

Taiwan

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New Copyright Law Passed by Legislature

After much attention from the software, music and movie industries and a poorly conceived first draft that nearly made it to the legislature a year ago, new amendments to *Taiwan's Copyright Law* (new Law) have finally been passed by the Legislative Yuan (LY). The approved amendments are expected to be made effective soon.

Infringement now a public crime

Although the new Law differs somewhat from the draft submitted this spring by Taiwan's Executive Yuan (EY), it preserves most of the features that copyright rights holders fought to include.

The new Law particularly targets Taiwan's rampant optical-media piracy problems, providing for heavier sentences and longer jail terms than were previously available. Optical-media infringement activities are also now classified as "public" crimes, opening up the possibility of night-market sweeps without the need for individual rights holders to first file complaints.

Intent to profit

One key change in the new Law that was not included in the earlier EY draft is the introduction of language that differentiates between infringements done with and without "intent to profit". The previous Law had no such "intent" requirement, and it remains to be seen how it will be interpreted by the courts.

Another industry concern is the new Law's removal of some minimum sentences and fines from the EY draft.

Article 91 of the new Law deals with unauthorized reproduction with "intent to profit", providing for a maximum sentence of not more than five years and a fine of between NT\$200,000 and NT\$2 million. The previous law and the EY draft had both provided for a six-month minimum sentence (sentences of six months or less are generally convertible into fines), but this was not included in the new Law. As a result, rights holders will likely watch sentencing very closely in the coming year. Reproduction of optical disks with "intent to profit" could lead to a five-year jail sentence and a fine of between NT\$500,000 and NT\$5 million.

Also in Article 91, provisions for reproduction "without intent to profit" have a threshold of five illegal copies or an infringement that exceeds NT\$30,000 (based on the value of the original), at which point an infringer faces up to three years in prison and a fine of not more than NT\$750,000.

Article 91bis makes a similar "intent to profit" distinction for infringing sales. Again, the EY's minimum sentence language was removed, although "with intent" sales will now incur penalties of up to three years in prison and a higher potential fine of NT\$70,000 to NT\$750,000. Individuals engaged in "with intent" sales of pirated optical disks now face three years' imprisonment and fines of up to NT\$1.5 million (lower than in the EY draft). Distribution of copyrighted works "without intent to profit" is subject to the same thresholds as reproduction and can be punished by jail terms of up to two years and a fine of up to NT\$500,000.

Infringement as a vocation

Article 94 of the new Law is identical to the EY version, covering crimes carried out "as a vocation" (i.e., where the defendant makes a living from infringement activities). The fines for standard infringement "as a vocation" will now be between NT\$300,000 and NT\$3 million, up substantially from the previous maximum of NT\$450,000. Vocational offenders in optical-media cases will face fines of between NT\$800,000 and NT\$8 million.

Customs seizures

Proposed changes to Article 90bis that would have authorized Customs officers to seize infringing goods on their own initiative have been stripped out at the request of Taiwan Customs, which has promised to implement internal guidelines authorizing such seizures. Also, proposed Article 80bis provisions regarding technological protection measures have been removed after the LY approved new *Criminal Law* Article 358 provisions regarding hacking and other computer crimes.