

Businesses try to make sense of Copyright Law

AMENDMENTS: Industry representatives complain that the changes not only fail to favor the copyright holder, they have opened the door to new abuses

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The entertainment industry and intellectual-property-rights (IPR) experts are still trying to make sense of the new Copyright Law (著作法) passed by the legislature on June 6, which seems to favor end-users rather than copyright holders as was originally intended.

The legislature made a total of 53 changes to the law.

Lawmakers appeared to be more concerned with protecting individuals against the powerful entertainment industry, the mastermind behind the original draft said yesterday.

"The Legislative Yuan paid more attention to the end-user and general consumer," Margaret Chen (陳淑美), director of the Copyright Department at the Ministry of Economic Affairs' Intellectual Property Office said yesterday.

"But we all agreed that infringing activity in relation to profit-making should be subject to penalty," she said.

One IPR legal expert already forecasts trouble ahead.

"In the next few months we're going to see ways in which Taiwan's hard-core infringers are going to get around [some of the changes]," said John Eastwood, a lawyer at Winkler Partners (博仲法律事務所) and co-chair of the Intellectual Property

Committee of the European Chamber of Commerce Taipei.

"The Legislative Yuan has unwittingly created with its 'with or without intent to profit' rule an opening for copyright infringers. I can think of at least two ways to exploit this, but I don't want to give the criminals any ideas. Let's just say we'll see some pretty clever ideas soon," he said.

One of the more controversial changes was making it illegal to make more than five copies — or the equivalent of more than NT\$30,000 when sold in the original legal packaging — of any copyrighted material, including software, movie disks or music CDs.

This crime falls under a new category of copyright violation dubbed "without the intent for profit" that seeks to stop people making too many copies.

Reproduction of amounts less than the five-disk/NT\$30,000 threshold are now automatically decriminalized. Any copies made with the intent for profit now carry heavier fines and longer prison sentences.

But even though legislators set higher maximum fines and prison sentences for hardened IPR infringers, they stripped away the lower limits.

"The provisions have taken away the bottom level of the range

so judges could fine as little as NT\$1 and sentence an infringer to only one day in prison," Eastwood said. "In Taiwan, where judges are notoriously lenient on IPR violators, this is not a good sign."

The music industry condemned the amendments as soon they were ratified last week.

Robin Lee (李瑞斌), secretary general of International Federation of the Phonographic Industry in Taiwan, said his organization was not happy with the changes and demanded more amendments.

The movie and software industry remain tight-lipped about the changes while they prepare an official response. Officials in the Taipei branch offices and regional offices in Singapore of the Business Software (BSA) and the Motion Picture Association (MPA) said yesterday that they would not comment on the amendments until they had a chance to study the changes in detail. They plan to issue statements by the end of this week.

Foreign business leaders initially welcomed the passage of the amendments, which changed copyright infringement from a "private" to a "public" crime and gave police the power to initiate arrests against suspected violators without first receiving a complaint from the copyright holder.

But in a statement issued last Wednesday, the American Chamber of Commerce in Taipei condemned the fact that public crime status only applies to electronic media like CDs and DVDs.