

**Enforcement/Interpretations Guidelines for the Copyright Act,  
promulgated on September 1, 2004**

	Interpretation	Articles Interpreted
1.	For purposes of the following articles of the Copyright Act, “distribute/distribution” is constituted by distribution to the degree simply of “making obtainable by the public,” and actual delivery is not requisite: Article 3, paragraph 1, subparagraphs 12 and 14; Article 28-1; Article 59-1; Article 63, paragraph 3; Article 80-1, paragraph 2; Article 87, subparagraphs 2 and 6; Article 87-1, paragraph 1, subparagraph 3; and Article 91-1, paragraphs 1 and 2.	<p>· (1) Article 3 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.</p> <p>· (2) Article 3 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.</p> <p>· (3) Article 28-1 Except as otherwise provided in this Act, authors of works have the exclusive right to distribute their works through transfer of ownership. Performers have the exclusive right to distribute their performances reproduced in sound recordings through transfer of ownership.</p> <p>· (4) Article 59-1 A person who has obtained ownership of the original of a work or a lawful copy thereof within the territory under the jurisdiction of the Republic of China may distribute it by means of transfer of ownership.</p> <p>· (5) Article 63 Persons that may exploit the work of another person in accordance with the provisions of Articles 46 through 50, Articles 52 through 54, paragraph 2 of Article 57, Article 58, Article 61, and Article 62 may distribute such work.</p> <p>· (6) Article 80-1 Whoever knows that electronic rights management information of a work has been unlawfully removed or altered shall not distribute or, with intent to distribute,</p>

		<p>import or possess the original or any copy of such work. He/She also shall not publicly broadcast, publicly perform, nor publicly transmit [the same].</p> <p>· (7) Article 87</p> <p>Any of the following circumstances, except as otherwise provided under this Act, shall be deemed an infringement of copyright or plate rights:</p> <p>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.</p> <p>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.</p> <p>· (8) Article 87-1</p> <p>The provisions of subparagraph 4 of the preceding article do not apply under any of the following circumstances:</p> <p>3. Where the original or a specified number of copies of a work are imported for the private use of the importer, not for distribution, or where such import occurs because the original or copies form part of the personal baggage of a person arriving from outside the territory.</p> <p>· (9) Article 91-1 、</p> <p>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.</p> <p>A person who distributes or with intent to distribute publicly displays or possesses a copy knowing that it infringes on</p>
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		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.
2.	The term “copy” in the definition of “distribution” in Article 3, paragraph 1, subparagraph 12, is not confined to lawful copies; it also includes unlawful copies. The term “copies” in the definition of “publication” in Article 3, paragraph 1, subparagraph 14 refers to lawful copies only.	<p>· (1) Article 3 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.</p> <p>· (2) Article 3 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.</p>
3.	<p>1. Ministry of Justice Letter Ref. <i>Fa</i> (84) <i>Lyu Jyue</i> No. 10127 of 4 May 1995 and Ministry of the Interior Letter Ref. <i>Tai</i> (84) <i>Nai Chu Tze</i> No. 8408800 of 15 May 1995 both hold that copies imported in violation of Article 87, subparagraph 4, are not “lawful copies” within the territory under the jurisdiction of the Republic of China.</p> <p>2. “Lawful copy” in Article 59-1 does not include any copy that is imported without authorization in violation of Article 87, subparagraph 4.</p>	<p>· (1) Article 87 4. Import of the original or any copies of a work without the authorization of the economic rights holder.</p> <p>· (2) Article 59-1 A person who has obtained ownership of the original of a work or a lawful copy thereof within the territory under the jurisdiction of the Republic of China may distribute it by means of transfer of ownership.</p>
4.	1. Ministry of Justice Letter Ref. <i>Fa</i> (84) <i>Lyu Jyue</i> No. 10127 of 4 May 1995 and Ministry of the Interior Letter Ref. <i>Tai</i> (84) <i>Nai Chu Tze</i> No. 8408800 of 15 May 1995 both hold that	<p>· (1) Article 87 4. Import of the original or any copies of a work without the authorization of the economic rights holder.</p> <p>· (2) Article 60</p>

	<p>8408800 of 15 May 1995 both hold that copies imported in violation of Article 87, subparagraph 4, are not “lawful copies” within the territory under the jurisdiction of the Republic of China.</p> <p>2. “Lawful copy” in Article 60, paragraph 1, does not include any copy that is imported without authorization in violation of Article 87, subparagraph 4.</p>	<p>Owners of originals of works and lawful copies of works may rent such original works or copies; provided, this shall not apply to sound recordings and computer programs.</p>
5.	<p>1. The expression “only for personal reference” in Article 91, paragraph 4 merely serves to emphasize matters relating to personal reference already present in Articles 44 to 65 concerning fair use. It does not expand the scope of the existing articles concerning fair use, so it does not create any scope of criminal exemption within the existing fair use regime.</p> <p>2. The expression “does not constitute infringement of copyright” in Article 91, paragraph 4, means does not constitute infringement of economic rights. It does not extend to moral rights.</p> <p>3. The expression “only for personal reference” in Article 91, paragraph 4, is an illustrative provision relating to fair use. It neither broadens nor narrows the scope of fair use under Articles 44 to 65. When determining</p>	<p>Article 91</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>A work only for personal reference or fair use of a work does not constitute infringement of copyright.</p>

	<p>whether there is a violation of Article 91-1, 92, 93, or 94, it remains necessary to determine whether fair use is constituted under Articles 44 to 65.</p>	
6.	<p>1. Concerning the legal effect of an ordinary member of the public photocopying another person's book for personal use:</p> <p>(1) If it conforms to fair use: it is entirely free of criminal and civil liability.</p> <p>(2) If it exceeds the scope of fair use, licensing must be obtained from the economic rights owner. If licensing is not obtained, it is an infringement of the reproduction right, in violation of Article 91, paragraph 1. As to whether to indict, and whether to convict, prosecutors and judges are asked to take into consideration the monetary amount, quantity, and other circumstances of the infringement and exercise their discretion in accordance with law.</p> <p>2. Concerning the legal effect of a photocopy shop photocopying another person's book for a customer:</p> <p>If the photocopied quantity exceeds the scope of fair use (e.g. photocopying an entire textbook for a student), even if only one copy is made, infringement of the</p>	<p>Article 91</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>A work only for personal reference or fair use of a work does not constitute infringement of copyright.</p>

	reproduction right is constituted, in violation of Article 91, paragraph 1.	
7.	<p>1. Legal liability for violation of Article 87, subparagraph 4:</p> <p>(1) Article 93, subparagraph 3 no longer penalizes violations of Article 87, subparagraph 4. So merely importing the original or copies of a work incurs only civil liability and not criminal liability, regardless of the quantity of copies of a work imported.</p> <p>(2) However, if the importation is followed by distribution through transfer of ownership, or rental, criminal liability is to be determined by the application, respectively, of Article 91-1, paragraph 2 or Article 92.</p> <p>2. Effects of the application of Article 87-1:</p> <p>(1) Article 87-1 has not been amended and remains in application. The competent authority has already made express provisions concerning quantities brought in, in the announcement entitled The Certain Amount in Items 2 and 3 of Paragraph on Article 87-1 of The Copyright Act . Those provisions remain applicable after enforcement of the amended Act.</p> <p>(2) The circumstances provided in Article 87-1 are an exception permitted by law. Civil and</p>	<p>Article 93</p> <p>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:</p> <p>1. Infringement of the author's moral rights as set forth in the provisions of articles 15 through 17.</p> <p>2. Violations of the provisions of Article 70.</p> <p>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 91-1.</p>

	<p>criminal liability are entirely ruled out if the provisions are met. Violations of Article 87, paragraph 1, subparagraph 4 that do not meet the exception in Article 87-1 remain subject to civil liability even though Article 93, paragraph 1, subparagraph 2 of the amended Act no longer provides for criminal liability. The circumstances under Article 87, paragraph 1, subparagraph 4, and Article 87-1 are widely different in legal nature and should be clearly distinguished.</p> <p>3. Legal liability of audio-visual disk rental stores that publicly display pirated optical disks: Display of pirated optical disks for rental falls under Article 87, paragraph 1, subparagraph 6 (the latter part), and is punishable under Article 93, subparagraph 3. It is an offense indictable only upon complaint, except in the case of career offenders.</p>	
8.	<p>1. "Distribution" in Article 3, paragraph 1, subparagraph 12 of the Act can be divided into three categories: "distribution by means of transfer of ownership," "by means of rental," and "by means other than transfer of ownership or rental" (the latter referring primarily to lending). These three categories of distribution are protected respectively under Article 28-1</p>	<p>· ( 1 ) Article 91-1 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</p>

	<p>respectively under Article 28-1, Article 29, and the fore part of Article 87, subparagraph 6. Penalties for infringements in these three categories are provided respectively in Article 91-1, Article 92, and Article 93, subparagraph 3. In a nutshell, the entire Article 91-1 refers specifically to unlawful distribution "by means of transfer of ownership." In paragraph 2 of Article 91-1, "a person who distributes or with intent to distribute publicly displays or possesses a copy knowing that it infringes on economic rights" refers in this context specifically to doing so by means of unauthorized transfer of ownership. This should be construed separately from the penalty provision in Article 92 for infringing rental rights and the penalty provision in Article 93, subparagraph 3, for unlawful lending in violation of the fore part of Article 87, subparagraph 6.</p> <p>2. The term "copy" in Article 91-1, paragraph 1, whether in terms of original legislative intent, literal meaning in context, or systematic interpretation, refers only to "lawful copies." An example of a circumstance in which it would apply is as follows: If a publishing contract stipulates a period for the publication of copies and specifies that any remaining inventory should</p>	<p>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.</p> <p>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.</p> <p>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.</p> <p>· ( 2 ) Article 92</p> <p>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.</p> <p>· ( 3 ) Article 93</p> <p>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:</p> <p>1. Infringement of the author's moral rights as set forth in the provisions of articles 15 through 17.</p>
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	<p>be destroyed upon the expiration of that period, then continuing to sell copies from inventory in breach of the contract would be punishable under Article 91-1, paragraph 1.</p> <p>3. The term "copy" in Article 91-1, paragraph 2, whether in terms of original legislative intent, literal meaning in context, or systematic interpretation, refers only to "unlawful copies" (in contrast to its meaning of "lawful copies" in paragraph 1 of the same article). Examples of offenses punishable under Article 91-1, paragraph 2, are: selling pirated optical disks in a night market or convenience store, or selling goods that violate Article 87, subparagraph 4 (which prohibits parallel importation).</p> <p>4. Legal liability for selling optical disks that violate the prohibition against parallel import of genuine goods: Goods imported in violation of Article 87, subparagraph 4 are "articles that infringe on copyright." The proviso to paragraph 3 of Article 91-1 merely provides specifically that "optical disk" in paragraph 3 does not include optical disks imported in violation of Article 87, subparagraph 4. Therefore, optical disks imported in violation of Article 87, subparagraph 4 remain subject to Article 91-1, paragraph</p>	<p>2. Violations of the provisions of Article 70.</p> <p>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 91-1.</p>
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	<p>2. Offenses involving such disks are not exempted from criminal liability; they merely are not subject to paragraph 3. So as specified in the words preceding the proviso of Article 100, they are offenses actionable only upon complaint.</p>	
9	<p>1. Legal effects of a night-market stall publicly displaying pirated optical disks (including setting up unattended pay-on-your-honor cash boxes):</p> <p>(1) This offense should be penalized under the provisions of Article 91-1, paragraphs 2 and 3 concerning distribution rights, and is indictable without the requirement of a complaint. A complaint by the copyright owner is not required for the police authorities to carry out investigation and seizure and the prosecutors' office to indict.</p> <p>(2) As for publicly displayed pirated optical disks, they are articles used in the commission of an offense or acquired through the commission of an offense, so they can be confiscated directly by the police authorities under Article 98-1 of the Copyright Act if the offender escapes and is unidentifiable.</p> <p>2. If a large quantity of pirated optical disks is discovered in warehouse inventory, the offender,</p>	<p>· Article 98-1</p> <p>An article used in the commission of an offense or acquired through the commission of an offense set forth in paragraph 3, Article 91, or paragraph 3, Article 91-1, may be confiscated by the judiciary police if the offender escapes and is therefore unidentifiable.</p> <p>The article confiscated pursuant to the preceding paragraph shall be destroyed, provided that where the confiscated article is money, that money shall be submitted to the national treasury. The relevant provisions of the Act for the Maintenance of Social Order shall apply mutatis mutandis to the procedures of the aforementioned destruction and submission.</p>

	<p>depending on the degree to which he or she participated in the offense, may have violated Article 91, paragraph 2 or 3, or Article 91-1, paragraph 2 or 3. Such an offense is indictable without requirement of a complaint. The pirated optical disks so discovered may be confiscated directly by the police authorities under Article 98-1 of the Copyright Act if the offender escapes and is unidentifiable.</p>	
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