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Intellectual Property, Taiwan Main points of Copyright Act draft amendments

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Introduction

On 30 January 2020 the Intellectual Property Office announced draft amendments to the Copyright Act which aim to address:

- the exploitation of copyrightable works in the era of digital convergence and cloud technology;
- the regulation of fair use;
- the reconciliation of rights; and
- the perfection of copyright regulations.

This article discusses the main points of the draft amendments.

Main points

Adjust the definitions of 'public broadcast' and 'public transmission' and add 'the right of simultaneous further broadcasting and transmitting to the public'

Under the amended Copyright Act, broadcasts via general TV stations and online streaming on network platforms are considered public broadcasts. In other words, network technology no longer serves as a means of classification. Further, the right of public transmission is limited to acts of interactive transmission and use.

The amended act adds the right of simultaneous further broadcasting and transmitting to the public. For example, a party wishing to stream a film via the Internet using screen equipment at a place of business must first obtain the copyright owner's consent.

Review justifiability of provisions governing copyright ownership

Under the amended Copyright Act, an employer and employee may contractually agree the ownership of a work's economic rights, which is more in line with the spirit of freedom of contract and gives the contracting parties greater flexibility.

The amended act also revises the legal relationship between a commissioning and a commissioned party, such that a commissioning party, regardless of whether it is a natural or legal person, may serve as the author of a work pursuant to a contract between the parties that meets copyright best practices.

Amend limitations on economic rights to a work

In order to expand the scope of what is considered a teaching method, the amended Copyright Act considers distance learning as fair use.

Further, the amended act adds provisions stipulating that, subject to certain restrictions, archival institutions (eg, libraries) may allow readers to browse their collections online.

Any regular non-profit activity may use relevant works once they have paid the necessary remuneration. As for individuals who play music using their own equipment for activities such as dancing in a park, the amendments provide that no authorisation or payment are required.

Compensation for damages

To resolve issues relating to the burden of proof for damages, under the amended Copyright Act, injured parties may request the court to set compensation amounts, based on the circumstances of the infringement, between NT\$10,000 and NT\$1 million.

The amended act also provides for injured parties to calculate damages based on received royalties.

Amend out-of-date provisions regarding criminal liability

The amended Copyright Act removes the six-month minimum sentence, thus allowing the courts to examine cases on a case-by-case basis to avoid minor cases facing excessive criminal liability.

Further, unauthorised sales of genuine products imported from abroad in the domestic market involves only civil liability (ie, no criminal liability will be imposed on such acts). Therefore, the unauthorised distribution of genuine products should be resolved through civil remedies.

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