。其包含了商業性出版的資料，以及其他公開資料，如圖書館收藏的學位論文。

An accessible copy can be passed to others who qualify as “visually impaired”, to the same extent as with a print copy, as long as the printed copy is passed with it. Equally, the original and accessible versions can be passed back to a librarian or teacher, who could later issue them to another eligible person.

一件可取用重製物得轉讓予其他合格「視障」者，但必須連同印刷重製物一併移轉。同樣地，原件版本與可取用版本得轉讓予圖書館館長或教師，他們嗣後可將這些版本交給另一位合格者。

The governing principle is that the original print copy remains with any accessible versions, so that only one person can “read” the work at any one time, as with the print version. The problem with this approach is that accessible versions may pass in and out of infringing copy status depending on the whether the version is held in association with the “master copy.”

這個規範原則是使原始印刷重製物(original print copy)與任何可取用重製物保持連結，因此任何時間都只有一個人能持有印刷重製物以「閱讀」該著作。這個方式的問題是，可取用版本依其與「原重製物」(master copy)的連結程度，而可能反覆構成或不構成違法侵權重製物的地位。

The exception does not apply if an equivalent accessible copy is already available commercially. The accessible copy must carry “sufficient acknowledgement” of its source, such as title, author, and edition. It must carry wording to indicate that it has been created under the terms of Section 31A of the Copyright, Designs and Patents Act 1988 as amended by the Copyright (Visually Impaired Persons) Act 2002.

如果相等的可取用重製物已經有商業發行，則這項例外規定便不適用。可取用重製物必須「充分記載」來源出處，例如書名、作者、版本等等。其必須註明根據 2002 年（視覺障礙者）著作權法所修訂之 1988 年著作權、設計暨專利法第 31A。

Multiple (two or more) accessible copies can be made by any not-for-profit body and any educational establishment. The Act refers to these as “approved bodies,” but no approval process is specified. Generally, files for producing accessible copies, known as intermediate copies, can be transferred between one approved body and another. However, an educational establishment has, under the Act, to ensure that copies will only be used for its own educational purposes.

任何非營利機構或教育事業，得製作多數（二份或更多）的可取用重製物。本法將這些機構稱為「受核准者」，但是並未規定核准程序。大體上，用於生產可取用重製物的檔案，即中間重製物，得在受核准者之間相互移轉。不過，根據本法，教育事業必須確保該重製物僅在教育目的內使用。

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Garnett, Kevin; James, Jonathan and Davies, Gillian: Copinger and Skone James on Copyright, 15th Edition, Sweet & Maxwell, 2005, pp. 508.

The exception covers any “commercially published” item of which the approved body has “lawful possession.” Thus they may have bought or borrowed the original. (Note that under this multiple copy exception, the original has to be published commercially, whereas for the personal use exception, the original has only to be “a work” or “published”).

這項例外規定涵蓋受核准者「合法持有」之任何「商業性出版」品。因此機構得以購買或借用原始出版品。（根據這項多數重製物例外規定，原始出版品必須為商業性出版品，而在個人使用例外規定方面，原始出版品只需為「著作」或「出版」品。）

As with personal copies, the exception does not apply if an equivalent accessible copy is already available commercially; and the accessible copy must carry “sufficient acknowledgement” of its source, such as title, author, and edition.

關於個人重製物，如果已經有商業性出版的相等可取用重製物，則這項例外規定不適用；而可取用重製物必須「充分記載」來源出處，例如書名、作者、版本等等。

It must carry wording to indicate that it has been created under the terms of Section 31B of the Copyright, Designs and Patents Act, 1988, as amended by the Copyright (Visually Impaired Persons) Act 2002. The rights holder must still be notified retrospectively that the accessible copies have been produced and distributed.

其必須註明，其製作係根據 2002 年（視覺障礙者）著作權法所修訂之 1988 年著作權、設計暨專利法第 31 條 B。關於可取用重製物已經生產與散布，權利人仍必須在事後接受通知。

Records must be kept of titles and formats produced, and of the approved body’s customers. These records must be available for inspection by the copyright owner on request.

關於書名、所生產格式，以及受核准者之消費者，必須保留記錄。這些記錄必須應著作權人之請求提供檢查。

### Licensing schemes

#### 授權架構

The Act allows for licensing schemes, drawn up by rights holder groups. Such schemes may enhance the Act’s provisions in respect of the production of multiple copies, but cannot detract from the basic rights conferred in the Act.

本法允許由著作權人團體擬定授權架構。此等架構得加強本法關於生產多數重製物之規定，但不得減損本法賦予之基本權利。

If a licensing scheme exists covering the type of material or the formats involved, a licence must be taken out and its terms must be complied with.

如果授權架構涵蓋本法規定之資料類型或格式，則必須獲得許可執照，並遵守執照條款。

When the Act came into force, two licensing schemes had been notified, one under the auspices of the Copyright Licensing Agency (CLA) and one under those of the Music Publishers Association (MPA).

當本法生效時，已有二件授權架構申報，一件由著作權授權仲介團體(Copyright Licensing Agency, CLA)所申請，另一件由音樂出版商協會(Music Publishers Association, MPA)所申請。



Generally speaking, these schemes extend or simplify the exceptions conferred by the Act. For example, instead of notifying each individual rights holder, there is only a requirement to notify REVEAL in the case of the CLA licence or MPA in the case of theirs.

一般而言，這些方案擴充或簡化了本法的例外規定。例如，在 CLA 或 MPA 的授權情形，只須通知 REVEAL<sup>36</sup>即可，而不須通知個別權利人。

Organizations such as schools, colleges and libraries who already hold CLA licenses and who only distribute copies to their own students will be able to have an extension to their existing license.

諸如學校、學院及圖書館等已擁有 CLA 授權且僅對於其學生散布重製物的組織，得延展既有的授權。

Schemes, once notified to the Secretary of State, are in force until or unless deemed in the courts to be “unreasonable.”

一旦授權架構向國務大臣(Secretary of State)通報，則發生效力，直到或除非法院認定其「不合理」。

## 5. *United States of America*

### 美國

The free national library program of reading materials for visually handicapped adults administered by the National Library Service for the Blind and Physically Handicapped (NLS), Library of Congress, was established by an act of Congress in 1931. The program was expanded in 1952 to include blind children, in 1962 to include music materials, and in 1966 to include individuals with physical impairments that prevent the reading of standard print.

國會圖書館的盲人與殘障者國家圖書館服務(National Library Service for the Blind and Physically Handicapped, NLS) 是由 1931 年的國會立法所設立，負責掌理成年視覺障礙者閱讀資料的國家自由圖書館計畫(free national library program)。這項計畫在 1952

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<sup>36</sup> Revealweb <<http://www.revealweb.org.uk>> is a web based catalogue bringing together information about available titles produced in accessible formats from a wide range of organisations. Revealweb is intended for use by visually impaired people and their intermediaries. Revealweb will :

- Find books available in Braille, moon, audio books and digital talking books, tactile diagrams and large print ;
- Find titles currently in production in an accessible format to avoid duplication;
- Find who produces, loans or sells accessible material; and
- Act as the copyright notification register.

Revealweb <<http://www.revealweb.org.uk>>是以網路為基礎的目錄系統，收集由廣泛來源組織所生產的可取用格式資料。Revealweb 是由視覺障礙者及其中介者所使用。Revealweb 的工作是：

- 尋找點字書、有聲書、數位有聲書，以及觸覺圖表書籍與大字體書籍；
- 尋找目前生產中的可近用格式資料，以避免重複；
- 尋找可近用材料的生產者、出借者或銷售者；且
- 擔任著作權通知註冊者。

年擴充而納入盲人兒童，於 1962 年納入音樂資料，而於 1966 年納入因生理傷殘而無法閱讀標準印刷本之人。

From the beginning, this program was dependent upon the cooperation of authors and publishers, who granted NLS permission to select and reproduce in special formats copyrighted works without royalty. Although many factors influence the length of time it takes to make a print book accessible in a specialized format, the period required to obtain permission from the copyright holder has sometimes been significant.

自這項計畫的開始，便依賴於作者與出版商的合作，由他們許可 NLS 得不支付權利金，而選擇有著作權的著作並重製成特殊格式。將一本印刷書籍製作成可取用的特殊格式，其耗時長短牽涉許多影響因素，而由著作權利人獲得許可的所需時間，有時候佔了相當大的份量。

### Public Law 104-197

On July 29, 1996, Congress approved H.R. 3754, introduced by Senator John H. Chafee (R-R.I.), that provides for an exemption affecting the NLS program. On September 16, 1996, the bill was signed into law by President Clinton.

於 1996 年 7 月 29 日，國會通過了夏菲(John H. Chafee)參議員所提出的 H.R. 3754 法案，這項法案規定了影響 NLS 計畫的一個例外規定。於 1996 年 9 月 16 日，這項法案經柯林頓總統簽署而成為法律。

The Chafee Amendment adds section 121 to the U.S. Copyright Law, establishing a limitation on the exclusive rights in copyrighted works. The amendment allows authorized entities to reproduce or distribute copies or phonorecords of previously published non-dramatic literary works in specialized formats exclusively for use by blind or other persons with disabilities.

這項夏菲增修條款加進了美國著作權法 121 條，建立了有著作權作品專屬權的一個限制規定。針對已出版之非戲劇文學著作(non-dramatic literary works)，這項增修條款允許獲得授權者重製或散布盲人或其他有障礙者專用的特殊格式重製物或唱片。

The exemption covers all nondramatic literary works protected by copyright regardless of when they were first published, but reproduction and distribution under the exemption must take place on or after September 16, 1996, the effective date of the amendment.

這項例外規定涵蓋一切著作權所保護的非戲劇文學著作，適用於任何時間首次出版著作，但是重製與散布，則限於這項增修條款生效之 1996 年 9 月 16 日起或之後。

The new exemption covers “nondramatic literary works”; section 101 includes “periodicals” within the definition of “literary works.”

這項新例外規定涵蓋「非戲劇文學著作」，而美國著作權法第 101 條文學著作的定義包含了「期刊」(periodicals)。

The exemption defines “specialized format” as “braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities.” Works reproduced in large print are, therefore, not included under the exemption.

這項例外規定將「特殊格式」(specialized format) 定義為「盲人或其他有障礙者專用之點字、聲音或數位文件」。因此，放大字體所重製著作不包含在這項例外規定中。

The amendment defines and limits “authorized entity” to “a nonprofit organization or a governmental agency that has a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs of blind or other persons with disabilities.” A “nonprofit organization” is understood to mean an organization that has been granted nonprofit tax exemption under section 501(c)(3) of the Internal Revenue Code.

這項增修條款將「獲得授權者」(authorized entity)限縮定義於「對盲人或其他有障礙者提供訓練、教育，或適應性閱讀或資訊取用需要等相關特殊服務，為主要業務之非營利組織或政府機關」。「非營利組織」意指根據美國國稅法 501(c)(3)獲得非營利免稅之組織。

To the extent that authorized agencies and organizations use or delegate authority to volunteers, special education teachers, and commercial producers under government contract to produce and distribute works under the exemption, those activities appear to be fully covered by the exemption. Such individuals can be said to be agents of authorised entities and are, therefore, acting under implied authority.

獲得授權之機關與組織自行使用，或委任志願服務者、特殊教育教師使用，以及依本項例外規定根據政府契約而生產、散布著作之製造商，在以上限度內的這些行為，看起來能夠由本例外規定所完全涵蓋。此等個人能夠解釋為代理人或是獲得授權者，因而是依據默示授權而行為。

Section 121 has two notice requirements; it provides that the copies or phonorecords produced under the exemption shall (1) “bear a notice that any further reproduction or distribution in a format other than a specialized format is an infringement,” and (2) “include a copyright notice identifying the copyright owner and date of the original publication.”

美國著作權法第 121 條有二個聲明要求；規定根據本例外規定生產之重製物或唱片應(1)「聲明生產或散布非特殊格式構成侵權行為」，以及(2)「包含著作權聲明，以標示著作權人與原出版日期」。

Case study: Bookshare.org

案例研究：Bookshare.org

In the United States both the National Library Service for the Blind and Physically Handicapped of the Library of Congress (NLS), and Recording for the Blind and Dyslexic (RFB&D), offer high quality digital book services. Contract narrators at NLS and volunteers at RFB&D record the audio books. The cost per book is quite high because of quality control requirements and this limits production. NLS has a server providing roughly 4700 books in the Braille BRF format via the Internet. RFB&D launched their digital program by making 6000 DAISY formatted audio books available on CR-ROMs in September 2002.

盲人與殘障者國家圖書館服務(NLS)，以及盲人與閱讀困難者記錄(Recording for the Blind and Dyslexic, RFB&D)，都提供了高品質的數位書籍服務。NLS 聘請的旁白者及 RFB&D 的志願服務者錄製了這些有聲書。由於品質管制的要求，因此每一本書的成本相當高，而限制了生產量。經由網際網路，NLS 的伺服器提供了大約 4700 本的 BRF 格式點字書。於 2002 年 9 月，RFB&D 啟動了他們的數位計畫，以 CR-ROMs 製作了 6000 本 DAISY 格式有聲書。

Bookshare.org, an organization based in Palo Alto, California, aims to provide a vast library of low cost scanned books instead of a small library of high quality digital books. It is an online community that allows users with print disabilities to legally share books.

Bookshare.org 是一個位在加州 Palo Alto 的組織，宗旨是對多數圖書館提供低成本的掃描書籍，而不是對少數圖書館提供高品質數位書籍。它是一個線上社群，使有閱讀印刷本障礙的讀者可以合法分享書籍。

Bookshare.org and its operations are specifically facilitated by section 121 of the United States copyright law:

Bookshare.org 及其運作，是由美國著作權法第 121 條所促成：

“It is not an infringement of copyright for an authorized entity to reproduce or to distribute copies of a previously published, nondramatic literary work if such copies are reproduced or distributed in specialized formats exclusively for use by blind or other persons with disabilities.”

「對於已出版之非戲劇文學著作，獲得授權者重製或散布盲人或其他有障礙者專用的特殊格式重製物，不構成侵害著作權。」

In practice this involves the following requirements which are at the heart of the Bookshare.org modus operandi:

在實務上，以下要件是 Bookshare.org 作法的核心：

- Copies of works may not be reproduced or distributed in a format other than a specialised format exclusively for use by blind or other persons with disabilities.
- 所重製或散佈的著作重製物，不得是非盲人或其他有障礙者專用的特殊格式。
- The copies must bear a notice that any further reproduction or distribution in a format other than a specialised format is an infringement.

- 該重製物必須聲明生產或散布非特殊格式構成侵權行為。
- The copies must include a copyright notice identifying the copyright owner and the date of the original publication.
- 該重製物必須包含著作權聲明，以標示著作權人與原出版日期。
- “Specialized formats” means Braille, audio, or digital text which is exclusively intended for use by blind or other persons with disabilities.
- 「特殊格式」意指盲人或其他有障礙者專用的點字、聲音、或數位文件。

As a project of the Benetech nonprofit organization, Bookshare.org meets the definition of an “authorized entity” under section 121.

Bookshare.org 是非營利組織 Benetech 的一項計畫，因此符合著作權法第 121 條「獲得授權者」的定義。

The Bookshare.org offerings are based on electronic Braille and digital talking book standards, and copyright law recognizes these digital formats as specialized formats for the disabled. Braille books and four-track audio cassettes are the most commonly recognized specialised formats in use over the past thirty years.

Bookshare.org 所提供的資料，是基於電子點字書及數位有聲書的標準，而著作權法認可這些數位格式屬於有障礙者專用的特殊格式。在過去三十年來，點字書及四軌錄音帶是公認最常用的特殊格式。

In addition, some publishers and authors have provided permission for books and other publications they provide in digital form to be made available in accessible digital formats to individuals with qualifying disabilities, either within the United States or worldwide.

此外，不論在美國或全世界，某些出版商與作者對他們的數位書籍與出版品，已經同意製成合格障礙者可取用的格式。

Although the requirements of the copyright law exception are quite clear, Bookshare.org has gone beyond these requirements to ensure broad support for the project. It works with the Association of American Publishers, the main industry group, to address publishers’ concerns in the design of the service. Bookshare.org also works with the leading disability organizations, including the Library of Congress and Recording for the Blind & Dyslexic. With extensive input from consumers, publishers and leading organizations, a plan for Bookshare.org has been established that can be supported by a broad array of interests.

儘管著作權法例外規定的要求相當明確，Bookshare.org 不僅僅以符合法律規定為滿足，而進一步尋求廣泛支持。它與主要產業團體美國出版商協會(Association of American Publishers)合作，以在設計這項服務時考量出版商的顧慮。Bookshare.org 也與主要的有障礙者組織合作，包括國會圖書館與盲人與閱讀困難者記錄。基於來自消費者、出版商及主要組織的意見參與，Bookshare.org 計畫便能在各種利益立場的支持下成立。

Bookshare.org works extensively to ensure that its collection and its users abide by

the law in order to maximise the benefits for the disability community and minimise the risk of abuse. Bookshare.org controls the format of the materials that it provides and ensures the appropriate copyright notices are in its digital publications. Access is restricted to disabled individuals and other authorized entities. Digital rights management helps to ensure that access remains limited to those covered by the copyright law exemption.

Bookshare.org 進行多方努力，確保它的館藏及使用者合乎法律，以追求有障礙者社群的最大利益，使濫用的風險減到最少。Bookshare.org 控制了所提供資料的格式，並確保它的數位出版品上有適當的著作權聲明。資料的取用只限於有障礙者與其他獲得授權者。數位權利管理有助於確保取用僅限於著作權例外規定的範圍。

The security strategy includes seven elements:

安全策略包含七個要素：

#### Qualified Users

合格使用者

Only blind or other persons with disabilities that affect their ability to access print are permitted to download copyrighted books. Bookshare.org follows the procedures and standards for access to books that is now in use by Recording for the Blind and Dyslexic (RFB&D). A Bookshare.org user must register and supply a signed certification completed by an appropriate professional in the field of disability services education, medicine, psychology or a related area. The certifier must be a recognized expert who can attest to the physical basis that limits the applicant's use of standard print. Appropriate certifying experts may differ from disability to disability. For example, in the case of blindness and visual impairments, an appropriate certifier may be a physician, ophthalmologist, or optometrist.

只有盲人或因爲障礙影響閱讀印刷本的人，才能被許可下載受著作權保護著作。Bookshare.org 遵循了盲人與閱讀困難者記錄(RFB&D)目前使用的取用程序與標準。Bookshare.org 的使用者必須登記註冊，並且提出障礙服務教育、醫學、心理學或相關領域適當專家的簽名認證。認證者必須是被承認的專家，能檢查限制申請者使用標準印刷本的生理狀況。適當的認證專家可能因各種障礙情形而異。例如，以盲人及視障爲例，適當認證者可能是醫師、眼科專家或驗光師。

In the case of a perceptual disability, a neurologist, learning disability specialist, or a psychologist with a background in learning disabilities may be the most qualified certifying professional. In addition, since any United States resident who has previously submitted their proof of disability to NLS (National Library Service for the Blind and Physically Handicapped of the Library of Congress) would qualify under the law, Bookshare.org has a cooperative agreement where NLS will certify that they have such proof already.

以知覺障礙爲例，神經科醫師、學習障礙專家、或有學習障礙背景的心理學家，可能是最有資格的認證專家。此外，曾經向 NLS（國會圖書館的盲人與殘障者國家圖書館服務）提出障礙證明的美國居民，根據著作權法屬於符合資格，關於在 NLS 已經提出證明者，Bookshare.org 與 NLS 有合作協議。

#### Contractual Agreement

契約協議

All Bookshare.org users have to agree to terms of use that forbid violation of the

copyright law restrictions on redistribution and use of copyrighted material. Users who violate these terms lose their access to Bookshare.org and may suffer other legal consequences as a result of their actions.

所有的 Bookshare.org 使用者必須同意使用條款，而不得違反著作權法關於有著作權資料的散布及使用限制。違反這些條款的使用者，即無法取用 Bookshare.org，而且可能因此承擔其他法律後果。

### Copyright Notice

#### 著作權聲明

In order to comply with the copyright law regulating the provision of accessible books to people with disabilities (section 121), Bookshare.org ensures that all copyrighted materials bear a notice that any further reproduction or distribution in a format other than a specialised format is an infringement. Such content includes a copyright notice identifying the copyright owner and the date of the original publication.

爲了符合向有障礙者提供可取用書籍的著作權法規定（第 121 條），Bookshare.org 會確保所有的有著作權資料上附有聲明，表示任何特殊格式之外的重製或散布構成侵害著作權。此等內容包含了標示著作權人及原出版日期之著作權聲明。

In addition, there is other language reminding users of their obligations to use this material only as permitted by their agreements with Bookshare.org and the law. It also informs people who are not Bookshare.org users that their possession of a Bookshare.org digital book is a violation of the copyright law and that they should erase such a book without using or copying it.

此外，還有其他文字提醒使用者義務，惟有在 Bookshare.org 協議及法律許可下，才能使用這項資料。它也告知不屬於 Bookshare.org 使用者的其他人，其持有 Bookshare.org 數位書籍構成侵害著作權，且必須刪除這本書，而不得使用或進行備份。

### Encryption

#### 加密

Bookshare.org encrypts a requested book for a given user. A custom decryption program is provided to each Bookshare.org customer. This program decrypts content delivered for that user only and saves the decrypted content to the specified DAISY or BRF (Braille) file.

Bookshare.org 會針對每一位特定使用者索取的書籍進行加密。每一位 Bookshare.org 消費者會得到一種依人訂製的解密程式。這個程式只會針對傳送到該使用者的內容進行解密，而將解密內容儲存成特定的 DAISY 或 BRF（點字）檔案。

### Fingerprint

#### 指紋

All copyrighted material downloaded is fingerprinted as part of the encryption process so that the identity of the authorized user is contained within the decrypted material in a difficult to find fashion. This way, if a user illegally redistributes material downloaded from Bookshare.org, it is possible to confirm both that the materials came from Bookshare.org and which user was responsible.

所有提供下載的有著作權資料，在加密過程中都有指紋紀錄，而且以難以發現的方式，將被授權使用者的身分包含在加密資料中。因此，如果某一位使用者不法散布來自 Bookshare.org 的資料，則能夠確認這份資料來自 Bookshare.org，以及哪一位使用者應該負責。

### Security Database

#### 安全資料庫

All transaction, encryption codes and fingerprints are stored in a database enabling Bookshare.org to track any abuse to the source. Users are informed of the existence of this database as part of Bookshare.org's privacy program.

所有的交易、密碼與指紋，都儲存在資料庫中，使 Bookshare.org 能夠追蹤任何的濫用源頭。使用者會被告知這個資料庫的存在，這是 Bookshare.org 隱私方案的內容之一。

### Security Watch Program

#### 安全監督方案

A security program monitors all transactions and will suspend any user whose account exhibits any excessive downloading of content or other unusual activity. This program will build usage profiles and over time will be strengthened through experience to flag potential abuse.

有一項安全方案監督了所有的交易，如果發現了某一個使用者帳號有內容過度下載或其他不正常活動情形，則會加以停權。這項方案將會建立用量檔案，而且會著經驗而逐漸增強標示潛在濫用的能力。

Individual subscriptions to Bookshare.org enable “all-you-can-read” access to books in easy-to-use digital formats for a full year. Subscriptions cost 50 dollars plus a 25 dollar sign-up fee the first year.

Bookshare.org 的個人註冊者，能夠全年以「完全開放閱讀」(all-you-can-read) 方式取用簡易使用的數位格式書籍。註冊費用是 50 美元，外加第一年 25 美元的登入費。

Books and periodicals from Bookshare.org contain the full text of the publication (not pre-recorded audio) that can be read with the adaptive technology of the reader's choice. A talking software application is included with membership, providing members with one option for reading the books. The publications are also available in digital Braille.

Bookshare.org 的書籍與刊物，包含了出版品的全文（不含預先錄製的聲音），而能夠以讀者選用的調整科技加以閱讀。會員資格中包括了一套發音軟體程式，提供了會員閱讀書籍的一個選項。這些出版品也有數位點字的版本。

Access to the full collection of copyrighted books and periodicals is only available to current Bookshare.org subscribers. By subscribing, users are able to read books, newspapers, and magazines that are not available from other accessible material providers.

完全取用這些有著作權書籍與刊物，僅限於目前 Bookshare.org 的註冊者。經由註冊，使用者得以閱讀其他可取用資料供應者所沒有的書籍、報紙、雜誌。

As part of the subscription, every member can download talking software that will



read material in the DAISY digital talking book format. The Victor Reader Soft DAISY player is a software program for PCs that enables users to navigate easily by paragraph and pages through the digital books and bookmark locations to return to at a later time. It has built in text-to-speech that can read the text aloud. The Victor Reader Soft, Bookshare.org Edition, will only read DAISY material downloaded from Bookshare.org.

在註冊過程中，每一位會員能夠下載發音軟體，以閱讀 DAISY 數位有聲書格式的資料。維克特閱讀軟體(Victor Reader Soft)是 PC 電腦系統的 DAISY 的播放程式，能讓使用者輕易瀏覽數位書籍的段落與頁面，並標示書籤位置在日後返回閱讀。它內建了文書語音輸出功能以朗讀文件。Bookshare.org 版本的維克特閱讀軟體只能閱讀來自 Bookshare.org 下載的 DAISY 資料。

Bookshare.org also serves organizations such as the state, local and federal educational system, the rehabilitation system, specialised nonprofit agencies and various governmental units that provide accessible materials to people with disabilities. Schools or groups can sponsor independent access through subscriptions. Alternatively, groups accounts can be set up to enable institutional access, whereby the school downloads the book and delivers it directly to the qualified student signed up under the account.

對於有障礙者提供可取用資料的州、地區與聯邦教育系統、復健系統，專門性非營利機關，以及許多政府單位等，也是 Bookshare.org 的服務對象。學校或團體能夠藉由註冊而獲得獨立的取用管道。建立團體帳號是另一種管道，以開啓機構性的取用，使學校能下載書籍，而直接傳送到團體帳號中合格的學生。

### Bookshare.org

Bookshare.org is a web-based system supplying accessible books in digital formats. These digital formats are the NISO/DAISY XML-based format for the next generation of talking books, and the BRF format for Braille devices and printers.

Bookshare.org 是一個提供數位格式可取用書籍的網路系統。這些數位格式是下一代有聲書的 NISO/DAISY XML 格式，以及點字設備與印表機所使用的 BRF 格式。

The Bookshare.org collection is built and shaped largely by its community of members and supporters. By scanning a book to submit to the collection, a Bookshare.org volunteer or member can provide access to that book to other members.

Bookshare.org 的藏書，主要是由會員與支持者所建立及塑造。一位 Bookshare.org 的志願者或會員，可以藉由掃描一本書加入館藏，而將這本書提供其他會員取用。

Benetech, a new kind of nonprofit enterprise, is sponsoring the Bookshare.org initiative. Benetech aims to combine social activism with the powerful methods and tools of the technology community. Benetech does not give technology away, but instead develops socially beneficial and affordable products and services that are not financially attractive to for-profit companies. Benetech's origins derive from the Arkenstone project. In 1989, a group of Silicon Valley engineers and executives asked themselves a question: "Why couldn't the far-reaching power of the PC with voice synthesis be combined with scanning technology to create a usable, affordable reading machine for the blind?" The market was small and for-profit companies were not interested. Benetech was formed as a nonprofit enterprise to bridge the gap between "the possible and profitable."

Benetech 是一個新型非營利事業，贊助了 Bookshare.org 提案。Benetech 的宗旨在於結合社會行動與科技社群的有力方法及工具。Benetech 並不是放棄科技，而是發展

在財務上不吸引營利性公司，但是有益社會而且價格適當的產品與服務。Benetech 起源自 Arkenstone 計畫(Arkenstone project)。在 1989 年一群矽谷工程師與經理人問他們自己一個問題：「PC 電腦語音合成的強大威力，為何不能結合掃瞄科技，來為盲人創造使用便利而且價格適當的閱讀機器？」這個市場很狹小，而營利性的公司不感興趣。Benetech 便設立成爲一個非營利事業，以銜接「可能與獲利」(the possible and profitable)二者之間的差距。

During Arkenstone's 11 years, Benetech sold literacy products under the Arkenstone brand in more than a dozen languages to over 35,000 individuals in 60 countries. The goal from the beginning was to empower people with vision and learning disabilities to use state of the art technology to achieve independence and high performance in the workplace. During this time, 99 percent of the nonprofit's budget came from product sales.

在 Arkenstone 的 11 年來，Benetech 以 Arkenstone 的廠牌出售了 12 種語言以上的閱讀產品，遍及 60 國家中的 35000 人。一開始的目標，則是增進有視力與學習障礙者使用當前科技的能力，以在職場上達成獨立與優良表現。在這段期間內，99%的非營利經費來自於產品銷售所得。

Today, Benetech has become one of the nation's most successful examples of high technology social enterprise, using an innovative business model to achieve major social objectives in education, employment and independence. The Arkenstone product line was so successful that it was purchased by a for-profit company and was thereby assured expansion capital and sustainability. The income received from the sale of Arkenstone provided the core capital for Benetech and seed investment for Bookshare.org.

在今天，Benetech 已經成爲美國高科技社會事業最成功的例子，它使用了創新的商業模式，而達成在教育、就業與獨立上的主要社會目標。Arkenstone 的產品路線非常成功，因此已經被一所營利性公司收購，因而能夠維持資本擴張及永續經營。來自出售 Arkenstone 的收入，便提供了 Benetech 的核心資本，以及 Bookshare.org 的種子投資。

## B. Provisions relating to distance education

### 關於遠距教育的規定

#### 1. *Australia*

##### *澳洲*

The provisions that allow educational institutions to use copyright material for educational purposes without needing permission from the copyright owner, including both limitations and compulsory licence mechanisms, are contained in Parts VA and VB of the Copyright Act of Australia. Payment is made under the compulsory license provisions to Copyright Agency Limited (CAL) (for reproducing literary, dramatic, artistic and musical material), and to Screenrights (for copying from radio and TV).

允許教育機構為教育目的使用有著作權資料，而不須由著作權人許可的規定，包括限制規定與強制授權機制，包含於澳洲著作權法Parts VA與VB。根據強制授權規定，重製文學、戲劇、藝術與音樂資料的費用支付予著作權代理有限公司(Copyright Agency Limited, CAL)，而由廣播與電視製作重製物的費用支付予Screenrights。

The following is a brief overview of the most important provisions in the Act:

以下是本法最重要規定的摘要概觀：

#### Reproducing and communicating literary, dramatic, artistic and musical works.

##### 重製與傳播文學、戲劇、藝術與音樂著作

There are two schemes in the Act which deal with the reproduction of literary, dramatic, artistic and musical works by or on behalf of an educational institution for its educational purposes.

關於為教育目的，由教育機構本身或代表教育機構重製文學、戲劇、藝術與音樂著作，本法有二個架構：

The first scheme (the “Hardcopy scheme”) applies when reproductions are being made from print resources such as books, newspapers, journals and so on. This scheme covers, for example, photocopying and scanning print resources. The second scheme (referred to as the “Electronic Reproduction and Communication scheme”) applies when reproductions are being made from electronic versions of literary, dramatic, artistic and musical works. This scheme covers, for example, copying a digital file, or printing from an electronic version. This scheme also allows literary, dramatic, artistic and musical works to be communicated by or on behalf of an educational institution for its educational purposes (for example, by emailing a file to students, or by making material available to staff and students on a secure intranet site).

第一個架構（紙本重製物架構）適用於由書籍、報紙、刊物等印刷品進行重製。例如，這個架構涵蓋影印與掃描印刷品。第二個架構（電子重製與散布架構）適用於由文學、戲劇、藝術與音樂著作電子版本進行重製。例如，這個架構涵蓋重製物數位檔案，或者由電子版本列印。這個架構也允許為教育目的，由教育機構本身或代表教育機構散布文學、戲劇、藝術與音樂著作（例如，以電子郵件傳送檔案給學生，或在安全的內部網站對教員及學生提供資料）。

Both of these schemes are administered by CAL, and there are strict limits as to the amount of material that may be reproduced or communicated if commercial copies of the

work are available. There are also a number of administrative requirements which apply, particularly in relation to the “electronic use scheme”.

這二個架構都由CA所管理，如果是有商業性重製物的著作，則關於重製或散佈的資料數量有嚴格限制。尤其是關於「電子使用架構」(electronic use scheme)，也有一些適用上的行政要求。

The Hardcopy licence now includes reproductions from paper to paper and from paper to digital. It is clear that, within the copying limits, the following reproductions are within this licence scheme:

現在紙本架構包括由紙張到紙張及由紙張到數位的重製。在複製限制下，顯然以下的重製行為屬於這個授權架構：

- Scanning from paper; and
- 由紙張掃描；且
- Re-keying paper copies and storing them in a digital medium.
- 重新鍵入紙本重製物，並儲存為數位媒體。

The important element is that the original must be paper-based, therefore this licence does not permit reproductions from digital to digital – for this the new Electronic Reproduction and Communication licence is required.

重要的因素則是，原件必須是以紙本為基礎，因此這種授權不許可由數位到數位的重製—為了進行數位到數位的重製，必須獲得新型的電子重製與散佈授權。

The Electronic Reproduction and Communication licence for educational institutions deals with an original electronic work and allows educational institutions to reproduce and communicate it to their staff and students. The work must already be in an electronic form. The electronic use system varies in the different educational sectors and has been operating in Universities and Technical And Further Education (TAFE) institutions since 2002. Negotiations are currently underway to determine the form of the system to be used in Schools after 2005.

針對教育機構的電子重製與散佈授權，所處理的是電子著作原件，而允許教育機構重製電子著作，並散佈予教員及學生。著作必須已經是電子形式。電子使用系統(electronic use system)因不同教育部門而異，而自2002年起，則由大學與技術暨繼續教育(Universities and Technical And Further Education, TAFE)<sup>37</sup>等機構所運作。關於2005年之後學校中所使用的系統形式，則正在協商決定當中。

In summary, the electronic educational licence:

電子教育授權之摘要：

- Provides for the electronic reproduction of an electronic form of a work within the copying limits of the licence;
- 在授權複製的限制內，規定了電子形式著作的電子重製；
- Provides for the communication of a work in an electronic form;

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<sup>37</sup> TAFEs are technical and vocational training institutions.

TAFEs 是技術職業訓練機構。

- 規定了電子形式著作的散布；
- Provides for the educational institution and CAL to agree on matters and processes constituting an electronic use system, such as payment and the system of records to be kept for recording usage;
- 規定了教育機構與CAL所同意之電子使用系統的組成材料及程序，諸如付款及留存使用記錄的記錄系統；
- Includes literary, dramatic, artistic and musical works;
- 包括文學、戲劇、藝術及音樂著作；
- Must be used for the educational purposes of the institution.
- 必須用於機構之教育目的。

Pursuant to the terms of the licence electronic copies and electronic communications must contain the requisite copyright notice. In addition, the institution must take all reasonable steps to ensure that each communication can only be received or accessed by persons entitled to receive or access it.

依照本授權條款，電子重製物與電子散布必須包含必要的著作權聲明。此外，機構必須採取所有的合理步驟，以確保每一件散布中，僅限於有資格接收或取用者所接收或取用。

The scope of the licence in terms of the extent of copying is as follows:  
關於複製限度的授權範圍如下：

For literary and dramatic works:

關於文學及戲劇著作：

- 10% of number of words
- 著作字數10%
- All of the work, if not separately available for purchase
- 如果無法個別購買取得時，可複製著作全部
- All of the work, if not available within a reasonable period of time
- 如果無法在合理期間內取得時，可複製著作全部

For periodical publications:

關於定期性刊物：

- One article or more if of the same subject matter
- 如果是在同一客體刊物之內，可複製一篇或多篇文章

For musical works:

關於音樂著作：

- 10%
- 音樂著作內容10%
- All of the work, if not available for purchase
- 如果無法購買取得，可複製著作全部

- All of the work, if not available within a reasonable period of time
- 如果無法在合理期間內取得，可複製著作全部

For artistic works:

關於藝術著作：

- All of an artistic work
- 可複製藝術著作全部

### Copying and communicating material from TV and radio

由電視與廣播資料進行複製與傳播

A scheme in the Act, administered by Screenrights, allows educational institutions to copy material from radio and TV for their educational purposes. There are a number of administrative requirements which apply. For example, particular information needs to be marked onto hardcopy or analogue copies of material copied under the scheme, or onto the containers in which these copies are kept.

在本法中由Screenrights所管理的架構，允許教育機構為教育目的複製廣播與電視資料。這會適用一些行政上的要求。例如，在本架構下所重製的紙本或類比式重製物上，必須標示特定資訊，或者標示於這些重製物的包裝容器上。

These provisions do not, however, allow educational institutions to copy commercially produced copies of films (for example, to convert VHS to DVD).

不過，這些規定並不允許教育機構複製商業性影片的重製物（例如將VHS轉錄為DVD）。

### Additional licences for music in schools

學校中音樂的另外授權

In addition to relying on the provisions in the Copyright Act, most primary and secondary schools have an agreement with the Australasian Mechanical Copyright Owners Society (AMCOS) allowing limited photocopying of print music within the AMCOS repertoire where a copy of the music is owned by the school or a member of staff. Most primary and secondary schools also have a separate joint licence agreement with AMCOS and (ARIA) the Australian Record Industry Association, that allows them to make certain video and audio recordings of music, including recorded music. Most schools (and many other educational institutions) are also covered by a licence from the Australasian Performing Right Association (APRA) for the performance of live and recorded music.

除了依據著作權法規定之外，大多數中、小學與澳洲機械式著作權人協會(Australasian Mechanical Copyright Owners Society, AMCOS)簽有協定，於學校或教員擁有一件音樂印刷品重製物時，得有限量影印AMCOS館藏的音樂印刷品。大部分中、小學與AMCOS及澳洲錄製產業協會(Australian Record Industry Association, ARIA)有另一份聯合授權協議，使學校得錄製特定的音樂視聽著作，包括已錄製的音樂。關於現場與錄音表演，大部分學校（與許多其他教育機構）也加入了澳洲表演權利協會(Australasian Performing Right Association, APRA)的授權。

### 案例研究：澳洲 CAL – 數位教材架構

Copyright Agency Limited (CAL) is an Australian rights management company whose role is to provide a bridge between creators and users of copyright material. CAL is the principal representative of authors, journalists, visual artists, photographers and publishers as a nonexclusive licensing agent for the copying of their works by the general public.

著作權代理有限公司(Copyright Agency Limited, CAL)是一家澳洲權利管理公司，扮演著作權資料創作者與使用者之間的媒介角色。CAL 是作家、記者、視覺藝術家、攝影師與出版商的主要非專屬授權代理人，處理一般公眾複製著作的授權。

CAL provides a legal and practical method for the public, business and government to copy published works. As a single entity, CAL provides copyright clearances for hundreds of thousands of books, articles, essays and artwork. It administers the copying of print material by educational institutions, government agencies, corporations, associations, places of worship and other organizations.

CAL 提供了合法而切合實際的方式，使公眾、企業與政府能複製已出版的著作。CAL 是一個單一實體，為數以萬計的書籍、文章與藝術作品提供了著作權的交易權證。它管理了教育機構、政府機關、公司、協會、宗教禮拜會所與其他組織進行的印刷品複製。

CAL is the designated licensing agency in respect of both the statutory licensing schemes for the use of copyright works in education.

關於教育上使用受著作權保護著作的二個法定授權架構，CAL 是被指定的授權代理人。

Under the statutory licence, course material must contain no more than 10 per cent or one chapter of any publication. To comply with this restriction, teachers often have to juggle content from various sources to stay within the limits, and may sometimes omit material they would prefer to include. They may also undertake extensive and time-consuming editing of material in order to comply with the copying limits.

根據法定授權，教材不得含有任何出版品 10% 以上或一章以上的內容。為了符合這項限制，教師們往往必須從各種來源拼湊教材，以維持在法定限制之下，有時便不得不割愛他們想納入的材料。他們也可能進行繁雜耗時的教材編輯工作，以符合複製的限制。

Materials copied under the statutory licence may not be sold at a profit. This provides no incentive for educational institutions or printers to add value to the book of readings, for instance by adding their own supplementary material or by including the same material on a CD-ROM to be bundled with the book of readings.

根據法定授權所複製的資料，不得營利販售。這可以消除教育機構或印刷者對書籍或讀本進行加值的誘因，例如加入他們的補充資料，或是將相同資料放入 CD-ROM 與書籍讀本一起搭配。

The management of CAL realised the limitations of the situation and the fact that it does not always allow educational institutions to provide the most appropriate and best quality materials to their students. As a result, CAL has developed and is actively promoting a voluntary licensing scheme. Its aim is to act as a broker between publishers

and educational institutions to facilitate a more flexible and mutually beneficial system of licensing publishers' content for distribution to students. To do this, CAL offers a range of voluntary licensing schemes that are not subject to the same restrictions as the statutory licence.

CAL 的管理部門了解到實際情形的侷限，以及這些侷限下，教育機構不一定能對學生提供最適當及最佳品質教材的事實。因此，CAL 已經發展出一套合意授權架構，並正在積極推廣。它的目標在於成為出版商與教育機構之間的媒介者，以促進一套更有彈性及互利的授權系統，使出版商的內容能夠散布到學生。為了實現這個目標，CAL 提出了一些合意授權架構，而不受法定授權規定所限制。

One such scheme is the Digital Course Material (DCM) scheme, which facilitates the digital distribution of content for educational use and allows the streamlining of production and rights management under the voluntary licence. The DCM scheme and voluntary licence complement the existing statutory licence to extend the range of possibilities for educational institutions when they compile course materials.

數位教材(Digital Course Material, DCM)架構就是一套這種架構，能促成教育上使用內容的數位化散布，並允許產品串流與根據合意授權的權利管理。當教育機構編輯教材時，DCM 架構與合意授權補充了法定授權，而擴大了編輯的可能性範圍。

DCM uses Digital Object Identifier technology to automate the process of managing copyright under the voluntary licence.

DCM 使用了數位物件識別號(Digital Object Identifier, DOI)<sup>38</sup> 科技，將合意授權的著作權管理程序進行自動化。

The DCM process works as follows:

DCM 的工作程序如下：

CAL maintains a database of content information – including book chapters, journal articles and newspaper clippings – that is available through the DCM scheme. The database includes metadata about each article, similar to a library catalogue, and the DOI is used as the unique identifier, similar to ISBNs for print publications.

CAL 維護內容資訊的資料庫 – 包括書籍章節、期刊文章與新聞剪報 – 都可在 DCM 架構中取得。資料庫包含每一筆文章的後設資料(metadata)，這類似圖書館目錄，而 DOI 則用於作為獨一無二的識別號，類似於印刷出版品的 ISBN 號碼。

Publishers wishing to make content available using the voluntary licence scheme host it on their own systems, giving them full control over security. Once this content is available, publishers submit information about each unit of content to CAL's database.

使用合意授權架構的出版商想要提供內容時，是將內容存放他們自己的系統上，這可以使他們在安全性上具有充分控制力。一旦內容提供出來，出版商將內容每一單元的資訊提交到 CAL 資料庫。

Teachers then use CAL's search interface to discover, preview and access digital material. They compile the course materials and register the compilation using CAL's database. CAL negotiates with publishers to make a wide variety of content available,

<sup>38</sup>

Information available at <<http://www.doi.org>>.



but the compilations are by no means restricted to articles currently provided by publishers. Educational institutions can generate and host their own content and register it with CAL's database in the same way a publisher would. Where publishers' content is not available, CAL can act as a broker to negotiate rights to that material.

教師們則使用 CAL 搜索介面尋找、預覽並取用數位資料。他們編輯教材，並使用 CAL 資料庫登錄編輯結果。CAL 與出版商進行協商，使廣泛內容可資取得，不過編輯並不限於出版商目前提供的文章。教育機構也能夠如同出版商一樣，在 CAL 資料庫中新增、存放與登錄他們自己的內容。於出版商無提供資料的情形下，CAL 能夠作為媒介者，針對該資料的權利進行協商。

The digital content – usually in Adobe Portable Document Format (PDF) – can be downloaded from the publishers' servers into the educational institution's document repository. The printer can print the compiled book of readings by adding printing instructions such as paper stock, binding and number of copies.

數位內容通常是 Adobe 可攜式文件格式(Adobe Portable Document Format, PDF)，能夠由出版商伺服器下載到教育機構的文件典藏庫。藉由加入列印指令如紙張、格式、份數，便可由印表機印出所編輯的書籍讀本。

Once in the document repository, the same content can also be made available to students online, provided they are authenticated users. If the document repository is integrated with the institution's enterprise reporting systems, copyright payments for materials printed or accessed online can be generated automatically.

一旦內容放入文件典藏庫，只要是經過認證的使用者，學生就能在線上獲得相同的內容。如果文件資料區整合了機構的企業回報系統(enterprise reporting systems)，則可以針對所列印資料或線上取用自動進行著作權付款。

A commercial trial at the Queensland Government-owned Open Learning Institute of TAFE (OLI) was one of a number CAL has undertaken to gain a better understanding of the issues involved in producing course materials using the DCM scheme under a voluntary licence. The trial at OLI was conducted between March and September 2004. The main achievements of the project were:

為更加了解合意授權下使用 DCM 架構生產教材的相關問題，CAL 曾進行了一些試驗，而在昆士蘭政府 TAFE 開放學習研究所(Open Learning Institute, OLI)的一項商業性試驗則是其中之一。OLI 的試驗執行日期是 2004 年 3 月至 9 月。本計畫的主要成就為：

- The creation of a selection of original, copyright-cleared OLI learning materials registered with DOI numbers;
- 經由 DOI 登錄號碼，創造了一些自始合於著作權的 OLI 學習材料；
  
- Registration of these materials as learning objects capable of being distributed in a variety of formats;
- 將這些材料登錄為教育學習物品，得以用多種格式加以散布；
  
- Registration at an appropriate level of granularity of selected material licensed from a third-party publisher through the CAL DCM scheme;
- 在 CAL 的 DCM 架構下，由第三者出版商獲得授權的選編材料，以適當間隔水準加以登錄；

- Registration of aggregated course packs that include the learning materials and other objects;
- 登錄累計的課程套件，包括學習材料與其他物品；
  
- Developing the capability to use DOI-registered portions of commercial publications in combination with digitised internal material to create course packs which can be printed on demand;
- 培養使用 DOI 登錄的商業出版品內容，結合數位化內部材料，創造隨選列印課程套件的能力；
  
- Developing a better understanding of the underlying issues such as metadata handling and course pack building;
- 更加理解處理後設資料及創立課程套件等根本問題；
  
- Documenting procedures and standards for implementing the DCM scheme;
- 將執行 DCM 架構的程序及標準加以成文化；
  
- An evaluation of the benefits to OLI of using the DCM scheme.
- 評估使用 DCM 架構對於 OLI 的利益。

The availability of content from publishers is a major factor in the viability and availability of this method for publishing course materials. CAL negotiated the grant of rights and release of the required files from John Wiley & Sons. The conditions of release were embedded in a contract between CAL and the OLI. These conditions included the right for OLI to print a copy and communicate a digital file to the student. Under the terms and conditions of the contract, OLI students are also permitted to print a copy of the digital file.

可否取得來自出版商的內容，是以這種方式出版教材在存續性及普及性上的一個主要因素。CAL 曾經與 John Wiley & Sons 公司協商授權及釋出所需檔案。這些釋出條件納入了 CAL 與 OLI 的契約當中。這些條件包括 OLI 列印重製物的權利，以及將數位檔案散布予學生的權利。根據契約中這些條款與條件，OLI 的學生也可以對數位檔案列印重製物。

As the designated collecting society in Australia, CAL has close relationships with several hundred domestic and international publishers. It is also proactively obtaining content for several initiatives that will take advantage of the DCM scheme. This content includes granular, rights-cleared material such as book chapters and journal articles.

CAL 身為澳洲之中指定的收集團體(collecting society)，與數百個國內及國際出版商擁有密切關係。為了幾項利用 MCM 架構的先行性計畫，它也正在前瞻性地獲取內容。內容包括合乎著作權的個別材料，如書籍章節與期刊文章。

CAL is thus expanding the base of content available under the DCM scheme with both domestic and international material. It is also seeking to obtain print and digital mandates for additional content. This trend will allow a wide range of publisher content to be delivered to consumers in a variety of print or digital formats.

以國內與國際材料，CAL 擴充了 DCM 架構下可資取得內容的基礎。它也正在尋求進一步內容的印刷與數位授權。這個趨勢將使廣泛的出版商內容，得以用多種印刷

或數位格式傳送到消費者。

CAL worked extensively with OLI staff to determine the information and financial flows involved in payment to CAL for content consumed. CAL determined that the point at which content is considered “consumed” is when students enroll in the course. The model therefore allowed OLI to design and produce content without incurring consumption costs up front.

CAL 曾與 OLI 人員廣泛合作，以決定消費內容而對 CAL 付款所涉及的資訊及財務流向。CAL 所決定的內容消費時間點，就是學生選修課程時。這個模式使 OLI 能設計與生產內容，而不至於產生事前消費成本。

CAL provided OLI with a metadata schema, which had been developed in CAL’s previous Coursepack projects. OLI registered the aggregated book of readings using this schema. CAL issued OLI with a registered DOI prefix enabling OLI to register items using identifiers generated by its internal systems. This in turn allows OLI to generate DOIs that can be processed by its financial systems and automatically account for licence costs during the production process.

CAL 提供 OLI 一套後設資料架構，這套架構是由 CAL 先前的課程套件計畫所發展出來。OLI 以這套架構登錄累計書籍讀本。CAL 發給 OLI 一個已登錄的 DOI 名稱，使 OLI 運用內部系統所創造的識別號去登錄這些項目。而這回過頭來使 OLI 創造出財務系統能處理的 DOIs，並能自動記錄生產過程中的授權費用。

When the compilation is registered in CAL’s DCM database, the process also automatically registers a DOI for the compilation and captures the appropriate metadata for each individual work included in the book of readings. This procedure is a key component of the rights management reporting process.

當編輯登錄於 CAL 的 DC 資料庫，這個登錄程序也會自動對該項編輯登錄一個 DOI，並且擷取書籍讀本當中每一個別著作的後設資料。這個程序是權利管理報告程序中的關鍵成分。

In response to publishers’ concerns, OLI contracted independent experts to review OLI’s printing processes and other file security issues. The report concluded that printing-related security at TAFE OLI was sufficient to meet the security concerns of publishers in the short-to-medium term. In the long term, printers and educational institutions will need to ensure publishers are satisfied with the security of their procedures and systems for handling copyright material.

爲了回應出版商的顧慮，OLI 聘請了一些獨立專家審查 OLI 的列印程序及其他檔案安全問題。專家報告的結論是，在 TAFE OLI 中列印相關的安全性，足以應付中短期內出版商的安全顧慮。長期而言，印刷者與教育機構必須確保出版商能夠滿意著作權資料處理程序及系統的安全性。

When the licensed material is published electronically, OLI’s web infrastructure and document management system provides a security model that means that only authenticated student users are able to access the controlled material.

當被授權材料以電子方式出版時，OLI 的網路基礎建設與文件管理系統提供了一套安全模式，只有經認證的學生使用者能夠取用這件被控制的材料。

2. *The Republic of Korea**韓國*

The Copyright Law of 1989 as amended provides for certain exceptions in relation to education. Article 23 of the law provides as follows:

1989 年增修的著作權法，規定了關於教育的特定例外規定。本法第 23 條規定如下：

“Article 23

「第 23 條

(1) A work already being made public may be reproduced in textbooks to the extent deemed necessary for the purpose of education at high schools, their equivalents or lower level schools.

(1) 為高級中學、高級中學同等學校或中、小學之教育目的，得於必要範圍內，將已公開之著作重製於教科書中。

(2) Educational institutions established by special Acts, or the Education Act, or operated by the state or local government may broadcast or reproduce a work already being made public to the extent deemed necessary for the purpose of education.

(2) 依特別法或教育法所設立，或由國家或地方政府經營之教育機構，得於教育目的必要範圍內，廣播或重製已公開之著作。

(3) A person who intends to exploit a work under Paragraphs (1) and (2) shall pay compensation to the owner of authors' economic rights as determined and announced officially by the Minister of Culture and Tourism according to the criteria for compensation prescribed under subparagraph 1 of Article 82, or shall deposit the same as prescribed by the Presidential Decree. Broadcasting or reproduction of a work done at high schools, their equivalents or lower level schools as prescribed under Paragraph (2) is not obliged to pay a compensation.”

(3) 意圖利用前二項規定之著作，應向著作財產權人支付補償金，其金額由文化旅遊部長依第 82 條第 1 項規定之補償基準認定並公告，或應寄存總統命令所規定之相同金額。於第 2 項規定，由高級中學、高級中學同等學校或中、小學所為之廣播或重製，不須支付補償金。

## Case study: the Republic of Korea

## 案例研究：韓國

There are a number of companies in the Republic of Korea which specialise in the development of DRM technologies. Two of the leading companies are Fasoo and Digicaps. 在韓國有一些專精於發展 DRM 科技的公司。Fasoo 與 Digicaps 則是二家具有領導地位的公司。

Fasoo.com, founded in 2000, set landmarks in DRM technology including the launch of the first commercial DRM services in 2000, enterprise DRM solutions in 2001, and personal DRM services in 2002.

Fasoo.com 成立於 2002 年，所樹立的 DRM 科技指標包括，於 2000 年開啓首創的商業性 DRM 服務，於 2001 年提出企業 DRM 解決方案，以及於 2002 年提出個人 DRM 服務。

Fasoo's particular focus is on security in the work place where DRM becomes essential to prevent abuse of digital content, smuggling of corporate documents, and uncontrolled exposure of private information.

職場安全是 Fasoo 的特有焦點，爲了在職場中防止濫用數位內容、盜取公司文件與私人資料外洩，DRM 成爲其中關鍵。

Fasoo's enterprise DRM solutions are now being used in more than 100 companies and the total number of users exceeds 250,000. Fasoo also provides personal DRM services for individuals and DRM services for content commerce.

Fasoo 的企業 DRM 解決方案目前用於超過 100 家公司，使用總人數超過 250,000 人。Fasoo 也提供個人 DRM 服務，以及內容商業的 DRM 服務。

Fasoo has developed a number of DRM solutions principally, as noted above, for application in the business environment. It has also partnered with the Credu company which is the leading provider of commercial distance education services in the Republic of Korea, principally for the professional market. Credu provides over 700 different learning packages on-line to some 300,000 students.

如上所述，Fasoo 基本上已經發展出一些商務環境下的 DRM 解決方案。它也和 Crdu 公司合作。在韓國商業性遠距教育服務業中，Credu 是在專業市場佔有領導地位的供應者。Credu 提供了超過 700 項不同的線上學習套件，學生約有 300,000 人。

Credu produces some of its own learning materials but also buys or licences in a large amount of material from third party suppliers: individual authors or other commercial entities. Managing the rights in the material in compliance with copyright law is therefore a major part of its operations. To this end it has adopted DRM technology developed by Fasoo to automate certain elements of the rights management process. The DRM technology is able to provide the necessary rights management functionality whether in respect of downloading or streaming learning materials to students. It is also able to capture information about student interaction with the system, an important aid in evaluating course participation.

Credu 自行生產某些教材，但是有大量教材是來自於向第三者供應商購買或取得授權：如個別作者或其他商業實體等。遵循著作權法管理教材權利，因而成爲其營業的一個主要部分。爲此，它已採用 Fasoo 發展的 DRM 科技，針對權利管理程序的特定要件進行自動化。不論是對學生提供下載或串流，這項 DRM 科技能夠提供必要的權利管理功

能。它也能擷取學生與系統互動的資訊，這對於評估課程參與是一個重要幫助。

Credu runs its own secure authentication system, relying on credentials issued by the local entity of which the student is a member: her company or educational institution.

Credu 經營自己的安全認證系統，這套系統的運作，是依賴於地區性實體如公司或教育機構所發給學生的證明。

Digicaps, another leading developer of DRM technology offers a range of DRM technologies including mobile solutions, eBook solutions and general media solutions. More information can be found at <<http://www.digicaps.com/eng/Company/Ceo.asp>>.

Digicaps 是另一家 DRM 科技的發展領導者，提供了包括行動解決方案(mobile solutions)、電子書解決方案與一般性媒體解決方案(media solutions)等 DRM 科技。更多資訊可見於<<http://www.digicaps.com/eng/Company/Ceo.asp>>。

### 3. *Spain*

#### *西班牙*

The existing law provides in Article 32 that for the purposes of teaching or research it is lawful to include extracts of the works of others whether the works are written, sound or audio-visual. The exception relates only to published third party works and provided they are only used for the purpose of analysis, comment or critical assessment. The source and name of the author have to be stated.

現行著作權法第 32 條規定，為教學或研究目的，得引用他人文字、聲音或視聽著作之一部分。這項例外規定僅限於已出版之第三人著作，並規定這些著作僅能為分析評論之目的而使用。出處來源與作者姓名必須加以註明。

Recital 14 of the European Union Copyright Directive provides as follows:

歐洲聯盟著作權指令第 14 段前言規定如下：

“This Directive should seek to promote learning and culture by protecting works and other subject-matter while permitting exceptions or limitations in the public interest for the purpose of education and teaching.”

「本指令應保護著作及其他客體，以促進學習與文化，但為教育及教學目的等公共利益，得許可例外及限制規定。」

The draft legislation to implement the European Union Copyright Directive, currently before the Spanish Parliament, provides as follows:

為執行歐洲聯盟著作權指令，目前在西班牙國會審議中的立法草案規定如下：

“Article 32(1) first paragraph. Quotations and illustration for teaching.

「第 32 條第 1 項 為教學而引用及解說

“it shall be lawful to include in one’s own work fragments of the works of others, whether of written, sound or audiovisual character, and also to include isolated works of visual arts and figurative photography, provided that the works concerned have already been disclosed and that they are included by way of quotation or for analysis, comment or critical assessment. Such use may only be made for teaching or research purposes

and to the extent justified by the purpose of the inclusion, and the source and the name of the author of the work shall be stated.

「對於已公開文字、聲音或視聽著作之部分內容，及視覺藝術與攝影之個別著作，得以分析評論方式引用於自己之著作。此類使用以教學或研究目的之合理引用範圍為限，且必須註明出處來源與作者姓名。」

“Article 32(2)

「第 32 條第 2 項

Communication to the public, reproduction and distribution are not subject to authorisation when undertaken by teachers in “regular education” regarding small fragments of works or isolated works of visual arts and figurative photography, excluding text books and University manuals, provided that such acts take place only for educational activities in the classroom, to the extent justified by the non commercial purpose, that the works concerned have already been disclosed and that, unless proven impossible, the source and the name of the author of the work is mentioned. However this limitation does not cover compilations or collections of fragments of works or isolated works in visual arts and figurative photography.”

教師於教室內進行正常教育活動，得於非商業性合理範圍內，對已公開著作之小部分內容或視覺藝術與攝影之個別著作，得不須獲得授權而為公開傳播、重製與散布，其出處來源與作者姓名必須註明，但經證明無法註明者不在此限。本項限制規定，不適用於著作部分內容或視覺藝術與攝影個別著作之編輯或收集行為。」

No changes have been proposed regarding the “Free Reproduction and Lending in Specific Establishments” in Article 37, which provides as follows:

關於第 37 條「於特定設施內之無償重製及出租」，並未有修法提案，其規定如下：「

“Article 37

「第 37 條

(1) The owners of copyright may not object to reproductions of works where they are made without gainful intent by museums, libraries, record libraries, film libraries, newspaper libraries or archives which are in public ownership or form part of institutions of cultural or scientific character, and where the reproduction is effected solely for research purposes.

(1) 公有或隸屬文化、科學機構之博物館、圖書館、錄音圖書館、影片圖書館、報紙圖書館或檔案館，單純為研究目的而重製著作，著作權人不得表示反對。

(2) Museums, archives, libraries, newspaper libraries, record libraries or film libraries in public ownership or belonging to institutions of general cultural, scientific or educational interest without gainful intent, or to teaching institutions integrated in the Spanish educational system, shall not require the authorization of the owners of copyright or pay remuneration to them for the loans that they make.”

(2) 博物館、檔案館、圖書館、報紙圖書館、錄音或影片圖書館，屬於公有或隸屬一般非營利文化、科學、教育機構，或隸屬西班牙教育體系之教學機構者，得不須獲得著作權人之授權，或向著作權人支付租金。」

However a new paragraph 3 introduces, almost literally, the limitation found in the Article 5(3)(n) of the Copyright Directive. Accordingly, no authorization is required regarding communication for the purpose of research to individual members of the public by dedicated terminals on the premises of establishments referred to in the previous paragraph of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections.

不過，立法草案引進了一個新的第 3 項規定，幾乎是逐字來自於著作權指令第 5 條第 3 項(n)款的限制規定。因此，在前項處所設施內，對於館藏非供銷售或授權之著作與其他客體，為研究目的，以特定終端顯示器播送至個別公眾成員者，不須獲得授權。

#### 4. *United Kingdom* 英國

As noted above, Recital 14 of the European Union Copyright Directive expressly recognises the need for certain exceptions in the public interest for the purposes of education and teaching.

如前所述，為教育教學目的之公共利益，歐洲聯盟著作權指令第 14 段前言明文承認特定例外規定的必要性。

Articles 5(2)(c) and (4) permit Member States to introduce exceptions to the reproduction and distribution rights in respect of specific acts of reproduction made by educational establishments which are not for direct or indirect economic or commercial advantage.

關於教育機構所為，不涉及直接或間接營利之特定重製行為，指令第 5 條第 2 項(c)款及第 5 條第 4 項許可會員國制訂關於重製及散布權例外規定。

Articles 5(3)(a) and (4) also permit an exception to be made to the reproduction right, to the communication to the public right, and the distribution, for the sole purpose, amongst other things, of illustration for teaching, as long as the source, including the author's name, is indicated, unless this turns out to be impossible, to the extent justified by the non-commercial purpose to be achieved.

單純為教學解說目的，在非商業性目的合理範圍內，且註明出處來源及作者姓名，但不可能註明時不在此限，則指令第 5 條第 3 項(a)款及第 5 條第 4 項也許可針對重製權、公開傳播權與散布權制訂例外規定。

Recital 42 of the Directive provides as follows:

指令第 42 段前言規定如下：

“When applying the exception or limitation for noncommercial educational and scientific research purposes, including distance learning, the non-commercial nature of the activity in question should be determined by that activity as such. The organizational structure and the means of funding of the establishment concerned are not the decisive factors in this respect.”

「關於非商業性教育及科學研究目的，包括遠距學習，適用例外或限制規定時，應以系爭活動本身判斷是否為非商業性。相關機構之組織結構或經費來源，並非判斷上之決定性因素。」



The United Kingdom amended its copyright law in October 2003 in accordance with the Directive. The amendments to the exceptions for educational purposes are contained in sections 32 to 36 of the Copyright, Designs and Patents Act 1988 (CDPA).

爲了符合本指令，英國在 2003 年 10 月增修了著作權法。這些關於教育目的例外規定增修條款，納入了 1998 年著作權、設計與專利法(Copyright, Designs and Patents Act 1988, CDPA)第 32 條至 36 條。

Section 32 deals with instruction and examination processes in a broad sense and is not restricted – unlike the provisions of the remaining sections – to acts conducted within an educational establishment. Section 32 provides that copyright in a literary, dramatic, musical or artistic work is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying:

第 32 條規範了廣義的教學及考試程序，而不像其餘條文規定僅限於教育機構內的行爲。第 32 條規定，於教學或準備教學過程中，複製文學、戲劇、音樂、或藝術著作不構成侵害著作權，其合法複製條件爲：

- is done by a person giving or receiving instruction
- 由教學或接收教學者所爲
  
- is not done by means of a reprographic process
- 並非以複印方式所爲
  
- is accompanied by a sufficient acknowledgement and the instruction is for a non-commercial purpose.
- 充分註明來源出處與作者，且教學爲非商業性目的。

In the case of literary, dramatic, musical or artistic works which have been made available to the public the restriction of the circumstances to non-commercial instruction does not apply providing the copying constitutes fair dealing in the work in question. Unlike the position in the United States law, there are no statutory criteria for the concept of fair dealing; the relevant considerations to be taken into account in assessing the fairness or otherwise of acts have been identified in case law. They include:

關於已公開之文學、戲劇、音樂或藝術著作，如果複製行爲對系爭著作構成合理處置(fair dealing)，則不受非商業性教學的要求所限。不像美國法的立場，英國並沒有合理處置的法定標準；在案例法中，則是舉出了評估行爲合理性的相關考慮因素。這些因素包括：

- The degree to which the alleged infringing act competes with exploitation of the work by the copyright owner;
- 所謂的侵權行爲與著作權人利用著作的競爭程度；
- 
- Whether the work has been published or not;
- 該著作是否曾經出版；
  
- The extent of the use and the importance of what has been taken.
- 使用的程度，以及被使用部分的重要性。

Other exceptions related to educational use of copyright works are contained in Section 33 (making of anthologies for educational use); in Section 34 (performing, playing or showing work in the course of the activities of an educational establishment); and Section 35 (recording of broadcasts by educational establishments).

受著作權保護著作在教育上使用的其他例外規定，規定於第 33 條（為教育使用而製作選輯）；規定於第 34 條（教育機構活動中的表演、演奏或展示）；且第 35 條（教育機構錄製廣播內容）。

Reprographic copying can be done by or on behalf of an educational establishment for the purposes of non-commercial instruction without infringing the copyright in the work or the typographic arrangement thereof provided sufficient acknowledgment is given. Furthermore, no more than 1% of the work may be copied per quarter (i.e. between 1<sup>st</sup> January and 31<sup>st</sup> March and so on).

為非商業性教學目的，未侵害著作之著作權或印刷協議，提供出處來源充分說明，教育機構或其代表者得進行複印。此外，複製著作的份量，每一季不得超過 1%（例如，在 1 月 1 日至 3 月 31 日之間，以此類推）。

#### Case study: The United Kingdom Open University

#### 案例研究：英國開放大學

The Open University (OU) is the United Kingdom's only university dedicated to distance learning. It was the world's first successful distance teaching university. Established in the 1960s, the "White Heat of Technology" era, the Open University was founded on the belief that communications technology could bring high quality degree-level learning to people who had not had the opportunity to attend campus universities. 開放大學(Open University, OU)是英國唯一致力於遠距學習的大學。它是世界上第一個成功的遠距教學大學。開放大學創立於「科技白熱化」的 1960 年代，其基礎信念是通訊科技能夠將高品質的學位學習課程帶給無法到大學校園就讀的人。

OU now has around 150,000 undergraduate and more than 30,000 postgraduate students. 10,000 of its students have disabilities. Nearly all students are studying part-time. About 70 per cent of undergraduate students are in full-time employment. More than 50,000 students are sponsored by their employers for their studies. 11,000 people are currently studying for OU Higher Degrees.

OU 現在有大約 150000 位大學生，以及超過 30000 名學士後學生。在學生中有 10000 名有障礙者。幾乎所有學生都不是全時上課生。大約 70% 的大學生有全職工作。由雇主資助上課的學生超過 50000 名。有 11000 名學生目前正在攻讀 OU 高等學位。

Most OU courses are available throughout Europe. Some of them are available in many other parts of the world. More than 25,000 OU students live outside the United Kingdom.

大多數 OU 課程可以在全歐洲上課。其中某些課程在世界上許多地區可以上課。超過 25000 名 OU 學生居住在英國以外地區。

OU's style of teaching is called supported open learning. Over three decades it has adopted various new media for teaching and learning. Audiocassettes and later videocassettes gave students more autonomy. In the 1980s, personal computers opened

up exciting new possibilities for many courses. By the mid-nineties OU began the massive exploitation of the Internet that has made the OU one of the world's leading e-universities. Today more than 180,000 students interact with the OU online from home: OU 的教學風格稱為輔助式開放學習(supported open learning)。在三十多年來，它採用了各式新型教學媒體。錄音帶與後起的錄影帶使學生有更多的自主性。在 1980 年代，個人電腦為許多課程開啓了令人振奮的新機會。在 1990 年代中期，OU 開始大量利用網際網路，而使 OU 成為世界上具有領先地位的電子化大學之一。今日有超過 180000 名學生在家中與 OU 進行線上互動。

- Each week, 25,000 students are able to view their academic records online; When exam results are made available, 85,000 students view them online; The student guidance website receives 70,000 page hits per week;
- 在每一週，有 25000 名學生能夠在線上閱覽學業成績；當考試結果公布時，85000 名學生能夠在線上加以閱覽；每一週學生指導網站的網頁點擊數是 70000 頁。
- The Open Library receives more than 2.5 million page views each year; 110,000 students use the conferencing system; and
- 開放圖書館每一年的閱覽數量是二百五十萬頁，有 110000 名學生使用線上會議系統；而且
- There are 16,000 conferences, of which 2,000 are organised and moderated by students themselves.
- 有 16000 個線上會議，其中 2000 個是由學生自行組成並主持。

This intensity of usage allows OU faculty and administrative staff to do pioneering research on the most effective approaches to online teaching and learning that aims to give the OU world leadership in its field.

這樣的使用密集性，使得 OU 教職員能夠從事先驅性的研究，以找出線上教學最有效的方式，使 OU 在這個領域中達到世界領先地位。

OU also produces peak-time television programmes such as *Rough Science*, *Renaissance Secrets*, and *Someone to Watch Over Me* have been seen by millions of viewers and have won new critical acclaim for the University.

OU 也製作了尖峰時段的電視節目，例如 *Rough Science*、*Renaissance Secrets*、*Someone to Watch Over Me* 等節目曾經有多達上百萬的觀眾，也為這所大學在近來贏得好評。

Given the innovative education processes involved in the OU's activities, the rights issues are complex. OU relies heavily on third party, commercial copyright materials but is also a significant generator and seller of materials in its own right.

由於 OU 活動涉及了創新性教育程序，權利議題就相當複雜。OU 高度依賴來自第三人的商業性著作權資料，但它本身也是教材資料的製造者與銷售者。

Compliance with copyright law is central to OU operations. In view of the distributed nature of the OU's student population a particular provision of the European Union Copyright Directive is of relevance:

遵循著作權法是 OU 經營上的核心。鑑於 OU 學生人口的分散性質，歐洲著作權指

令的一個規定就有所關連：

## Article 5

### 第 5 條

#### Exceptions and limitations

#### 例外與限制規定

3. Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:

3. 於以下情形，會員國得針對第 2 條與第 3 條之權利制訂例外與限制規定：

(n) use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections

(n) 於第 2 項(c)款處所設施內，對於館藏非供銷售或授權之著作與其他客體，為研究或私人學習目的，以特定終端顯示器播送或提供至個別公眾成員者。

The OU has a dedicated department with cross university responsibility for rights management issues both in relation to its own materials and those licensed in from third parties. The strategy followed in relation to rights clearance includes:

關於本身與來自第三者授權的教材，OU 有一個全校性專責部門處理權利管理事宜。關於權利權證所遵循的策略包含：

- A global approach to rights management;
- 全球化權利管理方式；
- Direct clearance of rights with commercial publishers;
- 與商業性出版商直接交易清算；
- Partnering with third party content providers; and
- 與供應內容的第三者建立伙伴關係；且
- Identification and application of appropriate copyright exceptions and alternative rights management.
- 識別及應用適當的著作權例外規定與另外的權利管理途徑。

#### A Global Approach

#### 全球化方式

Given the international reach of the OU its rights management processes are required to encompass the international exploitation of both its own and third party content. An important part of the international dimension of the rights management process is ensuring that the OU obtains the necessary translation rights.

鑑於 OU 有國際性的經營範圍，它的權利管理程序需要包含自己與第三者內容的國際性利用。權利管理程序的重要國際面向之一，即是確保 OU 獲得必要的翻譯權。

#### Direct Clearance of Rights

#### 權利直接交易清算

Much of the rights management process involves direct negotiations with

commercial publishers for the use of their materials in the OU curricula. Increasingly, OU is seeking to standardise the terms and automate the processes through which third party rights are cleared. It also establishes framework agreements with major content providers so that only specific issues in relation to particular items of content have to be dealt with on an ad hoc basis.

在大多數的權利管理程序中，涉及了與商業性出版商直接交涉在 OU 課程中使用他們的材料。OU 正在逐漸使條款標準化，並且將交易清算第三者權利的程序自動化。它也和主要的內容供應者建立了一份基本協議架構，因此只需針對特別內容事項進行個別交涉。

Rights clearance has to allow for the provision of both hard and electronic copies as well as meeting the demands of the global process as described above.

權利的交易清算必須允許提供紙本及電子備份，以因應前述全球化過程的需求。

OU claims a 95% success in relation to its rights clearance operations.

關於權利交易清算業務，OU 聲稱有 95% 的成功率。

#### Partnership with Content Providers

與內容供應者建立伙伴關係

A further dimension of the OU's relationship with major third party content providers is its effort to establish marketing and exploitation operations for course materials. Given the market access the OU offers, opportunities for commercial publishers in partnering with the OU are significant. The OU also has a number of co-production agreements in place including with the BBC.

OU 與主要供應內容的第三者的另一個關係層面，就是建立教材的行銷業務。根據 OU 提供的市場通路，顯然商業性出版商與 OU 大有合作機會。OU 也有一些執行中的共同生產協議，其中包括與 BBC 的協議。

#### Use of Exceptions and Alternative Rights Management

使用例外規定與另外的權利管理途徑

The OU aims to exploit the exceptions provided for various purposes to the full extent permissible under relevant law. Thus it does not consider itself constrained to work exclusively within the scope of exceptions provided for educational purposes. Exceptions for criticism, private research, and news reporting, for example, may be invoked where appropriate. This approach requires the OU to adopt specific risk management policies in the event that acts it performs are found to fall outside the scope of an exception invoked.

對於各式目的下所制訂的各種例外規定，OU 會在合法範圍內充分利用。因此它不會自我侷限於教育目的的例外規定範圍。例如，關於評論、私人研究，以及新聞報導等等的例外規定，都可能在適當情況下加以援引。在這個方式下，一旦 OU 的行為被認為超出所引用例外規定的範圍，OU 就需要因事制宜，而採納特定性的風險管理對策。

5. *United States of America*

## 美國

Prior to 2001 and the enactment of the Technology, Education, and Copyright Harmonization Act (TEACH Act), exceptions to copyright under the United States Copyright Law in respect of educational uses were those derived from the “fair use” provision in Section 107, and those introduced into the Law by the 1976 Instructional Broadcast Copyright Act Exemption.

在 2001 年之前以及科技、教育與著作權協調法(Technology, Education, and Copyright Harmonization Act, TEACH Act)制訂之前，美國著作權法關於教育性使用的著作權例外規定，是由第 107 條「合理使用」(fair use)規定衍生而來，以及 1976 年教學廣播著作權法(Instructional Broadcast Copyright Act)引入的各種除外條款。

The 1976 Instructional Broadcast Copyright Act Exemption provided as follows:  
1976 年教學廣播著作權法的除外規定如下：

Section 110(2) permitted “performance or display” of a “non-dramatic literary or musical work or “display” of “any work”, “by or in the course of a transmission” if:

符合下列情形時，「以傳輸方式或於傳輸過程中」，第 110 條第 2 項許可「非戲劇性文學或音樂著作」之「表演或展示」(performance or display)，或「任何著作」之「展示」：

- the performance or display was a “regular part” of the “systematic instructional activities” of a governmental body or nonprofit educational institution;
- 表演或展示是政府或非營利教育機構「系統性教學活動」的「正常部分」；
- the performance or display was “directly related and of material assistance to the teaching content” of the transmission; and
- 表演或展示對傳輸之「教學內容有直接關連及實質幫助」；而且
- the transmission was “made primarily for”:
- 「主要為」以下事項而製作進行該傳輸。

(1) reception in classrooms or similar places normally devoted to instruction, or

(1) 專供教學之教室或類似場所接收，或

(2) reception by persons to whom the transmission was directed because their disabilities or other special circumstances prevented their attendance in classrooms or similar places normally devoted to instruction, or

(2) 接收者因障礙或其他特殊情形，無法在專供教學之教室或類似場所上課。

(3) reception by officers or employees of governmental bodies as part of their official duties or employment.

(3) 政府公務員或聘僱人員因職務而接收。

Time and technology rendered these provisions increasingly obsolete. Limitations became apparent and uncertainties arose as to the application of the provisions in relation to emerging distance education systems and formats. These limitations and uncertainties included:

時間與技術使得這些規定逐漸落伍。法律規定的侷限很明顯，而關於新興遠距教育系統與格式的規定適用上出現了不確定性：

- Whether the provisions applied to digital transmissions;
- 這些規定是否適用於數位傳輸；
- Whether the provisions addressed reproduction of works (as well as display and performance), an essential part of the digital transmission process;
- 這些規定是否規範了著作重製（同展示與表演），這是數位傳輸程序的核心部分；
- Whether the performance exemption was limited to certain types of works: it did not cover performance of “dramatic literary or musical works” or “audio-visual” works; and
- 表演除外規定是否限於特定著作類型：它並未包含「戲劇性文學或音樂著作」或「視聽著作」；而且
- Whether the transmission was permitted only to a specific and limited location or audience.
- 所許可的傳輸是否僅限於特定列舉之地點或聽眾。

The need for change was taken up in the 1998 Digital Millennium Copyright Act (DMCA), which provided in Section 403(a):

1998年數位千禧年著作權法(Digital Millennium Copyright Act, DMCA)提到了修法的需要，其第403條(a)規定：

“Not later than 6 months after the date of enactment of this Act, the Register of Copyrights... shall submit to the Congress recommendations on how to promote distance education through digital technologies, including interactive digital networks, while maintaining an appropriate balance between the rights of copyright owners and the needs of users of copyrighted works. Such recommendations shall include any legislation the Register of Copyrights considers appropriate to achieve the objective described in the preceding sentence.”

「於本法制定六個月之內，關於以互動式數位網路在內之數位科技促進遠距教育，著作權局...應向國會提出建議，以維護著作權人權利及受著作權保護著作使用者需要之適當平衡。此等建議應包含著作權局認為適當的立法，以達成前段規定所述之目標。」

The Register’s Report on Copyright and Digital Distance Education was published in May 1999, and contained the following key conclusions:

著作權局關於著作權與遠距教育的報告<sup>39</sup>出版於1999年5月，含有以下關鍵性結論：

- By enacting Section 110 in 1976, Congress had already determined that “performances or displays of copyrighted works in the course of systematic

<sup>39</sup> Information available at < [http://www.copyright.gov/reports/de\\_rprrt.pdf](http://www.copyright.gov/reports/de_rprrt.pdf)>.

- instruction should be permitted without the need to obtain a license or rely on fair use.”
- 國會於 1976 年制訂第 110 條，已決定「系統性教學課程中，受著作權保護著作之表演與展示，不須獲得授權或根據合理使用。」
  - The “technological characteristics” of digital transmissions had rendered the “distance education” provisions of Section 110(2) “inapplicable to the most advanced delivery method for systematic instruction.”
  - 數位傳輸之「科技特徵」，使得第 110 條第 2 項「遠距教育」規定無法適用於系統性教學上最先進的傳送方法。
  - “Without an amendment to accommodate these new technologies, the policy behind the law will be increasingly diminished.”
  - 「若無增修法律因應這些新科技，法律所追求的政策將會逐漸式微」。
  - In amending Section 110(2), “a comparable balance” of interests between copyright owners and users of works “should be maintained.”
  - 增修第 110 條第 2 項時，關於著作權人與著作使用者之間的利益，「應維持」「相當的平衡」。

The report also contained the following recommendations as to how the law should be updated. It should:

關於應如何更新法律，這份報告也包含了以下建議：

- Clarify that “transmission” includes transmission by digital means;
- 釐清「傳輸」一詞包含以數位方法傳輸；
- Extend the exception to reproduction and distribution rights, but only as technologically required to digitally transmit the exempted performance or display of works;
- 關於除外的著作表演或展示，僅在於數位傳送時的技術必要範圍內，對於重製權及散布權的例外規定方可加以擴張；
- Ensure the exempt performance or display is analogous to what occurs in a live classroom setting with mediated instruction by requiring that it be made by or at the direction of an instructor;
- 藉由要求由教學者親自實施或監督實施，以確保除外的表演或展示能相當於有教學者帶領的現場教室情境；
- Replace the classroom limitations with a requirement that transmissions are exempt only if made to students enrolled in the course (regardless of their location);
- 以對選課學生進行傳輸的要求，取代教室的限制（而不論地點）；
- Require additional technological and other safeguards against uncontrolled copying and distribution as conditions on applying the exemption to digital transmissions;



- 關於數位傳輸的除外適用條件，要求額外的科技性與其他安全防護，以避免不受控制的複製與散布；
- Retain the limitation of scope to nonprofit educational institutions;
- 維持非營利教育機構的範圍限制；
- Extend the scope of the exception to include audiovisual works, sound recordings and dramatic literary and musical works, but only for portions of such works, only when they are the subject of study in the course and were not produced primarily for instructional use, and only when made from a lawful copy; and
- 擴張例外規定的範圍，以包含視聽著作、錄音及戲劇性的文學與音樂著作，但僅限於著作之一部分，屬於課程學習主題，並非主要供教學之用，以及由合法重製物所製作；且
- Exempt ephemeral recordings as necessary to permit asynchronous transmission to enrolled students.
- 對選課學生非同步傳輸所必要的暫時錄音加以免除。

Following these recommendations the TEACH Act was enacted by Congress and signed into law by President Bush in November 2002 as part of the 21st Century Department of Justice Appropriations Authorization Act, P.L.107-273 (Title III, Subtitle C, Section 13301 – Educational Use Copyright Exemption).

在這份報告之後，國會制訂了 TEACH 法，並作為二十一世紀司法部預算授權法的一部份，由布希總統於 2002 年 11 月簽署成為法律（P.L.107-273; Title III, Subtitle C, Section 13301 – 教育使用著作權除外規定）。

The key elements of the TEACH Act in terms of the scope and implementation the exceptions are as follows:

關於例外規定的範圍與執行，TEACH 法的要點如下：

#### Works Subject to Exemption

##### 適用除外規定之著作

- Performance of all kinds of works is permitted, but only reasonable and limited portions of works other than non-dramatic literary or musical works can be performed;
- 許可表演所有種類的著作，但非戲劇性的文學或音樂以外著作的表演，以著作合理局部為限；
- Display of all kinds of works is permitted, but only of an amount [of the work] comparable to that which is typically displayed in the course of a live classroom setting.
- 許可展示所有種類的著作，但以通常現場教室情境所顯示的份量為限。

#### Eligible Transmitting Entities

##### 適格傳輸主體

The application of the exception is limited to governmental bodies and nonprofit educational institutions which must be accredited. Accreditation is statutorily-defined in terms of the qualification of the institution, not in terms of the particular course or programs offered.

這項例外規定的適用，限於政府單位或立案的非營利教育機構。法律的立案規定在於機構的資格，而不在於所提供的特定課程。

#### Necessary Use Criteria

##### 必要使用標準

The exempted transmission must be made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of systematic mediated instructional activity. Actual supervision does not require constant, real-time supervision or pre-approval; it covers asynchronous use by students where a “class session” is a period in which the student is logged onto the server and may thus vary according to student need or nature of the course. The content of the transmission must be directly related and of material assistance to the teaching content of the transmission.

獲得除外的傳輸，必須實施於系統性媒體教學活動課程期間的正常課程內容。實際的監督並不要求持續性、即時性監督，也不要求獲得事前同意；它包含了學生的非同步使用，而「一節課」則是學生登入伺服器的一段期間，因此會因學生需要或課程性質而異。傳輸內容必須與傳輸教學內容有直接關連及實質幫助。

#### Limits to the scope

##### 範圍限制

The exception excludes works produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks. It also excludes performances/displays given by means of a copy that is not lawfully made and acquired under the Copyright Act.

以數位網路傳輸，而主要為媒體教學活動表演或展示所生產或行銷之著作，不適用這項例外限制。如果表演 / 展示不是來自依照著作權法合法取得的重製物，也不適用這項例外規定。

The transmission must be made solely for and, to the extent technologically feasible, reception must be limited to students officially enrolled in the course or governmental employees as part of their official duties or employment. This is intended to require identification of authorized recipients and limitation of reception to them through authentication processes.

在科技上可行的限度內，傳輸目的及其接收者必須僅限於課程中正式註冊的學生，或是政府人員為職務而接收。這需要以認證程序針對被授權接收者進行身分識別，以限定只有他們能接收傳輸。

#### Additional Safeguards to Counteract New Risks

##### 對抗新風險的額外安全防護

The transmitting entity must institute policies regarding copyright including provision of notice to recipients that materials may be copyrighted; provision of information to faculty, students and relevant staff that accurately describes and promotes compliance with copyright law. The transmitting entity must use technological measures to prevent (i) retention of a

work in accessible form by recipients for longer than class session, and (ii) unauthorized further distribution by recipients in accessible form. Furthermore, the transmitting entity must not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or further distribution.

傳輸主體必須制訂著作權政策，其中包含對接收者告知該材料可受著作權保護；對教員、學生及相關職員，提供著作權及守法之正確描述資訊。傳輸主體必須使用科技措施，以預防(i)接收者將著作存放於可取用形式超出課程期間，以及(ii)接收者以可取用形式進行未經授權散布。此外，對於著作權人為預防此等存放及散佈而使用的科技措施，傳輸主體不得從事合理預期下之可能干擾行為。

The Act does not authorize the conversion of works from print (analog) to digital formats, except where (1) no digital version is available to the transmitting entity, or (2) the available digital version is protected by technological measures that prevent its use for a performance or display authorized by the Act.

本法並不授權將著作由印刷（類比式）轉換為數位格式，但以下例外情形不在此限：(1)傳輸主體無法取得數位版本，或(2)數位版本受到科技措施所保護，以致於無法用於本法所授權的表演或展示。

#### Transient and Temporary Copies

##### 臨時與暫時性重製物

Transmitting entities generally are not liable for infringement by reason of transient or temporary storage of material carried out through the automatic technical process of transmission, provided that such transient or temporary copies stored on the system or network controlled or operated by the transmitting body are not maintained on the system or network in a manner ordinarily accessible to anyone other than anticipated recipients or in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary to facilitate the transmissions for which they were made.

關於臨時或暫時性重製物，當其儲存於傳輸主體所控制或經營的系統或網路時，如果儲存方式不至於使預期接收者以外之人所取用，或儲存時間並未超過為進行傳輸所需的合理期間，則一般情形下自動化傳輸程序執行的臨時或暫時性儲存，傳輸主體不須負擔侵權責任。

#### Ephemeral Recordings

##### 暫時性錄製

To facilitate asynchronous educational use, transmitting entities may load one or more copies of the authorized performance/display on their servers, provided that such copies are retained and used solely by the transmitting entity that made them, no further copies are made from them (except as authorized per the exemption), and they are used solely for transmissions authorized per the exemption.

為進行非同步教育使用，傳輸主體得將一件或多件法律授權的表演 / 展示重製物下載至伺服器，但僅限於傳輸主體自行存放與使用，且不得以這些重製物進行複製（但這項除外規定授權者不在此限），且該等重製物僅用於這項除外規定所授權之傳輸。

The Act also required the production of a report by the USPTO (United States Patent and Trademark Office) on available technological protection systems.

本法也要求美國專利商標局(USPTO)針對可行的科技保護系統提出報告。

CHAPTER 5  
第五章

THE INTERFACE OF LAW AND TECHNOLOGY  
法律與科技之介面

A. Digital lock up  
數位鎖定(Digital lock-up)

Digital lock-up is an expression which has come to be used to refer to the use of DRM technologies in a way which makes content unavailable other than on the terms imposed by the content provider. Concerns with digital lock up focus on the unilateral imposition of terms for the use of content; the denial of the use of content in ways sanctioned by the law; and the control of content in which the underlying rights have expired or, perhaps, never existed.

數位鎖定用語所描述的情形是，使用 DRM 科技，導致內容只能依照內容供應者所制訂的條款加以取得。關於數位鎖定的顧慮，集中於單方面所制訂的內容使用條款；將法律所支持的內容使用行為加以拒絕；且將權利過期失效的內容，或也許根本不存在權利的內容加以控制。

The responses from those concerned with the process of “digital lock-up” range from calls to dismiss the idea of DRM in its entirety, to ideas for alternative copyright licensing models, to proposals for workable ways to bring technology and copyright law into better alignment. Each of these approaches have found clear expression in the work of a number of organizations and individuals. There follows a description of relevant examples of illustrating each of these approaches.

來自於關心「數位鎖定」過程者的反應意見，有主張全盤否定 DRM 者，有主張替代性著作權授權模式者，有提議科技與著作權法之間的更佳調整方案者。以上每一個路線在一些組織與個人的著作中都有清楚的表達。以下是對於每一個途徑的相關說明舉例。

1. *Electronic Frontier Foundation*  
*電子邊境基金會(Electronic Frontier Foundation)*

In a submission to the International Telecommunications Union, ITU-R Working Party 6M Report on Content Protection Technologies the Electronic Frontier Foundation (EFF) along with ten other international organizations (including the World Blind Union) offered a simple proposition: “Digital Rights Management: A failure in the developed world, a danger to the developing world.”

對於國際電信聯盟(Electronic Frontier Foundation)關於內容保護科技的報告(ITU-R Working Party 6M Report)，電子邊境基金會(Electronic Frontier Foundation, EFF)<sup>40</sup>，連

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<sup>40</sup> Electronic Frontier Foundation (EFF) aims at protecting civil liberties in the networked world. Information available at <<http://www.eff.org>>. 電子邊境基金會(Electronic Frontier Foundation, EFF)宗旨為保護網路世界中的公民自由。資料見<<http://www.eff.org>>。

同其他十個國際組織（含世界盲人聯盟）提出了一份簡單主張：「數位權利管理：已發展國家的失敗，發展中國家的危害」。

The paper sets out the case against DRM in very stark terms:

這份文件以非常強硬的措辭反對 DRM：

“This paper discusses the failure of DRM in the developed world, where it has been in wide deployment for a decade with no benefit to artists and with substantial cost to the public and to due process, free speech and other civil society fundamentals.

「這份文件討論了 DRM 在已發展國家中的失敗，DRM 在這些地區普遍發展了十年，對於藝術家沒有益處，而對公眾、正當程序、言論自由與其他市民社會基本原則卻造成嚴重代價。

This paper also discusses the special risks to the developing world posed by DRM through restrictions on liberty, distance education, development efforts, criticism, and the creation and dissemination of culture.

這份文件也討論了 DRM 對於發展中國家引起的特別風險，DRM 限制了自由、遠距教育、發展努力、評論以及文化的創造與散播。

DRM delivers no public value but exacts a punishing public cost. It is so harmful to the interests of developed countries that there are widespread revolts against DRM underway in the United States of America and Canada, in Europe and in Asia.”

DRM 沒有帶來公共價值，卻為公眾帶來懲罰性的代價。DRM 對於已發展國家危害重大，因此在美國、加拿大、歐洲與亞洲，正在出現廣泛的反對聲浪。」<sup>41</sup>

The paper in fact makes no attempt to describe the DRM technology it references. Nor, it must be said does it make any attempt to reconcile its two principal propositions: that DRM does not work and that it will wreak havoc on the economies and cultures of the developing world. One is left wondering how the latter is sustainable in the light of the former.

這份文件事實上並未對它所謂的 DRM 科技加以描述。必須一提的是，它也並未試圖調和它相互矛盾的兩個基本命題：亦即一方面主張 DRM 無法運作，而另一方面主張 DRM 將破壞發展中國家的經濟與文化。

## 2. *Creative Commons*

### *創作共用(Creative Commons)*

Creative Commons does not set out to dismiss the concept of DRM. Its approach is to reduce the risks of widespread digital lock up by providing innovative and readily accessible models for the licensing and exploitation of content. The licensing models in question are conceptually linked to the kind of licensing structures used in open source software development.

創作共用<sup>37</sup>並不否定 DRM 的概念。它的路線是針對內容的授權及利用，提供創新而可用的模式，以降低廣泛數位鎖定的風險。它的授權模式在概念上相近於開放原始軟體運動所用的授權結構。

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<sup>41</sup> Information available at <[http://www.copyright.gov/reports/de\\_rprt.pdf](http://www.copyright.gov/reports/de_rprt.pdf)>.

<sup>42</sup> Information available at <<http://www.creativecommons.org>>.

The Creative Commons mechanism enables copyright holders to grant some of their rights to the public while retaining others, through a variety of licensing and contract schemes, which may include dedication to the public domain or open content licensing terms. The intention is to avoid the problems which current copyright laws and their implementation, at least in part, through technology, are perceived to create for the sharing of information.

創作共用機制使著作權人能夠對公眾授權某些權利，而又能保有其餘權利，其各式的授權與契約架構包括貢獻於公共領域，或是開放性內容授權條款。其目的在於避免現行著作權法及其執行因運用科技而產生的（至少一部分）問題，以創造資訊的分享。

Creative Commons provides several free licenses that copyright holders can use when they release their works on the web. It provides RDF/XML metadata that describes the license and the work to make it easier to automatically process and locate licensed works. It also provides a “Founder’s Copyright” contract, intended, so it claims, to re-create the effects of the original United States copyright created by the drafters of the United States Constitution.

創作共用提供了幾種免費授權，使著作權人將著作釋出到網路時可以使用。它提供了 RDF/XML 後設資料描述授權與著作，以便利於所授權著作在處理及標定上的自動化。它也提供了「建國者著作權」(Founder’s Copyright)契約，據稱這是重新創造了美國憲法制訂者所創造的美國著作權原始效果。

Creative Commons was officially launched in 2001. Lawrence Lessig, the founder and chairman of Creative Commons, started the organization as an additional method of achieving the goals of the case *Eldred v. Ashcroft*, which was adjudicated by the United States of America Supreme Court. The initial set of Creative Commons licences was published on December 16, 2002.

創作共用正式開始於 2001 年。Lawrence Lessig 是創辦人與創作共用主席，他發起這個組織，作為達成美國最高法院 *Eldred v. Ashcroft*<sup>43</sup>一案目的的額外方法。創作共用的最初授權條款公布於 2002 年 12 月 16 日。

The main Creative Commons licenses are written with the United States legal model in mind. Using the United States model without regard to local law could render licenses unenforceable, so the *iCommons* (International Commons) project has been established to fine-tune the Creative Commons legal wording to the specifics of individual countries.

主要的創作共用授權條款是基於美國法律模式而撰寫。使用美國模式而沒有顧及地區性的法律，可能導致授權條款無法執行，所以便設立 *iCommons* (International Commons)計畫，根據個別國家的特殊性而調整創作共用的法律文字。

The Creative Commons mechanisms involve a certain amount of automated formulation and graphic indications of the scope of licences. These processes should not however be confused with any of the rights expression processes employed in DRM technology. It is not clear either whether Creative Commons has the necessary infrastructure and standards in place to prevent abuse of its system.

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<sup>43</sup> *Eldred v. Ashcroft*, 123 United States Supreme Court 769, 793 (2003). See Decision available at <<http://www.supremecourtus.gov/opinions/02pdf/01-618.pdf>>.

關於授權範圍，創作共用機制使用了一些自動化公式及圖形標記。然而，這些程序不應該與 DRM 科技使用的權利表達程序混為一談。至於創作共用是否有防止濫用這套系統的必要基礎建設及標準，這一點也是不清楚。

Creative Commons provides a simple and standardised way for rightsholders to license their works. The conceptual link with open source software licensing is, however, questionable: the process of developing software – in many instances a collaborative and unremunerated process – is very different from the development of individual expression represented by other forms of copyright works.

創作共用為著作權人提供了簡單、標準化的著作授權方式。可是，創作共用與開放原始碼軟體授權的關連性仍有可疑之處：發展軟體的程序－許多情形下是合力與無償的程序－與透過其他著作權作品形式的個人表達發展程序大不相同。

While the Creative Commons approach has been adopted by a significant body of users – the BBC has announced it will use the approach for making its extensive archives available to the public – it is unlikely to find favour with major commercial copyright interests.

即使創作共用路線已經受到相當多使用者採用－BBC 已經宣布將使用創作共用製作許多公開檔案－但它不太可能受到主要的商業性著作權利益人士所喜愛。

### 3. *Fair use by design*

#### 內建合理使用設計(*Fair use by design*)

Another approach to the problem has been to examine whether DRM technologies can be designed to apply rules of fair use: a number of important papers have been written by academic researchers in the United States examining the proposition. Given the way the fair use doctrine is applied under United States copyright law, the ability to accommodate the mechanism within a DRM based rights management system is often seen as the ultimate test of the compatibility of DRM with established copyright practice.

對於數位鎖定問題的另一個路線，就是檢討 DRM 科技能否設計成適用合理使用規則：美國學者已經寫了一些重要的文章檢討這個提議。鑑於合理使用原則已經適用於美國法，DRM 權利管理系統接納合理使用機制的功能，通常被視為 DRM 與既有著作權實務在相容性上的終極測試。

Perhaps the most innovative and useful of these paper is one written in 2001 by Professors Julie E. Cohen and Dan Burk entitled “Fair use infrastructure for copyright management systems.”

Julie E. Cohen 與 Dan Burk 教授於 2001 年撰寫的文章「針對著作權管理系統合理使用基礎建設」(Fair use infrastructure for copyright management systems)，或許是其中最富有創新性與實用性的文章。<sup>39</sup>

They state their central proposition as follows:  
他們所述的核心提議如下：

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<sup>39</sup> Cohen, Julie E. and Burk, Dan L: Fair Use Infrastructure for Copyright Management Systems Harvard Journal of Law & Technology, Volume 15, Number 1 Fall 2001, available at <<http://jolt.law.harvard.edu/articles/pdf/15HarvJLTech041.pdf>>.



“The most direct method of accommodating fair use would be to mandate or prompt the development of rights management systems that directly allow purchasers of a work to make fair use of the content. Optimally, the “breathing space” required for fair uses would be programmed directly into the technical rule set that controls access to the work. The systems might, for example, include provisions allowing users to extract a certain number of bits, or display the work for certain periods of time, or partially perform the work a certain number of times. Depending on the characteristics of the desired use, users would be able to take these actions without having to seek additional permission or pay additional fees.

「接納合理使用最直接的方法，可能就是促進權利管理系統直接允許著作購買者能合理使用該著作。合理使用所需的「呼吸空間」，最好是能夠直接編入控制著作取用的技術規則集合。例如，該系統可能包含某些規定，以允許使用者擷取某些位元、或在特定期間內顯示該著作，或在一定次數內執行該著作的一部分。依據這些使用的特徵，使用者可以進行這些動作，而不須尋求額外許可或支付額外費用。

In reality, however, an algorithm-based approach to fair use is unlikely to accommodate even the shadow of fair use as formulated in current copyright law. We are not optimistic that system designers will be able to anticipate the range of access privileges that may be appropriate in order for fair uses to be made of a particular work. Neither are we optimistic that system designers will be able to anticipate the types of uses that would be considered fair by a court. Fair use is irreducibly a situation-specific determination. In some instances, a user may fairly take a work in its entirety – say, for example, where the work is entitled to only thin protection, the use is for a protected use such as scholarship or criticism, and/or the use is expected to have no appreciable impact on the market for the work. In other situations, where three or four of the factors weigh heavily against a particular use, taking much less might exceed fair use. Building the range of possible outcomes into computer code would require both a bewildering degree of complexity and an impossible level of prescience. There is currently no good algorithm that is capable of producing such an analysis, meaning that (at least for now) there is no feasible way to build rights management code that approximates the results of judicial determinations.”

不過，在現實上，即使是現行著作權法中合理使用的一點影子，以演算法為基礎的合理使用路線還不能加以接納。對於系統設計者將能夠預期特定著作在合理使用的取用程度，我們並不樂觀。對於系統設計者將能夠預期哪些類型使用者可以被法院任何合理，我們也不樂觀。在某些情形，使用者可以合理地使用整部著作—例如，對於所受保護程度低的著作，為學術或評論而加以使用是受到保護，以及/或者，使用不會對於著作銷路有所影響。在其他情形，當有三、四種因素足以否定特定的使用時，即使是更加小量的使用都可能逾越了合理使用範圍。在電腦程式碼中建立各種可能結果的範圍，需要高度的複雜性，以及不可能的預見程度。目前並沒有完善的演算法能夠產出這種分析，這就意味著（至少現在）無法建立趨近法院判斷結果的權利管理程式碼。

As do most of those who have written in this area, Burk and Cohen dismiss the possibility of voluntary incorporation of fair use rules by copyright owners in a DRM based system. And while they note the precedent of the Audio Home Recording Act which provides for both mandatory technical protection and a degree of permitted copying, they do not see a corresponding solution in the DRM area.

關於由著作權人自行在 DRM 系統中納入合理使用規則，如同多數該領域著作的作者，Burk 與 Cohen 否定了這個可能性。即使他們注意到了家庭錄音法(Audio Home Recording Act)提供強制性技術保護及一定程度的許可複製前例，他們在 DRM 領域中看不到相對應的解決方案。

They then go on to examine another alternative. This involves reference to a trusted third party holding keys to encrypted content in escrow so that fair users of content can access content in a manner compatible with law. The copyright owner would be required to deposit keys to content as the quid pro quo for having the anti-circumvention provisions of the DMCA apply to the content in question.

他們之後便檢討另一個替代方案。這涉及由具公信力第三者(a trusted third party)代管加密內容的解密鑰匙，使內容的合理使用者能夠以合法方式取用內容。著作權人必須寄託內容解密鑰匙，方能使 DCMA 反規避規定適用於系爭內容。

Burk and Cohen recognise issues with this approach as well, in particular the challenge of maintaining fair user anonymity and keeping transaction costs at an acceptable level. They consider at length what kind of entity should qualify as the trusted third party, concluding that this would likely be a publicly funded institution such as the Library of Congress.

Burk 與 Cohen 也察覺到這個提案的問題，尤其是維護合理使用者匿名性，以及使交易成本維持在可接受的程度。他們長篇考慮了哪一種單位才是合格的具公信力第三者，而結論則是諸如國會圖書館之類的公立機構。

They see the ultimate solution in a combination of the two approaches:

他們所看到的終極解決方案，是這二個路線的結合：

“Each of the two possible mechanisms for preserving fair use in a digital rights management environment has advantages and drawbacks. Automatic fair use functionality does not require human intervention, but is unlikely to afford the full spectrum of fair uses allowed by law. The use of a trusted third party intermediary to mediate access, in contrast, potentially allows the full spectrum of uses but is less responsive to anonymity and spontaneity concerns. The optimal result, we suggest, is an infrastructure that combines the two.

「在數位權利管理環境下，這二個可能機制都各有優點及缺點。自動化合理使用功能，不需要人為介入，但是可能無法提供所有法律允許的合理使用情形。反之，使用具公信力第三者作為取用中介，可能允許完全的使用情形，但是比較無法回應匿名性與自發性方面的顧慮。我們建議，結合這二者的基礎建設才是最佳結果。

The first layer of our proposed fair use infrastructure would involve the design of rights management technologies that incorporate automatic fair use defaults based on customary norms of personal noncommercial use. The legal rule for facilitating this part of the proposal would operate in a fashion similar to current provisions of the Copyright Act designed to encourage copyright registration and deposit, by conditioning copyright enforcement on implementation of the automatic fair use defaults. To guard against a “race to the bottom” in fair use law, the law would clearly state that the level of copying permitted by the automatic defaults does not define the full extent of permitted fair use.

在我們建議的合理使用基礎建設，第一層是基於個人非商業性使用的慣例，設計權利管理科技，以納入合理使用的自動預設值。促成這部分提議的法律規則，在運作上將類似於目前鼓勵著作權登記與寄託的著作權法規定，將合理使用的自動預設值，作為執行著作權法的條件。為了避免合理使用法律「向下沈淪」(race to the bottom)，法律會明文規定，自動預設值所許可的複製程度，並非法律許可合理使用的完全範圍。

Those who desire greater fair use access, meanwhile, would turn to a trusted third party intermediary. Under the system, deposit of access keys into key escrow would be facilitated by conditioning anti-circumvention protection on such deposit. Users who failed to obtain access via the escrow agent would be subject to suit for circumventing technical measures; those users, however, still might escape liability by successful invocation of a constitutional defense to circumvention liability. Rights holders that opt not to deposit keys with the escrow agent would be unable to invoke legal protection against circumvention; for such unescrowed works, a “right to hack” would effectively substitute for access via the escrowed keys. As noted [above], the DMCA’s ban on the manufacture and distribution of circumvention technologies also would need to be modified or amended to make this defense a realistic possibility. Finally, to preserve the relative anonymity of the key escrow system, the records of applicants and keys issued would need to be guarded by stringent legal protections along the lines described above.”

想要獲得更多合理使用的人，可以尋求受託中介第三者。在這個系統下，取用解密鑰匙的寄託代管，將以反規避的保護作為條件。未能通過代管者獲得取用的使用者，將會因為規避技術措施遭到起訴；不過，這些使用者仍可能成功援引憲法抗辯而逃脫規避責任。選擇不將解密鑰匙寄託到代管者的權利人，將無法引用法律保護而對抗規避；對於這些未交付代管的著作，「破解權」(right to hack)將會有效取代由代管解密鑰匙取用。如[先前]所述，DMCA 對於規避科技的製造與散布禁令，也需要修改或增修，使這種抗辯在現實上有可能性。最後，為了維護解密鑰匙代管系統的相對匿名性，申請人的記錄與所發放鑰匙，需要透過以上所述方向的嚴格法律保護加以保障。」

This paper is quoted at length because of the importance of the ideas it advances. The idea of developing DRM systems that can accommodate specific exceptions to copyright is logical. In this connection it is important to remember that United States law, both in the TEACH Act and the Chafee Amendment, provides specificity to areas falling within the scope of the fair use provisions, specificity which, in theory, could facilitate the design of DRM-enabled systems for properly implementing the provisions of the particular exceptions.

由於這篇文章所提觀念的重要性，所以此處加以長篇引述。發展接納著作權特定例外規定的 DRM 系統，這在觀念上是合乎邏輯。在這個關連點上應注意，美國 TEACH 法及夏菲增修條款(Chafee Amendment)都特別規定了合理使用範圍領域內的事項，因此在理論上，這些法律規定能夠促成適當執行特定例外規定條款的 DRM 系統設計。

The idea of making content available for use consistent with fair use principles through trusted third parties is equally compelling. Indeed this is an idea which is adopted and examined in more detail in Chapter 6 of this study.

經由具公信力第三者(trusted third parties)製作合於合理使用原則的內容，這個觀念也是同樣有說服力。事實上，本研究第六章會採用這個觀念，並有更深入的檢討。

The Cohen-Burk paper stops short however of considering how such systems would function in practice.

不過，Cohen-Burk 的文章並未考慮到這種系統如何在實務上運作。

First of all there is the question of cost. In terms of developing DRM technologies to accommodate specific exceptions to copyright, the options are either that of incentivising commercial developers to make the necessary investment or mandating such development by law. Mandating specific technical solutions is a complex and high-risk process in the best of circumstances. In the area of DRM where there are a number of different DRM technologies and as yet little interoperability between them, mandating a common mechanism for implementing exceptions would probably prove impossible.

首先是成本的問題。發展 DRM 科技以接納著作權特定例外規定，其可能選項若不是鼓勵商業性開發者從事必要投資，就是以法律強行規定。即使在最佳的情況下，強行規定特定的技術解決方案，也是一個複雜而高風險的過程。在 DRM 領域中，會有一些不同的 DRM 科技，而彼此間很少互通性，爲了執行例外規定而強行一個共同機制，將是不可能的事。

Cost is also a major consideration in the idea of using trusted third parties. The administrative infrastructure required to support a generalised third party mechanism as proposed by Burk and Cohen would be substantial. As will be seen in the remainder of this chapter, DRM systems require considerable management in themselves to function efficiently with any kind of dynamic capability.

在使用具公信力第三者的觀念時，成本也是一個主要考量。爲了支援 Burk 與 Cohen 提議的普遍第三者機制，所需的行政基本建設將會很龐大。我們在本章以下部分可以看到，爲了配合各種動態能力進行有效率的運作，DRM 系統本身需要可觀的管理作業。

A second key question is how the technical implementation of the exception would actually function and in this connection it is important to remember how DRM systems work. Content is encrypted and remains encrypted throughout its lifecycle, even when it resides on the device of a user. It is never made available to the user in unencrypted form other than during the process of secure rendering. This state of affairs, which is central to the idea of advanced DRM, is sometimes referred to as “persistent governance”.

第二個關鍵問題則是，如何實際上以技術執行例外規定，而在這一個關連點上，應注意 DRM 系統如何運作。當內容經過加密之後，便會在整個生命週期上維持加密狀態，即使是存在於使用者的設備上亦然。除了在安全監控下的播放程序中，內容絕不會以未加密形式顯露給使用者。這個狀態是先進 DRM 的核心觀念，有時被稱爲「持續治理」(persistent governance)。

It follows logically from this that simply releasing content from the control of a DRM technology in order to make content available and usable pursuant to some copyright exception would effectively negate the purpose of using DRM technology to protect the content in the first place. While in theory it would be possible to rely on the good faith of the user to prevent unencrypted content becoming widely available, the reality is that the risk of such an occurrence would be unacceptable to any prudent content provider.

由此處的邏輯推論便是，依據某種著作權例外規定，將內容由 DRM 科技的控制中釋出，而使內容得以開放使用，將會否定了使用 DRM 科技保護內容的初衷。為了避免內容廣泛流通，即使在理論上可以依賴使用者的誠信，但是在現實上，謹慎的內容供應者無法接受這種風險。<sup>40</sup>

The answer to this conundrum therefore must lie in ensuring that even when content is made available pursuant to a copyright exception, it remains in encrypted form and under governance of a DRM system. This could well be a different DRM system to the one through which the content is first and generally made available, but it would need to have many of the same features and deliver corresponding levels of security.

對於這個難題的解決答案，將必須確保，即使依據著作權例外規定而取得內容。內容仍處於 DRM 系統治理下的加密形式。這種 DRM 系統，就不同於內容一旦取得就可以普遍取得的 DRM 系統，不過它將需要許多相同功能，並提供各種安全等級。

Clearly, the ideas advanced by Burk and Cohen require deeper examination against the background of the technical and operational realities of implementation. The overriding question is therefore what kind of DRM system is required to implement exceptions to copyright, a question which can be broken down into two separate lines of enquiry:

顯然，Burk 與 Cohen 提出的觀念，需要深入檢討執行上的技術與操作現況背景。因此優先的問題便是，為了執行著作權例外規定，需要何種 DRM 系統？這個問題可以細分為二個不同問題：

- Does a DRM system used for implementing exceptions require particular components or configurations?
- 用於執行例外規定的 DRM 系統，是否需要特殊單元或裝置？
- What is involved administering such a system?
- 管理這套系統會涉及哪些事項？

## B. Rights expression languages

### 權利表達語言<sup>41</sup>

Essentially the DRM system for implementing rules sets based on an exception to copyright would have the same features as a system used for implementing rule sets defined and controlled by the content provider. There is one area however where specific tools might be employed. That area is the use of rights expression languages.

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<sup>40</sup> It is of course possible to build into content a forensic trace mechanism so that content made available to privileged users can be traced back to that user if the content is given a wider and unauthorized distribution. Bookshare.org uses this mechanism as part of its wider security strategy.

當然，在內容上內建法律追蹤機制具有可行性，關於原本對某些使用者開放取用的內容，如果出現廣泛的未經授權散布情形時，可以追溯到該使用者。Bookshare.org 就是用這套機制作為安全策略的一部分。

<sup>41</sup> See generally: Coyle, Karen: Rights Expression Languages – A Report for the Library of Congress; February 2004, available at <[http://www.loc.gov/standards/Coylereport\\_final1single.pdf](http://www.loc.gov/standards/Coylereport_final1single.pdf)>.

執行著作權例外規定指令集合的 DRM 系統，將會與內容供應者界定及控制的執行規則系統具有相同功能。不過，另有一個領域會使用特定工具。這就是權利表達語言的使用。

As we saw in Chapter 2, DRM functions by enabling certain acts to occur on a device in accordance with rules and policies governing the functioning of the device. The rules and policies may be stored locally on the device, delivered with the protected content or from a remote site or find their way to the device through of a combination of these methods. Whatever the modality of their delivery, these rules and policies have to be expressed in a language which can be made understandable to the device in question.

如在第二章中所見，DRM 的運作，是依照管理設備運作的規則與政策，而使某個設備產生特定的動作。這些規則與政策可能存放於該設備本身，與受保護的內容一起傳送，或來自遠端站，或合併使用這些方式送達該設備。不論送達態樣如何，這些規則與政策，必須以該設備能夠理解的語言加以表達。

To express rules in machine readable form requires the development of a computer language system comprising both a vocabulary (semantics) and structure (syntax). In the field of DRM these languages are called Rights Expression Languages (RELs).

為表達機器可讀的規則，需要發展出包含字彙（語意學）及結構（句法學）的電腦語言系統。在 DRM 領域中，這些語言被稱為權利表達語言（複數名詞）(Rights Expression Languages, RELs)。

There are a number of different languages which have been developed for the purpose but they share a common concept and basic structure. The term “Rights Expression Language” is a confusing term which requires some explanation.

為了這個目的，已經發展出了一些不同的語言<sup>42</sup>，不過這些語言都有共同概念與基本結構。因此單數名詞的「權利表達語言」(Rights Expression Language)是一個需要被解釋的混淆用語。

### C. The “rights”

#### 「權利」

The first issue that has to be discussed is the terminology. The “rights” referred to in the term Rights Expression Language are not the rights conferred on owners of content by copyright law. Indeed, they are not rights in the legal sense at all. The “rights” are described thus in one explanation of Rights Expression Languages:

第一個有待討論的問題是術語。在權利表達語言一詞中所謂的「權利」，並不是著作權法賦予內容所有人的權利。事實上，它們根本不是法律意義上的權利。在針對權利表達語言的一個解釋<sup>43</sup>中，權利被描述為：

“A right is a “verb” that a “principal” (i.e. a user) can be granted to exercise against some “resource” (i.e. a piece of content) under some “condition.” Typically, a right specifies an action (or activity) or class of actions that a principal may perform on or using the associated resource.”

<sup>42</sup> XrML, ODRM, among others.

<sup>43</sup> The MPEG-21 Rights Expression Language, a White Paper, Rightscom, London, 2003, available at <[http://www.rightscom.com/Portals/0/whitepaper\\_MPEG21-RELCB.pdf](http://www.rightscom.com/Portals/0/whitepaper_MPEG21-RELCB.pdf)>.

「權利是在某種條件下，針對某種「資源」(resource) (如一份內容)，對一位當事人(principal) (如使用者) 所賦予的一個動詞(verb)。基本上，權利指的是一個當事人能實施的一個動作 (或活動) 或動作的集合，或是使用相關資源的一個動作 (或活動) 或動作的集合。」

Copyright law grants the rights holder the right to authorize or prohibit certain acts. An affirmative exercise of such a right results in the entitlement of a party other than the rights holder, normally under contractually imposed conditions, to perform the otherwise restricted act. Clearly, simply expressing the permitted act and facilitating its occurrence through an REL expression does not constitute the creation of a right in a legal sense.

著作權法賦予權利人對特定行為加以授權或禁止的權利。一項權利的積極行使，將導致權利人以外第三者，通常在契約限制條件下，得從事原本受限制的行為。顯然，單純表達受許可的行為，並以 REL 表達而促成其發生，在法律意義上並不構成創設權利。

A standards forum known as MPEG 21 has been working to create a standardised REL structure and vocabulary. In the MPEG 21 scheme of things, the “right” (or rule) is coupled with a “condition,” which sets the boundaries for the execution of the act embodied in the right. For example, an end user may transact with a content provider so that his/her device can play (the right) a particular song 10 times beginning on December 1, 2005 (the condition).

MPEG 21 是一個規格標準的論壇，已經正在從事建立標準化的 REL 結構與字彙。在 MPEG 21 的事物架構中，「權利」(或規則) 是相連於一個「條件」，而條件則針對該權利中的動作執行設下界線。例如，一位終端使用者可能與內容供應者交易，使其設備能夠播放 (權利動作) 特定一首歌曲十次，時間由 2005 年 12 月 1 日起開始 (條件)。

Various other terms have been suggested – and are sometimes used – for the elements of the REL (e.g., “rules” or “permissions” for rights, “policies” for conditions). However, whatever terminology is used, the basic proposition remains that the REL is a component of the technical system used for implementing the consequences of a (legal) rights exploitation process – it should not be seen as providing a substitute for that process.

關於 REL 的組合成分，有其他各種其他用語曾經被提出過 – 有時獲得採用，例如以 rules 或 permissions 取代 rights，或 policies 取代 conditions。不過，不論使用何種用語，基本命題依然是，REL 是執行 (法律) 權利利用結果程序的技術系統單元 – 而不應被視為在該程序之外提出另一種程序。

#### D. Contextual conditioning

##### 情境式條件

Advanced DRM technologies are designed to automate as much of the permission granting and implementation process as possible, because in theory this means the rights management process is more efficient in terms of cost, transparency and security. The objective is to provide (i) the mechanism by which remote parties are able to transact efficiently and securely for the supply and use of content, and (ii) the level of trust – the predictability in the operation of a value chain – that remote parties require.

先進 DRM 科技的設計，是儘量將許可及執行程序加以自動化，因為在理論上，這就意味著權利管理程序在成本、透明度及安全上更加有效率。這樣的目標是提供(i)

在內容的供給與使用上，遠端當事人能夠有效率及安全地進行交易的機制，以及(ii)遠端當事人所需的信任層級－價值鍊運作中的可預測性。

A major problem with automation is that it can lead towards simplification and homogenization. Conversely, the exploitation of content in accordance with copyright law is a multi-faceted process depending on territorially-defined statutory rights and contractual rights and obligations. The context of use as well as the medium for storing and delivering content, may also imply certain licences or conditions. Context is also critical both in terms of providing clues as to how the exploitation of a right is to be managed and also in terms of related areas of law that may be in play. The music on a CD is first and foremost protected, commercially, by laws (both civil and criminal) relating to ownership of the plastic on which the music resides.

自動化的主要問題在於它可能導致簡化與同質化。反之，依據著作權利用內容，是一個多面向的過程，取決於主權領域界定的法律權利及契約上權利義務。使用情境與儲存傳送內容的媒體，也可能蘊含特定的授權或條件。關於權利的利用如何管理，以及相關法律領域如何適用，情境都具有關鍵地位。在商業上，一片 CD 上的音樂，其首要的法律保護，是關於碟片所有權的（民事與刑事）法律。

Efforts are being made to try to accommodate this complexity into automated systems. Some aspects of the problem are being addressed by developing “contextual” coding as part of RELs. It is however an extremely difficult process and one which may never be fully realised.

目前所投入的努力，是將這種複雜性納入於自動化系統。藉由發展 RELs 當中的「情境式」編碼，得以處理這個問題的某些層面。不過，它是一個極為困難的過程，而可能永遠不會完全實現。

#### E. Globalisation 全球化

Globalisation is fundamental to online content delivery. Technology prefers homogeneity and thus a world that from a copyright perspective can be broken down into, at most, six regions – comparable to the six regional coding specifications adopted for DVD Video discs. The legal reality is entirely different.

對於線上內容傳遞，全球化是根本所在。科技偏好同質性，因此由著作權觀點來看，世界能夠被分成最多六個區域－這相當於 DVD 影碟片採用的六區編碼規格。不過，法律上的現實狀況卻是截然不同。

One approach which has been considered is to establish a mechanism where relevant contextual information can be centrally stored and processed to provide the correct solution where a particular use of content occurs. This approach would enable an end user to download a piece of music to a mobile phone in Australia: a central server would process the relevant information relating to the music, the platform and the location, and automatically supply the relevant terms for an automated transaction with that particular end user.

曾經被考慮過的一個方式是，將相關情境資訊集中儲存與處理，於發生特定的內容使用情形時，提供正確解決方案的機制。這個方式能使終端使用者下載一首音樂到澳洲的行動電話：一個中央伺服器將處理這首音樂、平台與地點的相關資訊，並將自動化交易相關條款以自動化方式提供該特定使用者。



The problem with these kinds of approaches is the complexity, and thus the cost, of attempting to provide for the richness that traditional models of rights exploitation involve. As noted earlier, with automated and programmed uses, there is no recourse to interpretation or after the fact adjudication; computer coding is up front and unequivocal.

爲了能提供權利利用傳統模式的豐富性，複雜性及成本構成了這種方式的問題。如先前所述，關於自動化與程式化的使用，無法訴諸於解釋或事後裁判；電腦編碼則是事先明確編寫。

#### F. REs in operation

##### REs 的運作

REs are obviously key to the functioning of DRM systems but they raise a number of important issues at the point where legal and technical regulation of the use of content intersect. Consider the following.

REs 顯然是 DR 系統運作的關鍵，但是在內容使用的法律管制與技術管制交會點上，它們卻引發一些重要問題。考慮以下情形：

Many people are familiar with using a remote control device to control the function of a piece of equipment: an air conditioner, a CD player, a television set. It is a convenient way of directing the machine from a distance to perform certain functions: cool, fan, play, stop, change channel.

使用遙控器控制一個機件的運作，這是許多人所熟悉的事：空調機、CD 播放機、電視機。它是一個由遠處指揮機器完成特定功能的方便方式：冷卻、搧風、播放、停止，變更頻道等。

In the case of a CD player or a TV set, the basic instructions given to the machine via the remote control (on/ off, volume, channel) have nothing whatsoever to do with the copyright issues governing the access to or use of the content the machine is playing or displaying. Nothing in the content copyright nor in the chain of contracts between the original copyright owner in the content and the user has any bearing on the delivery of functional instructions to the machine.

在 CD 播放機或電視機的情形，由遙控下達到機器的基本指令（開 / 關，音量、頻道），無關於機器所播放或顯示內容的著作權取用問題。在內容著作權上，或內容著作權人與使用者之間的契約關係，都不影響對機器下達功能指令。

In recent years however the rights in the content have been given recognition in the functionality of the machine, and thus in the interpretation of instructions sent to the machine. In the summer of 1990, the recording industry and the consumer electronics industry agreed on a technical system to limit serial digital copying of content from digital audio sources. A consumer trying to create a second generation digital copy found that the copy function of the recording device was blocked.

不過在近年來，內容上的權利以及指令解釋，已經輸入機器功能中。在 1990 年夏季，錄製產業與消費性電子產業同意一套技術系統，以限制對數位聲音來源的內容進行連續性數位複製。當消費者嘗試製作第二代數位複製時，會發現錄音設備中的複製功能被封鎖。

Some years later the film industry divided the world into six regions and coded DVDs for delivery to each of those regions accordingly. A DVD from one region will not play in a

DVD machine from another region. The basis for that division of the global market thus effected was provided at least in part by the import controls provided by copyright laws in different territories.

幾年之後，影片產業將全世界分成六區，並將銷往各地區的 DVD 以不同區碼加密。某一地區的 DVD 無法在另一地區的 DVD 播放機器上播放。將全球市場做這種區分，至少有部分理由是由不同地區著作權法所提供的重要控制。

There is therefore a well established, albeit recent, history of the interposing of copyright interests between the delivery and execution of instructions governing the functioning of machines.

因此，在機器功能指令的傳達與執行之間，置入著作權利益考量，雖然屬於新近的作法，但已經有了相當明確的歷史。

DRM systems logically advance this process: they give the content provider, through the digital licensing mechanism, control over the functioning of the machine on which the content will be used in relation to the use of that content. Usually, there is no alternative digital licence other than that of the content provider, and without the instructions contained in the digital licence the machine will simply not function in relation to the content in question. In simple terms this might be seen as a record company not only delivering the CD but also the remote control device enabling it to be played.

DRM 系統順著邏輯推進了這個過程：在內容使用於機器時，經由數位授權機制，這些系統使內容供應者控制了機器的功能。通常情形是，除了內容供應者的數位授權之外，別無其他替代選擇，而在不具備數位授權指令時，機器對於系爭內容就停止功能。簡單地說，這看起來就像是錄音唱片公司不但銷售 CD，而且也銷售播放 CD 的遙控器。

Understandably, a growing number of commentators have highlighted this direct association between rights in content and the functionality of the machine as well as the dominance of the rightsholder in the digital licensing process. Their concerns come back again to a central theme of this study: How can legally enforceable exceptions to copyright be implemented in an environment over which, through rules applied to content, the content provider exercises exclusive control? Deidre Mulligan and Aaron Burstein consider, in relation to the United States Copyright Act, what is required to resolve this situation:

可以理解的是，有更多評論者特別指出了內容權利與機器功能之間的直接關連，以及數位授權程序中權利人的優勢地位。他們的顧慮再度直接回到本研究的主題：在內容供應者以內容規則進行控制的環境下，合法的著作權例外規定如何實施？關於在美國著作權法應如何解決這個局面，Deidre Mulligan 與 Aaron Burstein 認為：

“If RELs are to be agnostic as to legal context they must at least support the expression of the exceptions and limits on exclusivity found in copyright policy. To do so, several additional steps must be taken to better align RELs, and thereby DRMs, with copyright policy. First, the REL must be supported by a messaging protocol that enables statements of “rights” in multiple directions and from multiple sources, and resolves conflicting assertions of rights. The messaging protocol and REL must allow for the assertion and exercise of rights not yet granted or recognized and their later resolution. Second, recognized social norms regarding the use of works should be easy to reflect in RELs. Third, recognizing that RELs alone cannot address the imbalance that DRM can introduce protocols for processing and enforcing REL-based rules should provide a buffer between rights holders and the users of copyrighted works. This separation

would both alleviate some of the concerns relating to DRM technology and privacy and protect the kinds of unauthorized but fair use that the Copyright Act allows.”

「如果 RELs 對於法律情境不置可否，它們至少必須支援著作權政策中對於專屬權例外與限制規定的表達。爲了這麼做，必須額外採取幾項步驟，使 RELs 以及 DRMs 與著作權政策更加一致。首先，必須以某種通訊協定(messaging protocol)支援 REL，而能進行多重方向與來源的「權利」陳述，並解決權利上的衝突主張。第二，RELs 應該易於反映使用著作的公認社會規範。第三，一旦體認到僅憑 RELs 無法處理 DRM 帶來的不平衡，在著作權人與受著作權保護著作使用者之間，應該由處理與執行 RELs 規則的協定提供緩衝。這項區分可以緩和 DRM 科技與隱私權的某些顧慮，並保護未經授權，但著作權法所允許的合理使用。」<sup>44</sup>

There are a number of points to consider here: the idea that the control function can be exercised or at least influenced from a source or actor other than the content provider; the idea of building REL instructions to allow machines to function in accordance with exceptions and limitations to copyright; that some method has to be found to provide the contextual information necessary to assess the applicability of an exception to copyright to a particular use without encroaching on the privacy of the user.

在這裡必須考量以下幾點：內容供應者以外的來源或行爲人，能夠行使或至少影響控制功能；建立 REL 指令，以允許機器根據著作權例外與限制規定而運作；必須找到某些方法提供必要情境資訊，使著作權例外規定能適用於特定的一項使用，而不侵害使用者隱私權。

Establishing standards for technology and for technology-related practices is a cornerstone of the information society. And, as we have seen, there are clear precedents where the content industry has introduced copyright-based controls into the functionality of devices. There would seem to be therefore no logical reason why the public interest aspects of copyright law could not form the basis for controlling the functioning of a machine, where necessary, overriding the instructions of the copyright owner.

建立科技與科技相關實務的標準，是資訊社會的基礎。如我們先前所見，內容產業在設備的功能中引進著作權控制，已有明確先例。著作權法的公共利益層面，爲何不能在必要時優先於著作權人的指令，而成爲控制機器功能的基礎，這在邏輯上並沒有理由。

The practical reality is very different. The digital copying and DVD regional agreements referenced above were voluntary standards driven by industry and by the content industry in particular. Industry has no incentive to press for standards threatening control of content.

實際上的情形則相當不同。先前所提的數位複製與 DVD 區域協議，是產業界自願推行的標準，尤其是內容產業。對不利於他們控制內容的標準，產業界並沒有誘因去推動。

Furthermore, as various legislative initiatives in the United States over the last few years have shown, technology interests are becoming increasingly resistant to controls on the

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<sup>44</sup> Mulligan, Deidre and Burstein Aaron: Implementing Copyright Limitations in Rights Expression Languages, 2002; available at <[http://crypto.stanford.edu/DRM2002/mulligan\\_burstein\\_acm\\_drm\\_2002.doc](http://crypto.stanford.edu/DRM2002/mulligan_burstein_acm_drm_2002.doc)>.

capability of the technologies they develop. Again, there is no real likelihood of technology interests promoting voluntary standards along the lines suggested by Mulligan and Burstein.

此外，如美國近年來各項立法所顯示，對於產業界發展科技的能力加以控制，越來越遭受科技利益所抵制。再者，科技利益所促進的自願標準，不可能遵循 Mulligan 與 Burstein 建議的方向。

This leaves solutions mandated by law as the only option. Again there are precedents for this: the *Serial Copy Management System* (SCMS)<sup>45</sup> control on second generation digital copying is part of the United States of America Audio Home Recording Act and controls on the copying of analogue video recording are also mandated in United States of America law. Again, however, mandated solutions seem unlikely to succeed.

這就使法律規定成爲唯一的選項。在這一點也有前例。控制第二代數位複製的連續複製管理系統(*Serial Copy Management System*, SCMS)，是美國家庭錄音法的一部分，而複製類比式錄影的控制，也規定於美國法中。不過，法律規定的解決方案不太可能成功。

First, there is no precedent at international level for mandated technical solutions in the field of copyright. And while the current importance of the United States consumer technology market could lead to a *de facto* globalisation of a United States mandated solution, there would be no guarantee of its sustainability.

首先，在著作權領域，並沒有國際層面的技術解決方案規定。即使當前美國消費性科技市場具有重要地位，能夠事實上導致美國解決方案的規定成爲全球化，在永續性上也沒有擔保。

Second, mandated technical solutions are difficult to formulate and are often quickly outdated by further advances in technology. Given the currently immature state of DRM technologies, the risk of ending up encumbered with at best an ineffectual and at worst, an obstructive mandated "solution" is heightened accordingly.

第二，技術解決方案規定在制訂上有困難，而且往往因爲科技進展而過時。鑑於 DRM 科技目前還未成熟，加以總結的話會導致風險，最好的情形是沒有用處，而最壞的情形則是，造成阻礙的「解決方案」更加惡化。

Implementation, both from a technical and operational perspective, would be a totally different proposition.

由技術面與操作面來看，執行將會是一個完全不同的事情。

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According to the Wikipedia the *Serial Copy Management System* or SCMS was created in response to the digital audio tape (DAT) invention, in order to prevent DAT recorders from making second-generation or serial copies. SCMS sets a "copy" bit in all copies, which prevents anyone from making further copies of those first copies. It does not, however, limit the number of first-generation copies made from a master.

根據維基百科(Wikipedia)，連續複製管理系統(*Serial Copy Management System*, SCMS)的創造來自於因應數位錄音帶(digital audio tape, DAT)的發明，它可以預防 DAT 被錄製爲第二代或連續性重製物。SCMS 在所有重製物中設定了一種複製位元("copy" bit)，使人無法根據第一批重製物製作進一步的重製物。不過，它並不限制由原件製作第一代重製物的數量。

As to the second idea – encompassing exceptions and limitations to copyright in REL expressions – Professor Ed Felton does not appear to share the optimism of Mulligan and Burstein as to the ready achievability. Focusing first on the concept of fair use in United States of America law he describes the mismatch of legal and computer code standards:

關於第二個觀念－將著作權例外與限制規定包含在 REL 的表達－Ed Felton 教授對於現有的可行性並不像 Mulligan 與 Burstein 一樣樂觀。他首先關注於美國法上合理使用的概念，而描述法律與電腦編碼標準的不一致：

“The legal definition of fair use is, by computer scientists’ standards, maddeningly vague. No enumeration of fair uses is provided. There is not even a precise algorithm for deciding whether a particular use is fair. Instead, the law says that judges should make case-by-case decisions based on four factors: the nature of the use; the nature of the original work; the portion of the original work used; and the effect of the use on the market. The law does not say exactly how these factors should be evaluated or even how the factors should be weighted against one another.

「以電腦科學家的標準來看，合理使用的法律定義模糊令人氣惱。合理使用的情形沒有列舉清單。甚至於沒有精確的演算法決定特定使用情形是否合理。反之，法律說法官應該依照四個標準個案判斷：使用之性質、原著作之性質、使用原著作之內容比例，以及該使用對於市場的影響。法律並未明確說明如何評估這些因素，甚至也沒有說明這些因素的相對比重如何。

To a computer scientist, such imprecision is a bug”

對一位電腦科學家而言，如此不精確就是程序錯誤(bug)。」<sup>46</sup>

Professor Felton concludes that the specific contextual analysis required for application of the fair use exception is beyond current computing capability, falling well into the area of “Artificial Intelligence hard problems”. Moving beyond the generality of fair use, he considers specific exceptions and limitations but even here he stresses the complexities involved in developing and implementing solutions:

Felton 教授的結論是，適用合理使用例外規定所需的特定情境分析，超出了當前的電腦運算能力，而屬於「人工智慧難題」的領域。在一般性的合理使用之外，他考慮了特定的例外與限制規定，但即使是這個部分，他強調發展與執行解決方案所涉及的複雜性：

“If DRM systems can’t make the right judgment in every case, perhaps they can get some special cases right. Perhaps they can allow backup copies or personal use within the home. Perhaps these special cases are simple enough that they can be reasonably approximated.

「如果 DRM 系統無法在每一個案判斷正確，或許它們能在某些特殊個案上正確。或許它們可以允許複製備份或家庭個人使用。或許這些特殊個案足夠單純，因此能夠合理趨近處理。

But even these seemingly simple cases are more difficult than they might initially seem. A backup, for instance, is most useful if it can be restored on a different machine (in case the original machine breaks). But backup cannot simply provide a mechanism for

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<sup>46</sup> Felton, E. “A Skeptical View of DRM and Fair Use” Communications of the ACM April, Vol. 46, No. 4 31(2003).

moving a file from one machine to another; such a general file transfer facility is a ready loophole for infringers. The solution may involve centralized record keeping, ensuring a backup is not restored too frequently or in too many places, though such record keeping raises privacy issues.

不過即使是這些看似單純的個案，其實比乍看之下更加困難。例如，備份能儲存於另一台機器上，才最具有實益（例如萬一原來的機器毀損）。但是備份並不僅僅是將檔案移動到另一台機器的機制；這種一般性的檔案轉移是侵權者可利用的漏洞。解決方案可能涉及集中式的記錄保存，確保備份的儲存次數與地點不會過多，然而這種記錄保存會引發隱私權問題。

The point is not that handling backup is impossible but that it is surprisingly challenging. To date there has been no satisfactory solution to these problems, though it may be because most of the development effort has been (mis)directed toward the effort to build all-encompassing DRM systems. There may be hope, however, for a bottom-up approach that tries to handle a few cases well.”

重點不在於不可能處理備份，而在於具有高度挑戰性。對於這些問題，迄今沒有令人滿意的解決方案，不過這可能是因為大多數的發展被（誤）導向了建立全能性 DRM 系統(all-encompassing DRM systems)。」

The reference to the “all-encompassing DRM system” is an important one. It highlights the dangers of assuming an entirely automated and secure rights management technology can be devised, employing a comprehensive REL to accurately express the authority to perform acts consistent with copyright law. Such a system would be virtually impossible to develop – and even harder to operate.

指出「全能性 DRM 系統」具有重要性。這點出了一個危險，就是預設能設計出完全自動化而且安全的權利管理科技，運用周延的 REL 清楚表達合乎著作權法的執行動作權限。幾乎不可能發展這樣的系統—而且更不可能操作。

Assuming for a moment however that some method could be found for defining rules derived from specific and limited exceptions to copyright, how would these rules be inserted into the DRM process?

不過，假設一下能夠找到某種方法，以界定出著作權法有限、特定的例外規定，這些規則要如何納入 DRM 程序？

Would it be through some form of default control in the packaging process, in the policy management process or somewhere else? Would it come from an assertion of some established usage “right” on the part of the user? How, from a technical, REL perspective would these exceptions or user “rights” be expressed and enforced; how would their possible abuse be policed?

是否透過封裝程序、政策管理程序或其他程序中的某種預設控制？或是使用者方面某種確立的使用「權利」主張？由技術性及 REL 角度來看，這些例外規定或使用「權利」如何能加以表達與實施？如何監督可能的濫用？

The instructions and conditions embodied in RELs are nothing more than that; they are not an analogue for the complex rights systems embodied in copyright law and without the capacity for contextual modulation they are unable to replicate the function of legal rights expressions.

REL 當中的指令與條件只不過如此；它們與著作權法的複雜權利系統無法相提並論，並且在沒有情境調控的能力下，它們無法複製法律權利表達的功能。

In summary, the problems to be addressed are as follows:

需要處理的問題摘要如下：

- Computing systems are unable to automate the process of contextual analysis associated with many exempted uses of copyright works;
- 關連許多著作權著作除外使用情形的情境分析程序，電腦計算系統無法進行自動化；
- Existing RELs neither in their semantics nor in their associated messaging protocols easily allow for the implementation of exempted uses;
- 現有 RELs 的語意學或相關通訊協定，無法使除外使用情形輕易執行；
- Capturing and processing contextual information to assist in the authorisation of exempted uses risks compromising user privacy;
- 為協助授權除外使用情形，而擷取與處理情境資訊，會引起使用者的隱私風險；
- There is no practical means of securing a default position in any DRM system which would guarantee authorisation of exempted uses;
- 缺乏實際方法，使任何 DRM 系統中的預設地位能確保除外使用情形的授權；
- Where authorised exempted use occurs there must be some mechanism to ensure the consequences of that use do not interfere with the overall security of the content.
- 所授權的除外使用情形發生時，必須有某種機制確保使用結果不至於干擾內容的整體安全。

#### G. DRM: operations and administration

##### DRM：運作與管理

As has been seen in the previous paragraphs, the idea of there existing an all-embracing, automated process for defining and implementing rights in a way that is fully consistent with copyright law is more than likely illusory. Indeed, whatever the capability of the particular DRM system, it will need to be deployed and managed by some trusted entity. This is because for the DRM system to function effectively there are certain tasks that have to be performed. Needless to say, the operational management requirements tend to increase in line with the sophistication of the solutions the DRM system offers.

如先前章節中所見，能夠充分合乎著作權法而界定與執行權利的全面性自動化程序，這種觀念形同虛幻。事實上，不論特定 DRM 系統的能力如何，都需要由某種受託人(trusted entity)加以運用及管理。為了使 DRM 系統有效運作，必須執行某些事項。自不待言的是，這些運作管理上的要求，將隨著 DRM 系統解決方案的精緻化而增加。

Examining all the aspects of the operational management activity is beyond the scope of this study. The cryptographic systems used in advanced DRM systems involve highly

complex key generation and management processes which need not be discussed here. Our review of relevant tasks can therefore be broken down into three areas:

檢討所有運作管理活動的層面，超出了本研究的範圍。用於先進 DRM 系統的加密系統，涉及高度複雜的解密鑰匙製作，以及不須在此討論的管理程序。我們對於相關事項的檢視，因此分成以下三個領域：

- Authorisation;
- 授權(Authorisation)；
  
- Authentication; and
- 認證(Authentication)；且
  
- Revocation.
- 撤回(Revocation)。

### 1. *Authorisation* *授權(authorisation)*

As we have described at various points in this study, the principal function of a DRM system is to enable certain acts to occur in relation to a piece of content in accordance with the intent and authority of the content provider. For a device to perform an authorised act in relation to a piece of content it has to have the necessary instructions in relation to the particular content and a specified user or class of users.

如我們先前在本研究中所描述，DRM 系統的主要功能是依照內容供應者的意願及授權，使關於某項內容的特定動作得以發生。為了使一個設備執行某項內容的授權動作，這個設備必須擁有關於特定內容及特定使用者或使用者的必要指令。

In DRM terms authorisation therefore involves a number of different steps:  
在 DR 系統，授權因此牽涉一些不同步驟：

- Identifying the content;
- 識別內容；
- Identifying the user or class of users; and
- 識別使用者或使用者的群；且
- Specifying the rules for the act (i.e. expressing through the REL the permitted act and any conditions applied to it).
- 指定該動作的規則（例如，以 REL 表達被許可的動作，以及適用於該動作的任何條件）。

In practical terms the process of authorisation is set up during the packaging of a particular piece of content. Packaging refers to the process whereby a particular item of content is prepared for delivery to and use in a device which is under the control of a DRM system. This may involve the conversion of the item of content into a particular digital format – an MP3 audio file or a PDF document for example. The content in the specified digital format is then encrypted and the package is given some form of identification so that the content in encrypted form can be readily found and identified in use.

在實際層面上，授權程序設定於特定內容的封裝過程中。封裝程序是一件特定內容傳送及使用於 DRM 所控制設備的準備程序。這會涉及將內容轉換為特定數位格式－



如 MP3 聲音檔案或 PDF 文件。內容在指定的數位格式中加密，而封裝則獲得某種識別形式，使加密型態的內容在使用中能夠被發現並識別。

The key used for encrypting and decrypting the content package is then stored with the rules (permitted acts and conditions) applicable to the item of content. As we have seen earlier in this study, the key can then be delivered to the intended user of the content along with the rules for the content use either simultaneously with the encrypted content package or independently.

對內容包裹加密及解密的鑰匙，儲存於適用這件內容的規則（所許可動作及條件）。如我們在本研究中先前所見，鑰匙與內容規則，可同時或不同時與加密內容傳送於內容指定使用者。

This is a highly simplified outline of the authorisation process intended only to indicate the range of activities and complexity involved in the process. And while a number of highly complex processes are involved, software written for DRM packaging renders it largely invisible to the normal user through simple interfaces.

這裡描述的授權過程是一個高度簡化的概觀，只是用於指出授權過程所涉及的活動範圍與複雜性。即使這當中涉及一些高度複雜程序，DRM 封裝軟體以單純介面使得一般使用者看不到這個過程。

As noted, a key requirement of an efficient DRM system is the ability to ensure that the authorised acts can only be performed by the intended user or class of user. That is where the process of authentication comes into play.

如我們所知，有效率 DRM 系統的關鍵要求，在於確保只能由指定使用者或使用群執行授權許可動作。這就是認證程序發揮作用的地方。

## 2. *Authentication*

### *認證(authentication)*

In computer security, authentication is the process by which a computer, computer program, or another user attempts to confirm that the computer, computer program, or user from whom the second party has received some communication is, or is not, the claimed first party.

在電腦安全上，認證程序指的是，電腦、電腦程式或另一個使用者(user)<sup>47</sup>，試圖確認由第二者(the second party)接收通訊的電腦、電腦程式或使用者，是否為所稱的第一者(the claimed first party)。

Again, a detailed examination of authentication processes and technologies is not required here; the objective is to introduce the concept to non-technical readers.

再一次，這裡並不需要詳細檢討認證程序與科技；這裡的目標是對非技術背景讀者介紹認證的概念。

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<sup>47</sup> An important point for the non-technologist to understand is that when references are made to “users” in describing computing processes, the reference can be both to a human actor or another device.

對非技術人士，有一個理解上的重點是，在描述運算過程中提到「使用者」(users)時，可能兼指人或者是設備。

In a leading reference work on the subject, Richard E. Smith describes the five basic elements of an authentication process:

在這個主題上，<sup>48</sup>Richard E. Smith 有一篇領導性的新近參考著作，他描述了認證程序的五個基本要件：

“Regardless of whether an authentication system is computer based or not, there are several elements usually present and certain things usually take place. First of all, we have a particular person or group of people to be authenticated. Next, we need a distinguishing characteristic that differentiates that particular person or group from others. Third, there is a proprietor who is responsible for the system being used and relies on mechanised authentication to distinguish authorised users from other people. Fourth, we need an authentication mechanism to verify the presence of the distinguishing characteristic. Fifth, we grant some privilege when the authentication succeeds by using an access control mechanism and the same mechanism denies the privilege if the authentication fails.”

「不論是否使用電腦，在認證系統中，有幾個經常出現的要件，以及一些常發生的事情。首先，有特定的一個人或一群人需要我們進行認證。其次，我們需要這個人或這群人與其他人有所不同的區分特徵。第三，在認證系統的使用上有一個所有人，這位所有人依據機械化的認證，以區別獲得授權的使用者與其他人。第四，我們需要一套認證機制確認區分特徵。第五，當認證成功之後，我們使用取用控制機制授予某種許可，而在認證失敗時，以相同機制拒絕許可。」

Smith then illustrates these elements in a variety of contexts including entering the cave in the story of Ali Baba with the Open, Sesame password, using an automated bank teller machine (ATM), and logging onto a computer system with a password.

Smith 接著以各種情境解說這些要件，這些情境包括阿里八八以芝麻開門密語進入山洞，使用銀行自動交易機(ATM)，以及以密碼登入電腦系統。

<i>Authentication Element</i>	<i>Cave of the 40 Thieves</i>	<i>ATM</i>	<i>Password Login</i>
<i>Person, principal entity</i>	Anyone who knew the password	Owner of a bank account	Authorised user
<i>Distinguishing characteristic</i>	Knowledge of and ability to express the password “Open, Sesame”	ATM card and personal Identification Number (PIN)	Secret password
<i>Proprietor, system owner, administrator</i>	The forty thieves	Bank	Enterprise owning the system
<i>Authentication mechanism</i>	Magical device that responds to the correct words	Card validation system	Password validation system
<i>Access control mechanism</i>	Mechanism to move stone	Allows banking transactions	Login, access controls

<sup>48</sup>

Smith, Richard E.: Authentication, Addison-Wesley, 2002.

認證要件	四十大盜洞穴	ATM	密碼登入
人、主體	任何知道密語者	銀行帳戶所有人	經授權使用者
區分特徵	知悉且能夠表達「芝麻開門」密語者	ATM 卡與個人識別碼(PIN)	密碼
所有人、系統所有人、管理者	四十大盜	銀行	擁有該系統之企業
認證機制	能回應正確密語的神奇設備	卡片確認系統	密碼確認系統
取用控制機制	移動石頭的機制	允許銀行交易	登入，取用控制

The term commonly used for the distinguishing characteristic of an individual or group is “attribute”. It is important to underline that the particular attribute which a user relies on to secure authentication within a system is not necessarily created for the user by the proprietor of the system. Most commonly users select their own attributes by choosing a password which they alone know. Sometimes official attributes are required: a social security or passport number, a student identity card number.

關於個人或群體的區分特徵，通常使用的術語是「屬性」。值得注意的是，在系統內，使用者賴以確保認證的區分特徵，並不必一定由系統所有人為使用者創造。通常大部分使用者自行選擇他們自己才知道的密碼作為自己的屬性。有時則需要官方屬性：如社會安全號碼、護照號碼、學生證號碼。

One area where authentication mechanisms have been in general use for some time – and which is of particular relevance to this study – is the field of higher education. A leading example is the Athens system created and run in the United Kingdom by Eduserv. This provides the authentication and access control mechanisms for the majority of higher education institutions in the United Kingdom. Once they hold the necessary authentication password teachers and students alike are able to log onto the institution’s systems providing access to its digital resources.

有一種定期性普遍使用的認證機制，而且與本研究特別相關——就是高等教育領域。英國 Eduserv<sup>49</sup>所創立並經營的雅典系統(Athens system)是一個具有領導性的例子。這個系統為英國大部分高等教育機構提供了認證與取用控制機制。一旦教師與學生擁有必要的認證密碼，他們都可以登入提供數位資源取用的機構系統。

A more recent development in this field is the Shibboleth standard.

在這個領域的新近發展是 Shibboleth 標準。<sup>50</sup>

Shibboleth is an initiative to develop an open, standards-based solution to the needs of organizations to exchange information about their users in a secure, and privacy-preserving manner. The initiative is facilitated by Internet2 and a group of leading campus middleware architects from member schools and corporate partners.

<sup>49</sup> Information available at <<http://www.eduserv.org.uk>>.

<sup>50</sup> Information available at <<http://shibboleth.internet2.edu/seas.html>>.

Shibboleth 是一個開放性、標準化的解決方案構想，以滿足在安全而維護隱私的方式下交換使用者資訊的需求。來自 Internet2 以及其成員學校、公司領導地位的中介軟體(middleware)設計者，促成了這個構想。

The organizations that may want to exchange information include higher education, their partners, digital content providers, government agencies, etc. The purpose of the exchange is typically to determine if a person using a web browser (e.g., Internet Explorer, Netscape Navigator, and Mozilla) has the permissions to access a resource at a target resource based on information such as being a member of an institution or a particular class. The system is privacy-preserving in that it leads with this information, not with an identity, and allows users to determine whether to release additional information about themselves.

想進行交換資訊的組織包括高等教育及其合作者、數位內容供應者與政府單位等等。基本上，資訊交換的目的在於確定，使用網路瀏覽器(IE, Netscape, Mozilla)的某個人，是否基於某機構成員或某團體成員資訊，而針對目標資源獲得取用許可。這個系統之所以能維護隱私，在於它以機構或團體成員資訊，而不是個人身分資訊進行認證，且允許使用者決定是否釋出關於自己的額外資訊。

An open solution means both an open architecture and a functioning, open-source implementation. Standards-based means that the information that is exchanged between organizations can interoperate with that from other solutions.

開放性解決方案意味著一套開放架構，以及運作上執行開放原始碼。標準化則意味著組織之間交換的資訊，與其他解決方案的資訊具有互通性。

Key concepts within Shibboleth include:

Shibboleth的關鍵概念包括：

- Federated Administration. The origin campus (home to the browser user) provides attribute assertions about that user to the target site. A trust fabric exists between campuses, allowing each site to identify the other speaker, and assign a trust level. Origin sites are responsible for authenticating their users, but can use any reliable means to do this.
- 聯合管理(Federated Administration)。來源校區（瀏覽器使用者所在地）對於目標站提供關於使用者的屬性陳述。在校區之間有信任結構，使每一個站能識別另一個發言者，並指定信任層級。來源站負責認證他們的使用者，但可用任何可靠方法進行認證。
- Access Control Based On Attributes. Access control decisions are made using those assertions. The collection of assertions might include identity, but many situations will not require this (e.g. accessing a resource licensed for use by all active members of the campus community, accessing a resource available to students in a particular course).
- 基於屬性的取用控制(Access Control Based On Attributes)。取用控制是由使用屬性陳述而決定。陳述的集合包含身分資料，但許多情況下不會要求身分資料（例如，取用僅授權校內成員的資源，取用僅開放於特定課程學生的資源）。
- Active Management of Privacy. The origin site and the browser user control what information is released to the target. A typical default is merely “member of

- community”. Individuals can manage attribute release via a web-based user interface. Users are no longer at the mercy of the target’s privacy policy.
- 主動式隱私管理(Active Management of Privacy)。來源站與瀏覽器使用者控制了哪些資訊釋出於目標站。典型的預設僅僅是「群體成員」(member of community)。個人可以經由網路使用者介面管理屬性。使用者不再受制於目標站的隱私政策。
  - Standards Based. Shibboleth will use OpenSAML for the message and assertion formats, and protocol bindings which is based on Security Assertion Markup Language (SAML) developed by the OASIS Security Services Technical Committee.
  - 標準化(Standards Based)。Shibboleth 將使用 OpenSAML<sup>51</sup>作為訊息與陳述格式，以及 OASIS 安全服務技術委員會所發展的安全陳述標示語言(Security Assertion Markup Language, SAML)作為協定規格。

### 3. Revocation

#### 撤回(Revocation)

Revocation is essentially the reversal of the processes of authorisation and authentication described above. It can occur for any number of reasons, but among the most common reasons are changes in status of the content item or user or the response to some threat to the system.

基本上，撤回就是前述授權與認證程序的反向過程。發生撤回的情形有各種原因，不過最通常的原因內容或使用者地位變更，或是系統接收到具有某種威脅性的反應。

The change of status situation is a normal occurrence. The authentication system used in institutions of higher education as described above regularly have to accommodate changes in the status of particular students. Clearly, as they leave the institution their institutional privileges are lost and both authority to use the institution’s digital resources as well as the ability to authenticate oneself as an authorised user are revoked.

身分情況變更是一種正常發生的事。前述高等教育機構所使用的認證系統，必須經常輸入特定學生們身分變更的資料。顯然，當他們離開這個機構，他們就喪失了在機構中享有的優惠，而他們使用機構數位資源的權限，與經認證為授權使用者的能力，都會遭到撤回。

Revocation in an academic environment might also occur as a student moves from one academic year to the next; attributes will change accordingly and can be used for reserving certain resources to particular groups of students.

在學術環境，撤回也可能發生於學生的學年升級時；屬性將會因此變更，而屬性也可用於對特定學生群體保留特定資源。

Security is the other area where revocation is most commonly provided for. If the system proprietor or administrator perceives that a particular user is attempting to hack the security of the system, it should be possible revoke that user’s ability to access the system.

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<sup>51</sup> Information available at <<http://www.opensaml.org>>.

安全是另一個最常導致撤回的領域。如果系統所有人或管理人發覺特定使用者試圖破解系統安全，就可能撤回該使用者取用系統的能力。

The principle of revocation is therefore relatively straightforward. The implementation is more complex.

因此，撤回的原則相對上很簡單。而執行則是較為複雜。

First of all, the mechanisms in the system facilitating revocation should be able to respond efficiently to the particular need. The revocation may need to be effected in rapid response to a threat or an attack to the security or integrity of the system; it should occur accurately, ensuring the target is correctly identified and the right action taken. There should be no disruption to other users on the system.

首先，系統的撤回機制應該能夠對特定行為採取有效率的反應。對於系統安全或完整性的威脅或攻擊，必須以迅速反應實行撤回；撤回必須準確，以確保目標識別與行動正確無誤。對於系統其他使用者不應有干擾。

Secondly, the ability of the system proprietor or administrator to deny particular users access to the system illustrates the power that the proprietor or administrator wields over the access and use of content as whole. The potential for abuse is significant.

第二，系統所有人或管理人拒絕特定使用者取用系統的能力，顯示出其權力凌駕於全體的內容取用與使用。而濫用權力的可能性則相當大。

To counter this threat, revocation should only be performed in accordance with clear and well-established policies. There should be clearly stated criteria for exercising the right to revoke a user and for dealing with the consequences of revocation.

爲了反制這種威脅，惟有依照清楚明確的政策方能夠實施撤回。關於針對使用者行使撤回權，以及撤回結果的處理，應該有清楚規定的標準。

CHAPTER 6  
第六章

TRUSTED INTERMEDIARIES  
具公信力中介者(TRUSTED INTERMEDIARIES)

In this study we have advanced a number of propositions:  
在本研究中，我們提出了一些命題：

- That there exist no DRM systems capable of automating the full range of rights management processes customarily required by copyright law;  
著作權法要求的權利管理程序，是能夠在個案中量身訂製，然而卻沒有 DRM 系統能夠將這種程序完全自動化；
- That where a DRM system is used for managing the copyright in an item of content, the same or a comparable DRM system is required to manage (at least some of) the exceptions to that copyright;  
使用 DRM 系統管理某一件內容時，該 DRM 系統或類此相當的 DRM 系統必須管理（至少某些）著作權例外規定；
- That there are a variety of tasks both integral and extraneous to the specific DRM mechanism that have to be performed by some entity or entities to enable the DRM system to function efficiently; and  
對於特定的 DRM 機制，必須由某個主體執行各種 DRM 內部與外部措施，使 DRM 系統有效率地運作；且
- That there needs to exist an unbroken chain of trust throughout the automated rights management process; the technology of the system as well as its operational managers have to be trustworthy.  
在整個自動化權利管理程序，信任環節不能有中斷；該系統的科技與管理者必須值得信賴。

These propositions lead logically to our final area of enquiry: consideration of the intermediary entities that are required to facilitate the implementation of copyright exceptions through automated rights management systems. We have to reflect on the role of such entities and the requirements of that role.

這些命題在邏輯上導出了我們最後的研究領域：在自動化權利管理系統中，執行著作權例外規定所必須的中介者(intermediary entities)。我們必須思考這個主體的角色，以及這個角色應具備的要求條件。

We also suggest a convergence in the role of managing the copyright based exceptions to technically enforced protection and the management (as described in the previous chapter) of the technology required to give effect to those exceptions.

我們也建議，關於技術性保護的著作權例外規定，以及使這些例外規定能發揮作用的科技，這二者在管理角色上進行合併。

There are few if any precedents for these roles in the copyright field, whether in the administration of rights or exceptions, including compulsory licences. We have therefore to launch our enquiry from basic assumptions about the likely components of the intermediary role and see what analogues can be found in other fields.

在著作權領域中有一些這種角色的前例，例如在權利上的管理或例外規定上的管理，包括強制授權。因此我們必須由中介者角色可能內涵的基本假設開始研究，並看看在其他領域能找到哪些類似者。

A preliminary consideration is the requirement that the intermediary entity, and processes in which it engages, have to be “trusted” in the sense we have adopted throughout this study: the capability of delivering predictable results. The intermediary entity proposition we consider here involves the bringing together or an infinite number of both content providers and end users: all of these have to be able to rely on the role of the intermediary. Content providers need to be assured that content they entrust to the intermediary will be managed and protected in strict accordance with their instructions and the requirements of the law. End users will rely on the intermediary, perhaps exclusively, for access to relevant content and must be guaranteed the sustainability and efficiency of that supply.

中介者與其所從事的程序，在要求條件上的一個基本考量是，必須在本研究所採取的意義上「可信賴」：產出可預測結果的能力。我們這裡所考量的中介者，涉及無數的內容供應者與使用者：所有這些人都必須依賴中介者的角色。內容供應者必須確保，他們委託於中介者的內容，將會嚴格依照他們的指示與法律要求，而受到管理及保護。終端使用者或許將完全依賴中介者，以取用相關內容，並必須由中介者擔保內容供給上的持續及效率。

In short, our search is for a basic model for a trusted intermediary to implement through technical measures certain exceptions to copyright in a way that respects fully the rights of content providers and the legitimate expectations of end users.

總而言之，我們所探求的是，能充分尊重內容供應者權利及終端使用者正當期待，以技術措施執行特定例外規定的具公信力中介者(trusted intermediary)基本模型。



#### A. Trusted third parties

##### 具公信力第三者(trusted third parties)

We start our enquiry with a brief and very basic examination of an established intermediary function and entity, that of the trusted third party in a Public Key Infrastructure security system.

一開始，我們以基本簡要方式檢討已確立的中介者功能與主體，亦即公鑰基礎建設(Public Key Infrastructure)安全系統中的具公信力第三者。

In cryptography, the term “trusted third party” (TTP) is applied to an entity which facilitates interactions between two parties who both trust the third party; they use this trust to secure their own interactions. TTPs are common in systems involving cryptographic protocols, for example, a certificate authority (CA).

在密碼學中，具公信力第三者(trusted third party, TTP)是由交易雙方所信任，而促成交易的第三者主體；交易雙方使用這項信任，以保障其交易。TTPs 在涉及密碼協定的系統中很常見，例如憑證管理中心(certification authority, CA)。<sup>52</sup>

People who wish to communicate confidentially and securely with each other encrypt their messages so that only the two parties hold the necessary keys to decrypt them and render them legible. The problem with traditional encryption systems was that passing the key from one person to another was a relatively insecure process. The key exchange could be intercepted by a hostile third party.

人們希望秘密通訊，以及安全地互相針對訊息加密，使持有必要解密鑰匙的這二方才能解密讀取訊息。傳統加密系統的問題在於，由一方傳遞鑰匙到另一方，相對上是一個不安全的過程。惡意第三者可能會截取鑰匙的交換。

Public key cryptography provided a solution to this problem. It involves the use of one key to encrypt a message and a second related key to decrypt it. The two keys are matched: one is publicly accessible, like the telephone number of a listed telephone subscriber. The other key is held privately and exclusively by the owner of the keys. Using this system, the sender of the secret message can look up the public key of the intended recipient and encrypt the message with that key. When it is received by the intended recipient he is able to decrypt the message with his privately held key.

公鑰密碼提供了這個問題的解決方案。其中涉及使用一份鑰匙加密訊息，以及一份相關的解密鑰匙。這二份鑰匙是相互配對：一份是公開可得，如同電話目錄上的電話號碼。另一份鑰匙只由鑰匙所有人私下持有。使用這套系統，秘密訊息送件人可以查到收件人的公鑰，並以公鑰加密訊息。當收件人收到訊息，便能以他的私鑰解密訊息。

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<sup>52</sup> A *Certification Authority* (CA) is a body, either public or private, that seeks to fill the need for trusted third party services in electronic commerce by issuing digital *certificates* that attest to some fact about the subject of the certificate. Information available at

<<http://www.law.miami.edu/%7Efroomkin/articles/trustedf.htm> - ENDNOTE22>.

憑證管理中心(certification authority, CA)是一種公立或私人主體，經由發出數位認證，以證明被認證者某些事實，而滿足電子商務中對具公信力第三者服務之需求。資訊可見於

<<http://www.law.miami.edu/%7Efroomkin/articles/trustedf.htm> - ENDNOTE22>。

The issue which this process obviously threw up was how far the sender could be sure that the publicly accessible number was indeed the number of the intended recipient. If it was not, the message transmission would fail. The solution involved the services of a trusted third party to guarantee the accuracy of the public key as being that of the intended recipient. Consider the following example:

顯然這個過程產生一個問題，送件人如何能確定公開號碼實際上就是收件人的號碼。如果不是，訊息傳遞將會失敗。解決方案涉及了具公信力第三者的服務，以確保公鑰收件人的正確性。考慮以下例子：

Suppose Alice and Bob wish to communicate securely — they may choose to use cryptography. Without ever having met Bob, Alice may need to obtain a key to use to encrypt messages to him. In this case, a TTP is a third party who may have previously seen Bob (in person), or is otherwise willing to vouch that this key (typically in an identity certificate) belongs to the person indicated in that certificate, in this case, Bob. (In discussions, this third person is often called “Trent”.) Trent gives it to Alice, who then uses it to send secure messages to Bob. Alice can trust this key to be Bob’s if and only if she trusts Trent. In such discussions, it is simply assumed that she has valid reasons to do so.

假設 Alice 與 Bob<sup>53</sup> 想要安全地通訊—他們可以選擇使用密碼。Alice 沒有與 Bob 會面，因此需要獲得一份鑰匙，針對給 Bob 的訊息加密。在這個情形，一個 TTP 可能是先前當面見過 Bob 的第三者，或者是願意保證這份鑰匙屬於證書上的人，亦即本例中的 Bob。（在討論中，這個第三者通常稱為 Trent）。Trent 將鑰匙給予 Alice，Alice 之後可以使用它寄送安全訊息給予 Bob。只要 Alice 信任 Trent，Alice 就可以信任這是 Bob 的鑰匙。在這些討論中，是直接假設她有正確理由這樣做。

An important reference text on the function and responsibilities of trusted third parties is the Technical Report of ISO/ IEC entitled “Guidelines for the use and management of Trusted Third Party services.” The introduction to the report describes the subject matter as follows:

關於具公信力第三者的功能與責任，ISO/ IEC 的技術報告是一份重要參考文件，其名稱為「具公信力第三者服務之使用與管理準則」(Guidelines for the use and management of Trusted Third Party services)<sup>54</sup>。這份報告導論中所描述的主題如下：

“Achievement of adequate levels of business confidence in the operation of IT systems is underpinned by the provision of practical and appropriate legal and technical controls. Business must have confidence that IT systems will offer positive advantages and that such systems can be relied upon to sustain business obligations and create business opportunities.

「在資訊科技系統運作上達到適當水準的商業信任，有賴於提供實用而適當的法律與技術控制。商業界必須信任資訊科技系統能夠提供積極優點，而且在維持商業義務與創造商機上能依賴該系統。

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<sup>53</sup> For those readers unfamiliar with the parlance of cryptographers, Alice and Bob are the standard names for the different actors in a particular interaction. There are a series of other such names. 對不熟悉解密用語的讀者，Alice 與 Bob 是特定互動中不同行為人的標準名稱。而其他類似的名稱也有很多。

<sup>54</sup> Information technology – Security techniques - Guidelines for the use and management of Trusted Third Party services, Technical Report Document ISO/IEC TR 14516, 2002.

An exchange of information between two entities implies an element of trust, e.g. with the recipient assuming that the identity of the sender is in fact the sender, and in turn, the sender assuming that the identity of the recipient is in fact the recipient for whom the information is intended. This “implied element of trust” may not be enough and may require the use of a Trusted Third Party (TTP) to facilitate the trusted exchange of information. The role of TTPs includes providing assurance that business and other trustworthy (e.g. governmental activities) messages and transactions are being transferred to the intended recipient, at the correct location, that messages are received in a timely and accurate manner, and that for any business dispute that may arise, there exist appropriate methods for the creation and delivery of the required evidence for proof of what happened. Services provided by TTPs may include those necessary for key management, certificate management, identification and authentication support, privilege attribute service, non-repudiation, time stamping services, electronic public notary services, and directory services. TTPs may provide some or all of these services. 二個主體之間的資訊交往意味著信任，例如收件人假設送件者的身分事實上就是這位送件者，而送件者假設收件者的身分就是這項資訊預定的收件者。這種「默示的信任要件」(implied element of trust)可能有所不足，而可能需要使用具公信力第三者(Trusted Third Party, TTP)促成受委託的資訊交流。TTPs的角色包含確保商業性與其他可靠（例如政府活動）訊息與交易將能夠傳遞到預定的收件者及正確地點，以及訊息能夠以及時與正確方式接收，以及關於可能發生的商業爭端，有適當方法提出證明事件發生的必要證據。TTPs可能提供以下事項所需的服務：鑰匙管理、證書管理、識別與認證支援、權限屬性(privilege attribute)服務、不可否認(non-repudiation services)服務與時間戳記服務(time stamping services)、電子公證服務，以及目錄服務。TTPs可能提供以上部分或全部的服務。

A TTP has to be designed, implemented and operated to provide assurance in the security services it provides, and to satisfy applicable legal and regulatory requirements. The types and levels of protection adopted or required will vary according to the type of service provided and the context within which the business application is operating.”

TTP 必須設計、執行並運作，以確保所提供的安全服務，並且滿足相關的法律與管制要求。所採取或所需的保護類型與層級，取決於服務類型。以及商務應用的運作情境。」

The report then proceeds to list the key requirements of an effective trusted third party: 接下來這份報告列舉了具公信力第三者在效能上的關鍵要求條件：

(a) operate within a legal framework which is consistent among the participating entities;

(a)在當事主體之間相容的法律架構中運作；

(b) offer a range of services, with minimum services clearly defined;

(b)提供一定範圍的服務，明確界定最基本的服務項目；

(c) have defined policies, in particular a public security policy;

(c)已定出政策，尤其是公共安全政策(public security policy)；

(d) be managed and operated in a secure and reliable manner, based on an information security management system and trustworthy IT systems;

- (d) 基於資訊安全管理系統及可靠的資訊科技系統，以安全可靠方式進行管理及運作；
- (e) conform to national and international standards, where applicable;  
(e) 遵守相關國內與國際標準；
- (f) follow an accepted best code of practice;  
(f) 遵循獲得認可的最佳作業準則(best code of practice)；
- (g) publish practice statements;  
(g) 公布作業聲明；
- (h) record and archive all evidence relevant to their services;  
(h) 將一切與服務相關的證據加以記錄與建檔；
- (i) allow for independent arbitration, without compromising security;  
(i) 在不危害安全下允許獨立仲裁；
- (j) be independent and impartial in their operation, (e.g. accreditation rules); and  
(j) 在運作上保持獨立不偏頗（例如認證規則）；且
- (k) assume responsibility of liability within defined limits for availability and quality of service.  
(k) 對於服務的可取用性與品質承擔有限度責任。

Obviously, the element of trust is fundamental to the role of the trusted third party. The report describes this as follows, identifying the essential trust components of the entity in question:

信任顯然是具公信力第三者角色的根本要件。這份報告接下來的描述指出了該主體的信任基本內涵：

“The use of a TTP and its services depends on the fundamental observation that the services provided by the TTP will be trusted by other TTPs and entities. This trust results from the confidence that the TTP is managed correctly and its services are operated securely. Therefore it should give assurance that the TTP itself and the services it provides are according to the defined policies. Especially, the security policy should cover all security aspects related to the management of the TTP and the operation of the services.

「TTP及其服務的運用，取決於該TTP的服務能夠受到其他TTPs與主體所信任。這項信任來自於相信該TTP有正確的管理及安全的服務運作。因此TTP本身與其服務，必須保證能遵循明確的政策。尤其是，安全政策應涵蓋TTP管理與服務運作所有的相關安全面向。

The confidence can be established through evidence of the management and operational TTP aspects. Evidence should be given that the management aspects are proper and sufficient to completely achieve the objectives, that the management system is effective, suitable to minimise risks and to counter threats, and the safeguards are documented and understood by personnel, not outdated or superseded and are implemented properly.

TTP 在各面向上的管理及運作證據，能夠建立這項信任。應該提出的證據是，在各管理面向上能適當充分完成這些目標，以及管理系統能恰當有效將風險控制到最少，並能反制威脅，以及安全措施有明文規定，為 TTP 人員所了解，沒有落伍過時，而且能適當執行。

To gain confidence in the management and operational aspects a TTP especially should provide evidence that:

爲了在管理及運作面向上獲得信任，TTP 應特別提供以下證據：

(a) there is an appropriate Security Policy in place;

(a)已有適當安全政策；

(b) security problems have been addressed by a combination of correctly implemented security procedures and mechanisms;

(b)以正確執行的安全程序與機制處理安全問題；

(c) the operations are being carried out correctly and in keeping with a clearly defined set of roles and responsibilities;

(c)運作上的實施正確，並且符合明確的角色與責任；

(d) the interfaces and procedures for communicating with entities are appropriate for the functions to be performed and are correctly used;

(d)與其他主體的通訊介面與程序，適合 TTP 所執行的功能，並且運用得當；

(e) rules and regulations are followed by management and staff, and are consistent with a stated or targeted level of trustworthiness;

(e)規則與管制規定爲管理人員與職員所遵循，並且符合所宣稱或預定的信任層級；

(f) the quality of the processes, operations and working practices have been suitably accredited;

(f)程序、運作與作業的品質，已經過適當認證；

(g) the TTP meets its contractual obligations according to a formal contract with its users;

(g)該 TTP 遵守與使用者之間的正式契約義務；

(h) there is a clear understanding and acceptance of the liability aspects;

(h)對於責任有清楚理解及承擔；

(i) compliance with laws and regulations is maintained and audited;

(i)能保持並查核符合法律及管制規定；

(j) known threats and safeguards to mitigate those threats are clearly identified;

(j)明確識別已知的威脅與因應威脅的安全措施；

(k) a Threat and Risk Assessment is done initially and reviewed/updated on a regular basis to ensure that confidentiality, integrity, availability and reliability requirements are met;

(k)自始即有進行威脅與風險評估(Threat and Risk Assessment)，並有經常性審查 / 更新，以確保能符合保密(confidentiality)、完整性(integrity)、可用性(availability)與可靠性(reliability)上的要求；

(l) proper organizational and personnel measures are met;

(l)有適當的組織與人事措施；

(m) the trustworthiness of the TTP can be relied upon and that it can be checked and verified, and

(m)TTP的可信度能夠加以依賴，並能加以檢查與驗證；且

(n) that the TTP is monitored by some type of administrative authority to oversee that its operation is within its accreditation rules.”

(n) 某種行政機關能監督 TTP 的運作是否逾越認證規則。」

## B. Trusted digital repositories

### 具公信力數位典藏庫

The trusted intermediary role envisaged for the tasks under consideration here will no doubt encompass that of the repository. This will almost certainly be the case where the provision of content for particular uses involves the conversion of the original content format in some way.

在這裡任務所考量的具公信力第三者角色，無疑會包含典藏庫的角色。針對特定使用而提供的內容，涉及轉換原始內容格式時，必然需要典藏庫。

The concept of the trusted repository is not new. The following definition of the trusted digital repository is taken from a report on trusted digital repositories published in 2002 by the Research Libraries Group in Mountain View, California:

具公信力典藏庫的概念並不新穎。以下具公信力數位典藏庫的定義，取自於 200 年加州山景城研究圖書館集團(Research Libraries Group)的一份報告<sup>55</sup>：

“A trusted digital repository is one whose mission is to provide reliable, long-term access to managed digital resources to its designated community, now and in the future. Trusted digital repositories may take different forms: some institutions may choose to build local repositories while others may choose to manage the logical and intellectual aspects of a repository while contracting with a third-party provider for its storage and maintenance.

「具公信力數位典藏庫是針對所管理數位資源，向現在與未來目標群體，提供可靠、長期取用的典藏庫。具公信力數位典藏庫可能有不同的形式：某些機構選擇

<sup>55</sup>

Trusted Digital Repositories: Attributes and Responsibilities; RLG; Mountain View, CA; May 2002.

建立內部典藏庫，而其他機構可能選擇管理典藏庫的邏輯與智慧層面，而將儲存與維護事項以契約外包第三供應者。

The infrastructure of the institution (a large university or national repository versus a small library, archives, or museum) will be a determining factor in the nature of the overall digital repository system, but another factor will be equally important: the repository's "designated community"- its identified group of potential users - will determine what is deposited (content and format), how the digital information is managed and preserved, and how it is disseminated and accessed. Despite their different organizational models, all digital repositories will need to address the same underlying issues of not only functionality, but of reliability."

機構的基礎建設將是整體數位典藏制度在性質上的決定因素（大型大學或國家典藏庫，對比於小型圖書館、檔案館或博物館），但是另一個因素也同樣重要：典藏庫的「預定群體」(designated community)－所識別的潛在使用者團體－將決定典藏物（內容與格式）、數位資訊管理與保存方法，以及流通與取用方法。不論組織模式如何，所有數位典藏庫需要處理的相同根本問題不僅是功能，還有可靠性。」

The report goes on to list the responsibilities of an efficient trusted repository:

這份報告繼續列出，一個有效率的具公信力典藏庫所應盡的職責：

- accept responsibility for the long-term maintenance of digital resources on behalf of its depositors and for the benefit of current and future users;
- 承擔代表寄託人長期維護數位資源的職責，以及承擔照顧目前與將來使用者利益的責任；
- have an organizational system that supports not only long-term viability of the repository, but also the digital information for which it has responsibility;
- 組織系統能支援典藏庫的長期存續性，以及所負責數位資訊的長期存續性；
- design its system(s) in accordance with commonly accepted conventions, and standards to ensure the ongoing management, access, and security of materials deposited within it;
- 系統設計符合通行慣例與標準，能確保寄託材料的持續管理、取用及安全；
- establish methodologies for system evaluation that meet community expectations of trustworthiness;
- 建立系統評估方法論，以滿足使用者群體在可信度上的期待；
- be depended upon to carry out its long-term responsibilities to depositors and users openly and explicitly;
- 能公開明確實現對於寄託人與使用者的長期職責；
- have policies, practices, and performance that can be audited and measured.
- 政策、作業與績效能夠被稽核與衡量。

### C. Others

#### 其他

Outside cryptography, the law in many places makes provision for trusted third parties upon whose assertions parties to a transaction may rely. For instance, a notary public acts as a trusted third party for authenticating the validity and execution of documents.

除了密碼以外，關於能作為當事人法律依據的具公信力第三者陳述，法律有多處規定。例如，作為具公信力第三者的公證人，能認證文件的效力與執行。

In the field of copyright we find two kinds of organizations that bear some resemblance to the requisite intermediary entities. On the one hand are the (normally public) institutions of registration and legal deposit for copyright materials. To greater or lesser extent, these entities are able to vouch for certain information regarding material that is registered and/ or deposited. At the very least they provide a source for verification of the precise substance of the material in question. In some cases they are able to furnish information as to the original owner of the rights in the material as well as the date of creation.

在著作權領域，我們找到二種某程度類似必要中介主體的組織。在一方面，就是著作權材料的登記與法律寄託（公證）機構。在或多或少的程度上，關於這些登記與 / 或寄託的材料，這些主體能夠在法律上作證。至少他們能提供查證來源，證實系爭材料確實存在。在某些情形，對於材料的原權利人以及創作日期，他們能夠提供資訊。

On the other hand there is a multitude of entities responsible for the collective administration of copyright. Many of these have a long operational history and highly developed licensing infrastructures; others are of more recent origin with a less extensive scope of operation, often established to manage the consequences of advances in technology such as the widespread use of photocopying. Examples of the latter include the Spanish Reproduction Rights Centre (CEDRO) in Spain and the CAL in Australia. Both these organizations recognise the potential for development of their existing intermediary role as can be seen from the CAL Case Study included earlier in this study.

在另一方面，有許多種主體能負責著作權的集體管理。其中許多主體具有長期運作歷史與高度發展的授權基礎建設；其餘主體的起源則是較為晚近，而運作範圍比較窄，其設置目的通常是管理科技進展的後果，例如影印機的廣泛使用。後者的例子包括西班牙重製權利中心(Spanish Reproduction Rights Centre, CEDRO)<sup>56</sup>，以及澳洲 CAL。這二個組織都認識到了既有中介角色的發展潛力，這可見於本研究中先前舉出的 CAL 案例。

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<sup>56</sup> The Centro Español de Derechos Reprográficos (CEDRO) is a non-profit association of authors and publishers of books, periodicals and other publications in any medium. The association collectively protects and manages members' intellectual property rights (copying, processing, public disclosure and distribution). CEDRO was authorised for its role in 1988 by the Spanish Ministry of Culture under the Intellectual Property Act.

<[http://www.cedro.org/ingles\\_mision.asp](http://www.cedro.org/ingles_mision.asp)>.

西班牙重製權利中心(Centro Español de Derechos Reprográficos, CEDRO)是書籍、期刊與其他媒體出版品作者與出版商非營利協會。該協會以集體方式保護與管理會員智慧財產權（複製、公開與散布）。CEDRO的這項角色，來自1988年由西班牙教育部根據智慧財產法所授權。



Potential intermediary entities can also be found in the target fields of this study. Indeed, a number of organizations representing the interests of visually impaired people are already developing their role as trusted intermediaries in the acquisition of content, its conversion into accessible formats, its secure delivery to qualified recipients. Examples of such entities in Europe include Braille Net in France and the Danish National Library for the Blind (DBB) in Denmark.

在本研究中的目標領域，也能發現潛在的中介主體。實際上，一些代表視障者利益的團體，在取得內容、格式轉換、安全送達合格收件者方面，已經正在發展具公信力中介者的角色。在歐洲，這種主體的例子包括在法國的點字網(Braille Net)<sup>57</sup>，以及在丹麥的丹麥國家盲人圖書館(Danish National Library for the Blind, DBB)<sup>58</sup>。

Another major development in this connection is occurring in the United States under the auspices of the Department of Education. The United States Department of Education's Office of Special Education Programs has awarded CAST two five-year Cooperative Agreements to establish two national centers to further develop and implement the National Instructional Materials Accessibility Standard (NIMAS). NIMAS guides the production and electronic distribution of digital versions of textbooks and other instructional materials so they can be more easily converted to accessible formats, including Braille and text-to-speech.

在美國，以教育部的推動下，出現了另一個相關的重大發展。美國教育部特殊教育計畫局(Office of Special Education Programs)已經資助 CAST<sup>59</sup>進行二個五年期合作協議，以建立二個國家中心推動國家教材取用標準(National Instructional Materials Accessibility Standard, NIMAS)。NIMAS 指導數位版本教科書與其他教材的生產與電子化散布，因而使可取用格式的轉換更加簡易，包括點字及文書語音轉換。

Version 1.0 of the NIMAS standard was developed in 2002-2004 by the National File Format Technical Panel comprised of 40 technology specialists, educators, disability advocates, and publishers, and is based on the ANSI/NISO Z39.86 (DAISY 3) specification.

有四十位科技專家、教育工作者、障礙支持者與出版商組成了國家檔案格式技術小組(National File Format Technical Panel)，該小組根據 ANSI/NISO Z39.86 (DAISY 3)規格，在 2002-2004 年間發展出了第 1.0 版的 NIMAS 標準。

The object of this program is to ensure that required texts are available in timely fashion to disabled students in need of accessible formats. A key element of the program is the designation of a central repository for the deposit of relevant texts and for management of the format conversion and distribution.

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<sup>57</sup> Braillet is focuses on achieving full web accessibility for visually impaired people. <<http://www.braillet.net>>.

Braillet 專注於使視覺障礙者獲得充分網路可取用性。<<http://www.braillet.net>>。

<sup>58</sup> DBB - The Danish National Library for the Blind - is an institution under the The Danish Ministry of Culture. DBB provides services to the blind, the visually impaired and other persons whose handicap prevents them from reading standard printed material. <<http://www.dbb.dk/English/facts.asp>>.

丹麥國家盲人圖書館(Danish National Library for the Blind, DBB)隸屬於丹麥文化部。DBB 提供服務的對象是：盲人、視覺障礙者，及其他因障礙而無法閱讀標準印刷材料者。

<<http://www.dbb.dk/English/facts.asp>>。

<sup>59</sup> Center for Applied Special Technology. Information available at <<http://www.cast.org>>.

這個計畫的目標在於，對需要可取用格式的有障礙學生，確保他們能及時取得所需課本。這個計畫的一個關鍵是，指定一個集中典藏庫，以負責相關課本的寄託，以及格式轉換與散佈的管理。

## CHAPTER 7

## 第七章

## CONCLUSIONS

## 結論

Imagine the use of a particular copyrighted work within an educational context recognised by the applicable law as giving rise to an exception to copyright or, perhaps, a licensed extension thereof. Within that context a student is given an assignment to produce a multi-media work bringing together audio, audio-visual and text materials from a variety of sources – some in the public domain, others from commercial copyright owners.

想像一下在某個教育情境中使用特定的受著作權保護著作，這個情境是相關法律所認可的著作權例外情形，或者也許是一個因例外而來的延伸授權情形。在這個情境中，某個學生被指定做出一份多媒體作業，作業包含各種來源的聲音、視聽與文字材料—某些材料來源是公共領域，其餘材料來源則是商業性著作權人。

Provided the assignment is performed in a controlled environment which conforms to the permitted educational environment, and provided the product of that assignment is likewise controlled, it is relatively easy to conceive of a system of technical control which will map directly to the contours of the regulation derived from the copyright law.

如果這項作業是在受許可的教育環境下所完成，而且這項作業的產品受到控制，則設計一套技術控制系統直接設定著作權法規範的界線，是相對上很簡單的事情。<sup>60</sup>

That system would involve a number of components:

這套系統將涉及一些成分：

- A dedicated network of trusted devices through which content could be sourced, on which the assignment is performed, and on which the product could be made available;
- 一套受託設備的專用網路，得以藉此尋找內容來源，得以藉此完成作業，並得以藉此利用產品；
- A central network administrator that would enforce the policies governing use of the system;
- 執行系統使用政策的集中網路管理員；
- A mechanism for authenticating the student as someone entitled to use a device within the network and to obtain and perform certain acts on content accessed via that device; and
- 一套認證學生的機制，判斷誰有資格在網路內部使用設備、獲得內容，以及經由該設備對內容從事某些動作；且

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<sup>60</sup> Apart, of course, from the potential restriction in the use of the public domain material contained in the multi-media assignment product. That is not the issue here.

當然，此外還有的潛在問題是，在多媒體作業中使用公共領域材料的限制。這不是此處討論的問題。

- A control mechanism to ensure content accessed and used via an authorised device did not find its way onto unauthorised devices.
- 一套控制機制，確保內容的取用與使用是經由授權設備，而不是經由未授權的設備。

Such systems are commonplace in many walks of life today: in the work place, in state administration, in education. The problem facing the use of DRM systems in general is that answers have to be found regarding implementation of exceptions and limitations to copyright beyond centrally administered networks.

這樣的系統在今日各行各業中是相當普遍：例如職場、國家行政、教育。而 DRM 系統普遍面臨的問題在於，關於著作權例外與限制規定的執行，超出了集中式管理的網路之外。

This is so for several reasons. The strength of the Internet as an information resource lies in the distributed management and use of content resources. At the same time, users of copyright protected materials want to enjoy access to content permitted by law on devices of their own choice.

之所以如此有幾個原因。網際網路的資訊來源優勢，在於內容資源的分散式管理及使用。同時，著作權保護材料的使用者，想要以自己選擇的設備，以取用法律許可的內容。

The implementation of exceptions and limitations to copyright law in the electronic environment should not however be constrained to centralised network systems.

在電子化環境下，著作權例外與限制規定的執行，不應該侷限於集中式網路系統。

Imagine therefore the same scenario minus the centrally administered network. The student would be using an uncontrolled device and would be free, technically, to obtain the necessary content from any available source: by downloading from the Internet, by a file transfer mechanism or from a convertible physical source. Likewise, the product of the assignment would be, again from a technical point of view, freely distributable.

因此想像一下少了中央管理網路的相同場景。學生將可能使用不受控制的設備，而且在技術上可以由任何來源自由獲得必要內容：網際網路下載、檔案傳送機制或可轉換的實體來源(convertible physical source)。同理，由技術觀點來看，作業的產品可能會自由散布。

This scenario is of course at odds with copyright law and with the rights of the copyright owner. It is, however, a scenario which is likely to become the norm not only in the field of education but in relation to the use of copyright materials generally. The dilemma is therefore to find a technical solution for this scenario which enables lawful use of content outside the confines of strictly controlled networks.

當然，這個場景抵觸了著作權法與著作權人的權利。然而，不只是教育領域，在一般著作權材料的使用上，這個場景很可能會變成常態。因此，兩難問題在於，在嚴格控管的網路範圍之外，找到這個場景的技術解決方案，使內容能夠合法使用。

As we have seen, the problem of finding technical solutions to implement the full scope of copyright law outside a centrally administered and strictly controlled environment is significant. It involves addressing the expectations of users regarding the scope of exceptions and limitations, the complexities of writing machine readable rules which accurately

encompass specific exceptions and limitations, the complexities involved in devising technical mechanisms for providing the contextual basis for the interpretation of machine based rules, and the complexities involved in managing the consequences of the application of such a rule.

如我們先前所見，在集中管理與嚴格控制環境之外，找到技術解決方案執行著作權法的完整範圍，是一個重大問題。其中牽涉使用者對於例外與限制規定的期望；撰寫機器可讀的規則，準確包含特定例外與限制規定的複雜性；設計技術機制提供詮釋機械化規則的情境基礎的複雜性，以及管理規則應用後果的複雜性。

This study has attempted to break down in an objective way the various issues and concerns of both copyright owning content providers and the end users of copyright materials. It has looked at the capabilities and limitations of the relevant technologies, it has reviewed the relevant law, it has considered possible future developments in both the use and protection of copyright materials.

對於各種問題，以及著作權內容提供者與著作權材料終端使用者的各種顧慮，本研究已經試圖以客觀方式加以區分。本研究已經視察相關科技的能力與侷限，已回顧了相關法律，並已考慮著作權材料在使用及保護上的未來發展。

A number of conclusions can be easily stated; others require more extensive treatment. 有一些結論能夠容易加以陳述；其他則需要更進一步的處理。

First of all, while the issue of digital lock-up has to be taken very seriously it should not obscure the underlying facts and issues nor impede rational investigation of accommodation between the rights of copyright owners and the interests of end users. The technology considered responsible for the perceived lock-up is essentially neutral: indeed, appropriately deployed and administered, it will likely prove a key contributor to the necessary accommodation.

首先，雖然數位鎖定的問題必須認真看待，但是不應該混淆基本的事實與議題，也不應阻礙協調著作權人權利與使用者利益的理性探討。導致所謂數位鎖定的科技本身，本質上屬於中性：實際上，如果適當運用與管理這項科技，將可能是達成這種必要協調的關鍵性貢獻者。

Secondly, DRM technology is unable to replicate the full scope of copyright practice. Again, as we have seen, even for relatively straightforward copyright-based tasks DRM technologies require considerable extraneous support to ensure they work efficiently and securely.

第二，DRM 科技無法重現著作權實務的完整範圍。再次，如我們先前所見，即使是相對上單純的著作權事項，DRM 科技仍需要可觀的外部支援，以確保它們運作上的效率及安全。

Third, in both of the target fields under consideration, other kinds of technology are dramatically changing the way content is accessed and used. Traditional approaches and demarcations are disappearing rapidly. Universal access via technology is becoming the norm. In both areas, these are generally perceived to be positive developments but they hold complex implications for rights management.

第三，在這二個目標領域，其他種類的科技正在急遽改變內容取用及使用的方式。傳統的方法與區分正在迅速消失。以科技全面取用正在成爲常態。在這二個領域，出現了普遍察覺到的積極發展，但是這些發展對權利管理有複雜的影響。

Fourth, there seems little evidence to suggest that legislative initiatives, whether at international or national level, are required in order to deliver appropriate solutions. The steps already undertaken by WIPO in assisting the development of national copyright law are extensive, as are its efforts to support the constructive interpretation and application of the international norms. The model provisions on the exceptions related to the use of copyright materials by visually impaired people are a particular case in point:

第四，似乎沒有什麼證據顯示，爲了產生適當解決方案，必須有國際或國家層級的立法。爲協助國內著作權法的發展，WIPO 已經採行了廣泛的步驟，例如支持國際規範的建設性解釋與適用。關於視覺障礙者使用著作權材料的例外規定範本，尤其是相關例子：

“Notwithstanding the provisions of Section 6(1)(a) and (d), it shall be permitted without the authorization of the author or other owner of copyright to reproduce a published work for visually impaired persons in an alternative manner or form which enables their perception of the work, and to distribute the copies exclusively to those persons, provided that the work is not reasonably available in an identical or largely equivalent form enabling its perception by the visually impaired; and the reproduction and distribution are made on a non-profit basis.

「當視覺障礙者無法合理取得便於知悉之著作版本形式，爲協助視覺障礙者知悉著作，以另外之方式或形式重製已出版著作，並僅向視覺障礙者散布重製物，且重製與散布爲非營利性質，則不須獲得作者或其他著作權人之授權，而不適用第6條第1項(a)款與(d)款之規定。

The distribution is also permitted in case the copies have been made abroad and the conditions mentioned above have been fulfilled.”

於國外製作之重製物，符合前項條件者，亦得爲散布。」

Fifth, the most promising avenue appears to involve two basic components:

第五，最有希望的途徑包含二個基本要件：

- The development and use of voluntary licensing arrangements relevant to the new environment; and
- 發展及使用關於新環境下的自願性授權協議；且
- The establishment of trusted intermediaries charged with the trusted implementation of contractually-based licensing arrangements.
- 建立具公信力中介者，以負責受託執行契約授權協議。

Sixth, to promote the developments suggested in the preceding conclusion, WIPO should consider further work in a number of areas:

第六，爲促進前述結論中所顯示之發展，WIPO 應考慮在以下領域從事後續研究工作：

- Continuing development of model provisions and/ or best practice statements for interpretation of the exceptions in national laws relating to the target fields dealt with in this study, which take account as far as possible of the impact and potential of the new technology;

- 對於本研究目標領域相關國內法例外規定之解釋，繼續發展模範條款(model provisions)與 / 或最佳實例說明(best practice statements)，並儘可能考慮新科技的衝擊與潛力。
- Studying in greater detail the use of statutory and voluntary licensing schemes and entities in the target areas of this study. This would help to foster a better common understanding of the benefits and utility of the various structures and processes in use. Based on the knowledge acquired thereby, consideration might also be given to the development of model templates for the voluntary licensing of copyright materials;
- 在本研究目標領域中，詳細研究法定及自願授權機制與主體。這將有助於共同理解使用各種結構與程序的利益與效用。
- Conducting further research into the concept of the trusted intermediary as introduced in this study. As indicated there are numerous organizations already performing many of the functions of such an intermediary: their objectives, processes and experiences should provide extensive and valuable information as to the role such entities can play in bridging the inevitable divide between the mechanisms of law and technology.
- 對於本研究中提到的具公信力中介者概念，進行進一步研究。如先前所舉出，早已有許多組織正在執行這種中介者的許多功能：在連結法律與科技機制的斷層上，這種主體所能扮演的角色，這些組織的目的、程序與經驗，應可提供廣泛而有價值的資訊。

[Annex follows]

[附錄如下]

## ANNEX

## 附錄

## DETAILED LEGAL ANALYSIS

## 法律細節分析

Provisions relating to visually impaired people視覺障礙者相關規定

## Australial

## 澳洲

Reference 1 參考法條 1	PART VB: Division 3– Reproduction and communication of works by institutions assisting persons with a print disability  135ZN  PART VB: Division 3 – 協助閱讀 印刷本障礙者機構重製與傳播著作
Works Covered 涵蓋之著作	Published edition of a work (being a work in which copyright does not subsist)  已出版之編輯著作（編輯不適用 著作權法之著作）
Exception or Compulsory Licence 例外或強制授權規定	Exception 例外規定
Principal Beneficiary 主要受益人	A body administering an institution assisting persons with a print disability  協助閱讀印刷本障礙者機構之管 理者
Targeted End User 目標終端使用者	Persons with a print disability 閱讀印刷本障礙者
Act Covered 涵蓋之行爲	Making of one or more facsimile copies of the whole or a part of the edition



	針對編輯著作全部或一部內容製作重製物
Rights Covered 涵蓋之權利	Reproduction 重製
Scope of Exception/ Licence 例外 / 授權規定範圍	<p>The copy, or each of the copies, is made in the course of the making of a reproduction of the whole or a part of the work by, or on behalf of, a body administering an institution assisting persons with a print disability for use in the provision, whether by the institution or otherwise, of assistance to such persons</p> <p>協助閱讀印刷本障礙者機構之管理者本身或其代表，為協助閱讀印刷本障礙者，重製著作全部或一部內容之重製物。</p>

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Reference 2 參考法條 2	135ZP (1)
Works Covered 涵蓋之著作	Literary or dramatic work 文學或戲劇著作
Exception or Compulsory Licence 例外或強制授權規定	Compulsory Licence 強制授權
Principal Beneficiary 主要受益人	A body administering an institution assisting persons with a print disability 協助閱讀印刷本障礙者機構之管理者
Targeted End User 目標終端使用者	Persons with a print disability 閱讀印刷本障礙者
Act Covered 涵蓋之行爲	Making or communication (...) of one or more records embodying a sound recording of the work or of a part of the work 針對著作全部或一部，製作或傳播一件或多件錄音
Rights Covered 涵蓋之權利	Reproduction; communication 重製權；傳播權
Scope of Licence 授權範圍	Making or communication by, or on behalf of, a body administering an institution assisting persons with a print disability of one or more records embodying a sound recording of the work or of a part of the work 協助閱讀印刷本障礙者機構之管理者本身或其代表，針對著作全部或一部，製作或傳播一件或多件錄音
Modality of Exercise 行使態樣	(a) a remuneration notice, given by or on behalf of the body to the relevant collecting society, is in force; (a)由該主體或其代表，向相關收取團體爲提出報酬之通知方才生效。  (b) each record is made, or each communication is carried out solely for the purpose of use in the provision,

	<p>whether by the institution or otherwise, of assistance to persons with a print disability; and</p> <p>(b) 單純為協助閱讀印刷本障礙者，所從事之每一件錄製或傳播行為；且</p> <p>(c) the body complies with subsection 135ZX (1) or (3) or section 135ZXA, as the case requires, in relation to each copy or communication.</p> <p>(c) 關於每一件重製或傳播行為，該主體合乎第 135 條 ZX 第 1 項或第 3 項，或第 135 條 ZXA 之規定。</p>
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<p>Conditions Applied</p> <p>適用條件</p>	<p>1. 135ZX Records notices and sampling notices: marking and record-keeping requirements</p> <p>1. 135ZX 錄製通知與採樣通知：標示與記錄保存要求</p> <p>(1) Where a records notice is given by, or on behalf of, an administering body to a collecting society in respect of licensed copies made in hardcopy form or analog form, the administering body shall:</p> <p>(1) 關於製作紙本或類比式重製物，於管理者或其代表向收取團體為錄製通知後，管理者應：</p> <p>(a) mark, or cause to be marked, in accordance with the regulations, each such licensed copy made by it, or on its behalf, while the notice is in force, or any container in which such a copy is kept;</p> <p>(a) 於通知生效期間，自行或由其代表，依規定標示每一件重製物，或保存重製物之容器；</p> <p>(b) make, or cause to be made, a record of the making of each such licensed copy that is carried out by it, or on its behalf, while the notice is in force, being a record containing such particulars as are prescribed;</p> <p>(b) 於通知生效期間，自行或由其代表，製作被授權重製物之記錄，包含規定之詳細記錄；</p> <p>(c) retain that record for the prescribed retention period after the making of the copy to which it relates; and</p> <p>(c) 於規定期間內保存相關重製物之記錄；且</p> <p>(d) send copies of all such records to the collecting society in accordance with the regulations.</p> <p>(d) 依規定將所有記錄複本送交收取團體。</p> <p>(3) If a sampling notice is given by, or on</p>
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	<p>behalf of, an administering body to a collecting society in respect of licensed copies made in hardcopy form or analog form, the administering body must mark, or cause to be marked, in accordance with the regulations, each such licensed copy made by it, or on its behalf, while the notice is in force, or any container in which such a copy is kept.</p> <p>(3) 於通知生效期間，關於製作紙本或類比式重製物，於管理者自行或其代表向收取團體為採樣通知時，管理者或其代表應依規定標示每一件重製物，或保存重製物之容器。</p> <p>135ZXA Electronic use notices: notice requirements etc.</p> <p>135ZXA 電子使用通知：通知要求等</p> <p>If an electronic use notice is given by, or on behalf of, an administering body to a collecting society, in respect of licensed copies made in electronic form or licensed communications, the administering body must:</p> <p>關於被授權之電子形式重製物或被授權之傳播，於管理者自行或其代表向收取團體為電子使用通知時，管理者應：</p> <p>(a) give a notice, in accordance with the regulations, in relation to each such copy or communication made by it, or on its behalf, while the electronic use notice is in force, containing:</p> <p>(a) 於電子使用通知生效期間，關於每一件重製物或傳播，依規定自行或其代表提出以下通知：</p> <p>(i) statements to the effect that the copy or communication has been made under this Part and that any work or other subject-matter contained in the copy or communication might be subject to copyright protection under this Act; and</p> <p>(i) 聲明依本法製作重製物或傳播之效果，以及重製物或傳播內之著作</p>
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	<p>或其他客體，可能適用本法之著作權保護；且</p> <p>(ii) such other information or particulars (if any) as are prescribed; and</p> <p>(ii) 其他規定之資訊或細節；且</p> <p>(b) in the case of each such communication made by it, or on its behalf, while the electronic use notice is in force—take all reasonable steps to ensure that the communication can only be received or accessed by persons entitled to receive or access it (for example, teachers or persons receiving educational instruction or other assistance provided by the relevant institution); and</p> <p>(b)於電子使用通知生效期間，於每一次傳播，應自行或由其代表採取一切合理步驟，以確保傳播僅限於有合格接收或取用者（例如，接收教育性教學或相關機構所提供協助之教師或人員）；且</p> <p>(c) comply with such other requirements (if any) as are prescribed in relation to each such copy or communication made by it, or on its behalf, while the electronic use notice is in force.</p> <p>(c)於電子使用通知生效期間，關於自行或由其代表所為之複製或傳播，遵守其他要求規定。</p> <p>2. 135 ZP (3) Where a sound recording of a work has been published, subsection (1) does not apply to the making of any record embodying a sound recording of the work (including a record that is a copy of that first-mentioned sound recording) for, or on behalf of, a body administering an institution assisting persons with a print disability unless the person who makes that record, or causes that record to be made, is satisfied, after reasonable investigation, that no new record that embodies only a sound recording of the work can be obtained within a reasonable time at an ordinary commercial price.</p>
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	<p>2. 135 ZP (3) 於錄音著作出版後，協助印刷本閱讀障礙者機構之管理者或其代表，不得適用 subsection (1) 製作著作之錄音（含首先提及之錄音重製物），但經過合理調查後，於合理時間、通常商業價格無法取得著作之新錄音者，不在此限。</p>
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Reference 3 參考法條 3	135ZP (2)
Works Covered 涵蓋之著作	Published literary or dramatic work 已出版文學或戲劇著作
Exception or Compulsory Licence 例外或強制授權規定	Compulsory Licence 強制授權
Principal Beneficiary 主要受益人	A body administering an institution assisting persons with a print disability 協助印刷本閱讀障礙者機構之管理者
Targeted End User 目標終端使用者	Persons with a print disability 印刷本閱讀障礙者
Act Covered 涵蓋之行爲	Making or communication of one or more Braille versions, large-print versions, photographic versions or electronic versions of the work 製作或傳播一件或多件著作之點字版本、大字體版本、照相版本或電子版本。
Rights Covered 涵蓋之權利	Reproduction; communication 重製權；傳播權
Scope of Licence 授權範圍	Making or communication by, or on behalf of, a body administering an institution assisting persons with a print disability, of one or more Braille versions, large-print versions, photographic versions or electronic versions of the work or of a part of the work 對著作之全部或一部，協助印刷本閱讀障礙者機構之管理者或其代表製作或傳播一件或多件點字版本、大字體版本、照相版本或電子版本。
Modality of Exercise 行使樣態	As for 135 ZP (1)
Conditions Applied	1. As for 135ZP (1)



適用條件	<ol style="list-style-type: none"><li>1. 同 As for 135ZP (1)</li><li>2. Where a Braille version/ large print version/ photographic version/ of a work has been separately published, [Compulsory Licence] does not apply to the making of a Braille version of the work, or of a part of the work, unless the person who makes that version, or causes that version to be made, for, or on behalf of, a body administering an institution assisting persons with a print disability is satisfied, after reasonable investigation, that no new copy of a Braille version of the work, being a version that has been separately published, can be obtained within a reasonable time at an ordinary commercial price.  2. 於著作之點字版本、大字體版本、照相版本分別出版時，不得適用[強制授權]製作著作全部或一部點字版本，但經過合理調查後，於合理時間、通常商業價格無法取得點字版本者，不在此限。</li><li>3. [Compulsory Licence] does not apply to the making or communication of an electronic version of the work, or of a part of the work, unless the person who makes or communicates the version, or causes the version to be made, or communicated, for, or on behalf of, a body administering an institution assisting persons with a print disability is satisfied, after reasonable investigation, that an electronic version of the work, being a version that has been separately published, is not available within a reasonable time at an ordinary commercial price.  3. 對著作全部或一部，不得適用[強制授權]製作或傳播電子版本著作，但經過合理調查後，於合理時間、通常商業價格無法取得分別出版之著作電子版本者，不在此限。</li></ol>
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Reference 4 參考法條 4	135ZQ
Works Covered 涵蓋之著作	Published literary or dramatic work 已出版之文學或戲劇著作
Exception or Compulsory Licence 例外或強制授權規定	Exception 例外
Principal Beneficiary 主要受益人	A body administering an institution assisting persons with a print disability 協助印刷本閱讀障礙者機構之管理者
Targeted End User 目標終端使用者	Persons with a print disability 印刷本閱讀障礙者
Acts Covered 涵蓋之行爲	<p>Making of a <i>relevant reproduction</i> or a <i>relevant communication</i> of the work, or of a part of the work;</p> <p>對著作全部或一部之相關重製或傳播行爲；</p> <p><i>Relevant communication</i>, in relation to a work or part of a work, means:</p> <p>關於著作全部或一部之相關傳播爲：</p> <p>(a) the communication of a sound recording of the work, or part of the work; or</p> <p>(a) 傳播著作全部或一部之錄音；或</p> <p>(b) the communication of an electronic version of the work.</p> <p>(b) 傳播著作電子版本。</p> <p><i>Relevant reproduction</i>, in relation to a work or part of a work, means:</p> <p>關於著作全部或一部之相關重製爲：</p> <p>(a) a reproduction of the work, or part of the work; or</p> <p>(a) 著作全部或一部之重製；或</p> <p>(b) a record embodying a sound recording of the work, or part of the work; or</p>

	<p>(b) 著作全部或一部之錄音；或</p> <p>(c) a Braille version, a large-print version, a photographic version or an electronic version of the work, or part of the work.</p> <p>(c) 著作全部或一部之點字版本、大字體版本、照相版本或電子版本。</p>
<p>Rights Covered</p> <p>涵蓋之權利</p>	<p>Reproduction; communication</p> <p>重製權；傳播權</p>
<p>Scope of Exception</p> <p>例外範圍</p>	<p>Reproduction or communication is made solely for use in the making by, or on behalf of that body, of a reproduction or communication of the work, or of a part of the work, under section 135ZP for a person with a print disability</p> <p>依 135ZP，單純為閱讀印刷本障礙者之使用，對著作全部或一部，由管理者或代表為重製或傳播。</p>
<p>Modality of Exercise</p> <p>行使樣態</p>	<p>1. For the making of a relevant reproduction, being a record embodying a sound recording in analog form, of a work, or of a part of a work, at the time the record was made, there [must be] embodied on the record, immediately before the beginning of that sound recording, a sound recording of the prescribed message.</p> <p>1. 對著作全部或一部重製相關類比式錄音，於錄製時，必須於所錄製聲音之前錄製規定訊息。</p> <p>2. For the making of a relevant reproduction in hardcopy form of a work, or of a part of a work, the body by whom, or on whose behalf, the relevant reproduction is made [must] mark it, or cause it to be marked, in accordance with the regulations.</p> <p>2. 對著作全部或一部，製作相關紙本重製物，管理者或其代表應依規定標示之。</p> <p>3. [Licence] is (...) taken never to have applied to the making of a relevant</p>

	<p>reproduction or relevant communication of a work, or of a part of a work, if, within 3 months after the relevant reproduction or relevant communication was made, the body by whom, or on whose behalf, the relevant reproduction or relevant communication was made has not given to a collecting society (if any) a notice of the making of the relevant reproduction or relevant communication. The notice must be in writing and must specify:</p> <p>3. 對著作全部或一部，於相關重製或傳播後三個月內，管理者或其代表未向收取團體為相關重製或傳播之通知者，不得適用[強制授權]。通知必須以書面記載以下事項：</p> <p>(a) the name of the body; and (a) 管理者之名稱；且</p> <p>(b) the work, or the part of the work, reproduced or communicated; and (b) 重製或傳播之著作全部或一部；且</p> <p>(c) the date on which the reproduction or communication was made. (c) 重製或傳播之日期。</p>
<p>Conditions Applied 適用條件</p>	<p>1. If (...) the reproduction or communication is used otherwise than for use in the making by, or on behalf of that body, of a reproduction or communication of the work, or a part of the work, under section 135ZP for a person with a print disability [Limitation] does not apply, and is taken to never have applied, to the making of the relevant reproduction or relevant communication.</p> <p>1. 如非依 135ZP 由管理者或其代表為閱讀印刷本障礙者而重製或傳播者，[限制規定] 不適用於相關重製或傳播。</p> <p>2. The copyright in a published literary or dramatic work is infringed by a person who does any of the acts specified in section 38 in relation to a relevant reproduction of a work, or of a part of a work, if the person knows, or ought</p>

	<p>reasonably to have known, that the reproduction was made solely for use in the making by, or on behalf of, a body administering an institution assisting persons with a print disability of a copy of the work, or of a part of the work, as the case may be, for a person with a print disability.</p> <p>2. 對協助印刷本閱讀障礙者機構之管理者或其代表，單純為印刷本閱讀障礙者所製作之著作重製物，於明知或可得而知情形下，對著作全部或一部為第 38 規定之行爲者，即侵害已出版文學或戲劇著作之著作權。</p>
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## The Republic of Korea

### 韓國

Reference 1 參考法條 1	Article 30(1) 第 30 條第 1 項
Exception or Compulsory Licence 例外或強制授權規定	Exception 例外規定
Principal Beneficiary 主要受益人	Any person or entity 任何人或主體
Targeted End User 目標終端使用者	Any person or entity 任何人或主體
Works Covered 涵蓋之著作	Work already made public 已公開著作
Rights Covered 涵蓋之權利	Reproduction; adaptation 重製權；改作權
Scope of Exception 例外範圍	Produce a version of the work in Braille 生產點字版著作

Reference 2 參考法條 2	Article 30(2) 第 30 條第 2 項
Exception or Compulsory Licence 例外或強制授權規定	Exception 例外規定
Principal Beneficiary 主要受益人	Any person or entity 任何人或主體
Targeted End User 目標終端使用者	Blind persons 盲人
Works Covered 涵蓋之著作	Work already made public 已公開著作
Rights Covered 涵蓋之權利	Reproduction 重製權
Scope of Exception 例外範圍	Making sound recordings of a work already made public, exclusively for the purpose of providing such recordings for the use of the blind at the facilities established for the promotion of the welfare of the blind as prescribed by the Presidential Decree.  已發行之著作，得由總統命令許可之盲人福利機構，製作專供盲人於機構內使用之錄音。

## Spain 西班牙<sup>61</sup>

Reference 1 參考法條 1	31.3 第 31 條第 3 項
Exception or Compulsory 例外或強制授權規定	Exception 例外規定

<sup>61</sup> At the time of publication, draft legislation implementing the EC Copyright Directive was under consideration in the Spanish Parliament. See commentary in Chapter 4.  
本研究出版時，執行歐洲聯盟著作權指令的立法草案，正在西班牙國會中審議。見第四章之解說。

Principal Beneficiary 主要受益人	Any person or entity 任何人或主體
Targeted End User 目標終端使用者	Blind persons 盲人
Works Covered 涵蓋之著作	Published Works 已出版著作
Rights Covered 涵蓋之權利	Reproduction 重製權
Scope of Exception 例外範圍	Reproduction for the private use of visually impaired people provided that the reproduction makes use of the Braille system or another specific process and that the copies are not used for profit generating purposes.  為視覺障礙者私人之用，使用點字系統或其他特定程序進行重製，且非以營利為目的使用該重製物。

## United Kingdom

### 英國

Reference 1 參考法條 1	31A Making a single accessible copy for personal use  31A 為個人使用製作一件可取用重製物
Exception or Compulsory Licence 例外或強制授權規定	Exception 例外規定
Principal Beneficiary 主要受益人	Visually impaired person 視覺障礙者
Works Covered 涵蓋之著作	(a) a literary, dramatic, musical or artistic work; or  (a) 文學、戲劇、藝術或音樂著作；或  (b) a published edition

	已出版之版本
Acts Covered 涵蓋之行爲	Making of an accessible copy 製作可取用版本
Rights Covered 涵蓋之權利	Reproduction; adaptation 重製權；改作權
Scope of Exception 例外範圍	<p>If a visually impaired person has lawful possession or lawful use of a copy (“the master copy”) of the whole or part of [a work] which is not accessible to him because of the impairment, it is not an infringement of copyright in the work, or in the typographical arrangement of the published edition, for an accessible copy of the master copy to be made for his personal use</p> <p>視覺障礙者持有或使用之合法重製物（原重製物），因視覺障礙而無法取用全部或一部時，為個人使用而製作可取用重製物者，不構成侵害著作權或排版權。</p>
Modality of Exercise 行使樣態	<p>(a) An accessible copy made under this section must be accompanied by:</p> <p>(a) 依本條規定製作可取用版本，應：</p> <p>(i) a statement that it is made [pursuant to this provision]; and</p> <p>(i) 聲明[依本規定]製作；且</p> <p>(ii) a sufficient acknowledgement.</p> <p>(ii) 充分記載來源出處。</p> <p>(b) If a person makes an accessible copy on behalf of a visually impaired person under this section and charges for it, the sum charged must not exceed the cost of making and supplying the copy.</p> <p>(b) 依本條規定為視覺障礙者製作可取用版本者，其收費金額不得多於製作與供給之成本。</p>



Reference 2 參考法條 2	31B Multiple copies for visually impaired persons 31B 為視覺障礙者製作多件重製物
Exception or Compulsory Licence 例外或強制授權規定	Exception 例外規定
Principal Beneficiary 主要受益人	Approved body 受核准者
Targeted End User 目標終端使用者	Visually impaired person 視覺障礙者
Works Covered 涵蓋之著作	(a) a commercially published literary, dramatic, musical or artistic work; or (a) 商業性出版之文學、戲劇、藝術或音樂著作；或 (b) a commercially published edition, (b) 商業性出版之版本。
Acts Covered 涵蓋之行爲	Making or supplying accessible copies for the personal use of visually impaired persons 為視覺障礙者個人使用而製作或供給可取用版本
Rights Covered 涵蓋之權利	Reproduction; adaptation; distribution 重製權、改作權、散布權
Scope of Exception 例外範圍	Where an approved body has lawful possession of a copy (“the master copy”) of the whole or part of a work it is not an infringement of copyright in the work, or in the typographical arrangement of the published edition, for the body to make, or supply, accessible copies for the personal use of visually impaired persons to whom the master copy is not accessible because of their impairment. 受核准者持有之合法重製物（原重製物），因視覺障礙而無法被取用，為視覺障礙者製作、或供給可取用重製物者，不構成侵害著作權或排版權。
Modality of Exercise	(a) An accessible copy made under this

<p>行使樣態</p>	<p>section must be accompanied by:</p> <p>(a) 依本條規定製作可取用版本，應：</p> <p>(i) a statement that it is made under this section; and</p> <p>(i) 聲明[依本規定]製作；且</p> <p>(ii) a sufficient acknowledgement.</p> <p>(ii) 充分記載來源出處。</p> <p>(b) If an approved body charges for supplying a copy made under this section, the sum charged must not exceed the cost of making and supplying the copy.</p> <p>(b) 受核准者依本條規定為視覺障礙者供給可取用版本者，其收費金額不得多於製作與供給之成本。</p>
<p>Conditions Applied</p> <p>適用條件</p>	<p>(a) The limitation does not apply:</p> <p>(a) 本限制規定不適用於</p> <p>(i) if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of it; or</p> <p>(i) 如原重製物為音樂著作之全部或一部，且製作可取用重製物涉及錄製表演著作之全部或一部者；或</p> <p>(ii) if the master copy is of a database, or part of a database, and the making of an accessible copy would infringe copyright in the database.</p> <p>(ii) 如原重製物為資料庫之全部或一部，且製作可取用重製物將侵害資料庫著作權者。</p> <p>(b) The limitation does not apply in relation to the making of an accessible copy for a particular visually impaired person if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to that person.</p> <p>(b) 如著作權人本人或其授權之人，於</p>

	<p>商業上已提供可取用之重製物者，不得適用本條限制規定為特定視覺障礙者製作可取用重製物。</p> <p>(c) An approved body making copies under this section must, if it is an educational establishment, ensure that the copies will be used only for its educational purposes.</p> <p>(c) 教育機構依本條規定製作重製物時，應確保重製物僅供教育目的使用。</p> <p>(d) If the master copy is in copy-protected electronic form, any accessible copy made of it under this section must, so far as it is reasonably practicable to do so, incorporate the same, or equally effective, copy protection (unless the copyright owner agrees otherwise).</p> <p>(d) 如原重製物屬於防止複製之電子形式，於合理可行範圍內，應於根據本條製作之可近用重製物內，附加相同有效之防止複製措施。</p> <p>(e) If an approved body continues to hold an accessible copy when it would no longer be entitled to make or supply such a copy under that subsection, the copy is to be treated as an infringing copy.</p> <p>(e) 於受核准者已無權依本條規定製作或供給重製物時，其繼續持有之可近用重製物視為侵權重製物。</p> <p>(f) If an accessible copy which would otherwise be an infringing copy is subsequently sold or let for hire or offered or exposed for sale or hire or included in a broadcast or cable programme service.</p> <p>(f) 原非侵權重製物之可取用重製物，如經銷售、出租或供作銷售或出租之用，或包含於廣播或有限節目服務。</p> <p>(i) it is to be treated as an infringing copy for the purposes of that dealing; and</p> <p>(i) 於該交易之目的內，視為侵權重製物；且</p>
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	<p>(ii) if that dealing infringes copyright, is to be treated as an infringing copy for all subsequent purposes.</p> <p>(ii)如該交易侵害著作權，則於所有後續目的內，視為侵權重製物。</p>
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Reference 3 參考法條 3	31C Intermediate copies and records 31C 中間重製物與記錄
Exception or Compulsory Licence 例外或強制授權規定	Exception 例外規定
Principal Beneficiary 主要受益人	Approved body 受核准者
Targeted End User 目標終端使用者	Visually impaired person 視覺障礙者
Works Covered 涵蓋之著作	<p>(a) a commercially published literary, dramatic, musical or artistic work; or</p> <p>(a) 商業性出版之文學、戲劇、音樂或藝術著作；或</p> <p>(b) a commercially published edition,</p> <p>(b)商業性出版之版本。</p>
Acts Covered 涵蓋之行爲	<p>Holding an intermediate copy of the master copy</p> <p>持有主備份之中間備份</p> <p>Lending or transferring the intermediate copy to another approved body</p> <p>出租或移轉中間備份予另一受核准者</p>
Rights Covered 涵蓋之權利	<p>Reproduction; distribution; communication; lending</p> <p>重製權、散布權、傳播權、借貸權</p>
Scope of Exception 例外範圍	<p>(a) An approved body which is entitled to make accessible copies under section 31B may hold an intermediate copy of the master copy which is necessarily created</p>

	<p>during the production of the accessible copies</p> <p>有權依第 31 條之 B 製作可取用備份之受核准者，於可近用備份生產過程必要範圍內，得持有一件中間備份</p> <p>(b) An approved body may lend or transfer the intermediate copy to another approved body which is entitled to make accessible copies of the work or published edition under the limitation</p> <p>依本限制規定，對著作或已出版版本有權製作可近用備份之另一受核准者，核准者得對之借貸或移轉中間備份。</p>
<p>Modality of Exercise 行使樣態</p>	<p>(a) If an approved body charges for lending or transferring the intermediate copy, the sum charged must not exceed the cost of the loan or transfer.</p> <p>(a) 受核准者借貸或移轉中間重製物者，其收費金額不得多於借貸或移轉之成本。</p> <p>(b) An approved body must:</p> <p>(b) 受核准者應：</p> <p>(i) keep records of accessible copies made under section 31B and of the persons to whom they are supplied;</p> <p>(i) 記錄依第 31 條之 B 製作之可取用重製物及受供給者；</p> <p>(ii) keep records of any intermediate copy lent or transferred under this section and of the persons to whom it is lent or transferred; and</p> <p>(ii) 記錄依本條規定借貸或移轉之中間重製物及借用人或受讓人；且</p> <p>(iii) allow the copyright owner or a person acting for him, on giving reasonable notice, to inspect the records at any reasonable time.</p> <p>(iii) 允許著作權人或其人員於合理通知後，於任何合理時間檢查記錄。</p> <p>(c) Within a reasonable time of making an</p>

	<p>accessible copy under section 31B, or lending or transferring an intermediate copy under this section, the approved body must:</p> <p>(c) 依第 31 條之 B 製作之可取用重製物，或依本條規定借貸或移轉之中間重製物，受核准者應於合理期間內為：</p> <p>(i) notify each relevant representative body; or</p> <p>(i) 通知每一相關代理人；或</p> <p>(ii) if there is no such body, notify the copyright owner.</p> <p>(ii) 如無代理人時，通知著作權人。</p> <p>A relevant representative body is a body which represents particular copyright owners, or owners of copyright in the type of copyright work concerned and has given notice to the Secretary of State of the copyright owners, or the classes of copyright owner, represented by it.</p> <p>相關代表者為特定著作人之代理人，或相關著作權著作類型多數著作權人之代理人，且通知國務大臣所代表之著作權利人，或多種著作權人之代理人。</p>
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## United States of America

### 美國

Reference 1 參考法條 1	Chapter 1 of title 17, United States Code, section 121. 美國法典第 17 篇第 1 章第 121 條
Exception or Compulsory Licence 例外或強制授權規定	Exception 例外規定
Principal Beneficiary 主要受益人	An authorized entity: a nonprofit organization or a governmental agency that has a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs

	<p>of blind or other persons with disabilities</p> <p>獲得授權者：對盲人或其他有障礙者提供訓練、教育，或適應性閱讀或資訊取用需要等相關特殊服務，為主要業務之非營利組織或政府機關</p>
<p>Targeted End User</p> <p>目標終端使用者</p>	<p>Blind or other persons with disabilities: individuals who are eligible or who may qualify in accordance with the Act entitled “An Act to provide books for the adult blind,” approved March 3, 1931 (2 U.S.C. 35a; 46 Stat. 1487) to receive books and other publications produced in specialized formats</p> <p>盲人或其他有障礙者，符合或得符合「為成年盲人提供書籍之法律」(2 U.S.C. 35a; 46 Stat. 1487)，而得接受特殊格式之書籍與其他出版品者。</p>
<p>Works Covered</p> <p>涵蓋之著作</p>	<p>Published, non-dramatic literary work</p> <p>已出版之非戲劇文學著作</p>
<p>Rights Covered</p> <p>涵蓋之權利</p>	<p>Reproduction; adaptation; distribution</p> <p>重製權、改作權、散布權</p>
<p>Scope of Exception</p> <p>例外範圍</p>	<p>Reproduce or distribute copies or phonorecords of a previously published, non-dramatic literary work if such copies or phonorecords are reproduced or distributed in specialized formats exclusively for use by blind or other persons with disabilities</p> <p>對已出版之非戲劇文學著作，且屬於盲人或其他有障礙者專用的特殊格式重製物或唱片，得重製或散布之</p>
<p>Modality of Exercise</p> <p>行使樣態</p>	<p>(a) The work must be reproduced or distributed only in Braille, audio, or digital text, exclusively for use by blind or other persons with disabilities;</p> <p>(a) 著作之重製或散布，僅限於盲人或其他有障礙者專用之點字、聲音或數位文件</p> <p>(b) Copies must carry a notice that any further reproduction or distribution in a format other than a specialized format is an infringement and include a copyright notice identifying the copyright owner and the date</p>

	<p>of the original publication.</p> <p>(b) 重製物上應聲明任何非專用格式之重製或散布構成侵權行爲，且應包含著作權聲明，註明著作權人及原出版品之出版日期</p>
<p>Conditions Applied 適用條件</p>	<p>This exception does not apply to standardized, secure, or norm-referenced tests and related testing material, or to computer programs, except the portions thereof that are in conventional human language (including descriptions of pictorial works) and displayed to users in the ordinary course of using the computer programs.</p> <p>本例外規定不適用於標準化、安全或標準參考測驗與相關測驗材料，或電腦程式，但電腦程式之內容部分，為傳統人類語言（含圖形著作之描述），並顯示於通常電腦程式課程使用者時，不在此限。</p>



Provisions relating to distance education遠距教育相關規定

## Australia

## 澳洲

<p>Reference 1 參考法條 1</p>	<p>Part VA—Copying and communication of broadcasts by educational and other institutions</p> <p>Part VA—教育及其他機構對廣播為複製及傳播</p> <p>Division 1—Preliminary</p> <p>Division 1—基本規定</p> <p>135A Interpretation:</p> <p>135A 解釋</p>
<p>Administering body 管理者</p>	<p>means a body administering an <i>institution</i></p> <p>意指管理某一機構之主體</p>
<p>Institution 機構</p>	<p>means:</p> <p>意指：</p> <p>(a) an educational institution; or</p> <p>(a) 教育機構；或</p> <p>(b) an institution assisting persons with an intellectual disability.</p> <p>(b) 協助智能障礙者之機構。</p>

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<p>Reference 2 參考法條 2</p>	<p>Division 2—Copying and communication of broadcasts</p> <p>Division 2—廣播之複製及傳播</p> <p>135E Copying and communication of broadcasts by educational institutions</p>
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	135E 教育機構對廣播為複製及傳播
Works Covered 涵蓋之著作	Broadcast 廣播 any work, sound recording or cinematograph film included in a broadcast 廣播中包含之錄音、影片與任何著作
Exception or Compulsory Licence 例外或強制授權規定	Compulsory licence 強制授權
Principal Beneficiary 主要受益人	Administering body 管理者
Targeted End User 目標終端使用者	
Acts Covered 涵蓋之行爲	Making or communication, by or on behalf of an administering body, of a copy of the broadcast
Rights Covered 涵蓋之權利	Reproduction; communication 重製權、傳播權
Scope of Licence 授權範圍	Where the copy or communication is made by, or on behalf of, a body administering an educational institution—the copy or communication is made solely for the educational purposes of the institution or of another educational institution 教育機構管理者或其代表，單純為該機構或另一教育機構之教育目的，而從事複製或傳播
Modality of Exercise 行使樣態	A remuneration notice, given by or on behalf of the administering body to the collecting society, [must be] in force 由管理者或其代表，對收取團體[應]為有效之報酬通知 135K Marking and record keeping requirements 135K 標示與保存記錄要求 (1) Where a records notice is given by, or on behalf of, an administering body, the

	<p>body shall:</p> <p>(1) 於管理者或其代表為錄製通知時，管理者應：</p> <p>(a) mark, or cause to be marked, in accordance with the regulations, each copy in analog form of a broadcast made by it, or on its behalf, while the notice is in force, or any container in which such a copy is kept;</p> <p>(a) 於通知生效期間，自行或由其代表，依規定標示每一件廣播重製物或類比式錄音，或保存重製物之容器；</p> <p>(b) make, or cause to be made, a record of each copying of a broadcast, and each communication of such a copy, carried out by it, or on its behalf, while the notice is in force, being a record containing such particulars as are prescribed;</p> <p>(b) 於通知生效期間，自行或由其代表，對每一件廣播複製，及每一件以該重製物所為之傳播，製作記錄，包含規定之詳細記錄；</p> <p>(c) retain that record for the prescribed retention period after the making of the copy or communication to which it relates; and</p> <p>(c) 於規定期間內保存相關重製物或傳播之記錄；且</p> <p>(d) send copies of all such records to the collecting society in accordance with the regulations.</p> <p>(d) 依規定將所有記錄複本送交收取團體。</p> <p>(3) Where a sampling notice is given by, or on behalf of, an administering body, the body shall mark, or cause to be marked, in accordance with the regulations, each copy in analog form of a broadcast made by it, or on its behalf, while the notice is in force, or any container in which such a copy is kept.</p> <p>(3) 於通知生效期間，管理者自行或由其</p>
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	<p>代表為採樣通知時，管理者或其代表應依規定標示每一件廣播類比式重製物，或保存重製物之容器。</p> <p>135KA Notice requirements in respect of communications</p> <p>135KA 關於傳播之通知要求</p> <p>If a remuneration notice is given by, or on behalf of, an administering body to a collecting society in respect of communication of copies of broadcasts made by, or on behalf of, the body while the remuneration notice is in force, the body must, except in such circumstances (if any) as are prescribed:</p> <p>關於廣播重製物之傳播，於管理者自行或其代表向收取團體為報酬通知時，於報酬通知生效期間，除另有規定外，管理者應：</p> <p>(a) give a notice, in accordance with the regulations, in relation to each such communication made by it, or on its behalf, while the remuneration notice is in force, containing:</p> <p>(a) 於報酬通知生效期間，關於每一件傳播，依規定自行或其代表提出以下通知：</p> <p>(i) statements to the effect that the communication has been made under this Part and that any work or other subject-matter contained in the communication might be subject to copyright protection under this Act; and</p> <p>(i) 聲明依本法傳播之效果，以及傳播內之著作或其他客體，可能適用本法之著作權保護；且</p> <p>(ii) such other information or particulars (if any) as are prescribed; and</p> <p>(ii) 其他規定之資訊或細節；且</p> <p>(b) in the case of each such communication made by it, or on its</p>
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	<p>behalf, while the remuneration notice is in force—take all reasonable steps to ensure that the communication can only be received or accessed by persons entitled to receive or access it (for example, teachers or persons receiving educational instruction or other assistance provided by the relevant institution); and</p> <p>(b) 於報酬通知生效期間，於每一次傳播，應自行或由其代表採取一切合理步驟，以確保傳播僅限於有合格接收或取用者（例如，接收教育性教學或相關機構所提供協助之教師或人員）；且</p> <p>(c) comply with such other requirements (if any) as are prescribed in relation to each such communication made by it, or on its behalf, while the remuneration notice is in force.</p> <p>(c) 於報酬通知生效期間，關於自行或由其代表所為之傳播，遵守其他要求規定。</p>
<p>Conditions Applied 適用條件</p>	<p>Where a copy, or communication of a copy, of a broadcast:</p> <p>於廣播之重製物或廣播重製物之傳播：</p> <p>(a) is used for a purpose [outside the scope of the licence];</p> <p>(a) 用於[本授權範圍外]之目的；</p> <p>(b) is made, sold or otherwise supplied for a financial profit; or</p> <p>(b) 為財務利益而製作、銷售或供給者；或</p> <p>(c) is given to an administering body when there is not in force a remuneration notice given by that body to the collecting society; with the consent of the administering body by whom, or on whose behalf, it is made, [the Compulsory Licence] does not apply, and shall be taken never to have applied, to the making of the copy or communication.</p> <p>(c) 給予未向收取團體為有效報酬通知之管理者，並經管理者或其代表同意</p>

	者，其所為複製或傳播不得適用[本強制授權]。
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Reference 3 參考法條 3	135F Making and communication of preview copies 135F 預覽重製物(preview copies)之製作與傳播
Works Covered 涵蓋之著作	Broadcast 廣播 any work, sound recording or cinematograph film included in a broadcast 廣播中包含之錄音、影片與任何著作
Exception or Compulsory Licence 例外或強制授權規定	Compulsory licence 強制授權
Principal Beneficiary 主要受益人	Administering body 管理者
Targeted End User 目標終端使用者	
Act Covered 涵蓋之行爲	Making of a preview copy of the broadcast 製作廣播預覽重製物
Rights Covered 涵蓋之權利	Reproduction 重製權
Scope of Licence 授權範圍	The copy is made by, or on behalf of, an administering body (...) and used solely for the purpose of enabling that body to decide whether or not the copy should be retained for the educational purposes of the institution administered by it. 教育機構管理者或其代表，爲協助該機構決定是否爲教育目的而保留重製物，而製作預覽重製物。
Modality of Exercise 行使樣態	A remuneration notice, given by or on behalf of the administering body to the collecting society, [must be] in force 由管理者或其代表，對收取團體[應]爲有效之報酬通知

<p>Conditions Applied</p> <p>適用條件</p>	<p>a preview copy shall be destroyed within 14 days after the day on which it was made (in this section called <i>the preview period</i>). A preview copy may be retained after the end of the preview period where the relevant institution is an educational institution [and] the copy is retained solely for the educational purposes of the institution.</p> <p>預覽重製物應於製作日起 14 日內銷毀（本條稱為預覽期間）。於預覽期間後，單純為機構教育目的而保留該重製物時，相關教育機構得保留預覽重製物。</p> <p>Where a preview copy is retained subsection 135E (1) applies in relation to the copy after the end of the preview period as if the copy had been made solely for a purpose referred to therein.</p> <p>預覽重製物於預覽期間後受保留者，如單純為教育目的而製作該重製物，該重製物適用 135E (1)之規定。</p> <p>Where a preview copy is neither destroyed within the preview period nor retained [as per b. above] [the Compulsory Licence] does not apply, and shall be taken never to have applied, to the making of the copy.</p> <p>如預覽重製物於預覽期間後未經銷毀，亦未依法律規定而保留者，其重製物之製作不得適用[本強制授權]。</p>
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<p>Reference 4</p> <p>參考法條 4</p>	<p>135F (7) Communication of preview copies</p> <p>135F (7) 預覽重製物之傳播</p>
<p>Works Covered</p> <p>涵蓋之著作</p>	<p>(a) broadcast</p> <p>(a) 廣播</p> <p>(b) any work, sound recording or cinematograph film included in a broadcast</p> <p>(b) 廣播中包含之錄音、影片與任何著作</p>



Exception or Compulsory Licence 例外或強制授權規定	Exception 例外規定
Principal Beneficiary 主要受益人	Administering body 管理者
Targeted End User 目標終端使用者	
Act Covered 涵蓋之行爲	Communication of a preview copy 預覽錄製本之傳播
Rights Covered 涵蓋之權利	Communication 傳播權
Scope of Exception 例外範圍	The communication is made solely to enable an administering body to decide whether or not that copy should be retained (...) for the educational purposes of the institution administered by it  爲協助決定是否爲該機構教育目的而保留重製物而進行傳播。
Conditions Applied 適用條件	the communication is made only to the extent necessary for the purpose mentioned and the communication is made within the preview period.  所爲之傳播，以前述目的必要範圍爲限，且未超出預覽期間。

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Reference 5 參考法條 5	Part VB-Reproducing and communicating works etc. by educational and other institutions  Part VB—由教育機構或其他機構重製與傳播著作等  Division 2-Reproduction by educational institutions of works that are in hardcopy form  Division 2—教育機構重製紙本形式著作  135ZG Multiple reproduction of
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	<p>insubstantial parts of works that are in hardcopy form</p> <p>135ZG 對紙本形式著作之少部分內容為多件重製</p>
<p>Works Covered</p> <p>涵蓋之著作</p>	<p>Literary or dramatic work</p> <p>文學或戲劇著作</p>
<p>Exception or Compulsory Licence</p> <p>例外或強制授權規定</p>	<p>Exception 例外規定</p>
<p>Principal Beneficiary</p> <p>主要受益人</p>	<p>Administering body</p> <p>管理者</p>
<p>Targeted End User</p> <p>目標終端使用者</p>	
<p>Act Covered</p> <p>涵蓋之行爲</p>	<p>Reproduction</p> <p>重製</p>
<p>Rights Covered</p> <p>涵蓋之權利</p>	<p>Reproduction</p> <p>重製權</p>
<p>Scope of Exception</p> <p>例外範圍</p>	<p>Making of one or more reproductions of a page or pages of the work in an edition of the work if the reproduction is carried out on the premises of an educational institution for the purposes of a course of education provided by it.</p> <p>爲教育課程目的，於教育機構設施內，對一頁或數頁著作內容，爲一件或多件重製。</p>
<p>Modality of Exercise</p> <p>行使樣態</p>	
<p>Conditions Applied</p> <p>適用條件</p>	<p>1. [Limitation] does not apply to the making of a reproduction of more than 2 of the pages of a work in an edition of the work unless:</p> <p>1. 除以下規定外，[限制規定]不適用於著作2頁以上之重製：</p> <p>(a) there are more than 200 pages in the edition; and</p> <p>(a) 著作頁數多於200頁；且</p>

	<p>(b) the total number of pages so reproduced does not exceed 1% of the total number of pages in the edition.</p> <p>(b) 重製頁數未超過著作總頁數1%。</p> <p>2. Where:</p> <p>2. 於：</p> <p>(a) a person makes, or causes to be made, a reproduction of a part of a work contained on a page or pages in an edition; and</p> <p>(a) 行為人製作或使人重製著作1頁或數頁；且</p> <p>(b) subsection (1) applies to the making of that reproduction;</p> <p>(b)第1項規定適用於該重製者；</p> <p>that subsection does not apply to the making, by or on behalf of that person, of a reproduction of any other part of that work within 14 days after the day on which the previous reproduction was made.</p> <p>於重製之日起 14 日後，行為人或其代表對該著作任何部分之重製，不適用第 1 項之規定。</p>
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<p>Reference 6</p> <p>參考法條6</p>	<p>135ZH Copying of printed published editions by educational institutions</p> <p>135ZH 教育機構複製印刷出版品</p>
<p>Works Covered</p> <p>涵蓋之著作</p>	<p>Printed published edition of a work (being a work in which copyright does not subsist)</p> <p>(不適用著作權之)印刷出版品著作</p>
<p>Exception or Compulsory Licence</p> <p>例外或強制授權規定</p>	<p>Exception</p> <p>例外規定</p>
<p>Principal Beneficiary</p> <p>主要受益人</p>	<p>A body administering an educational institution</p> <p>教育機構管理者</p>

Targeted End User 目標終端使用者	
Act Covered 涵蓋之行爲g	Making of one or more facsimile copies of the whole or a part of the edition 對出版品全部或一部，製作一件或多件複印本
Rights Covered 涵蓋之權利	Reproduction 重製權
Scope of Exception 例外範圍	making of one or more facsimile copies of the whole or a part of the edition, if the copy, or each of the copies, is made in the course of the making of a reproduction of the whole or a part of the work by, or on behalf of, a body administering an educational institution for the educational purposes of that institution or of another educational institution 教育機構管理者或其代表，為該機構或另一教育機構之教育目的，於重製著作全部或一部時，對出版品全部或一部，製作一件或多件複印本。
Modality of Exercise 行使樣態	
Conditions Applied 適用條件	

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Reference 7 參考法條 7	135ZJ Multiple reproduction of printed periodical articles by educational institutions 135ZJ 教育機構重製多件印刷期刊文章
Works Covered 涵蓋之著作	Article contained in a printed periodical publication 印刷出版期刊內之文章
Exception or Compulsory Licence	Compulsory Licence

例外或強制授權規定	強制授權
Targeted End User 目標終端使用者	
Act Covered 涵蓋之行爲	Making of one or more reproductions of the whole or a part of that article 對文章全部或一部，爲一件或多件重製
Rights Covered 涵蓋之權利	Reproduction 重製權
Scope of Licence 授權範圍	The making of one or more reproductions of the whole or a part of that article by, or on behalf of, a body administering an educational institution 教育機構管理者或其代表，對文章全部或一部，爲一件或多件重製
Conditions Applied 適用條件	This section does not apply in relation to reproductions of, or of parts of, 2 or more articles contained in the same periodical publication unless the articles relate to the same subject-matter 對期刊出版品，除相同主題之文章，本條規定不適用於二篇文章以上全部或一部之重製

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Reference 8 參考法條 8	135ZK Multiple reproduction of works published in printed anthologies 135ZK 印刷論文集著作之多件重製
Works Covered 涵蓋之著作	Literary or dramatic work, being a work contained in a printed published anthology of works and comprising not more than 15 pages in that anthology 印刷論文集著作 15 頁內之文學或戲劇著作
Exception or Compulsory Licence 例外或強制授權規定	Compulsory Licence 強制授權
Principal Beneficiary 主要受益人	A body administering an educational institution 教育機構管理者
Targeted End User 目標終端使用者	
Act Covered 涵蓋之行爲	Making of one or more reproductions of the whole or part of the work 對著作全部或一部，爲一件或多件重製
Rights Covered 涵蓋之權利	Reproduction 重製權
Scope of Licence 授權範圍	The making of one or more reproductions of the whole or part of the work by, or on behalf of, a body administering an educational institution. 教育機構管理者或其代表，對著作全部或一部，爲一件或多件重製
Modality of Exercise 行使樣態	As for 135ZJ 同 135ZJ

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Reference 9	135ZL Multiple reproduction of works that
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參考法條 9	are in hardcopy form by educational institutions 135ZL 教育機構對紙本著作為多件重製
Works Covered 涵蓋之著作	Literary, dramatic, musical or artistic work (other than an article contained in a periodical publication) (期刊出版品文章以外之) 文學、戲劇、音樂或藝術著作
Exception or Compulsory Licence 例外或強制授權規定	Compulsory Licence
Principal Beneficiary 主要受益人	A body administering an educational institution 教育機構管理者
Targeted End User 目標終端使用者	
Act Covered 涵蓋之行爲	Making of one or more reproductions of the whole or part of the work 對著作全部或一部為一件或多件重製
Rights Covered 涵蓋之權利	Reproduction 重製權
Scope of Licence 授權範圍	The making of one or more reproductions of the whole or part of the work by, or on behalf of, a body administering an educational institution. 教育機構管理者或其代表，對著作全部或一部，為一件或多件重製
Modality of Exercise 行使樣態	As for 135ZJ 同 135ZJ
Conditions Applied 適用條件	This provision does not apply in relation to reproductions of the whole, or of more than a reasonable portion, of a work that has been separately published unless the person who makes the reproductions, or causes the reproductions to be made, for, or on behalf of, the body is satisfied, after reasonable investigation, that reproductions (other than second-hand reproductions) of the work cannot be obtained within a reasonable

	<p>time at an ordinary commercial price.</p> <p>於著作分別出版後，對著作全部或超出合理範圍之部分為重製者，不適用本條規定，但重製或使人重製之行為人或其代表，經過合理調查後，於合理時間、通常商業價格下，無法取得（非二手）重製物時，不在此限。</p>
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<p>Reference 10 參考法條 10</p>	<p>Division 2A—Reproduction and communication of works that are in electronic form</p> <p>Division 2A – 電子形式著作之重製與傳播</p> <p>135ZMB Multiple reproduction and communication of insubstantial parts of works that are in electronic form</p> <p>135ZMB 對電子形式著作之少部分內容為多件重製與傳播</p>
<p>Works Covered 涵蓋之著作</p>	<p>Published literary or dramatic work</p> <p>已出版之文學或戲劇著作</p>
<p>Exception or Compulsory Licence 例外或強制授權規定</p>	<p>Exception</p> <p>例外規定</p>
<p>Principal Beneficiary 主要受益人</p>	<p>An educational institution</p> <p>教育機構</p>
<p>Targeted End User 目標終端使用者</p>	
<p>Act Covered 涵蓋之行爲</p>	<p>(a) the making of one or more reproductions of a part of the work; or</p> <p>(a) 對著作之一部為一件或多件重製；或</p> <p>(b) communicating a part of the work;</p> <p>對著作之一部為傳播</p>
<p>Rights Covered</p>	<p>Reproduction; communication</p>



涵蓋之權利	重製權、傳播權
Scope of Exception 例外範圍	<p>The reproduction or communication is carried out on the premises of an educational institution for the purposes of a course of study provided by it.</p> <p>為教育機構課程目的，於教育機構設施內為重製或傳播。</p>
Modality of Exercise 行使樣態	
Conditions Applied 適用條件	<p>Subsection (1) does not apply to the reproduction or communication of more than 1% of the total number of words in the work</p> <p>超過著作總字數 1%之重製或傳播，於以下情形不適用第 1 項之規定：</p> <p>If:</p> <p>如：</p> <p>(a) a person makes, or causes to be made, a reproduction of a part of a work or communicates a part of a work; and</p> <p>(a) 行為人為重製或傳播，或使人為重製或傳播；且</p> <p>(b) subsection (1) applies to the making of the reproduction or to the communication;</p> <p>(b) 第 1 項規定適用於該重製或傳播；</p> <p>that subsection does not apply to the making by, or on behalf of, that person of a reproduction or to the communication by that person, of any other part of that work within 14 days after the day on which the previous reproduction or the first communication of the work was made.</p> <p>則超過該著作先前重製或首次傳播 14 日，行為人或其代表對著作任何部分為重製或傳播者，不適用該項規定。</p> <p>If:</p> <p>如：</p> <p>(a) a person communicates a part of a</p>

	<p>work by making the part available online; and</p> <p>(a) 行為人將著作一部份傳播於線上供人取用；且</p> <p>(b) subsection (1) applies to the communication;</p> <p>(b) 第 1 項規定適用於該傳播；</p> <p>that subsection does not apply to the making available online by that person of any other part of that work while the part previously made available online continues to be so available.</p> <p>先前於線上供人取用之該部分著作，於線上持續供人取用期間，行為人或其代表於線上提供取用行為，不適用該項規定。</p>
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<p>Reference 11 參考法條 11</p>	<p>135ZJ Multiple reproduction of printed periodical articles by educational institutions</p> <p>135ZJ 教育機構重製多件印刷期刊文章</p>
<p>Works Covered 涵蓋之著作</p>	<p>Article contained in a periodical publication</p> <p>印刷出版品中之文章</p>
<p>Exception or Compulsory Licence 例外或強制授權規定</p>	<p>Compulsory Licence</p> <p>強制授權</p>
<p>Principal Beneficiary 主要受益人</p>	<p>A body administering an educational institution</p> <p>教育機構管理者</p>
<p>Targeted End User 目標終端使用者</p>	
<p>Act Covered 涵蓋之行爲</p>	<p>(a) The making of one or more reproductions of the whole or a part of the article; or</p> <p>(a) 對文章全部或一部，爲一件或多件</p>

	<p>重製</p> <p>(b) The communication of the whole or a part of the article</p> <p>(b) 對文章全部或一部為傳播</p>
<p>Rights Covered</p> <p>涵蓋之權利</p>	<p>Reproduction</p> <p>重製權</p>
<p>Scope of Licence</p> <p>授權範圍</p>	<p>The making of one or more reproductions of the whole or a part of that article by, or on behalf of, a body administering an educational institution</p> <p>教育機構管理者或其代表，對文章全部或一部，為一件或多件重製。</p>
<p>Modality of Exercise</p> <p>行使樣態</p>	<p>1. A remuneration notice, given by or on behalf of the administering body to the collecting society, [must be] in force</p> <p>1. 由管理者或其代表，對收取團體[應]為有效之報酬通知</p> <p>2. The reproduction is carried out solely for the educational purposes of the institution or of another educational institution</p> <p>2. 單純為該機構或另一教育機構之教育目的，而為重製</p> <p>3. The body complies with subsection 135ZX (1) or (3) or section 135ZXA, as the case requires, in relation to each reproduction or communication</p> <p>3. 關於每一件重製或傳播行為，該主體合乎第 135 條 ZX 第 1 項或第 3 項，或第 135 條 ZXA 之規定。</p>
<p>Conditions Applied</p> <p>適用條件</p>	<p>This section does not apply in relation to reproductions of, or of parts of, 2 or more articles contained in the same periodical publication unless the articles relate to the same subject-matter</p> <p>對期刊出版品，除相同主題之文章，本條規定不適用於二篇文章以上全部或一部之重製</p>

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Reference 12 參考法條 12	135ZMD Multiple reproduction and communication of works that are in electronic form by educational institutions  135ZMD 教育機構對電子形式著作為多件重製與傳播
Works Covered 涵蓋之著作	Literary, dramatic, musical or artistic work (other than an article contained in a periodical publication)  (期刊出版品文章以外之) 文學、戲劇、音樂或藝術著作
Exception or Compulsory Licence 例外或強制授權規定	Compulsory Licence 強制授權
Principal Beneficiary 主要受益人	A body administering an educational institution  教育機構管理者
Targeted End User 目標終端使用者	
Act Covered 涵蓋之行爲	(a) The making of one or more reproductions of the whole or a part of the work; or  (a) 對著作全部或一部，為一件或多件重製。  (b) The communication of the whole or a part of the work  (b) 對著作全部或一部為傳播
Rights Covered 涵蓋之權利	Reproduction; communication  重製權、傳播權
Scope of Licence 授權範圍	The making of one or more reproductions of the whole or a part of that article by, or on behalf of, a body administering an educational institution  教育機構管理者或其代表，對文章全部或一部，為一件或多件重製。
Modality of Exercise	1. A remuneration notice, given by or on behalf of the administering body to the

<p>行使樣態</p>	<p>collecting society, [must be] in force</p> <ol style="list-style-type: none"> <li>1. 由管理者或其代表，對收取團體[應]為有效之報酬通知</li> <li>2. The reproduction is carried out solely for the educational purposes of the institution or of another educational institution</li> <li>2. 單純為該機構或另一教育機構之教育目的，而為重製</li> <li>3. The body complies with subsection 135ZX (1) or (3) or section 135ZXA, as the case requires, in relation to each reproduction or communication</li> <li>3. 關於每一件重製或傳播行為，該主體合乎第 135 條 ZX 第 1 項或第 3 項，或第 135 條 ZXA 之規定。</li> </ol>
<p>Conditions Applied 適用條件</p>	<ol style="list-style-type: none"> <li>1. [The licence] does not apply in relation to the reproduction or communication of: [本授權]不適用於以下相關之重製或傳播：</li> </ol> <ol style="list-style-type: none"> <li>(a) the whole, or of more than a reasonable portion of, a literary or dramatic work; or</li> <li>(a) 文學或戲劇著作之全部或超出合理範圍之部分；或</li> <li>(b) the whole, or of more than 10% of, a musical work;</li> <li>(b) 音樂著作全部或超出10%以上；</li> </ol> <p>that has been separately published unless the person who makes the reproduction or communication, or causes it to be made, for, or on behalf of, the body is satisfied, after reasonable investigation, that the work is not available in electronic form within a reasonable time at an ordinary commercial price.</p> <p>已分別出版者，但重製、傳播或使人重製、傳播之行為人或其代表，經過合理調查後，於合理時間、通常商業價格下，無法取得電子形式著作時，不在此</p>

	<p>限。</p> <p>2 If a person communicates a part of a work by or on behalf of a body administering an educational institution, by making the part available online [the licence] does not apply to the making available online by, or on behalf of, that body of any other part of that work while the part previously made available online continues to be so available.</p> <p>2.教育機構或其代表，將著作一部份傳播於網路上供人取用，而先前於線上供人取用之該部分著作，持續供人取用者，行為人於線上提供取用行為，不適用[本授權]。</p>
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## The Republic of Korea

## 韓國

Reference 1 參考法條 1	Article 23(1) 第 23 條第 1 項
Works Covered 涵蓋之著作	Works made public 已公開著作
Exception or Compulsory Licence 例外或強制授權規定	Compulsory Licence 強制授權
Principal Beneficiary 主要受益人	A publisher of textbooks. 教科書出版商
Targeted End User 目標終端使用者	A person giving or receiving instruction 教學或接收教學者
Act Covered 涵蓋之行爲	Copying of a work 複製著作
Rights Covered 涵蓋之權利	Reproduction 重製權
Scope of Exception 例外範圍	The work may be reproduced in the textbook to the extent deemed necessary for the purpose of education at high schools, their equivalents or lower level schools.  爲高級中學、高級中學同等學校或中、小學之教育目的，得於必要範圍內，將著作重製於教科書中。
Modality of Exercise 行使樣態	
Conditions Applied 適用條件	The publisher shall pay compensation to the owner of authors' economic rights as determined and announced officially by the Minister of Culture and Tourism according to the criteria for compensation prescribed under subparagraph 1 of Article 82, or shall deposit the same as prescribed by the Presidential Decree. Broadcasting or

	<p>reproduction of a work done at high schools, their equivalents or lower level schools as prescribed under Paragraph (2) is not obliged to pay a compensation.</p> <p>出版商應向著作財產權人支付補償金，其金額由文化旅遊部長依第 82 條第 1 項規定之補償基準認定並公告，或應寄存總統命令所規定之相同金額。於第 2 項規定，由高級中學、高級中學同等學校或中、小學所為之廣播或重製，不須支付補償金。</p>
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## §

<p>Reference 2 參考法條 2</p>	<p>Article 23(2) 第 23 條第 2 項</p>
<p>Works Covered 涵蓋之著作</p>	<p>Works made public 已公開著作</p>
<p>Exception or Compulsory Licence 例外或強制授權規定</p>	<p>Compulsory Licence 強制授權</p>
<p>Principal Beneficiary 主要受益人</p>	<p>Educational institutions established by special Acts, or the Education Act, or operated by the state or local government 依特別法或教育法所設立，或由國家或地方政府經營之教育機構</p>
<p>Targeted End User 目標終端使用者</p>	<p>A person giving or receiving instruction 教學或接收教學者</p>
<p>Act Covered 涵蓋之行爲</p>	<p>Broadcasting or copying 廣播或複製</p>
<p>Rights Covered 涵蓋之權利</p>	<p>Broadcasting and Reproduction 廣播權與重製權</p>
<p>Scope of Exception 例外範圍</p>	<p>The work may be broadcast or reproduced to the extent deemed necessary for the purpose of education.</p>
<p>Modality of Exercise 行使樣態</p>	



<p>Conditions Applied</p> <p>適用條件</p>	<p>The educational institutions shall pay compensation to the owner of authors' economic rights as determined and announced officially by the Minister of Culture and Tourism according to the criteria for compensation prescribed under subparagraph 1 of Article 82, or shall deposit the same as prescribed by the Presidential Decree. Broadcasting or reproduction of a work done at high schools, their equivalents or lower level schools as prescribed under Paragraph (2) is not obliged to pay a compensation.</p> <p>教育機構應向著作財產權人支付補償金，其金額由文化旅遊部長依第 82 條第 1 項規定之補償基準認定並公告，或應寄存總統命令所規定之相同金額。於第 2 項規定，由高級中學、高級中學同等學校或中、小學所為之廣播或重製，不須支付補償金。</p>
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## Spain

### 西班牙<sup>62</sup>

<p>Reference 1</p> <p>參考法條 1</p>	<p>Article 32(1)</p> <p>第 32 條第 1 項</p>
<p>Exception or Compulsory Licence</p> <p>例外或強制授權規定</p>	<p>Exception</p> <p>例外規定</p>
<p>Principal Beneficiary</p> <p>主要受益人</p>	<p>Any person or institution</p> <p>任何人或任何機構</p>
<p>Targeted End User</p> <p>目標終端使用者</p>	<p>A person giving or receiving instruction</p> <p>教師與學生</p>
<p>Works Covered</p>	<p>Third party works</p> <p>第三人著作</p>

<sup>62</sup> At the time of publication, draft legislation implementing the EC Copyright Directive was under consideration in the Spanish Parliament. See commentary in Chapter 4.

本研究出版時，執行歐洲聯盟著作權指令的立法草案，正在西班牙國會中審議。見第四章之解說。

涵蓋之著作	
Act Covered 涵蓋之行爲	Inclusion of extracts of the works of others. 摘錄引用他人著作
Rights Covered 涵蓋之權利	Reproduction
Scope of Exception 例外範圍	The exception relates only to published third party works and provided they are only used for the purpose of analysis, comment or critical assessment. 摘錄僅限於已出版之第三人著作，且僅用於分析或評論目的。
Modality of Exercise 行使樣態	
Conditions Applied 適用條件	The source and name of the author have to be stated. 應註明來源出處及作者名稱。

## United Kingdom

### 英國

Reference 1 參考法條 1	CDPA 1988 s.32 (1) 1998 年著作權、設計與專利法第 32 條第 1 項
Exception or Compulsory Licence 例外或強制授權規定	Exception 例外規定
Principal Beneficiary 主要受益人	A person giving or receiving instruction 教學或接收教學者
Targeted End User 目標終端使用者	A person giving or receiving instruction 教學或接收教學者
Works Covered 涵蓋之著作	Literary, dramatic, musical or artistic work 文學、戲劇、音樂或藝術著作
Act Covered 涵蓋之行爲	Copying of a work 複製著作

<b>Rights Covered</b> 涵蓋之權利	<b>Reproduction</b> 重製權
<b>Scope of Exception</b> 例外範圍	Work is being copied in the course of instruction or of preparation for instruction 於教學或準備教學過程中複製著作
<b>Modality of Exercise</b> 行使樣態	Copying must be done by a person giving or receiving instruction, and not by means of a reprographic process 由教學或接收教學者複製，且不得以複印方式為之
<b>Conditions Applied</b> 適用條件	Where a copy is made in accordance with this exception but is subsequently sold or let for hire or offered or exposed for sale or hire it shall be treated as an infringing copy for the purpose of that dealing, and if that dealing infringes copyright for all subsequent purposes 依本例外規定所為之重製物，經販賣、出租、要約販賣或要約出租，或為販賣或出租而展示者，就該項交易視為侵權重製物，又如該項交易侵害著作權，就其後所有目的，視為侵權重製物。

## §

<b>Reference 2</b> 參考法條 2	CDPA 1988 s.32 (2) 1998 年著作權、設計與專利法第 32 條第 2 項
<b>Exception or Compulsory Licence</b> 例外或強制授權規定	Exception 例外規定
<b>Principal Beneficiary</b> 主要受益人	A person giving or receiving instruction 教學或接收教學者
<b>Targeted End User</b> 目標終端使用者	A person giving or receiving instruction 教學或接收教學者
<b>Works Covered</b> 涵蓋之著作	Sound recording, film, broadcast or cable programme

	錄音、影片、廣播或有線節目
Act Covered 涵蓋之行爲	Copying of a sound recording, film, broadcast or cable programme in the making of a film or film sound track 製作影片或影片音軌時，複製錄音、影片、廣播或有線節目
Rights Covered 涵蓋之權利	Reproduction 重製權
Scope of Exception 例外範圍	The subject matter is copied by making a film or film sound-track in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks. 於教學或準備教學過程中，製作影片或影片音軌時，複製錄音、影片、廣播或有線節目
Modality of Exercise 行使樣態	Copying must be done by a person giving or receiving instruction 由教學或接收教學者複製
Conditions Applied 適用條件	Where a copy is made in accordance with this exception but is subsequently sold or let for hire or offered or exposed for sale or hire it shall be treated as an infringing copy for the purpose of that dealing, and if that dealing infringes copyright for all subsequent purposes. 依本例外規定所爲之重製物，經販賣、出租、要約販賣或要約出租，或爲販賣或出租而展示者，就該項交易視爲侵權重製物，又如該項交易侵害著作權，就其後所有目的，視爲侵權重製物。

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Reference 3 參考法條 3	CDPA 1988 s.32 (3) 1998 年著作權、設計與專利法第 32 條第 3 項
Exception or Compulsory Licence	Exception 例外規定

例外或強制授權規定	
Principal Beneficiary 主要受益人	Any person or entity 任何人或主體
Targeted End User 目標終端使用者	A candidate in an examination 應考者
Works Covered 涵蓋之著作	All works 一切著作
Act Covered 涵蓋之行爲	Anything done for an examination 爲考試所爲一切行爲
Rights Covered 涵蓋之權利	All rights 一切權利
Scope of Exception 例外範圍	Anything done for the purposes of an examination by way of setting the questions, communicating the questions to the candidates or answering the questions. 爲擬定考題、傳達考題或回答考題，所爲之一切行爲。
Modality of Exercise 行使樣態	
Conditions Applied 適用條件	<p>(a) This exception does not extend to the making of a reprographic copy of a musical work for use by an examination candidate in performing the work.</p> <p>(a) 於應考者演奏著作而使用複印之音樂著作時，不適用本例外規定。</p> <p>(b) Where a copy is made in accordance with this exception but is subsequently sold or let for hire or offered or exposed for sale or hire it shall be treated as an infringing copy for the purpose of that dealing, and if that dealing infringes copyright for all subsequent purposes.</p> <p>(b) 依本例外規定所爲之重製物，經販賣、出租、要約販賣或要約出租，或爲販賣或出租而展示者，就該項交易視爲侵權重製物，又如該項交易侵害著作權，就其後所有目的，視爲侵權重製</p>

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Reference 4 參考法條 4	CDPA 1988 s.33 1998 年著作權、設計與專利法第 33 條
Exception or Compulsory Licence 例外或強制授權規定	Exception 例外規定
Principal Beneficiary 主要受益人	Any person or entity 任何人或主體
Targeted End User 目標終端使用者	Any end user in an educational institution 教育機構內任何終端使用者
Works Covered 涵蓋之著作	Published literary or dramatic work 已出版之文學或戲劇著作
Act Covered 涵蓋之行爲	Copying of a short passage 複製簡短段落
Rights Covered 涵蓋之權利	Reproduction 重製權
Scope of Exception 例外範圍	The inclusion of a short passage from a published literary or dramatic work in a collection which is intended in educational establishments for any use for the educational purposes of such an establishment and consists mainly of material in which no copyright subsists where the work itself is not intended for use in such establishments  由已出版之文學或戲劇著作選輯引用簡短段落，該選輯之目的即用於教育機構內任何教育使用，而其主要內容爲非用於教育機構之無著作權材料。
Modality of Exercise 行使樣態	The collection must be described as being for use in educational establishments in its title and in any advertisements issued by or on behalf of the publisher, and  於標題、出版商或其代表發佈之廣告，該選輯必須被描述爲供教育機構使用，且

	<p>The inclusion must be accompanied by a sufficient acknowledgement.</p> <p>引用時必須附加註明來源出處。</p>
<p>Conditions Applied</p> <p>適用條件</p>	<p>(a) The exception does not authorise the inclusion of more than two excerpts from copyright works by the same author in collections published by the same publisher over any period of five years.</p> <p>(a) 於相同出版商對相同作者 5 年內所出版之各選輯，對受著作權保護著作摘錄二段以上者，不適用本例外規定之授權。</p> <p>(b) In relation to any given passage the reference to excerpts from works by the same author:</p> <p>(b) 關於任何段落，引用摘錄來自相同作者之各件著作時：</p> <p>(i) shall be taken to include excerpts from works by him in collaboration with another, and</p> <p>(i) 視為包括從由該作者與他人共同創作之著作中摘錄，且</p> <p>(ii) if the passage in question is from such a work, shall be taken to include excerpts from works by any of the authors, whether alone or in collaboration with another.</p> <p>(ii) 如該段落出自該等作品，視為包括從由其中任何一位作者製作的作品中摘錄，不論該作品為該作者單獨創作或與另一作者共同創作。</p>



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Reference 5 參考法條 5	CDPA 1988 s.34(1) 1998 年著作權、設計與專利法第 34 條 第 1 項
Exception or Compulsory Licence 例外或強制授權規定	Exception 例外規定
Principal Beneficiary 主要受益人	Teacher or pupil 教師與學生  Any person for the purposes of instruction 任何教學者
Targeted End User 目標終端使用者	Teachers and pupils at an educational establishment and other persons directly connected with the activities of the establishment. (Another person is not for this purpose directly connected with the activities of the educational establishment simply because he is the parent of a pupil at the establishment.)  教育機構內之教師、學生與其他與教育機構活動直接相關者（教育機構學生之父母，並不能直接被認為屬於與教育機構活動直接相關者）。
Works Covered 涵蓋之著作	Literary, dramatic or musical work 文學、戲劇或音樂著作
Act Covered 涵蓋之行爲	Performance of a work 著作之表演
Rights Covered 涵蓋之權利	Public Performance 公開表演權
Scope of Exception 例外範圍	The performance by a teacher or pupil must occur in the course of the activities of the establishment or must be for the purposes of instruction when done any other person  教師或學生之表演，必須於教育機構活動中爲之，且必須屬於教學目的範圍。
Modality of Exercise	

行使樣態	
Conditions Applied 適用條件	

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Reference 6 參考法條 6	CDPA 1988 s.34 (2) 1998 年著作權、設計與專利法第 34 條第 2 項
Exception or Compulsory Licence 例外或強制授權規定	Exception 例外規定
Principal Beneficiary 主要受益人	Any person 任何人
Targeted End User 目標終端使用者 (Audience)	Teachers and pupils at an educational establishment and other persons directly connected with the activities of the establishment. (Another person is not for this purpose directly connected with the activities of the educational establishment simply because he is the parent of a pupil at the establishment.) 教育機構內之教師、學生與其他與教育機構活動直接相關者（教育機構學生之父母，並不能直接被認為屬於與教育機構活動直接相關者）。
Works Covered 涵蓋之著作	Sound recording, film, broadcast or cable programme 錄音、影片、廣播或有線節目
Act Covered 涵蓋之行爲	Performance of a sound recording, film, broadcast or cable programme 錄音、影片、廣播或有線節目之上映
Rights Covered 涵蓋之權利	Public Performance 公開上映權
Scope of Exception 例外範圍	The performance must be before such an audience at an educational establishment for the purposes of instruction

	上映必須為教學目的，於教育機構內對觀眾為之。
Modality of Exercise 行使樣態	
Conditions Applied 適用條件	

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Reference 7 參考法條 7	CDPA 1988 s.35 1998 年著作權、設計與專利法第 35 條
Exception or Compulsory Licence 例外或強制授權規定	Exception 例外規定
Principal Beneficiary 主要受益人	An educational establishment 教育機構
Targeted End User 目標終端使用者	
Works Covered 涵蓋之著作	Broadcast or cable programme and any work included in the broadcast or cable programme 廣播或有線節目中包含之廣播、有線節目與任何著作
Act Covered 涵蓋之行爲	Copying of a broadcast or cable programme 廣播或有線節目之複製
Rights Covered 涵蓋之權利	Reproduction 重製權
Scope of Exception 例外範圍	A recording of a broadcast or cable programme, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment 為教育機構之教育目的，教育機構或其代表得錄製廣播或有線節目，或複製該

	等錄製
Modality of Exercise 行使樣態	
Conditions Applied 適用條件	<p>(a) The exception does not apply if or to the extent that there is a licensing scheme certified under CDPA s.143 providing for the grant of licences.</p> <p>(a) 於著作權、設計與專利法第 143 條<sup>63</sup>授權架構範圍，不適用本例外規定。</p> <p>(b) Where a copy is made under this exception but is subsequently sold or let for hire or offered or exposed for sale or hire, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.</p> <p>(b) 依本例外規定所為之重製物，經販賣、出租、要約販賣或要約出租，或為販賣或出租而展示者，就該項交易視為侵權重製物，又如該項交易侵害著作權，就其後所有目的，視為侵權重製物。</p>

<sup>63</sup> Section 143

- (1) A person operating or proposing to operate a licensing scheme may apply to the Secretary of State to certify the scheme for the purposes of
- (a) Section 35 (educational recording of broadcasts or cable programmes),
- (2) The Secretary of State shall by order made by statutory instrument certify the scheme if he is satisfied that it
- (a) enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences, and
- (b) sets out clearly the charges (if any) payable and the other terms on which licences will be granted.
- (3) The scheme shall be scheduled to the order and the certification shall come into operation for the purposes of section 35 (...) as the case may be-
- (a) on such date, not less than eight weeks after the order is made, as may be specified in the order, or
- (b) if the scheme is the subject of a reference under section 118 (reference of proposed scheme), any later date on which the order of the Copyright Tribunal under that section comes into force or the reference is withdrawn.
- (4) A variation of the scheme is not effective unless a corresponding amendment of the order is made; and the Secretary of State shall make such an amendment in the case of a variation ordered by the Copyright Tribunal on a reference under section 118, 119 or 120, and may do so in any other case if he thinks fit.
- (5) The order shall be revoked if the scheme ceases to be operated and may be revoked if it appears to the Secretary of State that it is no longer being operated according to its terms.
- (1) 經營或計畫經營授權架構者，得為以下目的，向國務大臣申請認證其架構
- (a) 第 35 條（廣播或有線節目之教育性錄製）

§

Reference 8 參考法條 8	CDPA 1988 s.36 1998 年著作權、設計與專利法第 36 條
Exception or Compulsory Licence 例外或強制授權規定	Exception 例外規定
Principal Beneficiary 主要受益人	An educational establishment 教育機構
Targeted End User 目標終端使用者	
Works Covered 涵蓋之著作	Passages from published literary, dramatic or musical works and the typographical arrangement thereof 已出版文學、戲劇或音樂著作及其編輯著作之段落
Act Covered 涵蓋之行爲	Copying of passages 複製段落
Rights Covered 涵蓋之權利	Reproduction 重製權
Scope of Exception 例外範圍	

[Footnote continued from previous page]

(2) 於符合以下規定時，國務大臣應以法定文書之命令認證其架構

- (a) 對於相關著作，充分確定能使需要獲得授權者所識別，且
- (b) 關於授權之價格與其他條款，有明確規定。

(3) 架構之進度表應配合命令爲之，認證應依第 35 條之目的 (... )，依下列情形生效—

- (a) 日期，應於命令下達後八週後，命令所規定之日期，或
- (b) 如該架構適用第 118 條規定（提議架構之提交）(reference of proposed scheme)，於著作權法院根據該條規定所命令日期之後生效，或撤回提交後之日期生效。

(4) 除有命令變更，架構之變更不生效力；於著作權法院依第 118 條、第 119 條或第 120 條對提交有命令變更之情形，國務大臣得命令變更之，於國務大臣認爲適當情形時，亦得爲命令變更。

(5) 如架構停止經營者，得撤銷命令，於國務大臣認爲無法依授權條款經營時，亦得撤銷命令。

<p>Modality of Exercise</p> <p>行使樣態</p>	
<p>Conditions Applied</p> <p>適用條件</p>	<p>(a) Not more than one per cent of any work may be copied by or on behalf of an establishment under this exception in any quarter, that is, in any period 1st January to 31st March, 1st April to 30<sup>th</sup> June, 1st July to 30th September or 1st October to 31st December.</p> <p>(a) 依本例外規定，教育機構或其代表，於每一季內不得複製任何著作 1% 以上內容，每一季之定義為 1 月 1 日至 3 月 31 日，4 月 1 日至 6 月 30 日，7 月 1 日至 9 月 30 日，或 10 月 1 日至 12 月 31 日。</p> <p>(b) Copying is not authorised by this section if, or to the extent that, licences are available authorising the copying in question and the person making the copies knew or ought to have been aware of that fact. However, the terms of a licence granted to an educational establishment authorising the reprographic copying for the purposes of instruction of passages from published literary, dramatic or musical works are of no effect insofar as they purport to restrict the proportion of a work which may be copied (whether on payment or free of charge) to less than that which would be permitted under this exception.</p> <p>(b) 複製行為人明知或應知系爭複製有授權可得者，即不適用本條之授權。但對於教學機構之授權條款，授權為教學目的而複印已出版文學、戲劇或音樂著作，其授權複印比例低於本例外規定許可而應為無效者，不在此限。</p> <p>(c) Where a copy is made under this exception but is subsequently sold or let for hire or offered or exposed for sale or hire, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.</p>

	(c) 依本例外規定所為之重製物，經販賣、出租、要約販賣或要約出租，或為販賣或出租而展示者，就該項交易視為侵權重製物，又如該項交易侵害著作權，就其後所有目的，視為侵權重製物。
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## United States of America

### 美國

Reference 1 參考法條 1	Section 110 - Limitations on exclusive rights: Exemption of certain performances and displays 第110條－專屬權之限制：特定表演與展示之除外 (1)
Exception or Compulsory Licence 例外或強制授權規定	Exception 例外規定
Principal Beneficiary 主要受益人	Instructors or pupils 教師或學生
Targeted End User 目標終端使用者	
Works Covered 涵蓋之著作	Any work 任何著作
Acts Covered 涵蓋之行爲	Performance or display 表演或展示
Rights Covered 涵蓋之權利	Performance 表演權
Scope of Exception 例外範圍	Performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction 於非營利教育機構之面對面教學活動，

	於教室或類似教學場所，由教師或學生為表演或展示
Modality of Exercise 行使樣態	
Conditions Applied 適用條件	<p>The limitation does not extend to a motion picture or other audiovisual work, if the performance, or the display of individual images, is given by means of a copy that was not lawfully made under [The Copyright Law], and the person responsible for the performance knew or had reason to believe it was not lawfully made</p> <p>如個別影像之表演或展示取自於不法重製物，且該表演之負責人明知或可得而知者，則本限制規定不適用於動畫或其他視聽著作。</p>

## §

Reference 2 參考法條 2	<p>Section 110 - Limitations on exclusive rights: Exemption of certain performances and displays</p> <p>第110條－專屬權之限制：特定表演與展示之除外</p> <p>(2)</p>
Exception or Compulsory Licence 例外或強制授權規定	<p>Exception</p> <p>例外規定</p>
Principal Beneficiary 主要受益人	<p>Instructors or pupils</p> <p>教師或學生</p>
Targeted End User 目標終端使用者	
Works Covered 涵蓋之著作	<p>(a) Nondramatic literary or musical work</p> <p>(a) 非戲劇性文學或音樂著作</p> <p>(b) reasonable and limited portions of any other work</p>



	(b) 任何著作之合理與有限部分
Acts Covered 涵蓋之行爲	Performance or display 表演或展示
Rights Covered 涵蓋之權利	Performance 表演權
Scope of Exception 例外範圍	<p>The performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission</p> <p>以傳輸方式或於傳輸過程中，非戲劇性文學或音樂著作或任何其他著作之合理與有限部分之表演，或相當於通常教室上課期間展示內容之展示。</p>
Modality of Exercise 行使樣態	<p>1. The performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities of a governmental body or an accredited nonprofit educational institution</p> <p>1. 表演或展示由教學者親自實施或監督實施，為政府或非營利教育機構系統性媒體教學活動上課期間的正常部分</p> <p>2. The performance or display is directly related and of material assistance to the teaching content of the transmission</p> <p>2. 與傳輸教學內容具有直接關連及實質幫助之表演或展示</p>
Conditions Applied 適用條件	(a) [The limitation does not apply] with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, or a performance or display that is given by means of a copy or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited nonprofit educational

	<p>institution knew or had reason to believe was not lawfully made and acquired;</p> <p>(a) 以數位網路傳輸，而主要為媒體教學活動表演或展示所生產或行銷之著作，[不適用本例外限制]；</p> <p>(b) the transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to</p> <p>(b) 單純為以下人員而傳輸，而於科技可行範圍內，傳輸應限於以下人員</p> <p>(i) students officially enrolled in the course for which the transmission is made; or</p> <p>(i) 該傳輸課程之正式註冊學生；或</p> <p>(ii) officers or employees of governmental bodies as a part of their official duties or employment;</p> <p>(ii) 履行職務之政府公務員或聘僱人員；</p> <p>(c) the transmitting body or institution must</p> <p>(c) 傳輸者或機構應</p> <p>(i) institute policies regarding copyright, provide informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection; and</p> <p>(i) 制訂著作權政策，對教員、學生及相關職員，提供遵守美國著作權法之正確描述資訊，告知學生課程使用教材可受著作權保護；且</p> <p>(ii) In the case of digital transmissions apply technological measures that reasonably prevent retention of the work in accessible form by recipients of the transmission from the transmitting body</p>
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	<p>or institution for longer than the class session and unauthorized further dissemination of the work in accessible form by such recipients to others</p> <p>(ii) 於數位傳輸情形，運用科技措施以合理預防接收者將著作存放於可取用形式超出課程期間，以及接收者以可取用形式對他人進行未經授權散布</p> <p>(d) does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination</p> <p>(d) 對於著作權人為預防此等存放及未授權散佈而使用的科技措施，不得從事合理預期下之可能干擾行為</p>
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#### Provisions relating to the use and protection of technical measures

##### 技術措施之使用與保護相關規定

This section considers national provisions regarding technical measures applied to the protection of copyright works and other subject matter. As before, a template model is used in order to provide some basis for comparison between different national regimes. The template adopted for this analysis is as follows:

關於受著作權保護著作與其他客體的各國技術措施規定，將在本節中探討。一如先前，本節將使用模版，以作為不同國家體制間的比較基礎。這項分析所採用的模版如下：

- Reference
- 參考法條
- Definition of Technical Protection Measures (TPM)
- 技術保護措施之定義
- Definition of Rights Management Information (RMI)
- 權利管理資訊之定義
- Definition of Circumvention Device
- 規避設備之定義
- Definition of Circumvention Service
- 規避服務之定義
- Targeted acts in relation to circumvention
- 規避行為
- Exceptions to anti-circumvention regulation
- 反規避規定之例外
- Administrative action
- 行政行為

## Australia

澳洲<sup>64</sup>

Reference 1 參考法條 1	Division 2A — Actions in relation to circumvention devices and electronic rights management information; 116A ~ 116D  Division 2A — 關於規避設備及權利管理電子資訊之行爲；116A ~ 116D
Definition of Technical Protection Measures (TPM)	Technological Protection Measure means a device or product, or a component incorporated into a process, that is

<sup>64</sup> Under the Australia–United States Free Trade Agreement, which entered into force on January 1, 2005, changes will be made in the sections of the Copyright Act concerning the use and protection of technical measures.  
根據 2005 年 1 月 1 日生效之澳洲–美國自由貿易協定，著作權法中技術措施之使用與保護相關條文，將會有所修改。

<p>技術保護措施之定義</p>	<p>designed, in the ordinary course of its operation, to prevent or inhibit the infringement of copyright in a work or other subject-matter by either or both of the following means</p> <p>科技保護措施意指，以下列方法之一或二者情形，於普通運作過程中，設計為預防或禁止侵害著作或其他客體之著作權，而安裝於某一程序之設備、產品或零件：</p> <p>(a) by ensuring that access to the work or other subject matter is available solely by use of an access code or process (including decryption, unscrambling or other transformation of the work or other subject-matter) with the authority of the owner or exclusive licensee of the copyright;</p> <p>(a) 使用取用密碼，或著作權人或專屬被授權人之授權程序（含解密(decryption)、解譯(unscrambling)或對著作或其他客體之轉換），以確保無其他方法得取用著作或其他客體；</p> <p>(b) through a copy control mechanism.</p> <p>(b) 藉由複製控制機制。</p>
<p>Definition of Rights Management Information (RMI)</p> <p>權利管理資訊之定義</p>	<p>Electronic rights management information in relation to a work or other subject-matter means information that:</p> <p>關於著作或其他客體之權利管理電子資訊，意指下列資訊：</p> <p>(a) is electronic; and</p> <p>(a) 屬於電子資訊；且</p> <p>(b) either:</p> <p>(b) 屬於以下二者之：</p> <p>(i) is or was attached to, or is or was embodied in, a copy of the work or subject-matter; or</p> <p>(i) 於現在或曾經，附著或包含於著作或客體之重製物；或</p> <p>(ii) appears or appeared in connection</p>

	<p>with a communication, or the making available, of the work or subject-matter; and</p> <p>(ii) 於現在或曾經，與著作或客體之傳播或可得取用同時出現；且</p> <p>(c) either:</p> <p>(c) 屬於以下二者之：</p> <p>(i) identifies the work or subject-matter, and its author or copyright owner (including such information represented as numbers or codes); or</p> <p>(i) 標示著作或客體，以及其作者與著作權人（含數字或代碼資訊）；或</p> <p>(ii) identifies or indicates some or all of the terms and conditions on which the work or subject-matter may be used, or indicates that the use of the work or subject-matter is subject to terms or conditions (including such information represented as numbers or codes).</p> <p>(ii) 標示或顯示著作或客體得以使用之一部或全部條款與條件，或顯示著作或客體使用上應適用之條款與條件（含數字或代碼資訊）。</p>
<p>Definition of Circumvention Device 規避設備之定義</p>	<p>Circumvention device means a device (including a computer program) having only a limited commercially significant purpose or use, or no such purpose or use, other than the circumvention, or facilitating the circumvention, of an technological protection measure</p> <p>規避設備意指，於規避或促成規避科技保護措施以外，其目的或使用上，僅具有限商業意義或毫無商業意義之設備（含電腦程式）</p>
<p>Definition of Circumvention Service 規避服務之定義</p>	<p>Circumvention service means a service, the performance of which has only a limited commercially significant purpose, or no such purpose or use, other than the circumvention, or facilitating the circumvention, of a technological protection measure</p>

	規避服務意指，於規避或促成規避科技保護措施以外，其履行之目的僅具有有限商業意義，或其目的或使用上毫無商業意義之服務
Targeted acts in relation to circumvention 規避行爲	<p>116A</p> <p>116A</p> <p>(i) making</p> <p>(i) 製作</p> <p>(ii) selling, letting for hire, or by way of trade offering or exposing for sale or hire or otherwise promoting, advertising or marketing,</p> <p>(ii) 販賣、出租、要約交易、為販賣或出租而展示，或其他促銷、廣告或行銷，</p> <p>(iii) distributing for the purpose of trade, or for any other purpose that will affect prejudicially the owner of the copyright;</p> <p>(iii) 為交易目的而散布，或為其他不利於著作權人之目的而散布；</p> <p>(iv) exhibiting in public by way of trade;</p> <p>(iv) 以交易方式公開陳列；</p> <p>(v) importing into Australia for any of the purposes itemized in (i) to (iv) above</p> <p>(v) 為任何前述四款目的之一而輸入澳洲</p> <p>(vi) making available online to an extent that will affect prejudicially the owner of the copyright;</p> <p>(vi) 於線上供人取用，以致於不利著作權人；</p> <p>(vii) providing</p> <p>(vii) 提供</p> <p>a circumvention device where the person knew, or ought reasonably to have known, that the device or service would be used to</p>

	<p>circumvent, or facilitate the circumvention of, the technological protection measure.</p> <p>規避設備，而行爲人於明知或合理情形下應知，該設備或服務得用於規避或促成規避科技保護措施。</p> <p><b>116B</b></p> <p>Removing or altering any electronic rights management information attached to a copy of a work or other subject-matter in which copyright subsists without the permission of the owner or exclusive licensee of the copyright and the person knew, or ought reasonably to have known, that the removal or alteration would induce, enable, facilitate or conceal an infringement of the copyright in the work or other subject-matter.</p> <p>未經著作權利人或專屬被授權人之同意，移除或變更受著作權保護之著作或其他客體上附著之權利管理電子資訊，且明知或合理情形下應知，移除或變更將引發、促使、促進或隱匿著作權之侵害。</p> <p><b>116C</b></p> <ul style="list-style-type: none"><li>(i) distributing for the purpose of trade;</li><li>(i) 意圖交易而散布；</li><li>(ii) importing into Australia for the purpose of trade;</li><li>(ii) 意圖交易而輸入澳洲；</li><li>(iii) communicating to the public</li><li>(iii) 公開傳播</li></ul> <p>a work or other subject-matter in which copyright subsists without the permission of the owner or exclusive licensee of the copyright where any electronic rights management information attached to the copy has been removed or altered and the person knew that the electronic rights management information had been so removed or altered without the permission of the owner or exclusive licensee of the copyright and, further, the person knew, or</p>
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	<p>ought reasonably to have known, that the acts referred to would induce, enable, facilitate or conceal an infringement of the copyright in the work or other subject-matter.</p> <p>受著作權保護之著作或其他客體，而未經著作權利人或專屬被授權人之同意，明知重製物上附著之權利管理電子資訊，未經著作權利人或專屬被授權人之同意，業經移除或變更者，且明知或合理情形下應知，該等行為將引發、促使、促進或隱匿著作權之侵害。</p>
<p>Relevant Exceptions to anti-circumvention regulation</p> <p>反規避規定之例外</p>	<p>This provision does not apply in relation to the supply of a circumvention device or a circumvention service to a person for use for a permitted purpose if:</p> <p>為經許可之目的，而對以下之人供給規避設備或規避服務者，不適用本規定：</p> <p>(a) the person is a qualified person; and</p> <p>(a) 該人為適格者；且</p> <p>(b) the person gives the supplier before, or at the time of, the supply a declaration signed by the person:</p> <p>(b) 該人於供給前或供給時，對供給者提出簽字之聲明：</p> <p>(i) stating the name and address of the person; and</p> <p>(i) 陳述該人姓名地址；且</p> <p>(ii) stating the basis on which the person is a qualified person; and</p> <p>(ii) 陳述該人之適格基礎；且</p> <p>(iii) stating the name and address of the supplier of the circumvention device or circumvention service; and</p> <p>(iii) 陳述規避設備或規避服務之供給者姓名；且</p> <p>(iv) stating that the device or service is to be used only for a permitted purpose by a qualified person; and</p> <p>(iv) 陳述該設備或服務僅由適格者用</p>

	<p>於經許可目的；且</p> <p>(v) identifying the permitted purpose by reference to one or more of sections (...) Part VB; and</p> <p>(v) 標示本法Part VB之一項或多項規定之經許可目的；且</p> <p>(vi) stating that a work or other subject-matter in relation to which the person proposes to use the device or service for a permitted purpose is not readily available to the person in a form that is not protected by a technological protection measure.</p> <p>(vi) 陳述該人爲經許可之目的所用之設備或服務，對於著作或其他客體，不至於以未經科技保護措施形式供人取用。</p> <p>Note 1: a work or other subject-matter is taken not to be readily available if it is not available in a form that lets a person do an act relating to it that is not an infringement of copyright in it as a result of (...) Part VB.</p> <p>說明1. 對著作或其他客體，如他人行爲因Part VB規定而不至於侵害著作權者，則不視爲供人取用。</p> <p>Note 2: <i>qualified person</i> means (...) a person authorised in writing by a body administering an institution (within the meaning of Part VB) to do on behalf of the body an act that is not an infringement of copyright because of that Part.</p> <p>說明 2. 適格者意指，由（Part VB 規定之）機構管理者書面授權，代表該機構從事行爲，而不至於侵害著作權者。</p>
<p>Administrative action</p> <p>行政行爲</p>	

## United Kingdom

## 英國

<p>Reference 1</p> <p>參考法條 1</p>	<p>CDPA 1988 s.296ZA ~ 296ZG</p> <p>1998 年著作權、設計與專利法第 296 條 ZA~ ZG</p>
<p>Definition of Technical Protection Measures (TPM)</p> <p>技術保護措施之定義</p>	<p>Technological measures include any technology, device or component which is designed, in the normal course of its operation, to prevent or restrict acts that are not authorised by the copyright owner of a work (other than a computer program) and are restricted by copyright. Such measures are “effective” if the use of the work is controlled by the copyright owner through</p> <p>科技措施包含，於正常運作過程中，對（電腦程式以外）著作，為預防或限制未經著作權人授權且著作權法所限制之行為，所設計之任何科技、設備或零件。如著作之使用因而受到著作權人以下方法所控制，該措施即為「有效」(effective)</p> <p>(a) an access control or protection process such as encryption, scrambling or other transformation of the work, or</p> <p>(a) 取用控制或對著作為加密(encryption)、攪亂(scrambling)或其他轉換(transformation)等保護程序</p> <p>(b) a copy control mechanism, which achieves the intended protection.</p> <p>(b) 達成預期保護之複製控制機制。</p>
<p>Definition of Rights Management Information (RMI)</p> <p>權利管理資訊之定義</p>	<p>Rights management information means any information provided by the copyright owner or the holder of any right under copyright which identifies the work, the author, the copyright owner or the holder of any intellectual property rights, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information.</p> <p>權利管理資訊意指，由著作權人或著作</p>

	<p>權法任何權利人所提供，標示著作、作者、著作權人或任何智慧財產權人之資訊，或關於使用著作條款與條件之資訊，或表現該等資訊之代碼。</p>
<p>Definition of Circumvention Device 規避設備之定義</p>	<p>In relation to criminal liability: 關於刑事責任：</p> <p>Any device, product or component which is primarily designed, produced, or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures</p> <p>主要為促使、促進規避有效科技措施，所設計、生產或修改之任何設備、產品或零件</p> <p>In relation to civil liability: 關於民事責任：</p> <p>Any device, product or component which – 以下任何設備、產品或零件 –</p> <ul style="list-style-type: none"> <li>(i) is promoted, advertised or marketed for the purpose of the circumvention of, or</li> <li>(i) 為規避目的而促銷、廣告或行銷，或</li> <li>(ii) has only a limited commercially significant purpose or use other than to circumvent, or</li> <li>(ii) 於規避以外，其目的或使用僅具有有限商業意義，或</li> <li>(iii) is primarily designed, produced, or adapted for the purpose of enabling or facilitating the circumvention of, specific technological measures.</li> <li>(iii) 主要為促使或促進規避特定科技措施，所設計、生產或修改。</li> </ul>
<p>Definition of Circumvention Service 規避服務之定義</p>	<p>(a) In relation to criminal liability (a) 關於刑事責任</p> <p>A service the purpose of which is to enable or facilitate the circumvention of</p>

	<p>effective technological measures</p> <p>為促使、促進規避有效科技措施之服務。</p> <p>(b) In relation to civil liability</p> <p>(b)關於民事責任</p> <p>A service which –</p> <p>以下性質之服務 –</p> <p>(i) is promoted, advertised or marketed for the purpose of the circumvention of, or</p> <p>(i) 為規避目的而促銷、廣告或行銷，或</p> <p>(ii) has only a limited commercially significant purpose other than to circumvent, or</p> <p>(ii) 於規避以外，其目的僅具有限商業意義，或</p> <p>(iii) is primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of, specific technological measures.</p> <p>(iii) 主要為促使或促進規避特定科技措施，所設計、生產或修改。</p>
<p>Targeted acts in relation to circumvention</p> <p>規避行為</p>	<p>– doing anything which circumvents technological measures where the perpetrator knows, or has reasonable grounds to know, that he is pursuing that objective. (296ZA)</p> <p>– 從事規避科技措施之任何行為，且行為人明知或有合理理由應知其行為之目的者(296ZA)。</p> <p>– manufacturing for sale or hire, or importing otherwise than for private and domestic use, or in the course of a business –</p> <p>– 為私人及家庭以外使用，而販賣、出租或輸入，或從事以下業務 –</p> <p>(i) selling or letting for hire, or</p>

	<p>(i) 販賣或出租，或</p> <p>(ii) offering or exposing for sale or hire, or</p> <p>(ii) 為販賣或出租而為要約或展示，或</p> <p>(iii) advertising for sale or hire, or</p> <p>(iii) 為販賣或出租而廣告，或</p> <p>(iv) possessing, or</p> <p>(iv) 處裡，或</p> <p>(v) distributing,</p> <p>(v) 散布，</p> <p>and distributing otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner, a circumvention device (296ZB)(1)</p> <p>且散布規避設備而不利於著作權人 (296ZB)(1)</p> <p>(c) provides, promotes, advertises or markets in the course of a business, or otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner, a circumvention service. (296ZB)(2)</p> <p>(c) 提供、促銷、廣告或行銷規避服務，而不利於著作權人(296ZB)(2)。</p>
<p>Relevant Exceptions to anti-circumvention regulation</p> <p>反規避規定之例外</p>	<p>296ZE</p> <p>(...)</p> <p>(2) Where the application of any effective technological measure to a copyright work other than a computer program prevents a person from carrying out a permitted act in relation to that work then that person or a person being a representative of a class of persons prevented from carrying out a permitted act may issue a notice of complaint to the Secretary of State.</p> <p>(2) 電腦程式以外之受著作權保護著作，應用任何有效科技措施，使人無法對該著作從事經許可之行爲者，其因而無法</p>

從事經許可之行爲之人或該等人之代表，得向國務大臣提出異議通知。

(3) Following receipt of a notice of complaint, the Secretary of State may give to the owner of that copyright work or an exclusive licensee such directions as appear to the Secretary of State to be requisite or expedient for the purpose of

(3) 國務大臣於接受異議通知後，爲以下目的，得向著作權人或專屬被授權人發出必要或適當命令

(a) Establishing whether any voluntary measure or agreement relevant to the copyright work the subject of the complaint subsists; or

(a) 關於所異議之受著作權保護著作，確認是否有任何自願性措施或協議；或

(b) (where it is established there is no subsisting voluntary measure or agreement) ensuring that the owner or exclusive licensee of that copyright work makes available to the complainant the means of carrying out the permitted act the subject of the complaint to the extent necessary to so benefit from that permitted act.

(b) (無自願性措施或協議時) 確保著作權人或專屬被授權人，於必要範圍內，提供可用之方法，使異議人得從事經許可行爲而獲益。

“permitted act” means an act which may be done in relation to copyright works, notwithstanding the subsistence of copyright, by virtue of a provision of this Act (...) including:

「經許可之行爲」意指，關於受著作權保護著作，依本法以下規定得從事之行爲：

section 29 (research and private study)

第 29 條 (研究與私人學習)

section 32(1), (2) and (3) (things done for purposes of instruction or examination)

	<p>第 31 條第 1 項、第 2 項及第 3 項（為教學或考試從事之行爲）</p> <p>section 35 (recording by educational establishments of broadcasts)</p> <p>第 35 條（教育機構錄製廣播）</p> <p>Note 1:</p> <p>Permitted act does not extend to section 31 dealing with access to content by visually impaired persons.</p> <p>說明 1.</p> <p>經許可之行爲不及於第 31 條視覺障礙者對內容之取用</p> <p>Note 2:</p> <p>The provisions of s.296ZE do not apply to copyright works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.</p> <p>說明 2.</p> <p>因合意契約條款公開取用之著作，而公眾成員得個別選擇地點、時間取用者，不適用第 296 條 ZE 之規定。</p>
<p>Administrative action</p> <p>行政行爲</p>	

## United States of America

### 美國

<p>Reference 1 參考法條 1</p>	<p>§ 1201 ~ § 1205</p>
<p>Definition of Technical Protection Measures (TPM)</p> <p>技術保護措施之定義</p>	<p>Technological measure: undefined but note (...)</p> <p>科技措施：未定義但附說明</p> <p>“a technological measure “effectively controls access to a work” if the measure, in the ordinary course of its operation,</p>



	<p>requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.”</p> <p>「有效控制著作取用」之科技措施，於其普通運作過程中，需要著作權人授權之資訊、程序或處裡，方能取用著作。</p>
<p>Definition of Rights Management Information (RMI)</p> <p>權利管理資訊之定義</p>	<p>“copyright management information” means any of the following information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form (...)</p> <p>「著作權管理資訊」意指，與著作、著作之表演或展示之重製物或唱片，有關之以下任何資訊，包含數位形式</p> <p>(1) The title and other information identifying the work, including the information set forth on a notice of copyright.</p> <p>(1) 著作名稱及其他標示著作之資訊，含著作權通知內之資訊。</p> <p>(2) The name of, and other identifying information about, the author of a work.</p> <p>(2) 作者名稱及其他標示作者之資訊。</p> <p>(3) The name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright.</p> <p>(3) 著作權人名稱及其他標示著作權人之資訊，含著作權通知內之資訊。</p> <p>(4) With the exception of public performances of works by radio and television broadcast stations, the name of, and other identifying information about, a performer whose performance is fixed in a work other than an audiovisual work.</p> <p>(4) 廣播台及電視台公開傳播之表演以外，非固著於視聽著作之表演，其表演人名稱及其他標示表演人之資訊。</p> <p>(5) With the exception of public performances of works by radio and</p>

	<p>television broadcast stations, in the case of an audiovisual work, the name of, and other identifying information about, a writer, performer, or director who is credited in the audiovisual work.</p> <p>(5) 廣播台及電視台公開傳播之表演以外，於視聽著作，關於作者、表演人或導演之名稱及其他標示資訊。</p> <p>(6) Terms and conditions for use of the work.</p> <p>(6) 使用著作之條款與條件。</p> <p>(7) Identifying numbers or symbols referring to such information or links to such information.</p> <p>(7) 指涉或連結此等資訊之標示數字或符號。</p> <p>(8) Such other information as the Register of Copyrights may prescribe by regulation, except that the Register of Copyrights may not require the provision of any information concerning the user of a copyrighted work.</p> <p>(8) 著作權局規定之其他資訊，但著作權局對於受著作權保護著作，不要求提供使用者資訊時不在此限。</p>
<p><b>Definition of Circumvention Device</b> 規避設備之定義</p>	<p>Any technology, product, service, device, component, or part thereof, that:</p> <p>任何科技、產品、服務、設備、零件或部分，而屬於：</p> <p>(a) is primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to a work protected under this title;</p> <p>(a) 其設計或生產之目的，主要為規避科技措施，而該科技措施係用於有效控制本法保護著作之取用；</p> <p>(b) has only limited commercially significant purpose or use other than to circumvent a technological measure that effectively controls access to a work</p>

	<p>protected under this title; or</p> <p>(b) 於規避有效控制本法保護著作取用之科技措施以外，其目的或使用僅具有有限商業意義；或</p> <p>(c) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing a technological measure that effectively controls access to a work protected under this title.</p> <p>(c) 明知規避有效控制本法保護著作取用之科技措施，由行為人行銷，或由另一行為人與之合作行銷。</p> <p>Note 1:</p> <p>To “circumvent a technological measure” means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner</p> <p>說明1.</p> <p>「規避科技措施」意指，對攪碼著作進行解碼，對加密著作進行解密，或未經著作權人授權，而避免、迴避、移除、解除或減損科技措施。</p>
<p>Definition of Circumvention Service</p> <p>規避服務之定義</p>	<p>See under circumvention device</p> <p>見規避設備條目</p>
<p>Targeted acts in relation to circumvention</p> <p>規避行為</p>	<p>(a) Circumventing a technological measure that effectively controls <i>access</i> to a work protected under this title.</p> <p>(a) 規避有效控制本法保護著作取用之科技措施。</p> <p>(b) Manufacturing, importing, offering to the public, providing, or otherwise trafficking in any technology, product, service, device, component, or part thereof [which is a circumvention device]</p> <p>(b) 對[規避設備之]任何科技、產品、服務、設備、零件或部分，從事製造、輸入、公開要約、提供或交易之行爲</p>

	<p>(c) Manufacturing, importing, offering to the public, providing, or otherwise trafficking in any technology, product, service, device, component, or part thereof that is primarily designed or produced for the purpose of circumventing protection afforded by a technological measure that effectively <i>protects a right</i> of a copyright owner</p> <p>(c) 為規避有效保護著作權人權利之科技措施，而設計或生產之任何科技、產品、服務、設備、零件或部分，從事製造、輸入、公開要約、提供或交易之行爲</p> <p>(d) Knowingly and with the intent to induce, enable, facilitate, or conceal infringement</p> <p>(d) 明知且意圖引發、促使、促進或隱匿侵權行爲</p> <p>(1) providing copyright management information that is false, or</p> <p>(1) 提供著作權管理虛偽資訊，或</p> <p>(2) distributing or importing for distribution copyright management information that is false.</p> <p>(2) 為散布著作權管理虛偽資訊，而散布或輸入。</p> <p>(e) Without the authority of the copyright owner or the law</p> <p>(e) 未經著作權人或法律授權</p> <p>(1) intentionally removing or altering any copyright management information,</p> <p>(1) 意圖移除或變更任何著作權管理資訊，</p> <p>(2) distributing or importing for distribution copyright management information knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law, or</p> <p>(2) 明知著作權管理資訊業經移除或變</p>
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	<p>更，而未經著作權人或法律授權，為散布著作權管理資訊，而散布或輸入，或</p> <p>(3) distributing, importing for distribution, or publicly performing works, copies of works, or phonorecords, knowing that copyright management information has been removed or altered without authority of the copyright owner or the law, knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title.</p> <p>(3) 明知著作權管理資訊業經移除或變更，而未經著作權人或法律授權，且關於本法第 1203 條之民事救濟，明知或有合理理由應知，將引發、促使、促成或隱匿本法任何權利之侵權行為，為散布或公開表演著作、著作重製物或唱片，而從事散布或輸入。</p>
<p>Relevant Exceptions to anti-circumvention regulation</p> <p>反規避規定之例外</p>	<p>Nothing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under this title.</p> <p>本條規定不影響關於著作權侵權行為之權利、救濟、限制規定、抗辯及本法之合理使用。</p> <p>A nonprofit library, archives, or educational institution which gains access to a commercially exploited copyrighted work solely in order to make a good faith determination of whether to acquire a copy of that work for the sole purpose of engaging in conduct permitted under this title shall not be in violation of subsection (a)(1)(A).</p> <p>非營利之圖書館、檔案館或教育機構，為單純以誠信方式決定是否取得著作重製物，並單純為從事本法許可之行為，而取用商業性受著作權保護著作，不違反(a)項(1)款(A)目。</p> <p><i>Relevant class of exempted work added pursuant to the rulemaking process,</i></p>

	<p><i>October 2000:</i></p> <p>依 2000 年 10 月之規則制訂程序 (rulemaking process)，新增之相關除外著作種類為：</p> <p>Literary works, including computer programs and databases, protected by access control mechanisms that fail to permit access because of malfunction, damage or obsolescence.</p> <p>受取用控制機制所保護之文學著作，含電腦程式與資料庫，因取用控制機制之製造、損壞或老舊因素，而無法取用者。</p> <p><i>Relevant class of exempted work added pursuant to the rule making process, October 2003</i></p> <p>依 2003 年 10 月之規則制訂程序 (rulemaking process)，新增之相關除外著作種類為：</p> <p>Literary works distributed in ebook format when all existing ebook editions of the work (including digital text editions made available by authorized entities) contain access controls that prevent the enabling of the ebook's read-aloud function and that prevent the enabling of screen readers to render the text into a "specialized format."</p> <p>以電子書格式散布之文學著作，而該著作一切既有電子書版本（含被授權者所提供之數位文件版本）具備近用控制，而使電子書朗讀功能及螢幕讀取程式轉換「特殊格式」功能無法作用者。</p> <p>For purposes of this exemption, "specialized format," "digital text" and "authorized entities" shall have the same meaning as in 17 U.S.C. 121.</p> <p>關於本除外規定之「特殊格式」及「被授權者」，其意義同美國法典第 17 篇第 121 條(17 U.S.C. 121.)。</p>
<p>Administrative action 行政行爲</p>	<p>During each 3-year period, the Librarian of Congress, upon the recommendation of the Register of Copyrights, who shall consult</p>

	<p>with the Assistant Secretary for Communications and Information of the Department of Commerce and report and comment on his or her views in making such recommendation, shall make the determination in a rulemaking proceeding (...) of whether persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition [against circumvention] in their ability to make noninfringing uses (...) of a particular class of copyrighted works. In conducting such rulemaking, the Librarian shall examine –</p> <p>於每三年，國會圖書館館長，基於著作權局之建議，經諮詢商務部通訊資訊局長，以其意見針對以下建議事項提出報告與評論，並於規則制訂程序中認定 (...) 於未來三年期間，哪一些受著作權保護著作使用者，因[禁止規避]之禁止規定， (...) 對於特定種類受著作權保護著作，在非侵權性使用上受到不利影響。於從事規則制訂時，圖書館館長應檢討—</p> <ul style="list-style-type: none"> <li>(i) the availability for use of copyrighted works;</li> <li>(i) 受著作權保護著作使用上之可取用性；</li> <li>(ii) the availability for use of works for nonprofit archival, preservation, and educational purposes;</li> <li>(ii) 為非營利之存檔、保存與教育目的，其著作使用上之可取用性；</li> <li>(iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;</li> <li>(iii) 關於評論、新聞報導、教學、學術或研究，禁止規避應用於受著作權保護著作之科技措施，其產生之影響；</li> </ul>
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	<p>(iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and</p> <p>(iv) 關於受著作權保護著作之市場或價值，規避科技措施所產生之效果；且</p> <p>(v) such other factors as the Librarian considers appropriate.</p> <p>(v) 其他圖書館館長認為適當之因素。</p> <p>(d) The Librarian shall publish any class of copyrighted works for which the Librarian has determined, pursuant to the rulemaking conducted under subparagraph (C), that noninfringing uses by persons who are users of a copyrighted work are, or are likely to be, adversely affected, and the prohibition contained in subparagraph (A) shall not apply to such users with respect to such class of works for the ensuing 3-year period.</p> <p>(d) 對於任何種類受著作權保護著作，圖書館館長根據 subparagraph (C)規定從事之規則制訂，應認定並公告，哪一些受著作權保護著作使用者，在非侵權性使用上受到或可能受到不利影響，而在未來三年期間，subparagraph (A)之禁止規定不適用於該種著作之使用者。</p>
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[End of Annex and of Study]

[本研究及附錄完]