

# Legal revisions hurt FTA chances, IPR experts say

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Intellectual-property-rights (IPR) experts said yesterday that a free-trade agreement (FTA) between Taiwan and the US may have been scuttled by changes in the Copyright Law (著作權法) passed by the Legislative Yuan at the beginning of June.

"The changes certainly could halt [FTA] negotiations," said Jeffrey Harris, co-chair of the American Chamber of Commerce in Taipei's Intellectual Property Committee.

"The point of trade negotiations is to move forward, but the changes to the law went backward," he said.

John Eastwood, Harris' counterpart at the European Chamber of Commerce Taipei, said, "This could be the straw that broke the camel's back.

"But it is part of a larger wave of sentiment — there are fake trademark goods everywhere in Taiwan, patents are infringed regularly and trade secrets stolen," Eastwood said.

The government seems to have woken up to the fact that weak IPR protection is hurting its economy, he said. Not only is the local entertainment industry being killed by bootlegged products, but possible investors are shying away from what is effectively a "piracy haven," Eastwood said.

Earlier this year, the Executive

Yuan completed a draft of the new Copyright Law in close consultation with its critics. The most significant change in the law was that copyright infringement became a "public" instead of a "private" crime, meaning that police can now initiate arrests without receiving a complaint from the copyright holder as required before.

"This is a law we'd been trying for 15 years to have passed and we're delighted that it went through," Harris said.

But the draft did not pass the Legislative Yuan intact. Legislators made a total of 53 changes to the law, some of which have brought fresh criticism on Taiwan.

An alliance of the movie, music and software industries said in a statement to the *Taipei Times* on the weekend that the law is now "worse than the law as it existed before."

The group's biggest gripes are that minimum penalties were removed for some offences, and making unauthorized copies "not for profit" was decriminalized. A threshold of five copies or NT\$30,000 in original value was set under which prosecutions will now not be sought, according to critics.

But one IPR official said the law's detractors have to accept the results of a democratic process.

"Taiwan is a democracy with a parliamentary system," Margaret

Chen (陳淑美), director of the Copyright Department at the Ministry of Economic Affairs' Intellectual Property Office, said yesterday.

"The entire country has to accept the results of the changes and we have to implement the law accordingly," she said.

There are ways that Taiwan can stick to the original meaning of the law despite the changes, Chen said.

For example, complaints that the five-copy/NT\$30,000 threshold will allow street vendors to get off scot-free are unfounded as the law states that any unauthorized copy that is placed on display for sale on a stall, in a brochure or on the Internet violates the law even if no actual financial transaction takes place.

To prove the point, law enforcement agencies launched raids on night markets on Aug. 6, Chen said.

"Generally speaking, the new Copyright Law is acceptable and feasible and better than the old law," Chen said. "Give us time to prove its feasibility."

Asked whether it was fair for the US to halt FTA negotiations as a result of the changes, Chen said it was not a one-way process.

"The negotiations are bilateral and are not just in Taiwan's interest," she said. "They are also in the US' interest."