

Who Owns the Map?

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Mapping Systems in Lands Department

- Land Information Centre established in 1989
- Mapping Systems comprised
 - Basic Mapping System
 - Cadastral Information System
 - Small Scale Mapping System

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Digital Map Products

- All data are available to Government Departments.
- There is still the problem of the private sector.
- Before the data are disseminated outside the Lands Department, we, in consultation with Intellectual Property Department (IPD), prepared a full set of procedures for protecting the copyright of our data.

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Court Case - Background

- 'Hong Kong Road Map' [HKRM]
 - Suspiciously found infringing the copyright work of the 1:10,000 digital map (B10000) of the Lands Department, HKSAR
- Section 118(1) & 119(1) Copyright Ordinance, Cap 528

.../con't

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Court Case - Background

- Section 119(1) Copyright Ordinance, Cap 528
 - A person who commits an offence under section 118(1) is liable on conviction on indictment to a fine at level 5 in respect of each infringing copy and to imprisonment for 4 years.

.../con't

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Court Case - Background

- Section 118(1), Copyright Ordinance, Cap 528
 - A person commits an offence if he
 - without the licence of the copyright owner;
 - makes for sale or hire;
 - possesses for the purpose of, in the course of, or in connection with, any trade or business with a view to committing any act infringing the copyright

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What is Copyright

- A property right which subsists in original literary, dramatic, musical, artistic works, sound recordings, films, broadcast or cable programming and typographical arrangement of published editions

Map Copyright

- a piece of graphic work with artistic element
- compilation of map data constitutes an intellectual creation
- literary work
- artistic work

Authorship & Ownership

- Author
 - the person who create the copyright work
- **Copyright Owner**
 - can take legal action against the person to recover the damages in the course of his employment
 - His employer is first owner, unless otherwise agreed by both parties

Map Copyright

- Ground features on earth surface which everyone perceives constitute no intellectual copyright
- Modeling and depicting these features on map is an artistic and literary work => copyright work
 - data capturing by different surveying means
 - compilation of map data by reason of the selection or arrangement of its contents
 - generalization
 - cartographic presentation

Investigation

- Randomly selected 200 seized HKRM copies (total 12,234 copies seized)
 - Overlay and comparison
 - Finding:

The map features shown on HKRM is **same as, or substantially similar** to those of the 'B1000'

Digital Signature



Road Alignment/Spot Height/Contour Height



B10000 Data of Lands Department

Hong Kong Road Map

Coastline/Beach/Rock



B10000 Data of Lands Department

Hong Kong Road Map

Building in Restricted Area/Artificial Slope



B10000 Data of Lands Department

Hong Kong Road Map

Layer Tinting



B10000 Data of Lands Department

Hong Kong Road Map

Judgment

- Trial before the Magistrate at the Eastern Magistrate's Court in October 2005
- Indisputable facts, evidence & expert witness affirmation
- Judgment
 - B10000 is a piece of artistic and literary work
 - Lands Department is the ultimate copyright owner
 - HKRM has infringed the copyright work of B10000
- Sentence
 - Imprisonment sentence ruled out
 - HK\$3.0 fine per infringing copy (total HK\$105,000 fine)

Review

- Defendants appeal before the Deputy High Court Judge of the Court of First Instance of High Court on the grounds:
 - The trial Magistrate had failed to consider whether the defendants could avail themselves of the statutory defence under Section 118(3), Copyright Ordinance
 - The appellants did not know and had no reason to believe that the copies they dealt with are infringing copy of B10000

Conclusion

- To nourish the healthy development of the map publication industry and safeguard the investment cost of the digital data
 - ➔ the **copyright ownership shall bring up** for everyone's attention
 - ➔ The **legal right of the copyright owner must be protected**

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Legislation

- Section 119(1) Copyright Ordinance, Cap 328
 - ➔ **the public** commits an offence under section 118(1) (without licence of copyright owner, make for sale or hire, possesses for the purpose of any sale or hire, or distributes for the purpose of any sale or hire, copies of any work in which copyright subsists) is liable on conviction on indictment to a fine at level 5 in the first schedule and imprisonment for 4 years.
 - ➔ **A firm and deterrent based sentencing policy is vital**

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Enforcement

- Copyright owners are encouraged to report all suspected infringement cases
- Copyright owners may consider to issue warning letters to the infringers as a formal notice – the infringers can no longer claim for statutory defence under Section 118(3) of the Copyright Ordinance in subsequent court proceedings.

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Public Awareness

- Despite the defendants were in plea of not guilty in the Court of First Instance of High Court
 - ➔ Lands Department is the **ultimate copyright owner of B10000**
 - ➔ have aroused the public awareness on the topic of Intellectual Property Right

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Technology

- The most effective way to prove the copyright of map work
 - ➔ **Watermarks/Digital signature** were embedded in the map content

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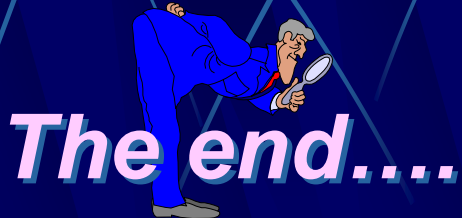
Partnership

- To encourage the proper use of the copyright map, Lands Department **Web site of Lands Department** were promoted and fostered business collaboration with any private sectors
 - ➔ www.landsd.gov.hk/mapping/en/digital_map
 - ➔ Value Added Reseller (VAR)
 - ➔ Internet Map Permittee (IMP)
 - ➔ Mapping Information Services through Internet (MISI)

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Thank You

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