

Amendments to Partial Provisions of the Copyright Act
(Third reading completed August 24, 2004)

Article 3

For the purposes of this Act the following definitions shall apply:

1. "Work" means a creation that is within a literary, scientific, artistic, or other intellectual domain.
2. "Author" means a person who creates a work.
3. "Copyright" means the moral rights and economic rights subsisting in a completed work.
4. "The public" or "a public" means unspecified persons or multiple specified persons; provided, this does not apply to multiple persons of a household and the household's normal social acquaintances.
5. "Reproduce" means to reproduce directly, indirectly, permanently, or temporarily a work by means of printing, reprography, sound recording, video recording, photography, handwritten notes, or otherwise. This definition also applies to the sound recording or video recording of scripts, musical works, or works of similar nature during their performance or broadcast, and also includes the construction of an architectural structure based on architectural plans or models.
6. "Public recitation" means to communicate the content of a work to the public by spoken words or other means.
7. "Public broadcast" means to communicate to the public the content of a work through sounds or images by means of transmission of information by a broadcasting system of wire, wireless, or other equipment, where such communication is for the purpose of direct listening reception or viewing reception by the public. This includes any communication, by transmission of information via a broadcasting system of wire, wireless, or other equipment, to the public of an original broadcast of sounds or images by any person other than the original broadcaster.
8. "Public presentation" means to use single- or multiple-unit audiovisual devices, or other methods of transmitting images, to simultaneously communicate the content of a work to the public at the place of transmission or at a specified place outside the place of transmission.

9. "Public performance" means to act, dance, sing, play a musical instrument, or use other means to communicate the content of a work to a public that is present at the scene. This includes any communication to the public of an original broadcast of sounds or images through loudspeakers or other equipment.
10. "Public transmission" means to make available or communicate to the public the content of a work through sounds or images by wire or wireless network, or through other means of communication, including enabling the public to receive the content of such work by any of the above means at a time or place individually chosen by them.
11. "Adaptation" means to create another work based upon a pre-existing work by translation, musical arrangement, revision, filming, or other means.
12. "Distribution" means, with or without compensation, to provide the original of a work, or a copy thereof, to the public for the purpose of trade or circulation.
13. "Public display" means to display the content of a work to the public.
14. "Publication" means distribution by the rights holder of a sufficient number of copies of a work to satisfy a reasonable level of public demand.
15. "Public release" means public issue by the rights holder of the content of a work to the public through publication, broadcast, presentation, recitation, performance, display, or other means.
16. "The original" or "an original" means the object to which a work is first fixed.
17. "Electronic rights management information" means electronic information presented on the original or copies of a work, or at the time of communication of content of a work to the public, sufficient to identify the work, the name of the work, the author, the economic rights holder or person licensed thereby, and the period or conditions of exploitation of the work, including numbers or symbols that represent such information.
18. "Technological protection measures" means equipment, devices, components, technology or other technological means employed by copyright owners to effectively prohibit or restrict others from accessing or exploiting works without authorization.

"Place of transmission or at a specified place outside the place of transmission" as referred to in subparagraph 8 of the preceding paragraph includes motion picture cinemas, clubs, places where video cassettes or videodiscs are presented, hotel rooms, public transportation vehicles, or other places that may be accessed by unspecified

persons.

Article 22

Except as otherwise provided in this Act, authors have the exclusive right to reproduce their works.

Performers have the exclusive right to reproduce their performances by means of sound recording, video recording, or photography.

The provisions of the preceding two paragraphs do not apply to temporary reproduction that is transient, incidental, an essential part of a technology process, and without independent economic significance, where solely for the purpose of lawful network relay transmission, or for the lawful use of a work; provided, this shall not apply to computer programs.

In the preceding paragraph, the phrase "temporary reproduction... for the purpose of lawful network relay transmission" includes technically unavoidable phenomena of the computer or machine occurring in network browsing, caching, or other processes for enhancing transmission efficiency.

Article 26

Except as otherwise provided in this Act, authors of oral and literary, musical, and dramatic/choreographic works have the exclusive right to publicly perform their works.

Performers have the exclusive right, by means of loudspeakers or other equipment, to publicly perform their performances; provided, this shall not apply to public performances of a performance by means of loudspeakers or other equipment after that performance has been reproduced or publicly broadcast.

Where a sound recording has been publicly performed, the author may claim payment of remuneration for use from the persons who publicly performed it.

Chapter IV *bis* Electronic Rights Management Information and Technological Protection Measures

Article 80ter

Technological protection measures employed by copyright owners to prohibit or restrict others from accessing works shall not, without legal authorization, be disarmed, destroyed, or by any other means circumvented.

Any equipment, device, component, technology or information for disarming,

destroying, or circumventing technological protection measures shall not, without legal authorization, be manufactured, imported, offered to the public for use, or offered in services to the public.

The provisions of the preceding two paragraphs shall not apply in the following circumstances:

1. Where to preserve national security.
2. Where done by central or local government agencies.
3. Where done by file archive institutions, educational institutions, or public libraries to assess whether to obtain the information.
4. Where to protect minors.
5. Where to protect personal data.
6. Where to perform security testing of computers or networks.
7. Where to conduct encryption research.
8. Where to conduct reverse engineering.
9. Under other circumstances specified by the competent authority.

The content in the subparagraphs of the preceding paragraph shall be prescribed and periodically reviewed by the competent authority.

Article 82

The specialized agency in charge of copyright matters shall establish a Copyright Examination and Mediation Committee to handle the following matters:

1. Examination of rates of compensation for use under the provisions of paragraph 4 of Article 47.
2. Mediation of disputes between copyright intermediary organizations and users concerning compensation for use.
3. Mediation of disputes concerning copyright or plate rights.
4. Other consultation in connection with copyright examination and mediation.

Dispute mediation referred to in subparagraph 3 of the preceding paragraph, when involving criminal matters, shall be limited to cases actionable only upon complaint.

Article 87

Any of the following circumstances, except as otherwise provided under this Act, shall be deemed an infringement of copyright or plate rights:

1. To exploit a work by means of infringing on the reputation of the author.
2. Distribution of articles that are known to infringe on plate rights, or public display

or possession of such articles with the intent to distribute.

3. Import of any copies reproduced without the authorization of the economic rights holder or the plate rights holder.
4. Import of the original or any copies of a work without the authorization of the economic rights holder.
5. Exploitation for business purposes of a copy of a computer program that infringes on economic rights in such computer program.
6. Distribution, by any means other than transfer of ownership or rental, articles that are known to infringe on economic rights; or public display or possession, with the intent to distribute, of articles that are known to infringe on economic rights.

Article 90bis

A copyright holder or plate rights holder may apply to the customs authorities to suspend the release of import or export goods that infringe on their copyright or plate rights.

The application referred to in the preceding paragraph shall be filed in writing, shall state the facts of the infringement, and shall include a bond in an amount equivalent to the import customs value or the export FOB value of the goods, as assessed by customs, to serve as a security to offset the loss suffered by the party whose goods are subject to attachment.

Customs shall immediately inform the applicant when processing an application to suspend the release of goods. Where Customs determines that the conditions in the preceding paragraph have been met and issues an attachment order, it shall give written notification to the applicant and to the party whose goods are attached.

The applicant or the party whose goods are attached may apply to the customs authorities for permission to inspect the attached goods.

Attached goods shall be confiscated by the customs authorities where the applicant has obtained a final and unappealable civil judgment determining that the goods infringe on copyright or plate rights. The owner of the attached goods shall be held liable for such costs as container demurrage, warehousing, loading, unloading, as well as for expenses connected with destruction of the goods.

If the expenses connected with destruction of the goods referred to in the preceding paragraph are not paid within the period prescribed by customs authorities, the claim shall be enforced through compulsory execution.

In any of the following circumstances, an attachment order shall be rescinded by the customs authorities and the attached goods shall be processed in accordance with

applicable import and export regulations; in addition, the applicant shall compensate the party whose goods were attached for damage incurred on account of the attachment:

1. The attached goods have been determined to be non-infringing of copyright or plate rights by a final and unappealable court judgment.
2. Within twelve days of the date on which the applicant is informed of the attachment, the customs authorities have not received notification from the applicant indicating that it has initiated litigation proceedings alleging that the attached goods are in infringement.
3. The applicant applies to rescind the attachment.

The period referred to in subparagraph 2 of the preceding paragraph may be extended by another twelve days if customs authorities deem it necessary.

Customs authorities shall return the bond upon the applicant's request in any of the following circumstances:

1. There is no need to continue posting the bond either because the applicant has obtained a final and unappealable judgment in its favor or because the applicant has reached a settlement with the party whose goods were attached.
2. The attachment order has been rescinded and the applicant can prove that at least the required twenty days have elapsed since the applicant notified the party whose goods are subject to the suspension of release to exercise its rights and such party has failed to exercise its rights.
3. The party whose goods were attached agrees to the return.

A person whose goods have been attached shall have the same rights as a pledgee with respect to the bond referred to in the second paragraph of this article.

When the customs authorities, in the course of executing their duties, discover import/export goods that in appearance are obviously suspect of copyright infringement, they may within one business day notify the rights holder and notify the importer/exporter to produce authorization materials. After receiving notice, the rights holder shall proceed to customs within four hours for air export goods and within one business day for air import goods and sea import/export goods to assist with verification. Where the rights holder is unknown or cannot be notified, or the rights holder fails to proceed to customs within the time limit as notified to assist with verification, or the rights holder determines that the goods in question are not infringing, and if there is no violation of other customs clearance regulations, customs

shall release the goods forthwith.

Where the goods are determined to be suspected infringing goods, customs shall take measures to suspend the release of the goods.

If within three business days after customs has taken measures to suspend the release of the goods the rights holder has not applied to customs for attachment under paragraphs 1 to 10, or has not initiated civil or criminal litigation procedure to protect the rights, and if there is no violation of other customs clearance regulations, customs shall release the goods forthwith.

Article 90^{quater}

Whoever violates any provision of Article 80^{bis} or Article 80^{ter}, thereby causing damage to the copyright owner, shall be liable for damages. If there are multiple violators, they shall bear joint and several liability for damages.

The provisions of Article 84, Article 88^{bis}, Article 89^{bis}, and Article 90^{bis} shall apply *mutatis mutandis* to violations of Article 80^{bis} or Article 80^{ter}.

Article 91

A person who infringes on the economic rights of another person by means of reproducing the work without authorization shall be punished by imprisonment for not more than three years, detention, or in lieu thereof or in addition thereto a fine not more than seven hundred and fifty thousand New Taiwan Dollars.

A person who infringes on the economic rights of another person by means of reproducing the work without authorization with the intent to sell or rent shall be imprisoned not less than six months and not more than five years, and in addition thereto, may be fined not less than two hundred thousand and not more than two million New Taiwan Dollars.

A person who commits the offense in the preceding paragraph by means of reproducing onto an optical disk shall be imprisoned not less than six months and not more than five years, and in addition thereto, may be fined not less than five hundred thousand and not more than five million New Taiwan Dollars.

A work only for personal reference or fair use of a work does not constitute infringement of copyright.

Article 91^{bis}

A person who infringes on the economic rights of another person by distributing the

original of a work or a copy thereof by transfer of ownership without authorization shall be punished by imprisonment for not more than three years, detention, or in lieu thereof or in addition thereto, a fine not more than five hundred thousand New Taiwan Dollars.

A person who distributes or with intent to distribute publicly displays or possesses a copy knowing that it infringes on economic rights shall be imprisoned not more than three years and, in addition thereto, may be fined not less than seventy thousand and not more than seven hundred and fifty thousand New Taiwan Dollars.

A person who commits the offense in the preceding paragraph and the infringing copy is optical disk shall be imprisoned not less than six months and not more than three years and, in addition thereto, may be fined not less than two hundred thousand and not more than two million New Taiwan Dollars; provided, this shall not apply to optical disks imported in violation of subparagraph 4 of Article 87.

Punishment of an offense in the preceding two paragraphs may be reduced if the offender confesses the source of the goods, resulting in the uncovering thereof.

Article 92

A person who infringes on the economic rights of another person without authorization by means of public recitation, public broadcast, public presentation, public performance, public transmission, public display, adaptation, compilation, or leasing, shall be punished by imprisonment for not more than three years, detention, or in lieu thereof or in addition thereto a fine not more than seven hundred and fifty thousand New Taiwan Dollars.

Article 93

In any of the following circumstances, a sentence of up to two years imprisonment or detention shall be imposed, or in lieu thereof or in addition thereto, a fine of not more than five hundred thousand New Taiwan Dollars:

1. Infringement of the author's moral rights as set forth in the provisions of articles 15 through 17.
2. Violations of the provisions of Article 70.
3. Infringement of another person's copyright by any of the means specified in subparagraphs 1, 3, 5, or 6 of article 87; provided this shall not apply to offenses as referred to in paragraph 2 or paragraph 3 of Article 91bis.

Article 96bis

In any of the following circumstances a sentence of up to one year imprisonment or detention shall be imposed, or in lieu thereof or in addition thereto, a fine of not less than twenty thousand and not more than two hundred and fifty thousand New Taiwan Dollars:

1. Violation of Article 80*bis*.

2. Violation of paragraph 2 of Article 80*ter*.