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## **COPYRIGHT ACT**

- 1.40 Articles adopted and promulgated in full on 14 May 1928 by Order No. 212 of the National Government.
- 2.37 Articles amended and promulgated in full on 27 April 1944 by Order Yu-Wen-Zih No. 251 of the National Government.
3. Articles 30, 31, 32, 33, and 34 amended and promulgated by Presidential order on 13 January 1949.
4. Articles 30, 31, 32, 36, and 41 newly adopted by Presidential order on 10 July 1964; original Articles 22-29 became Articles 23-30; original Articles 30-32 became Articles 33-35; original Articles 33-36 became Articles 37-40; original Article 37 became Article 42; and Articles 25, 26, 33, 35, 37-40 amended.
- 5.52 Articles amended and promulgated in full on 10 July 1985 by Presidential Order No. (74) Hua-Zong-(1)-Yi-Zih 3318.
6. Articles 50-51 newly adopted and promulgated and Articles 3, 28 and 39 amended and promulgated on 24 January 1990 by Presidential Order No. (79) Hua-Zong-(1)-Yi-Zih 0427.
- 7.117 Articles amended and promulgated in full on 10 June 1992 by Presidential Order No. (81) Hua-Zong-(1)-Yi-Zih 2805.
8. Article 53 amended and promulgated on 6 July 1992 by Presidential Order No. (81) Hua-Zong-(1)-Yi-Zih 3285.
9. Article 87 amended and promulgated and Article 87-1 newly adopted and promulgated on 24 April 1993 by Presidential Order No. (82) Hua-Zong-(1)-Yi-Zih 1841.
- 10.117 Articles amended and promulgated in full on 21 January 1988 by Presidential Order No. (87) Hua-Zong-(1)-Yi-Zih 87000126405.

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11. Articles 2, 34, 37, 71, 81, 82, and 90-1 amended and promulgated on 12 November 2001 by Presidential Order No. (81) Hua-Zong-(1)-Yi-Zih 2805.
12. Articles 26bis, 28bis, 59bis, Chapter IVbis (chapter name), 80bis, 82bis to 82quinquies, 90quater, 91bis, 96bis, 96ter, and 98bis newly adopted and promulgated, and Articles 2, 3, 7bis, 22, 24, 26, 29, 37, 49, 50, 53, 56, 56bis, 60, 61, 63, 65, 69, 79, 82, 87, 88, 91 to 95, 98, 100 to 102, 105, 106, 106ter, 106quater, 111, 113, 115bis, 115ter, and 117 amended and promulgated, on 9 July 2003 by Presidential Order No. (92) Hua-Zong-(1)-Yi-Zih 09200122700.
13. Article 80-2 of the Copyright Act newly adopted and promulgated and Articles 3, 22, 26, title of Chapter 4-1, Articles 82, 87, 90-1, 90-3, 91, 91-1, 92, 93, and 96-1 thereof amended and promulgated on 1 September 2004 by Presidential Order No. (93) Hua-Zong-(1)-Yi-Zih 09300158591.
14. Article 94 of the Copyright Act deleted and promulgated and Articles 98, 99 through 102, and 117 thereof amended and promulgated on 30 May 2006 by Presidential Order No. (95) Hua-Zong-(1)-Yi-Zih 09500075761.
15. Article 97-1 of the Copyright Act newly adopted and promulgated, and Articles 87 and 93 thereof amended and promulgated on 11 July 2007 by Presidential Order No. (96) Hua-Zong -(1)-Yi-Zih 09600088051.
16. Title of Chapter 6bis, Article 90quinquies to 90terdicies newly adopted and promulgated, and Article 3 thereof amended and promulgated on 13 May 2009 by Presidential Order No. Hua-Zong-(1)-Yi-Zih 09800116331.
17. Articles 37, Chapter V (chapter name), 81, and 82 amended and promulgated on 10 February 2010 by Presidential Order No. Hua-

Zong-(1)-Yi-Zih 09900029991.

18. Article 53 amended and promulgated on 10 February 2010 by Presidential Order No. Hua-Zong-(1)-Yi-Zih 09900030001.

19. Article 53, 65, 80-2, 87 and 87-1 amended and promulgated on 22 January 2014 by Presidential Order No. Hua-Zong-(1)-Yi-Zih 10300009931.

20. Article 98 amended and promulgated on 30 November 2016 by Presidential Order No. Hua-Zong-(1)-Yi-Zih 10500146961.

21. Article 87 and 93 amended and promulgated on 1 May 2019 by Presidential Order No. Hua-Zong-(1)-Yi-Zih 10800043331.

## **Chapter I**

### **General Principles**

#### **Article 1**

This Act is specifically enacted for the purposes of protecting the rights and interests of authors with respect to their works, balancing different interests for the common good of society, and promoting the development of national culture. Matters not provided for herein shall be governed by the provisions of other acts.

#### **Article 2**

The competent authority under this Act is the Ministry of Economic Affairs.

The Ministry of Economic Affairs shall appoint a specialized agency in charge of copyright matters.

#### **Article 3**

For the purposes of this Act the following definitions shall apply:

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1. "Work" means a creation that is within a literary, scientific, artistic, or other intellectual domain.
2. "Author" means a person who creates a work.
3. "Copyright" means the moral rights and economic rights subsisting in a completed work.
4. "The public" or "a public" means unspecified persons or multiple specified persons; provided, this does not apply to multiple persons of a household and the household's normal social acquaintances.
5. "Reproduce" means to reproduce directly, indirectly, permanently, or temporarily a work by means of printing, reprography, sound recording, video recording, photography, handwritten notes, or otherwise. This definition also applies to the sound recording or video recording of scripts, musical works, or works of similar nature during their performance or broadcast, and also includes the construction of an architectural structure based on architectural plans or models.
6. "Public recitation" means to communicate the content of a work to the public by spoken words or other means.
7. "Public broadcast" means to communicate to the public the content of a work through sounds or images by means of transmission of information by a broadcasting system of wire, wireless, or other equipment, where such communication is for the purpose of direct listening reception or viewing reception by the public. This includes any communication, by transmission of information via a broadcasting system of wire, wireless, or other equipment, to the public of an original broadcast of sounds or images by any person other than the original broadcaster.
8. "Public presentation" means to use single- or multiple-unit audiovisual devices, or other methods of transmitting images, to

simultaneously communicate the content of a work to the public at the place of transmission or at a specified place outside the place of transmission.

9. "Public performance" means to act, dance, sing, play a musical instrument, or use other means to communicate the content of a work to a public that is present at the scene. This includes any communication to the public of an original broadcast of sounds or images through loudspeakers or other equipment.
10. "Public transmission" means to make available or communicate to the public the content of a work through sounds or images by wire or wireless network, or through other means of communication, including enabling the public to receive the content of such work by any of the above means at a time or place individually chosen by them.
11. "Adaptation" means to create another work based upon a preexisting work by translation, musical arrangement, revision, filming, or other means.
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.
13. "Public display" means to display the content of a work to the public.
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.
15. "Public release" means public issue by the rights holder of the content of a work to the public through publication, broadcast, presentation, recitation, performance, display, or other means.

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16. "The original" or "an original" means the object to which a work is first fixed.
17. "Electronic rights management information" means electronic information presented on the original or copies of a work, or at the time of communication of content of a work to the public, sufficient to identify the work, the name of the work, the author, the economic rights holder or person licensed thereby, and the period or conditions of exploitation of the work, including numbers or symbols that represent such information.
18. "Technological protection measures" means equipment, devices, components, technology or other technological means employed by copyright owners to effectively prohibit or restrict others from accessing or exploiting works without authorization.
19. "Internet service provider" means those who provide the following services:
  - (1) Connection service provider: those who provide services, by wire or wireless means, of transmitting, routing, or receiving, information through a system or network controlled or operated by the service provider, or of the intermediate and transient storage of information in the course of such transmitting, routing, or receiving.
  - (2) Caching service provider: those who, after information has been transmitted at the request of a user, provide services of intermediate and temporary storage of the information through a system or network controlled or operated by the service provider, for purposes of providing accelerated access to the information by users who subsequently request transmission of the information.
  - (3) Information storage service provider: those who provide information storage services at the request of a user through a

system or network controlled or operated by the service provider.

- (4) Search service provider: those who provide users with services, including an index, reference, or hyperlink, to search or hyperlink to online information.

"Place of transmission or at a specified place outside the place of transmission" as referred to in subparagraph 8 of the preceding paragraph includes motion picture cinemas, clubs, places where videocassettes or videodiscs are presented, hotel rooms, public transportation vehicles, or other places that may be accessed by unspecified persons.

#### **Article 4**

Works of foreign nationals that comply with one of the following conditions may enjoy copyright under this Act; provided, where the terms of a treaty or an agreement that has been ratified by resolution of the Legislative Yuan provide otherwise, such terms shall govern:

1. Works that are first published in the territory under the jurisdiction of the Republic of China, or are published in the territory under the jurisdiction of the Republic of China within thirty days after their first publication in territory outside the jurisdiction of the Republic of China; provided, this shall only apply where the country of such foreign national extends protection under identical circumstances to the works of persons of the Republic of China, and such protection has been verified.
2. Where by treaty or agreement, or under the domestic acts, regulations, or standard practice of the home country of the foreign national, works of persons of the Republic of China enjoy copyright in such country.

#### **Chapter II Works**

## **Article 5**

For the purposes of this act, "works" shall include the following:

- 1.Oral and literary works.
- 2.Musical works.
- 3.Dramatic and choreographic works.
- 4.Artistic works.
- 5.Photographic works.
- 6.Pictorial and graphical works.
- 7.Audiovisual works.
- 8.Sound recordings.
- 9.Architectural works.
- 10.Computer programs.

The examples and content of each category of works set forth in the preceding paragraph shall be prescribed by the competent authority.

## **Article 6**

A creation adapted from one or more pre-existing works is a derivative work and shall be protected as an independent work.

Protection of a derivative work shall not affect the copyright in the pre-existing work.

## **Article 7**

A compilation work is a work formed by the creative selection and arrangement of materials, and shall be protected as an independent work.

Protection of a compilation work shall not affect the copyright in the work from which the material was selected and arranged.

### **Article 7bis**

A performance by a performer of a pre-existing work or folklore shall be protected as an independent work.

Protection of a performance shall not affect the copyright in the pre-existing work.

### **Article 8**

A joint work is a work that has been completed by two or more persons where the creation of each person cannot be separately exploited.

### **Article 9**

The following items shall not be the subject matter of copyright:

- 1.The constitution, acts, regulations, or official documents.
- 2.Translations or compilations by central or local government agencies of works referred to in the preceding subparagraph.
- 3.Slogans and common symbols, terms, formulas, numerical charts, forms, notebooks, or almanacs.
- 4.Oral and literary works for news reports that are intended strictly to communicate facts.
- 5.Test questions and alternative test questions from all kinds of examinations held pursuant to acts or regulations.

The term "official documents" in the first subparagraph of the preceding paragraph includes proclamations, text of speeches, news releases, and other documents prepared by civil servants in the course of carrying out their duties.

## **Chapter III Authors and Copyright**

### **Section 1 General Provisions**

## **Article 10**

The author of a work shall enjoy copyright upon completion of the work; provided, where this Act provides otherwise, such provisions shall govern.

## **Article 10bis**

Protection for copyright that has been obtained in accordance with this Act shall only extend to the expression of the work in question, and shall not extend to the work's underlying ideas, procedures, production processes, systems, methods of operation, concepts, principles, or discoveries.

## **Section 2 Authors**

### **Article 11**

Where a work is completed by an employee within the scope of employment, such employee is the author of the work; provided, where an agreement stipulates that the employer is the author, such agreement shall govern.

Where the employee is the author of a work pursuant to the provisions of the preceding paragraph, the economic rights to such work shall be enjoyed by the employer; provided, where an agreement stipulates that the economic rights shall be enjoyed by the employee, such agreement shall govern.

The term "employee" in the preceding two paragraphs includes civil servants.

### **Article 12**

Where a work is completed by a person under commission, except in the circumstances set out in the preceding article, such commissioned person is the author of the work; provided, where an

agreement stipulates that the commissioning party is the author, such agreement shall govern.

Where the commissioned person is the author pursuant to the provisions of the preceding paragraph, enjoyment of the economic rights to such work shall be assigned through contractual stipulation to either the commissioning party or the commissioned person. Where no stipulation regarding the enjoyment of economic rights has been made, the economic rights shall be enjoyed by the commissioned person.

Where the economic rights are enjoyed by the commissioned person pursuant to the provisions of the preceding paragraph, the commissioning party may exploit the work.

### **Article 13**

Where a person's name or a pseudonym familiar to the public is represented in a normal way as the author on the original of a work, or on a published copy of the work, or in connection with a public release of a work, the person shall be presumed to be the author of the work.

The provisions of the preceding paragraph shall apply mutatis mutandis to presumptions concerning the date and place of publication of a work as well as the ownership of economic rights therein.

### **Article 14**

(deleted)

## **Section 3 Moral Rights**

### **Article 15**

The author of a work shall enjoy the right to publicly release the work; provided, this shall not apply to a civil servant where, pursuant

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to the provisions of Article 11 or 12, such person is the author while the juristic person employing such author enjoys the economic rights to the work.

In the following circumstances the author shall be presumed to have consented to the public release of the work:

1. Where, prior to publicly releasing its work, the author has transferred, or licensed to exploit, the economic rights to the work, and the work is publicly released as a consequence of the exercise or exploitation of the economic rights.
2. Where, prior to the public release of a artistic work or a photographic work, the author transfers the original or a copy of such work to another party and the transferee publicly displays the original or copy of the work.
3. Where the work is a Masters thesis or doctoral dissertation written under the "Degree Conferral Act" and the author has obtained a degree.

Where, in accordance with the provisions of paragraph 2 of Article 11 or paragraph 2 of Article 12, an employer or a commissioning party, ab initio, obtained economic rights to a work that has never been publicly released, and where such work is publicly released in conjunction with the transfer, exercise, or exploitation of the economic rights of such work, the author shall be deemed to have consented to the public release of the work.

The provisions of the preceding paragraph shall apply mutatis mutandis to paragraph 3 of Article 12.

### **Article 16**

The author of a work shall have the right to indicate its name, a pseudonym, or no name on the original or copies of the work, or when the work is publicly released. The author has the same right to a

derivative work based on its work.

The proviso in the first paragraph of the preceding article shall apply mutatis mutandis to the preceding paragraph.

The person exploiting a work may use its own cover design and may add the name or appellation of the designer or editor-in-chief; provided this shall not apply where the author has specifically indicated to the contrary, or where the addition would deviate from commonly accepted practices.

Where the purpose and method of exploitation neither present any likelihood of harm to the author's interests nor deviate from commonly accepted practices, the author's name or appellation may be omitted.

### **Article 17**

The author has the right to prohibit others from distorting, mutilating, modifying, or otherwise changing the content, form, or name of the work, thereby damaging the author's reputation.

### **Article 18**

The protection of moral rights of an author who has died or been extinguished shall be deemed to be the same as when the author was living or in existence and shall not be infringed upon by any person; provided, the act shall not constitute an infringement where it can be considered that the author's intent has not been contravened given the nature and degree of the act of exploitation, social changes, or other circumstances.

### **Article 19**

Moral rights in a joint work may not be exercised without the consent of all the joint authors. A joint author shall not refuse consent without a legitimate reason.

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Authors of a joint work may select an author from among the joint authors to be their representative for the purpose of exercising moral rights.

Limitations imposed on the representative powers of the representative referred to in the preceding paragraph shall not be effective against a third party acting in good faith.

### **Article 20**

The original of a work that has not been publicly released and the economic rights therein shall not be the object of compulsory execution unless they are the object of a trade or the principal has given its consent.

### **Article 21**

Moral rights belong exclusively to the author and shall not be transferred or succeeded.

## **Section 4 Economic Rights**

### **Subsection 1 Categories of Economic Rights**

### **Article 22**

Except as otherwise provided in this Act, authors have the exclusive right to reproduce their works.

Performers have the exclusive right to reproduce their performances by means of sound recording, video recording, or photography.

The provisions of the preceding two paragraphs do not apply to temporary reproduction that is transient, incidental, an essential part of a technology process, and without independent economic significance, where solely for the purpose of lawful network relay transmission, or for the lawful use of a work; provided, this shall not

apply to computer programs.

In the preceding paragraph, the phrase "temporary reproduction... for the purpose of lawful network relay transmission" includes technically unavoidable phenomena of the computer or machine occurring in network browsing, caching, or other processes for enhancing transmission efficiency.

### **Article 23**

Authors of oral and literary works have the exclusive right to publicly recite their works.

### **Article 24**

Except as otherwise provided in this Act, authors have the exclusive right to publicly broadcast their works.

The provisions of the preceding paragraph shall not apply to further public broadcasts of a performance after that performance has been reproduced or publicly broadcast.

### **Article 25**

Authors of audiovisual works have the exclusive right to publicly present their works.

### **Article 26**

Except as otherwise provided in this Act, authors of oral and literary, musical, and dramatic/choreographic works have the exclusive right to publicly perform their works.

Performers have the exclusive right, by means of loudspeakers or other equipment, to publicly perform their performances; provided, this shall not apply to public performances of a performance by means of loudspeakers or other equipment after that performance has

been reproduced or publicly broadcast.

Where a sound recording has been publicly performed, the author may claim payment of remuneration for use from the persons who publicly performed it.

### **Article 26bis**

Except as otherwise provided in this Act, authors of works have the exclusive right of public transmission of their works.

Performers have the exclusive right of public transmission of their performances reproduced in sound recordings.

### **Article 27**

Authors of unpublished fine arts or photographic works have the exclusive right to publicly display the original and copies of their works.

### **Article 28**

Authors of works have the exclusive right to adapt their works into derivative works or to compile their works into compilation works; provided, this shall not apply to performances.

### **Article 28bis**

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.

### **Article 29**

Except as otherwise provided in this Act, authors of works have the exclusive right to rent their works.

Performers have the exclusive right to rent their performances reproduced in sound recordings.

### **Article 29bis**

An employer or commissioning party that has obtained the economic rights in a work in accordance with the provisions of paragraph 2 of Article 11 or paragraph 2 of Article 12 shall have exclusive enjoyment of the rights set out in the provisions of Articles 22 through 29.

## **Subsection 2 Term of Protection for Economic Rights**

### **Article 30**

Except as otherwise provided in this Act, economic rights endure for the life of the author and fifty years after the author's death.

Where a work is first publicly released between the fortieth and fiftieth years after the author's death, the economic rights shall endure for a term of ten years beginning from the time of the first public release.

### **Article 31**

Economic rights in a joint work subsist for fifty years after the death of the last surviving author.

### **Article 32**

Economic rights in a pseudonymous work or an anonymous work endure for fifty years from the time of public release; provided, the economic rights shall be extinguished where it can be proven that the author has been deceased for over fifty years.

The provisions of the preceding paragraph shall not apply when the pseudonym of the author is well known to the public.

### **Article 33**

Economic rights in works authored by a juristic person endure for fifty years after the public release of the work; provided, if the work is not publicly released within fifty years from the completion of the creation, the economic rights shall subsist for fifty years after completion of the creation.

### **Article 34**

Economic rights for photographic works, audiovisual works, sound recordings, and performances endure for fifty years after the public release of the work.

The proviso of the preceding article shall apply mutatis mutandis to the preceding paragraph.

### **Article 35**

All terms of duration specified in Articles 30 through 34 terminate as of the last day of the last year of the term.

Where the term of economic rights for works released to the public continuously or successively is calculated on the basis of the date of the public release of the work, if each public release can constitute an independent work, the term of economic rights of each work shall be calculated from the date of each public release; if each public release cannot constitute an independent work, the term shall be calculated from the date of the public release(s) that can constitute an independent work.

With respect to the circumstances described in the preceding paragraph, if the continuing part has not been publicly released within three years of the date of public release of its preceding part,

the term of the economic rights shall be calculated from the date of public release of its preceding part.

### **Subsection 3      Transfer, Exercise, and Extinguishment of Economic Rights**

#### **Article 36**

Economic rights may be transferred in whole or in part to another person and may be jointly owned with other persons.

The transferee of economic rights obtains economic rights within the scope of the transfer.

The scope of the transfer of the economic rights shall be as stipulated by the parties; rights not clearly covered by such stipulations shall be presumed to have not been transferred.

#### **Article 37**

The economic rights holder may license others to exploit the work. The territory, term, content, method of exploitation, and other particulars of the license shall be as stipulated by the parties; particulars not clearly covered by such stipulations shall be presumed to have not been licensed.

The license referred to in the preceding paragraph shall not be affected by subsequent assignment or further licensing of economic rights by the economic rights holder.

A non-exclusive licensee may not sublicense the rights inherent in the license to any third party for exploitation without the consent of the economic rights holder.

An exclusive licensee may, within the scope of the license, exercise rights in the capacity of economic rights holder, and may perform litigious acts in its own name. The economic rights holder

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may not exercise rights within the scope of an exclusive license.

The provisions of paragraphs 2 through 4 shall not apply to any license conferred prior to the implementation of the November 12, 2001 amendment to this Act.

The provisions of Chapter VII do not apply in the following circumstances except for works subject to the management of copyright collective management organizations:

1. Exploitation of digitized karaoke machines or jukeboxes which contain licensed duplication(s) of music works for public performance; or
2. Rebroadcasting works of an original broadcast; or
3. Communicating the sounds or images of an original broadcast to the public with loudspeaker or other equipment; or
4. Communicating the works to the public through public broadcasting or simultaneous public transmission of advertisement, by a broadcaster, within which such works have been reproduced under authorization.

### **Article 38**

(deleted)

### **Article 39**

Where economic rights are the object of a pledge, unless otherwise stipulated at the time the pledge is created, the economic rights holder may exercise the economic rights to the work.

### **Article 40**

In the case of a joint work, each author's share of the ownership of such a work shall be as stipulated by the joint authors; where no

stipulation has been made, ownership shares shall be determined according to the degree of each author's creative contribution. Where the degree of each author's creative contribution is not clear, it shall be presumed that each author owns an equal share.

Where an author of a joint work abandons its share of the ownership of the work, that share shall be apportioned among the other joint authors in proportion to their respective shares.

The provisions of the preceding paragraph shall apply *mutatis mutandis* where the author of a joint work dies with no successor or is extinguished with no receiver.

#### **Article 40bis**

Joint economic rights in a work shall not be exercised except with the consent of all the joint economic rights holders; no economic rights holder shall transfer its share to another person or establish a pledge of its share in favor of a third party without the consent of all other joint economic rights holders. A joint economic rights holder shall not refuse consent without a legitimate reason.

The joint economic rights holders of a work may select a representative from among themselves to exercise their economic rights. Limitations imposed on the representative powers of such representative shall not be effective against a third party acting in good faith.

The second and third paragraphs of the preceding article shall apply *mutatis mutandis* to joint ownership of economic rights.

#### **Article 41**

Where an economic rights holder makes a submission to a newspaper or magazine, or licenses the public broadcast of the work, it shall be presumed, unless otherwise stipulated, that the economic

rights holder has licensed one printing or one public broadcast only, and that said printing or broadcast shall have no effect on other rights belonging to the economic rights holder.

#### **Article 42**

Economic rights are extinguished upon expiration of the term of protection. Economic rights are also extinguished where any of the following circumstances occurs during the term of protection:

- 1.The economic rights holder has died and the economic rights, for that reason, divest by law to the national treasury.
- 2.The economic rights holder is a juristic person that has been extinguished and the economic rights, for that reason, divest by law to a local government.

#### **Article 43**

Except as otherwise provided by this Act, any person may freely exploit a work for which the economic rights have been extinguished.

### **Subsection 4 Limitations on Economic Rights**

#### **Article 44**

Within a reasonable scope, central or local government agencies may reproduce the work of another person if it is considered necessary for internal reference for the purpose of legislation or administration; provided, this shall not apply where such reproduction would prejudice the interests of the economic rights holder due to the type and use of the work and the volume and method of reproduction.

#### **Article 45**

Within a reasonable scope, and for the sole purpose of use

necessary to judicial proceedings, the works of another person may be reproduced.

The proviso of the preceding article shall apply mutatis mutandis to the circumstances set forth in the preceding paragraph.

#### **Article 46**

Within a reasonable scope, and where necessary for the purpose of teaching in schools, all levels of legally established schools and their teachers may reproduce the works of another person which have already been publicly released.

The proviso of Article 44 shall apply mutatis mutandis to the circumstances set forth in the preceding paragraph.

#### **Article 47**

Within a reasonable scope, and for the purpose of preparing pedagogical texts for which review and approval by an education administrative agency is required by act or regulation, or where an education administrative agency prepares pedagogical texts itself, the works of another person that have been publicly released may be reproduced, adapted, or compiled.

The provisions of the preceding paragraph shall apply mutatis mutandis to the preparation of supplementary teaching aids which are ancillary to the aforesaid textbooks and which are exclusively provided to teachers for teaching purposes; provided, this shall be limited to editing by the preparer of such textbooks.

Within a reasonable scope and for the purpose of meeting educational needs, all levels of legally established schools and educational institutions may publicly broadcast the works of another person that have been publicly released.

In the circumstances set forth in the preceding three paragraphs

the exploiter of the work shall notify the economic rights holder and pay compensation for use. The level of compensation shall be set by the competent authority.

### **Article 48**

Libraries, museums, history museums, science museums, art museums, and other cultural institutions open to the public may reproduce works in their collections in any of the following circumstances:

1. Where a patron requests reproduction of a part of a work that has been publicly released, or a single article from a seminar paper or a single article from a periodical that has been publicly released, provided that the copy is for personal research purposes and is limited to one copy per person.
2. Where necessary to preserve materials.
3. Where the works in question are out of print or difficult to purchase, and have been requested by another similar institute.

### **Article 48bis**

Central or local government agencies, educational agencies that have been established by law, or libraries open to the public may reproduce abstracts appended to the following works where such works have been publicly released:

1. Masters theses or doctoral dissertations written under the "Degree Conferral Act," where the author has obtained a degree.
2. Academic papers published in periodicals.
3. Research reports or collections of seminar papers that have been publicly released.

## **Article 49**

When reporting current events by means of broadcasting, photography, film, newspaper, network, or otherwise, works that are seen or heard in the course of the report may be exploited within the scope necessary to the report.

## **Article 50**

Works publicly released in the name of a central or local government agency or a public juristic person may, within a reasonable scope, be reproduced, publicly broadcast, or publicly transmitted.

## **Article 51**

Within a reasonable scope, where for nonprofit use by an individual or a family, a work that has been publicly released may be reproduced by a machine that is either located in a library or is not provided for public use.

## **Article 52**

Within a reasonable scope, works that have been publicly released may be quoted where necessary for reports, comment, teaching, research, or other legitimate purposes.

## **Article 53**

For the purpose of exclusive use by the visually impaired, learning disabled, hearing impaired or other persons with a perceptual disability, works that have been publicly released may be exploited by local or central government agencies, non-profit organizations and all levels of legally established schools, by means of translation, Braille, sound-recording, digital transformation, verbal imagery, accompanying sign language or otherwise.

The preceding paragraph shall be applied mutatis mutandis to the disabled persons or their guardians referred to in the preceding paragraph for personal and nonprofit use by the disabled.

The copies reproduced in accordance with the preceding two paragraphs may be distributed or publicly transmitted among the disabled persons, local or central government agencies, non-profit organizations and all levels of legally established schools as prescribed in the preceding two paragraphs.

#### **Article 54**

Works that have been publicly released may be reproduced for use in examination questions on all kinds of examinations held by central or local government agencies and all levels of schools or educational institutions established in accordance with law; provided, this shall not apply to works that have been publicly released as examination questions.

#### **Article 55**

The work of another person that has been publicly released may be publicly recited, publicly broadcast, publicly presented, or publicly performed in the course of an activity of non-profit nature, provided that no fee is directly or indirectly collected from the viewers or listeners, and no compensation is given to the performers.

#### **Article 56**

For the purposes of public broadcasting, a radio or television broadcasting organization may, with its own equipment, sound record or video record a work; provided, this shall be limited to situations where the public broadcasting has been licensed by the economic rights holder, or situations otherwise comporting with the provisions of this Act.

Except where preservation of the recording referred to in the preceding paragraph has been approved for a designated place by the specialized agency in charge of copyright matters, such sound or video recordings shall be destroyed within six months from the time of recording.

### **Article 56bis**

For the purpose of enhancing receiving effect, a community antenna installed in accordance with law may simultaneously rebroadcast works broadcast by wireless television stations established in accordance with law; the form and content of such broadcasts shall not be changed.

### **Article 57**

The owner of the original legal copy of an artistic work or photographic work, or a person authorized by the owner, may publicly display such original or legal copy of the work.

The public displayer referred to in the preceding paragraph may reproduce the work in a descriptive writing in order to provide viewers with an explanation or introduction.

### **Article 58**

Artistic works or architectural works displayed on a long-term basis on streets, in parks, on outside walls of buildings, or other outdoor locales open to the public, may be exploited by any means except under the following circumstances:

- 1.Reproduction of a building by construction of another building.
- 2.Reproduction of a work of sculpture by production of another sculpture.
- 3.Reproduction for the purpose of long-term public display in

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locales specified in this article.

4.Reproduction of artistic works solely for the purpose of selling copies.

### **Article 59**

The owner of a legal copy of a computer program may alter the program where necessary for utilization on a machine used by such owner, or may reproduce the program as necessary for backup; provided, this is limited to the owner's personal use.

If the owner referred to in the preceding paragraph loses ownership of the original copy for any reason other than the destruction or loss of the copy, all altered and backup copies shall be destroyed unless the economic rights holder grants its consent otherwise.

### **Article 59bis**

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.

### **Article 60**

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.

The proviso of the preceding paragraph shall not apply to copies of computer programs incorporated in products, machinery, or equipment to be legally rented, where such copies do not constitute the essential object of such rental.

### **Article 61**

Commentary on current political, economic, or social events that has appeared in a newspaper, magazine, or network may be republished by other newspapers or magazines, or be publicly broadcast by radio or television, or publicly transmitted on a network; provided, this shall not apply where there is indication that republishing, public broadcast, or public transmission is not authorized.

### **Article 62**

Public speeches on politics or religion, and public statements made in legal proceedings or during proceedings of central or local government agencies, may be exploited by any person; provided, consent of the economic rights holder shall be obtained when compiling a compilation work that is dedicated to the speeches or statements of specified persons.

### **Article 63**

Persons that may exploit the work of another person in accordance with the provisions of Article 44, Article 45, subparagraph one of Article 48, Articles 48bis through 50, Articles 52 through 55, Article 61, and Article 62 may translate such work.

Persons that may exploit the work of another person in accordance with the provisions of Articles 46 and 51 may adapt such work.

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.

### **Article 64**

A person who exploits the work of another person pursuant to

the provisions of Articles 44 through 47, Articles 48bis through 50, Article 52, Article 53, Article 55, Article 57, Article 58, and Articles 60 through 63 shall provide a clear indication of the source of the work.

The "clear indication of the source" referred to in the preceding paragraph shall indicate the name or appellation of the author in a reasonable manner, except where the work is anonymous or the author is not known.

### **Article 65**

Fair use of a work shall not constitute infringement on economic rights in the work.

In determining whether the exploitation of a work complies with the reasonable scope referred to in the provisions of Articles 44 through 63, or other conditions of fair use, all circumstances shall be taken into account, and in particular the following facts shall be noted as the basis for determination:

- 1.The purposes and nature of the exploitation, including whether such exploitation is of a commercial nature or is for nonprofit educational purposes.
- 2.The nature of the work.
- 3.The amount and substantiality of the portion exploited in relation to the work as a whole.
- 4.Effect of the exploitation on the work's current and potential market value.

Where the copyright owner organization and the exploiter organization have formed an agreement on the scope of the fair use of a work, it may be taken as reference in the determination referred to in the preceding paragraph.

In the course of forming an agreement referred to in the preceding paragraph, advice may be sought from the specialized agency in charge of copyright matters.

## **Article 66**

The provisions of Articles 44 through 63 and Article 65 shall not affect the author's moral rights.

## **Subsection 5 Compulsory Licensing**

### **Article 67**

(deleted)

### **Article 68**

(deleted)

### **Article 69**

Where a sound recording of a musical work recorded for sale has been published for six months, a person who wishes to exploit the aforementioned musical work to record and produce other sound recordings for sale may apply to the specialized agency in charge of copyright matters for a compulsory license, and after paying compensation, may exploit such musical work and record and produce other sound recordings.

Regulations governing the compulsory license for a musical work referred to in the preceding paragraph, the method for calculating the compensation for exploitation, and other requisite matters shall be prescribed by the competent authority.

### **Article 70**

Copies of sound recordings which exploit musical works pursuant to the provisions of the preceding article shall not be sold outside of the territory under the jurisdiction of the Republic of China.

**Article 71**

The specialized agency in charge of copyright matters shall void approval for a compulsory license obtained in accordance with the provisions of Article 69 if the application is found to contain misrepresentations.

The specialized agency shall void approval for a compulsory license obtained in accordance with the provisions of Article 69 if the work is not exploited in the manner approved by the specialized agency.

**Article 72**

(deleted)

**Article 73**

(deleted)

**Article 74**

(deleted)

**Article 75**

(deleted)

**Article 76**

(deleted)

**Article 77**

(deleted)

**Article 78**

(deleted)

**Chapter IV Plate Rights**

**Article 79**

For a literary or artistic work that has no economic rights or for which the economic rights have been extinguished, a plate maker who arranges and prints the said literary work, or in the case of an artistic work, a plate maker who photocopies, prints, or uses a similar method of reproduction and first publishes such reproduction based on such original artistic work, and duly records it in accordance with this Act, shall have the exclusive right to photocopy, print, or use similar methods of reproduction based on the plate.

The rights of the plate maker shall subsist for ten years from the time the plate is completed.

The last day of the term of protection referred to in the preceding paragraph shall be the last day of the last year of such term.

Assignment or placement in trust of plate rights shall not be effective against third parties unless it has been recorded.

The regulations governing recordation of plate rights, recordation of assignment, recordation of trust, and other requisite matters shall be prescribed by the competent authority.

## **Article 80**

The provisions of Article 42 and Article 43 concerning the extinguishment of economic rights, and the provisions of Articles 44 through 48, Article 49, Article 51, Article 52, Article 54, Article 64, and Article 65 concerning limitations on economic rights, shall apply *mutatis mutandis* to plate rights.

## **Chapter IVbis Electronic Rights Management Information and Technological Protection Measures**

### **Article 80bis**

Electronic rights management information made by a copyright owner shall not be removed or altered; provided, this shall not apply

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in any of the following circumstances:

1. Where removal or alteration of electronic rights management information of the work is unavoidable in the lawful exploitation of the work given technological limitations at the time of the act.
2. Where the removal or alteration is technically necessary to conversion of a recording or transmission system.

Whoever knows that electronic rights management information of a work has been unlawfully removed or altered shall not distribute or, with intent to distribute, 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].

### **Article 80ter**

Technological protection measures employed by copyright owners to prohibit or restrict others from accessing works shall not, without legal authorization, be disarmed, destroyed, or by any other means circumvented.

Any equipment, device, component, technology or information for disarming, destroying, or circumventing technological protection measures shall not, without legal authorization, be manufactured, imported, offered to the public for use, or offered in services to the public.

The provisions of the preceding two paragraphs shall not apply in the following circumstances:

1. Where to preserve national security.
2. Where done by central or local government agencies.
3. Where done by file archive institutions, educational institutions, or public libraries to assess whether to obtain the information.

4. Where to protect minors.
5. Where to protect personal data.
6. Where to perform security testing of computers or networks.
7. Where to conduct encryption research.
8. Where to conduct reverse engineering.
9. Where to exploit works of others in accordance with the provisions of Articles 44 through 63 and Article 65.
10. Under other circumstances specified by the competent authority.

The content in the subparagraphs of the preceding paragraph shall be prescribed and periodically reviewed by the competent authority.

## **Chapter V Copyright Collective Management Organizations and Copyright Review and Mediation Committees**

### **Article 81**

Economic rights holders may, with the approval of the specialized agency in charge of copyright matters, establish copyright collective management organizations for the purpose of exercising rights or for collecting and distributing compensation for use.

Exclusive licensees may also join copyright collective management organizations.

The approval for establishment and the organization and capacities of the organizations referred to in paragraph 1, as well as the supervision and guidance thereof, shall be otherwise provided for by act.

### **Article 82**

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The specialized agency in charge of copyright matters shall establish a Copyright Review and Mediation Committee to handle the following matters:

- 1.Examination of rates of compensation for use under the provisions of paragraph 4 of Article 47.
- 2.Mediation of disputes between copyright collective management organizations and users concerning compensation for use.
- 3.Mediation of disputes concerning copyright or plate rights.
- 4.Other consultation in connection with copyright examination and mediation.

Dispute mediation referred to in subparagraph 3 of the preceding paragraph, when involving criminal matters, shall be limited to cases actionable only upon complaint.

### **Article 82bis**

Within seven days of the date of the conclusion of a mediation settlement, the specialized agency in charge of copyright matters shall submit the written mediation settlement statement for review by the court of jurisdiction.

The court shall review the written mediation settlement statement referred to in the preceding paragraph with due dispatch. Unless it is contrary to act or regulation, public order, or good morals, or compulsory execution would be impossible, the judge shall sign [copies] thereof and affix the seal of the court thereto, and shall return the mediation settlement statement to the specialized agency in charge of copyright matters for service to the parties, retaining one copy for its own records.

Where the court decides not to ratify a mediation settlement statement, it shall notify the specialized agency in charge of

copyright matters of the reasons.

### **Article 82ter**

After a mediation settlement has been ratified by a court, the parties shall not initiate any further public or private prosecution or action with respect to the mediated matter.

A civil mediation settlement ratified by a court as referred to in the preceding paragraph shall have the same force as a final and unappealable court judgment in a civil case. With respect to a criminal mediation settlement that has been ratified by a court, where the subject matter is payment of a certain amount of money, or other substitute therefore, or securities, the written mediation settlement statement shall constitute a writ of execution.

### **Article 82quater**

Where a civil mediation settlement has been concluded, and then ratified by a court while the civil action is under litigation, and where no final and unappealable court judgment has yet been obtained, the civil action shall be deemed withdrawn as of the date of the conclusion of the mediation settlement.

Where a criminal mediation settlement has been concluded, and then ratified by a court while the criminal case is in the investigation stage or before the conclusion of arguments in the trial of first instance, and where the parties have agreed to withdraw the case, the complaint or private prosecution shall be deemed withdrawn as of the date of the conclusion of the mediation settlement.

### **Article 82quinquies**

Should there exist any ground for invalidation or avoidance of a civil mediation settlement after ratification by a court, the parties may file an action with the original ratifying court to invalidate or void the

mediation settlement.

The action referred to in the preceding paragraph shall be initiated by the parties within 30 days of service of the written mediation settlement statement ratified by the court.

### **Article 83**

The organic charter for the Copyright Examination and Mediation Committee referred to in Article 82, and the regulations concerning dispute mediation, shall be drafted by the competent authority and promulgated after review and approval by the Executive Yuan.

## **Chapter VI Remedies for Infringement of Rights**

### **Article 84**

The copyright holder or the plate rights holder may demand removal of infringement of its rights. Where there is likelihood of infringement, a demand may be made to prevent such infringement.

### **Article 85**

A person who infringes on the moral rights of an author shall be liable for damages. In the event of non-pecuniary injury, the injured party may claim a commensurate amount of compensation.

In infringement matters referred to in the preceding paragraph the injured party may demand indication of the author's name or appellation, correction of content, or adoption other appropriate measures necessary for the restoration of its reputation.

### **Article 86**

After the death of the author, unless otherwise specified by a

will, the following persons, in the order indicated, shall be entitled to request remedies in accordance with Article 84 and the second paragraph of the preceding article for actual or likely violations of Article 18:

- 1.Spouses
- 2.Children
- 3.Parents
- 4.Grandchildren
- 5.Brothers and sisters
- 6.Grandparents

### **Article 87**

Any of the following circumstances, except as otherwise provided under this Act, shall be deemed an infringement of copyright or plate rights:

- 1.To exploit a work by means of infringing on the reputation of the author.
- 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.
- 3.Import of any copies reproduced without the authorization of the economic rights holder or the plate rights holder.
- 4.Import of the original or any copies of a work legally reproduced abroad without the authorization of the economic rights holder.
- 5.Exploitation for business purposes of a copy of a computer program that infringes on economic rights in such computer program.

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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.
7. To provide to the public computer programs or other technology that can be used to publicly transmit or reproduce works, with the intent to allow the public to infringe economic rights by means of public transmission or reproduction by means of the Internet of the works of another, without the consent of or a license from the economic rights holder, and to receive benefit therefrom.
8. Knowing that the works broadcast or transmitted publicly by another person infringe economic rights, with the intent to provide the public to access such works by the Internet, acting as follows, and to receive benefit therefrom:
  - (1) To provide the public with computer programs which have aggregated the Internet Protocol Addresses of such works.
  - (2) To direct, assist or preset paths to the public for using computer programs in the preceding item.
  - (3) To manufacture, import or sell equipment or devices preloaded with the computer programs of the first item.

A person who undertakes the actions set out in subparagraphs 7 or 8 above shall be deemed to have "intent" pursuant to that subparagraph when the advertising or other active measures employed by the person instigates, solicits, incites, or persuades the public to use.

### **Article 87bis**

The provisions of subparagraph 4 of the preceding article do not apply under any of the following circumstances:

1. Where the original or copies of a work are imported for the use of central or local government agencies; provided, this does not apply to import for use in schools or other educational institutions, or to the import of any audiovisual work for purposes other than archival use.
2. Where the original or a specified number of copies of any audiovisual works are imported in order to supply such works to nonprofit scholarly, educational, or religious organizations for archival purposes, or where an original or specified number of copies of works other than audiovisual works are imported for library lending or archival purposes, provided that such copies are used in compliance with the provisions of Article 48.
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.
4. For the purpose of exclusive use by the visually impaired, learning disabled, hearing impaired or other persons with a perceptual disability, local or central government agencies, non-profit organizations and all levels of legally established schools may import copies reproduced by means of translation, Braille, sound-recording, digital transformation, verbal imagery, accompanying sign language or otherwise, provided that such copies are used in compliance with the provisions of Articles 53.
5. Where the original or copies of a work incorporated into any legally imported goods, machinery, or equipment are imported in conjunction with the import of such items. Such original or copies of the work shall not be reproduced during the use or operation of the goods, machinery or equipment.

6. Where a user's manual or operating manual accompanying any legally imported goods, machinery, or equipment is imported; provided, this does not apply where the user's manual or operating manual are the principal objects of the importation.

The "specified number" set forth in subparagraphs 2 and 3 of the preceding paragraph shall be prescribed by the competent authority.

### **Article 88**

A person who unlawfully infringes on another person's economic rights or plate rights out of intention or negligence shall be liable for damages. Where multiple persons engage in unlawful infringement, they shall bear joint and several liability for damages.

With regard to the damages referred to in the preceding paragraph, the injured party may make claim in any of the following manners:

1. In accordance with the provisions of Article 216 of the Civil Code; provided, when the injured party is unable to prove damages, it may base the damages on the difference between the amount of expected benefit from the exercise of such rights under normal circumstances and the amount of benefit from the exercise of the same rights after the infringement.
2. Based on the amount of benefit obtained by the infringer on account of the infringing activity; provided, where the infringer is unable to establish costs or necessary expenses [of the infringing act or articles], the total revenue derived from the infringement shall be deemed to be its benefit.

If it is difficult for the injured party to prove actual damages in accordance with the provisions of the preceding paragraph, it may request that the court, based on the seriousness of the matter, set compensation at an amount of not less than ten thousand and not

more than one million New Taiwan Dollars. If the damaging activity was intentional and the matter serious, the compensation may be increased to five million New Taiwan Dollars.

### **Article 88bis**

Where claim is made pursuant to Article 84 or paragraph 1 of the preceding Article, the injured party may request the destruction or other necessary disposition of goods produced as a result of the infringing act, or of articles used predominantly for the commission of infringing acts.

### **Article 89**

The injured party may demand that the infringer, at its own expense, publish in a newspaper or magazine all or part of a judgment concerning said infringement.

### **Article 89bis**

The right to claim damages as specified in Articles 85 and 88 shall be extinguished if not exercised within two years from the time the person having the right to make claim learns of its right to claim damages and knows the identity of the obligor, or within ten years of the occurrence of the infringement.

### **Article 90**

Each holder of copyrights in a joint work may, pursuant to the provisions of this chapter, separately demand remedies from the infringer, and may also claim damages based on its share of copyright ownership.

The provisions of the preceding paragraph shall apply *mutatis mutandis* to joint holders of economic rights and plate rights that arise out of other relationships.

## **Article 90bis**

A copyright holder or plate rights holder may apply to the customs authorities to suspend the release of import or export goods that infringe on their copyright or plate rights.

The application referred to in the preceding paragraph shall be filed in writing, shall state the facts of the infringement, and shall include a bond in an amount equivalent to the import customs value or the export FOB value of the goods, as assessed by customs, to serve as a security to offset the loss suffered by the party whose goods are subject to attachment.

Customs shall immediately inform the applicant when processing an application to suspend the release of goods. Where Customs determines that the conditions in the preceding paragraph have been met and issues an attachment order, it shall give written notification to the applicant and to the party whose goods are attached.

The applicant or the party whose goods are attached may apply to the customs authorities for permission to inspect the attached goods.

Attached goods shall be confiscated by the customs authorities where the applicant has obtained a final and unappealable civil judgment determining that the goods infringe on copyright or plate rights. The owner of the attached goods shall be held liable for such costs as container demurrage, warehousing, loading, unloading, as well as for expenses connected with destruction of the goods.

If the expenses connected with destruction of the goods referred to in the preceding paragraph are not paid within the period prescribed by customs authorities, the claim shall be enforced through compulsory execution.

In any of the following circumstances, an attachment order shall be rescinded by the customs authorities and the attached goods shall be processed in accordance with applicable import and export regulations; in addition, the applicant shall compensate the party whose goods were attached for damage incurred on account of the attachment:

1. The attached goods have been determined to be non-infringing of copyright or patent rights by a final and unappealable court judgment.
2. Within twelve days of the date on which the applicant is informed of the attachment, the customs authorities have not received notification from the applicant indicating that it has initiated litigation proceedings alleging that the attached goods are in infringement.
3. The applicant applies to rescind the attachment.

The period referred to in subparagraph 2 of the preceding paragraph may be extended by another twelve days if customs authorities deem it necessary.

Customs authorities shall return the bond upon the applicant's request in any of the following circumstances:

1. There is no need to continue posting the bond either because the applicant has obtained a final and unappealable judgment in its favor or because the applicant has reached a settlement with the party whose goods were attached.
2. The attachment order has been rescinded and the applicant can prove that at least the required twenty days have elapsed since the applicant notified the party whose goods are subject to the suspension of release to exercise its rights and such party has failed to exercise its rights.

3.The party whose goods were attached agrees to the return.

A person whose goods have been attached shall have the same rights as a pledgee with respect to the bond referred to in the second paragraph of this article.

When the customs authorities, in the course of executing their duties, discover import/export goods that in appearance are obviously suspect of copyright infringement, they may within one business day notify the rights holder and notify the importer/exporter to produce authorization materials. After receiving notice, the rights holder shall proceed to customs within four hours for air export goods and within one business day for air import goods and sea import/export goods to assist with verification. Where the rights holder is unknown or cannot be notified, or the rights holder fails to proceed to customs within the time limit as notified to assist with verification, or the rights holder determines that the goods in question are not infringing, and if there is no violation of other customs clearance regulations, customs shall release the goods forthwith.

Where the goods are determined to be suspected infringing goods, customs shall take measures to suspend the release of the goods.

If within three business days after customs has taken measures to suspend the release of the goods the rights holder has not applied to customs for attachment under paragraphs 1 to 10, or has not initiated civil or criminal litigation procedure to protect the rights, and if there is no violation of other customs clearance regulations, customs shall release the goods forthwith.

### **Article 90ter**

The implementing regulations for the preceding article shall be prescribed by the competent authority in consultations with the Ministry of Finance.

## **Article 90quater**

Whoever violates any provision of Article 80bis or Article 80ter, thereby causing damage to the copyright owner, shall be liable for damages. If there are multiple violators, they shall bear joint and several liability for damages.

The provisions of Article 84, Article 88bis, Article 89bis, and Article 90bis shall apply mutatis mutandis to violations of Article 80bis or Article 80ter.

## **Chapter VI-1 Limitations on Liability for Internet Service Providers**

### **Article 90quinquies**

An Internet service provider shall be entitled to the application of Article 90sexies to Article 90novies regarding the limitation on liability only if the service provider—

1. by contract, electronic transmission, automatic detective system or other means, informs users of its copyright or plate right protection policy, and takes concrete action to implement it; and
2. by contract, electronic transmission, automatic detective system or other means, informs users that in the event of repeat alleged infringements up to three times the service provider shall terminate the service in whole or in part; and
3. publicly announces information regarding its contact window for receipt of notification documents.
4. accommodate and implement the technical measure described in paragraph 3.

A connection service provider that, after receiving notification by a copyright holder or plate rights holder of alleged infringement

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by a user, has forwarded the notification to that particular user by electronic mail is deemed to have met the requirement in the preceding paragraph, subparagraph 1.

If a copyright holder or plate rights holder has provided technical measures which have been developed based on a broad consensus and are used to identify or protect copyrighted or plate-righted works, the Internet service provider shall accommodate and implement the measures if the technical measures has been ratified by the competent authority.

### **Article 90sexies**

A connection service provider shall not be liable for damages for infringement of the copyright or plate rights of another by a user of its service if—

1. the transmission of the information was initiated by or at the request of the user; and
2. the transmission, routing, provision of connections, or storage is carried out through an automatic technical process, without any selection of the material or modification of its content by the connection service provider.

### **Article 90septies**

A caching service provider shall not be liable for damages for infringement of the copyright or plate rights of another by a user of its service if—

- 1.the service provider does not make any modification to the cached information ;
- 2.when the person who made the original information available subsequently update, deletes, or blocks access to it, the cached information is done in the same way as a result of an automatic

technical process; and

- 3.the service provider responds expeditiously to remove, or disable access to, the allegedly infringing content or related information upon notification by a copyright holder or plate rights holder of the alleged infringement by the user of the service provider.

### **Article 90octies**

An information storage service provider shall not be liable for damages for infringement of the copyright or plate rights of another by a user of its service if the service provider—

- 1.does not have knowledge of the allegedly infringing activity of the user;
- 2.does not receive a financial benefit directly attributable to the infringing activity of the user; and
- 3.responds expeditiously to remove, or disable access to, the allegedly infringing content or related information upon notification by a copyright holder or plate rights holder of the alleged infringement by the user of the service provider.

### **Article 90novies**

A search service provider shall not be liable for damages for infringement of the copyright or plate rights of another by a user of its service if the service provider—

- 1.does not have knowledge that the searched or linked information may be infringing;
- 2.does not receive a financial benefit directly attributable to the infringing activity of the user; and
- 3.responds expeditiously to remove, or disable access to, the

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allegedly infringing content or related information upon notification by a copyright holder or plate rights holder of the alleged infringement by the user of the service provider.

### **Article 90decies**

An information storage service provider shall forward notice to the allegedly infringing user of any measures taken under Article 90octies, subparagraph 3, by the contact method stipulated between the service provider and the user or by the contact information left by the user. However, this requirement shall not apply if the nature of the service provided makes such notice impossible.

If a user referred to in the preceding paragraph believes that the materials were not involved in infringement, the user may submit counter notification documents to the information storage service provider with a request to restore the removed content or related information or restore the access to it.

Upon receipt of a counter notification described in the preceding paragraph, an information storage service provider shall expeditiously forward such documents to the copyright holder or plate rights holder.

If, within 10 business days since one day after the date of receiving counter notification from the information storage service provider as described in the preceding paragraph, the copyright holder or plate rights holder provides the information storage service provider with evidence regarding filing civil or criminal litigation against the user, the information storage service provider shall not bear any obligation to restore the content or related information.

If the copyright holder or plate rights holder fails to provide evidence on filing litigation in accordance with the preceding paragraph, the information storage service provider shall, within no more than 14 business days since one day after the date of forwarding

the counter-notification documents, restore the removed content or related information or restore the access to it. However, if restoration is impossible, the service provider shall notify the user in advance, or provide another appropriate method by which the user may restore it.

### **Article 90undecies**

An Internet service provider shall not be liable for damages to the allegedly infringing user if the service provider—

1. removes, or disables access to, the allegedly infringing content or related information in accordance with Articles 90septies to 90novies; or
2. upon obtaining knowledge of suspected infringement by the user, acts in good faith belief to remove, or disable access to, the allegedly infringing content or related information.

### **Article 90duodecies**

A person who misrepresents an Internet service provider with a notification or counter notification out of intention or negligence shall be liable for damages for any injury incurred on the user, copyright holder, plate right holder or Internet Service Provider.

### **Article 90terdecies**

The information in connection with the public announcement of the contact window under Article 90quinquies, and the content of the notification and counter notification, required particulars, supplementation or correction, and other requisite matters under Articles 90septies through 90decies shall be prescribe by the competent authority.

## **Chapter VII Penal Provisions**

### **Article 91**

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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.

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.

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.

A work only for personal reference or fair use of a work does not constitute infringement of copyright.

### **Article 91bis**

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 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.

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.

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.

### **Article 92**

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.

### **Article 93**

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:

1. Infringement of the author's moral rights as set forth in the provisions of articles 15 through 17.
2. Violations of the provisions of Article 70.
3. Infringement of another person's copyright by any of the means specified in paragraph 1, 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 91bis.

4. Violations of subparagraphs 7 or 8 of paragraph 1 of Article 87.

#### **Article 94**

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#### **Article 95**

A person who violates any provision of Article 112 shall be punished by imprisonment for not more than one year, detention, or, in lieu thereof or in addition thereto, a fine of not less than twenty thousand and not more than two hundred and fifty thousand New Taiwan Dollars.

#### **Article 96**

A fine of up to fifty thousand New Taiwan Dollars shall be imposed for violations of the provisions of the second paragraph of Article 59 or the provisions of Article 64.

#### **Article 96bis**

In any of the following circumstances a sentence of up to one year imprisonment or detention shall be imposed, or in lieu thereof or in addition thereto, a fine of not less than twenty thousand and not more than two hundred and fifty thousand New Taiwan Dollars:

1. Violation of Article 80bis.
2. Violation of paragraph 2 of Article 80ter.

#### **Article 96ter**

If a fine is to be imposed pursuant to the provisions of this Chapter, the financial ability of the offender and the benefit he/she has obtained through commission of the offense shall be taken into account. If the benefit obtained exceeds the maximum fine, such fine

may be increased within the limit of the obtained benefit.

## **Article 97**

(deleted)

### **Article 97-1**

When an enterprise, by means of public transmission, violates the provisions of Article 91, Article 92, or Article 93, subparagraph 4 and is convicted by a court, it shall immediately cease such activities. If the enterprise does not cease those activities, then following the convening by the competent authority of a group of specialists, academicians, and related enterprises who determine that the enterprise's activities constitute a serious infringement and that they materially affect the rights and interests of the economic rights holder, the competent authority shall prescribe a period of one month within which the enterprise shall take corrective action; where the enterprise fails to take corrective action within that period, the competent authority may order suspension or compulsory termination of the enterprise's business.

## **Article 98**

In an offense set forth in paragraph 3 of Article 91 or paragraph 3 of Article 91bis, an article used in the commission of the offense, or in preparation for the commission of the offense, or an article derived from the commission of the offense, may be confiscated, regardless of whether it belongs to the offender.

## **Article 98bis**

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 91bis, may be confiscated by the judiciary police if the offender escapes and is therefore unidentifiable.

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.

### **Article 99**

Upon motion by the injured party or another party having the right to file a complaint, an infringer as set out in Articles 91 through Articles 93, Article 95 may be ordered to publish all or part of the court judgment in a newspaper and bear the costs thereof.

### **Article 100**

The offenses specified in this chapter are actionable only upon complaint; provided, this shall not apply to offenses specified in paragraph 3 of Article 91 and paragraph 3 of Article 91bis.

### **Article 101**

Where the representative of a juristic person, or the agent, employee, or other servant of a juristic or natural person commits any of the offenses specified in Articles 91 through Article 93, Article 95 through 96bis in the performance of its duties, in addition to punishing the infringer in accordance with the aforesaid articles, such juristic or natural person shall also be fined in accordance with said articles.

In circumstances specified in the preceding paragraph, where a complaint against the infringer or the juristic or natural person is filed or withdrawn, the effect of such filing or withdrawal shall apply to the others.

### **Article 102**

An unrecognized foreign juristic person may file a complaint or bring a private prosecution against the offenses specified in Articles 91 through Article 93, Article 95 through 96bis.

### **Article 103**

Upon complaint or information of an infringement of a person's copyright or plate rights, judicial police officials or judicial police may seize the infringing articles in accordance with law and refer the matter for investigation.

### **Article 104**

(deleted)

## **Chapter VIII Supplementary Provisions**

### **Article 105**

Persons who apply under this Act for a compulsory license, recordation of plate rights, recordation of assignment of plate rights, recordation of trust of plate rights, dispute mediation, inspection of the register of plate rights, or issuance of a transcript thereof, shall pay a filing fee.

The amount of the fee referred to in the preceding paragraph shall be prescribed by the competent authority.

### **Article 106**

Except as otherwise provided for in this Chapter, this Act shall apply to works that were completed prior to the implementation date of the June 10, 1992 amendment to this Act where such works comply with any one of the provisions of Articles 106 through 109 of the Act prior to the January 21, 1998 Copyright Act taking effect.

This Act shall apply to works that were completed after the implementation date of the June 10, 1992 amendment to this Act.

### **Article 106bis**

Except as otherwise provided under in this Chapter, this Act shall apply to works that were completed prior to the date on which the World Trade Organization Agreement took effect in the territory under the jurisdiction of the Republic of China where such works did not enjoy copyright under the provisions of the respective versions of this Act but where the term of protection for economic rights has not expired in accordance with this Act; provided, this shall not apply to works of foreign nationals for which the term of protection has expired in their country of origin.

The term "country of origin" as used in the proviso of the preceding paragraph shall have the meaning ascribed to the term in Article 5 of the Berne Convention for the Protection of Literary and Artistic Works (Paris Act 1971).

### **Article 106ter**

Except as otherwise provided for in this Chapter, a person who began the exploitation of works protected pursuant to the provisions of the preceding article prior to the date on which the World Trade Organization Agreement took effect in the territory under the jurisdiction of the Republic of China, or who made significant investment toward the purpose of such exploitation, may continue to exploit such works during the two-year period which commences on the aforementioned effective date of said Agreement, and the provisions of Chapter VI and Chapter VII of this Act shall not apply.

From the implementation of the June 6, 2003 amendment to this Act, the person exploiting a work pursuant to the preceding paragraph, except in circumstances of rental or lending, shall pay to the economic rights holder of the exploited work a reasonable compensation for the exploitation such as would normally be paid for such work through free negotiation.

From one year after the date of promulgation of the amendment to this Act, an exploiter shall not further sell unauthorized copies of works protected under the preceding article; provided, it may still rent or lend them.

The preceding paragraph does not apply to copies of works that are separately created through exploitation of works protected under the preceding article; provided that, except as set forth in Articles 44 to 65, the economic rights holder of the exploited work shall be paid a reasonable compensation for the exploitation such as would normally be paid for such work through free negotiation.

### **Article 106quater**

Exploitation of a derivative work may continue beyond the date on which the World Trade Organization Agreement took effect in the territory under the jurisdiction of the Republic of China, where the preexisting work upon which such derivative work is derived is a work under Article 106bis, where the completion of the derivative work occurred prior to the aforementioned effective date, and where such derivative work was protected under respective versions of this act; the provisions of Chapter VI and Chapter VII of this Act shall not apply.

From the implementation of the June 6, 2003 amendment to this Act, the person exploiting the derivative work pursuant to the preceding paragraph shall pay to the economic rights holder of the underlying work a reasonable compensation such as would normally be paid for such work through free negotiation.

The provisions of the preceding two paragraphs shall not affect the protection of the derivative work.

### **Article 107**

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**Article 108**

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**Article 109**

(deleted)

**Article 110**

The provisions of Article 13 shall not apply to works completed and registered prior to the implementation date of the June 10, 1992 amendment to this Act.

**Article 111**

The provisions of Article 11 and Article 12 shall not apply in the following situations:

- 1.The copyright was obtained pursuant to the provisions of Article 10 or 11 of this Act prior to the implementation date of the June 10, 1992 amendment to this Act.
- 2.The copyright was obtained pursuant to Article 11 or 12 of this Act prior to the January 21, 1998 Copyright Act taking effect.

**Article 112**

Where the works of foreign nationals enjoyed protection of translation rights pursuant to this Act prior to the implementation date of the June 10, 1992 amendment hereto, translations of such works made prior to said implementation date shall no longer be reproduced after said implementation date without the consent of the holder of the copyright to such works, unless such exploitation is in conformity with Articles 44 through Article 65 of this Act.

Copies of translations of works referred to in the preceding paragraph shall no longer be sold after the expiration of the two-year period following the implementation date of the June 10, 1992

amendment to this Act.

### **Article 113**

This Act shall apply to plate rights that were obtained prior to the implementation date of the June 6, 2003 amendment to this Act; provided, the term of protection calculated pursuant to this Act has not expired.

### **Article 114**

(deleted)

### **Article 115**

Agreements for reciprocal copyright protection signed by organizations and agencies of this country and those of a foreign country shall, upon ratification by the Executive Yuan, be deemed "agreements" as that term is used in Article 4.

### **Article 115bis**

The plate rights register or recordation log, and samples submitted, shall be made available to the public for inspection and copying.

Any copyright register or recordation log that has been registered and recorded prior to the implementation date of the January 21, 1998 amendment to this Act, and any sample thereof that has been submitted, may be made available to the public for inspection and copying.

### **Article 115ter**

For the purpose of handling copyright litigation, courts may establish a specialized court or appoint specialized judges.

The courts shall deliver to the specialized agency in charge of

copyright matters a copy of decisions in copyright litigation cases.

**Article 116**

(deleted)

**Article 117**

This Act shall take effect from the date of promulgation, provided that the provisions of Articles 106bis through 106quater amended and promulgated on January 21, 1998 took effect from the date upon which the World Trade Organization Agreement took effect in the territory under the jurisdiction of the Republic of China, and the provisions amended on May 5, 2006 took effect from July 1, 2006.

# **AGREEMENT FOR THE PROTECTION OF COPYRIGHT BETWEEN THE COORDINATION COUNCIL FOR NORTH AMERICAN AFFAIRS AND THE AMERICAN INSTITUTE IN TAIWAN**

Approved by the Legislative Yuan on April 22, 1993. Signed and effectuated on July 16, 1993. Reconfirmed by Executive Yuan on August 11, 1993. Document No.: Foreign Affairs 28908.

The Coordination Council for North American Affairs (CCNAA), and the American Institute in Taiwan (AIT), in order to promote extensive, close and friendly commercial, cultural, and other relations and desiring to facilitate the expansion of commerce on a non-discriminatory basis, have established this Agreement to enhance the rights of authors and other copyright owners without impairing any protection in their works enjoyed by virtue of any prior agreements or other arrangements.

## **Article 1**

- (1)The AIT and the CCNAA, as Parties to this Agreement, undertake to provide for and to maintain in the domestic legislation of their respective authorities and under this Agreement the adequate and effective rights of authors and other copyright proprietors in their literary and artistic works.
- (2)"Territory" shall describe the area under the jurisdiction of the authority of either Party to this Agreement as the context may require.
- (3)A "protected person" shall mean:
  - (a)An individual or juridical person who under the laws of

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either territory would be considered a citizen or national of that territory, and

- (b) An individual or juridical person who first publishes his or her works in the territory.
- (4) In the territories represented by the Parties, each of the following also shall be deemed a "protected person" upon the fulfillment of the conditions set out in the proviso following paragraph (b) below:
  - (a) A person or entity identified in paragraph (3) (a) above; and
  - (b) A juridical entity wherever located which is directly, or indirectly controlled by, or where a majority of the shares or other proprietary interest is owned by, a person or entity identified in paragraph (3) (a) above.

A person or entity designated in paragraph (4) shall be considered a protected person to the extent that he owns, by way of any written agreement signed by the parties thereto, exclusive right(s) in a literary or artistic work in the territories represented by the Parties provided that:

- (a) The ownership of such right(s) was acquired by way of any written agreement signed by the parties thereto, within one year following the first publication of the work in a country that is party to a multilateral copyright convention to which the territory represented by either Party belongs; and
- (b) The work has been made available to the public in the territory represented by either Party.

For the purposes of paragraph (4) indirect control means control exercised through subsidiaries or affiliates wherever

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located.

- (5) Full copyright protection will be provided in the territory represented by AIT to protected persons of the territory represented by CCNAA for such exclusive rights in literary and artistic works upon the condition that such works are first published in a territory that is party to an international copyright convention to which the territory represented by AIT adheres.
- (6) Authors and other copyright owners who have their habitual residence in one of the territories represented by either Party to this Agreement shall, for the purposes of this Agreement, be assimilated to protected persons of that territory.
- (7) Notwithstanding the provisions of paragraphs (3) (b) and (6) above, if a territory not a Party to this Agreement does not protect works of protected persons of the territory represented by CCNAA first published in the non-party's territory, protection accorded to the works of such citizens, nationals, or juridical entities of that non-Party territory shall be restricted by the authorities of the territory represented by CCNAA in a corresponding manner.

## **Article 2**

- (1) The expression "literary and artistic works" shall include every original production in the literary, scientific, and artistic domain, whatever may be the mode or form of its expression, including books, pamphlets, computer programs and other writings; lectures, addresses, sermons and other oral works; dramatic or dramatico-musical works; choreographic works; musical works with or without words; sound recordings; motion pictures fixed in any form including videotape; pictorial works; artistic works; photographic works; maps;

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scientific-technological or engineering design drawings; translations; compilations; and other works. The categories of such works shall be determined by the applicable laws of each territory.

- (2) Whether all or specific categories of literary and artistic works must be fixed in some material form in order to be protected will be determined according to the laws of each territory.
- (3) Without prejudice to the copyright in the original work, and except as otherwise provided in this Agreement, translations, adaptations, arrangements of musical works and other alterations of a literary or artistic work shall be independently protected in accordance with this Agreement and the laws of each territory.
- (4) It shall be a matter for the legislation in each territory to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.
- (5) Collections of literary or artistic works or compilations of other preexisting materials which, by reason of the selection and arrangement of their contents, constitute intellectual creations such as directories, encyclopedias, and anthologies, regardless of their means of fixation and reproduction whether in print or analogous form or in electronic media, shall be independently protected; however such protection shall not affect the copyright, if any, in any works forming part of such collections or compilations.
- (6) The works mentioned in this Article shall enjoy copyright protection in each territory represented by a Party to this Agreement. This protection shall operate for the benefit of the

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author and his or her successors in title.

### **Article 3**

- (1)The protection of this Agreement shall apply to works created by protected persons of one of the territories represented by a Party to this Agreement, for their works, whether published or not.
- (2)The expression "published works" means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. Provided further that, the performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary and artistic works and the exhibition of a work of art shall not constitute publication.
- (3)A work shall be considered as having been first published in the territory represented by a Party to this Agreement if it has been published there within thirty days of its first publication anywhere else.

### **Article 4**

- (1)In respect of literary and artistic works for which they are protected persons under this Agreement, authors and other copyright owners shall enjoy in the territory represented by either of the Parties to this Agreement, the rights which their respective laws do now or may hereafter grant to their protected persons consistent with the terms of this Agreement and in accordance with their respective laws.

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- (2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the territory of origin of the work. The extent of protection and the means of redress afforded to such protected persons hereunder to protect their rights shall be consistent with the terms of this Agreement and governed by the laws of the territory where protection is claimed.
- (3) Upon compliance with procedural measures, if any, not precluded by (2) above, and concerned with enforcement of the rights embodied in this Agreement in each territory, the author or copyright owner and his or her assignees and exclusive licensees shall be entitled to institute in that territory infringement proceedings and to secure effective criminal or customs enforcement of the rights embodied in this Agreement and in accordance with the laws of the territories represented by the Parties to this Agreement.
- (4) Such procedural measures, if imposed, shall:
  - (a) be applied equally to all protected persons; and
  - (b) be implemented by regulations and instructions published so as to be readily available to applicants.
- (5) The territories represented by the Parties to this Agreement shall afford to the works of a protected person, in a suit brought to enforce the rights provided in the domestic law of either territory, a presumption that if the name of such person or the date or place of publication appears on copies of the work, such person is the author or copyright owner, as the case may be, and such date or place represents the facts with respect thereto until the contrary is proved.

## **Article 5**

- (1)The term of protection shall be no less than the life of the author and fifty years after his or her death.
- (2)In the case of works not authored by a natural person, the term of protection shall expire no less than fifty years after the date of creation or first publication of the work, whichever expires first.
- (3)If, however, on the date on which this Agreement comes into effect,the legislation of the territory represented by a Party to this Agreement has established periods of protection for certain categories of works as from the day of creation or the day of first publication, they may maintain this exception and apply it to works created after the Agreement comes into effect. The period of protection for such categories of works may not be less than fifty years after the day of completion.
- (4)In the case of a work of joint authorship, the term shall be measured from the death of the surviving author.

## **Article 6**

Authors of literary and artistic works protected under this Agreement shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works except as otherwise provided in this Agreement and the Appendix which is an integral part of this Agreement.

## **Article 7**

- (1)Except as otherwise provided in this Agreement, authors of literary and artistic works protected by this Agreement shall

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have the exclusive right of authorizing the reproduction of these works, in any manner or form.

- (2) Any sound or visual recording of any such work shall be considered as a reproduction for the purposes of this Agreement.

### **Article 8**

- (1) Authors of dramatic works, dramatico-musical works, musical works, and sound recordings for which they are protected persons hereunder shall enjoy the exclusive right of authorizing:

- (i) the public performance of their works, including such public performance by any means or process; or
- (ii) any communication to the public of the performance of their works.

- (2) The law of the territory represented by either Party may limit or not extend rights of public performance, public communication, or broadcasting to sound recordings, notwithstanding the provisions of this Article and Article 9.

- (3) For the purpose of this Article and Articles (9) and (10) to perform or present a work in "public" shall mean:

- (a) to perform or present it in a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or
- (b) to communicate, or transmit a performance or presentation of a work in any form or by means of any device or process to a place specified in clause (a) or to the public, regardless

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of whether the members of the public capable of receiving such communications receive them in the same or separate places and at the same time or at different times.

## **Article 9**

- (1) Except to the extent otherwise provided in paragraphs (2) and (3) of this Article, authors of literary and artistic works protected under this Agreement shall enjoy the exclusive right of authorizing:
- (i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;
  - (ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;
  - (iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work;
  - (iv) the exercise of the foregoing rights in the territory represented by a Party to this Agreement shall be in accordance with the legislation of that territory.
- (2) The rights of authors and copyright owners in works to authorize cable retransmission of broadcasts may be limited to right of remuneration notwithstanding the provisions of this Article. Such limitations shall apply only in the territories where they have been prescribed, and shall be accompanied by detailed laws and regulations that provide strong safeguards, including notification of the copyright owner and effective

opportunity to be heard, mechanisms to ensure prompt payment and remittance of royalties consistent with those that would be negotiated on a voluntary basis.

- (3) It shall, however, be a matter for legislation in the territory represented by each Party to this Agreement to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.

### **Article 10**

Authors of literary and artistic works for which they are protected persons hereunder shall enjoy the exclusive right of authorizing:

- (i) the public recitation of such works, including such public recitation by any means or process;
- (ii) any communication to the public of the recitation of such works.

### **Article 11**

Authors of literary or artistic works for which they are protected persons hereunder shall enjoy the exclusive right of authorizing adaptations, arrangements, and other alterations of their works.

### **Article 12**

Notwithstanding the provisions of Article 7, each territory represented by a Party to this Agreement may be permitted without the consent of the author or copyright owner of a musical

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work including both words and music to impose a non-voluntary license for the making of a sound recording of the musical work and any accompanying words, provided that the author or copyright owner of the work has already authorized the making of a sound recording of work. Such a non-voluntary license shall not permit the duplication of a sound recording fixed by another, shall apply only in the territory which has imposed such non-voluntary license, and shall not, in any circumstances, be prejudicial to the rights of these authors to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

### **Article 13**

It shall be a matter for the legislation of the territories represented by the Parties to this Agreement to make limited exceptions to the exclusive rights specified in articles 6, 7, 8, 9, 10, and 11 of this Agreement, provided that such exception shall neither conflict with a normal exploitation of the work, nor prejudice the legitimate interests of the author or copyright owner.

### **Article 14**

- (1) Infringing copies of a work protected in accordance with this Agreement shall be liable to seizure in either territory where such work enjoys legal protection. An infringing copy shall mean a copy of such work that infringes any of the exclusive rights provided in domestic law and in this Agreement including a copy which is imported into the territory represented by either Party where, if made in such territory by the importer, would constitute an infringement of the copyright.
- (2) The seizure shall take place in accordance with the legislation of each territory.

### **Article 15**

The provisions of this Agreement cannot in any way affect the right of either territory represented by a Party to this Agreement to permit, to control, or to prohibit, by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

### **Article 16**

- (1) The provisions of this Agreement shall apply in each territory represented by a Party to this Agreement to all works that are protected under the copyright law of that territory on the effective date of this Agreement. The provisions of this Agreement shall not affect obligations arising under earlier agreements except as specifically provided for in this Agreement.
- (2) Works created in the twenty years prior to 1985 shall be included as works protected under this Agreement in the territory represented by CCNAA, unless the work was registered pursuant to the copyright law then in effect and the term of protection under that law expired prior to 1985.

### **Article 17**

The provisions of this Agreement shall not preclude either Party to this Agreement from granting protection at a higher level than that provided for in this Agreement. In such event, however, such protection shall be afforded equally to all protected persons under this Agreement.

### **Article 18**

Juridical entities of the territory represented by each Party to this Agreement shall be entitled to full rights of filing suit or

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prosecution in the territory represented by the other Party, whether or not that entity is recognized by the authorities of the other Party.

### **Article 19**

Each territory represented by a Party to this Agreement shall adopt such measures as are necessary under its domestic law to ensure the application of the terms of this Agreement. It is understood that at the date this Agreement comes into force for either territory represented by a Party to this Agreement, that territory must under its domestic law give effect to the terms of this Agreement.

### **Article 20**

- (1)The Parties to this Agreement shall consult periodically in order to review the operation and application of this Agreement so as to assure that, with the passage of time and changes in circumstances, the objectives of this Agreement may be effectively maintained.
- (2)In order to assist in the carrying out of functions referred to in the Appendix to this Agreement, the Parties shall identify and ensure effective communication between the copyright information centers established by the Parties or by rights holders or users represented by the Parties.

### **Article 21**

This Agreement becomes effective on the date of the final signature hereafter and shall be valid until terminated by one Party upon notification to the other Party in writing at least six (6) months before the termination is to take effect.

**Article 22**

In witness thereof the Parties hereto have hereby set their hands by their duly authorized representatives and have caused this Agreement to be signed and effective the date of the last signature hereafter.

## **APPENDIX**

### **Article I**

- (1) To ensure an effective introduction of translation rights in the territory represented by the CCNAA, the AIT agrees that for a transitional period lasting until January 1, 2005 the authorities of the territory represented by the CCNAA may, so far as works published in printed or analogous forms of reproduction are concerned, substitute for the exclusive right of translation provided for in Article 6 of the Agreement for the Protection of Copyright Between the Coordination Council for North American Affairs and the American Institute in Taiwan (the Agreement) a system of non-exclusive and non-transferable licenses granted by the competent authority following notice of the commencement of a proceeding to the author or copyright owner under the following conditions.
- (2) A license under this Appendix may be granted only if the applicant, in accordance with the procedure of the territory represented by CCNAA, establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as making the request, the applicant shall inform any information center referred to in paragraph(3).
- (3) If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application, submitted to the authority competent to grant the license, to the publisher whose name appears on the work and to any information center which may have been designated by the Parties to this Agreement.
- (4) The name of the author shall be indicated on all copies of the

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translation published under a licence granted under this Appendix. The original title of the work shall appear on all the said copies.

- (5) No license granted under this Appendix shall extend to the export of copies, and any such license shall be valid only for publication of the translation in the territory represented by CCNAA.
- (6) All copies published under a license granted by virtue of this Appendix shall bear a notice in the Chinese language stating that the copies are available for distribution only in the territory represented by CCNAA.
- (7) The CCNAA shall ensure:
  - (a) That a license shall be granted only following a proceeding before the designated authority at which the author or copyright owner or his designated representative:
    - (i) has the right to appear with the assistance of counsel;
    - (ii) may introduce evidence and examine applicants for licenses; and,
    - (iii) has the right to a prompt appeal from the determination to grant a license.
  - (b) That the license provides, in favor of the owner of the right of translation, for just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two territories concerned, and
  - (c) Payment and transmittal of the compensation; should national currency regulations intervene, the Parties to this

Agreement shall make all efforts to ensure transmittal in convertible currency or its equivalent.

(d) That prompt and effective procedures are established to enforce the termination of a license granted under this facility where:

(i) the license has violated the terms of the license established by the competent authority, including the terms of this Appendix; or

(ii) where the circumstances set out in Article II (4) and (5) of this Appendix arise.

## **Article II**

(1)(a) In the case of teaching, scholarship or research after the expiration of a period of one year commencing on the date of the first publication of the work, any protected person of the territory represented by CCNAA may apply for a license to make a translation of such work into Chinese and publish the translation in printed or an analogous form of reproduction, provided that the work has not been published in Chinese anywhere in the world except the China mainland within that one year period by the owner of the right of translation or with his authorization.

(b) A license under the conditions provided in this Appendix may also be granted if all the editions of the translation published anywhere in the world except the China mainland are out of print.

(2)(a) No license obtainable after one year shall be granted under this Article until a further period of nine months has elapsed

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- (i) from the date on which the applicant complies with the requirements of Article I (2) of this Appendix.
  - (ii) Where the identity or the address of the owner of the right of translation is unknown, from the date on which the applicant sends, as provided for in Article I (3) of this Appendix, copies of his application submitted to the authority competent to grant the license.
- (b) If, during the said period of nine months, a translation in the language in respect of which the application was made is published by the owner of the right of translation or with his authorization, no license under this Article shall be granted.
- (3) Any license under this Article shall be granted only for the purpose of teaching, scholarship or research.
- (4) If a translation of a work is published by the owner of the right of translation or with his authorization at a price reasonably related to that normally charged in the territory represented by the CCNAA for comparable works, any license granted under this Article before such publication shall terminate if such translation is in Chinese and with substantially the same content as the translation published under the license.
- (5) No license shall be granted or maintained under this Article when the author has withdrawn from circulation all copies of his work.
- (6) In the event that any license granted under this Appendix is terminated in accordance with the procedure contemplated in paragraph (7) (d) of Article I of this Appendix or in circumstances described in paragraphs (4) and (5) of this Article II, all copies already made on or before the date on which the license terminates may continue to be distributed

until their stock is exhausted.

(7)(a) A license to make a translation of a work which has been published in printed or analogous forms of reproduction may also be granted to any broadcasting organization having its headquarters in the territory represented by CCNAA, upon an application made to the competent authority of that territory by the said organization, provided that all of the following conditions are met:

- (i) the translation is made from a copy made and acquired in accordance with the laws of the said territory;
- (ii) the translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession;
- (iii) the translation is used exclusively for the purposes referred to in condition (ii) through broadcasts made lawfully and intended for recipients on the said territory, including broadcasts made through the medium of sound or visual recordings lawfully and exclusively made for the purpose of such broadcasts;
- (iv) all uses made of the translation are without any commercial purpose.

(b) Sound or visual recordings of a translation which was made by a broadcasting organization under a license granted by virtue of this paragraph may, for the purposes and subject to the conditions referred to in subparagraph (a) and with the agreement of that organization, also be used by any other broadcasting organization having its headquarters in the territory whose competent authority granted the license in

question.

- (c) Provided that all of the criteria and conditions set out in subparagraph (a) are met, a license may also be granted to a broadcasting organization to translate any text incorporated in an audio-visual fixation where such fixation was itself prepared and published for the sole purpose of being used in connection with systematic instructional activities.
- (d) Subject to subparagraphs (a) to (c), the provisions of the preceding paragraphs shall apply to the grant and exercise of any license granted under this paragraph.

# **COPYRIGHT COLLECTIVE MANAGEMENT ORGANIZATION ACT**

Promulgated by the President on November 5, 1997

Amended and Promulgated by the President on February 10, 2010

## **CHAPTER I GENERAL PRINCIPLES**

### **Article 1**

This Act is enacted in accordance with Article 81, paragraph 3 of the Copyright Act.

### **Article 2**

The competent authority referred to in this Act is the Ministry of Economic Affairs (MOEA).

Issuance of establishment permits for copyright collective management organizations (CMOs), as well as guidance and supervision of their operations, will be carried out by the specialized agency designated by the MOEA.

### **Article 3**

The terms used in this Act shall be defined as follows:

1. Copyright collective management services ("collective management services"): Services for the management of economic rights on behalf of multiple economic rights holders, in which uniform royalty rates and methods for distribution of royalties are adopted as the basis for collection and distribution of royalties, and in which license agreements with users are established in the name of those providing the management.

2. Copyright collective management organization ("CMO"): An incorporated association engaging in collective management services, organized by economic rights holders, approved and established pursuant to this Act, and exercising rights and performing obligations in the name of the CMO.
3. Individual license agreement: An agreement between a CMO and a user under which the exploitation of specific economic rights under the management of the CMO is licensed to the user for its exploitation and royalties are paid by the user.
4. Blanket license agreement: An agreement between a CMO and a user under which all economic rights under the management of the CMO are licensed to the user for a specific period, with no restriction on the number of uses, and royalties are paid by the user.
5. Management agreement: An agreement between an economic rights holder and a CMO for management of such rights and distribution of the royalties collected to said economic rights holder by the CMO.
6. Management fees: The fees a CMO charges an economic rights holder for performing collective management services.
7. Royalty rates: The criteria for calculation, the ratios, or the amounts of royalties that the CMO collects for providing the economic rights it manages for exploitation by users.
8. Joint royalty rate: A single royalty rate jointly adopted by two or more CMOs with respect to the same type of exploitation.

## CHAPTER II ESTABLISHMENT

### Article 4

## Copyright Collective Management Organization Act

To establish a CMO, the promoters shall prepare an application form, with the following documentation attached, and apply to the specialized agency in charge of copyright matters for a permit:

1. A register of promoters.
2. The articles of organization.
3. The royalty collection and distribution rules.
4. Templates for individual license agreements, blanket license agreements, and management agreements.
5. Other documents designated by the specialized agency in charge of copyright matters.

The register of promoters under subparagraph 1 of the preceding paragraph shall include the following items:

1. The names of the promoters, and their nationalities, dates of birth, and domiciles or residences . For a juristic person promoter, the information shall include its name, the date of its establishment, the locations of its offices or places of business, and the name, date of birth, and domicile or residence of its representative.
2. The titles and categories of works for which a promoter is the economic rights holder.

The minimum number of the promoters referred to in paragraph 1 shall be determined by the specialized agency in charge of copyright matters for different respective categories of works. One-half or more of the promoters shall have domestic domiciles or offices.

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The application form mentioned in paragraph 1 shall state the purposes of applying for an establishment permit and shall bear the signature or personal seal of each promoter.

When a CMO adds a new category of works to those it manages, it shall submit a permit application to the specialized agency in charge of copyright matters, attaching a list of the economic rights holders for the new category along with the documents named in paragraph 1, subparagraphs 2 through 5.

The provisions of paragraph 2 and paragraph 3 regarding promoters shall apply *mutatis mutandis* to the list of economic rights holders and their numbers.

### **Article 5**

When multiple CMOs wish to merge and become a single CMO, they shall apply to the specialized agency in charge of copyright matters for a permit approval, attaching a list of economic rights holders and the documents named in paragraph 1, subparagraphs 2 through 5 of the preceding article.

The specialized agency in charge of copyright matters shall void the permits of the CMOs that are extinguished as a result of the merger; their rights and obligations shall be succeeded to by the post-merger surviving CMO or newly established CMO.

### **Article 6**

No party to whom any of the following circumstances apply may be a promoter of a CMO:

1. Having no legal capacity or having limited legal capacity, or receiving an order for commencement of assistance, where the order has not been revoked.

2. Having been declared bankrupt and its rights not yet reinstated.
3. Having committed the crime of fraud, breach of fiduciary duty, embezzlement, or violation of the Copyright Act, and after receiving a final and irrevocable judgment, having received a sentence of no less than six months imprisonment where the sentence has not yet been served, or has not been fully served, or less than two years has passed after serving such a sentence. In the case of a juristic person, having committed the crime of violation of the Copyright Act and having received a final and irrevocable judgment where the judgment has not been executed, has not been fully executed, or less than two years has passed after execution of the judgment.

## **Article 7**

The articles of organization of a CMO shall include the following information:

1. The CMO's name.
2. The CMO's purpose.
3. The address of its principal office, and address of any branch offices.
4. The category of works whose economic rights are under its management, and the scope of the rights.
5. The manner in which membership qualification is obtained and forfeited.
6. The rights and obligations of members.
7. Rates or amounts of management fees.

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- 8.The numbers, functions, terms of office, and methods of election and discharge of directors, supervisors and members of the complaint committee set out in Article 20, paragraph 1.
- 9.The kinds of meetings it will hold, procedures for convening the meetings, and methods of resolution.
- 10.Sources of funds, and their accounting treatment.
- 11.The method of public announcement.
- 12.Types of disputes between any member and a CMO that are subject to handling by the complaint committee, and the procedures and methods of dispute resolution.
- 13.Procedures for amending the articles of organization.
- 14.Procedures for changing royalty rates.
- 15.Procedures for changing the method of royalty collection and distribution.
- 16.Procedures for amending templates for individual license agreements, blanket license agreements, or management agreements.
- 17.The dates on which the articles of organization were adopted and amended.
- 18.Other matters required by laws and regulations.

### **Article 8**

Under any of the following circumstances, the specialized agency in charge of copyright matters shall deny an application for establishment of a CMO:

- 1.The name of the organization is the same as that of a CMO already granted an establishment permit.
- 2.The information supporting the application for establishment permit reveals that the applicant is unable to effectively administer collective management services.
- 3.Application particulars are found to be in violation of a law or regulation or to contain misrepresentations.
- 4.Statutory procedures are not observed and no correction is made within a period given by the specialized agency in charge of copyright matters.

Where the scope of management being applied for overlaps in whole or in part with the categories of works and the scope of rights under the management of a CMO that has already been granted an establishment permit, the specialized agency in charge of copyright matters may deny approval for the overlapping portion if the other CMO is already capable of functioning as a management collective.

The specialized agency in charge of copyright matters shall notify the applicant in writing whether the application for establishment permit has been granted or denied, and publish the approved application on its website.

## **Article 9**

A CMO shall incorporate as a juristic person within six months after the specialized agency in charge of copyright matters issues an establishment permit.

The CMO of the preceding paragraph shall submit a photocopy of its incorporation certificate to the specialized

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agency in charge of copyright matters for recordation within thirty days after its incorporation. It shall also make public announcement of its incorporation certificate, articles of organization, the royalty collection and distribution rules, and templates for individual license agreements, blanket license agreements, and management agreements; the same shall apply to amendments of the above items.

The public announcement of the preceding paragraph shall be published in an appropriate manner, such as publication in a newspaper at the place where the principal office of the CMO is located, or on the CMO's website.

### **Article 10**

A person not organized and approved for establishment as a CMO in accordance with this Act shall not conduct collective management services or perform any other juristic act in the name of a CMO.

Where any party violates the preceding paragraph, any individual or blanket license agreement executed by it shall become null and void and the offender shall be liable for compensation of damages for any resultant loss to another person. Where there are two or more offenders, they shall bear joint and several liability.

## CHAPTER III ORGANIZATION

### **Article 11**

A member of a CMO shall be an economic rights holder.

An economic rights holder may not be at the same time a member of two or more CMOs providing the same collective

management services.

If an economic rights holder violates the provision of the preceding paragraph and joins two or more CMOs at different times, the rights holder will be deemed to have not joined the CMO or CMOs it entered at later times; a rights holder who joins two or more CMOs at the same time shall choose membership in only one among them within 30 days after the time it joins; a rights holder that fails to make a choice within 30 days will be deemed to have joined none of the CMOs.

### **Article 12**

A CMO may not reject any applicant for membership who meets the membership qualifications set out in its articles of organization.

A member may withdraw from the organization at any time, unless the articles of organization provide that withdrawal can only take place at the end of a business year or after a period of pre-announcement.

### **Article 13**

Under any of the following circumstances, a member shall be deemed to have withdrawn from the organization:

1. Death, bankruptcy, or dissolution.
2. Loss of membership qualifications.

### **Article 14**

A member shall execute a management agreement with its CMO to entrust the CMO with management of its economic rights.

A member shall have the right, in accordance with the royalty collection and distribution rules, to request distribution of royalties, and also has the obligation to pay management fees and membership fees.

### **Article 15**

The highest authority of a CMO shall be the general meeting of its members.

The board of directors of a CMO shall have at least three directors, to be elected from among the members by the general meeting of its members.

The supervisors of a CMO shall be elected from among the members by the general meeting of its members. At least one of the supervisors shall have a domestic domicile.

The provisions of Article 6 shall apply mutatis mutandis to directors and supervisors.

### **Article 16**

Except for the first general meeting of CMO members, which shall be convened by promoters, general meetings of members shall be convened at least once a year by the board of directors.

Unless specially provided in this Act or the articles of organization, a resolution of the general meeting of members shall require a majority of votes cast at a meeting attended by members representing a majority of the total voting rights.

An amendment to the articles of organization shall require at least two thirds of votes cast at a meeting attended by members representing a majority of the total voting rights.

Members shall have equal voting rights, except where the articles of organization provide otherwise.

In respect of the number of members attending a meeting and the number of favorable votes required as provided for in paragraphs 2 and 3 above, if a higher requirement is provided for in the articles of organization, such provision shall apply.

The provisions in Article 57 of the Civil Code shall apply to the dissolution of a CMO.

### **Article 17**

The board of directors shall carry out its functions in accordance with laws, regulations, its articles of organization, and resolutions of the general meeting of members.

In the event that a resolution of the board of directors violates the provision of the preceding paragraph and causes injury to the CMO, directors participating in the resolution shall be jointly and severally liable for damages, provided that any director who has expressed opposition, as confirmed by records or a written statement, shall be exempt from liability.

### **Article 18**

A supervisor shall carry out the following duties:

1. Investigating the operational and financial status of the CMO and auditing its books and documents, either personally or by retaining an attorney or a certified public accountant.
2. Auditing the statements prepared under paragraph 1 of Article 21, either personally or by retaining a certified public accountant, and reporting the inspection results at a general meeting of members.

A supervisor who through neglect of his/her duties causes damage to the CMO shall bear liability for damages.

A supervisor shall not act concurrently as a director, complaint committee member, or staff member of the CMO.

### **Article 19**

If a director of a CMO bargains with the CMO on his/her own behalf or on behalf of another party, a supervisor shall act as the representative of the CMO.

### **Article 20**

A CMO shall have a complaint committee to handle disputes between members and the CMO in accordance with its articles of organization. The committee shall have at least five members, who shall be elected by the general meeting of members from among CMO members, impartial members of society, or scholars or experts.

A CMO may stipulate in its articles of organization that any dispute between a member and the CMO shall not be brought up at a general meeting of members until it has been handled by the complaint committee.

A director, supervisor, or staff member of a CMO shall not be a member of its complaint committee.

A complaint committee member shall withdraw voluntarily if he/she has personal interest in a complaint case.

A CMO shall notify the complaining member of the decision made by the complaint committee and the decision shall be carried out by the board of directors. However, the case may be brought up for resolution at a general meeting of members if the

complaining member or the board of directors is opposed to the decision rendered by the complaint committee.

## **Article 21**

At the end of each business year, the board of directors shall prepare the following statements and refer them to supervisors for auditing at least thirty days before a general meeting of members is held:

1. An operations report.
2. A balance sheet.
3. A property list.
4. A final statement of revenues and expenditures.

The statements listed in the preceding paragraph, together with the supervisor's audit report, shall be made available at the principal office of the CMO at least ten days before a general meeting of members is held, and members may at any time inspect and review the same, either by themselves or in the company of any attorneys or certified public accountants retained by them.

## **Article 22**

The board of directors shall submit the statements listed in the preceding Article, together with the supervisor's audit report, for ratification at a general meeting of members. Upon ratification through a resolution of the general meeting of members, directors and supervisors shall be released from liability; this provision does not apply, however, given the commission of any unlawful act by a director or supervisor.

## CHAPTER IV RIGHTS AND OBLIGATIONS OF A CMO

### **Article 23**

A CMO shall provide collective management services for members in accordance with laws, regulations, its articles of organization, and resolutions of the general meeting of its members.

A CMO, when providing collective management services under the preceding paragraph, shall collect management fees at the stipulated rate or in the stipulated amount.

The rate or amount of management fees in the preceding paragraph shall be stipulated based on the funding required to maintain normal operation of the CMO.

### **Article 24**

A CMO shall adopt royalty rates and dates for implementation of the rates for each type of exploitation of the economic rights under its management. A CMO shall take the following factors into account when setting royalty rates:

- 1.The result of consultations with the users, and the users' suggestions.
- 2.The economic benefit to be obtained by users through exploitation of the works.
- 3.The numbers of economic rights under its management.
- 4.The type and quantity of the exploitation.
- 5.Other factors that the specialized agency in charge of copyright matters designates for consideration.

In adopting the royalty rates of the preceding paragraph, when a blanket license agreement is employed, users shall be provided with a choice of the following fee collection methods:

1. A specific monetary amount or ratio.
2. A monetary amount set on a per use - per work basis.

A CMO shall lower at its discretion the royalty rates of paragraph 1 when the user exploits a work for cultural, educational, or other purposes in the public interest; when the exploitation is non-profit in nature, the CMO shall further lower at its discretion the royalty rates.

The specialized agency in charge of copyright matters may conduct investigations into the actual circumstances of use of the works under the management of any CMO.

The royalty rates of paragraph 1 shall be publicly announced for the purpose of review by the general public, and shall be reported to the specialized agency in charge of copyright matters for recordation. The royalty rates may not be implemented at any time prior to 30 full days after the date of announcement. The same provisions shall apply in the case of any change to the royalty rates.

A CMO shall state the reasons for adoption of the royalty rates at the time of their public announcement pursuant to the preceding paragraph.

When a CMO has not adopted a royalty rate for a specific type of exploitation in accordance with the provisions of paragraph 1, a user may request the CMO in writing to adopt a royalty rate; prior to the adoption of such a royalty rate, the provisions of Chapter 7 of the Copyright Act shall not apply to

any instance of exploitation for which adoption of a royalty rate has been requested.

## **Article 25**

A copyright user who objects to a royalty rate set by a CMO may apply to the specialized agency in charge of copyright matters for a review; at the time of application it shall also submit written reasons and other related materials.

When the specialized agency in charge of copyright matters receives an application pursuant to the preceding paragraph, it shall publish the application on its website. Other users with the same circumstances of exploitation may also submit written reasons and related materials and make a request of the specialized agency in charge of copyright matters for participation in the application for review.

After receiving an application for review pursuant to paragraph 1, the specialized agency in charge of copyright matters may order the CMO to provide the factors under each subparagraph of the preceding article that it used in consideration of the royalty rates, its conditions for licensing, and other relevant documents. The CMO may not refuse such an order.

When the specialized agency in charge of copyright matters performs its review, it may change the criteria, ratios, or amounts for calculation of royalties originally adopted by the CMO, and shall seek the opinion of the Copyright Review and Mediation Committee.

When there are matters requiring supplementation or correction with respect to an application under paragraph 1 that are not performed within the period designated by the specialized agency in charge of copyright matters, or in the absence of

reasons for application, the specialized agency in charge of copyright matters may reject the application.

When there is sufficient reason for an application for review under paragraph 1, the specialized agency in charge of copyright matters shall make a determination of the given royalty rate, which shall be effective from the date of application for review, provided that in the case of applications made prior to the date of implementation of a given royalty rate, the newly determined rate shall take effect from the date of implementation.

A royalty rate that has been determined pursuant to the preceding paragraph may not be changed by the CMO within three years from its date of implementation, and during the same period, users also may not make any further application for review of matters on which such a determination has been made, provided that these provisions will not apply in the case of a material change in circumstances.

The specialized agency in charge of copyright matters may prohibit the implementation of a royalty rate which is under application for review pursuant to paragraph 1 when the rate is in violation of the law, or when there is no legal basis for collection of that royalty rate.

The review determinations under paragraph 6 and the preceding paragraph shall be published on the website of the specialized agency in charge of copyright matters.

If a royalty rate is determined through a review by the specialized agency in charge of copyright matters, then for any license agreement that was signed between a user and a CMO prior to the determination, the user may, during the effective term of the agreement, request a change by the CMO in the amount of

the royalty.

When implementation of a CMO's royalty rate has been prohibited by the specialized agency in charge of copyright matters, the CMO shall return the royalties already collected.

The review decision of an application under paragraph 1 shall be made by the specialized agency in charge of copyright matters within four months from the date the documents are fully submitted.

The members of the Copyright Review and Mediation Committee under paragraph 4 shall include government authorities, scholars, experts, rights holders and users.

## **Article 26**

For royalty rates between the time of application for review and the review determination, the user may make a provisional payment, based on the type of exploitation, at the royalty rate originally set prior to the change in rate or at the originally stipulated royalty amount; if there is no originally set royalty rate or originally stipulated royalty amount, the user may apply to the specialized agency in charge of copyright matters to approve an amount for provisional payment.

Prior to its approval of the provisional payment of the preceding paragraph, the specialized agency in charge of copyright matters may seek the opinion of the Copyright Review and Mediation Committee.

The amount of provisional payment approved pursuant to paragraph 1 shall be published on the website of the specialized agency in charge of copyright matters, and during the period of review of the royalty rate, the provisional payment shall apply to

all users engaging in exploitation under the same circumstances.

When a user makes a provisional payment to a CMO pursuant to paragraph 1, and where the payment is clearly indicated as a provisional payment, the user's exploitation will not be subject to the provisions of Chapter 6 and Chapter 7 of the Copyright Act.

When a user has made provisional payments pursuant to paragraph 1, then except where otherwise stipulated between the two parties, the payments shall be adjusted based on the royalty rate determined through the review process; when an application for royalty rate review is rejected, the payments shall be adjusted based on the CMO's publicly announced royalty rate.

When the implementation of a royalty rate for which a review application has been made by a user is prohibited pursuant to paragraph 8 of the preceding article, the CMO shall return the provisional payments already collected.

## **Article 27**

A CMO shall publish information related to the works under its scope of management on the Internet for public access, including a list of the economic rights holders under its management, the number of works it manages or other information sufficient to allow the number of works under its management to be ascertained, and shall also provide information within a reasonable scope in response to applications by members of the public.

When a CMO negotiates a blanket license agreement with a user, it shall inform the user of the information under the preceding paragraph.

## **Article 28**

The following items shall be expressly set out in a individual license agreement:

- 1.The name of the economic rights holder, and title of the work.
- 2.The economic rights to be licensed for exploitation.
- 3.The territory, term, and method of licensed exploitation.
- 4.The method of calculation and the amount of royalties.
- 5.Method of royalty payment.
- 6.Liability for breach.
- 7.The date of agreement.

## **Article 29**

In addition to setting out the matters required in subparagraphs 2 through 7 of the preceding article, a blanket license agreement shall also state that the licensee is licensed, within a specified period, to use all the economic rights managed by the CMO an unlimited number of times..

## **Article 30**

The specialized agency in charge of copyright matters may designate relevant CMOs to adopt a joint royalty rate with respect to a specified type of exploitation.

The designated CMOs under the preceding paragraph shall engage in consultation in order to adopt the joint royalty rate and methods of distribution of royalties, to be collected from users by one of the CMOs.

If agreement cannot be reached by consultation pursuant to the preceding paragraph, any of the CMOs may apply to the specialized agency in charge of copyright matters for a determination.

The provisions of Article 24 through Article 26 shall apply to the joint royalty rate of paragraph 2.

In determining the joint royalty rate under paragraph 3, the opinions of users and of the Copyright Review and Mediation Committee shall be sought, and the disposition containing the determination shall be published on the website of the specialized agency in charge of copyright matters.

A joint royalty rate that has been determined pursuant to the preceding paragraph may not be changed by the CMOs within three years from its date of implementation, and during the same period, users also may not make any application for review of the rate, provided that these provisions will not apply in the case of a material change in circumstances.

The provisions of paragraph 2 through the preceding paragraph shall be implemented two years after promulgation of the 12 January 2010 amendments to this Act.

When, prior to the date of implementation under the preceding paragraph, CMOs that have been designated pursuant to paragraph 1 have already undertaken consultation and adopted a joint royalty rate with respect to a specific type of exploitation, they may apply the provisions of Article 24 through Article 26.

### **Article 31**

When a member withdraws from a CMO, the CMO shall terminate the management agreement and cease to manage that

member's economic rights.

A copyright user who has already entered into a license agreement with the CMO prior to a member's withdrawal may continue to exploit the works of the member who has withdrawn until the agreement expires and need not pay further royalties to that member, provided that where the license agreement contains stipulations prohibiting continued exploitation, those stipulations shall apply.

In the absence of the circumstances under the proviso of the preceding paragraph, the member who has withdrawn may apply to the CMO to request distribution of royalties, provided that the member who has withdrawn may not so request distribution of royalties when it has joined another CMO and may receive distribution of royalties in the new CMO for the exploitation by users set out in the preceding paragraph.

When stipulations exist between the CMO and the user as in the proviso of paragraph 2, the CMO shall immediately notify the user when the member withdraws from the CMO.

### **Article 32**

A CMO shall not refuse a request from a non-member economic rights holder for management of the rights holder's economic rights that falls within the scope of categories of works and rights managed by the CMO.

### **Article 33**

The provisions of Article 11, Article 14, Article 20, paragraphs 1, 2, and 5, Article 23, paragraphs 1 and 2, and Article 31 shall apply *mutatis mutandis* to matters between non-member economic rights holders and a CMO.

### **Article 34**

Within the scope of rights managed by it, a CMO shall provide licenses with the same terms and conditions to users engaging in exploitation under the same circumstances.

If a user is refused a license by the CMO, or no licensing agreement can be reached, the user shall be deemed to have obtained a license if, prior to exploitation, the user has made payment of or lodged with a court the royalty rate or the amount demanded by the CMO.

When a user has made payment to the CMO or lodged payment with a court pursuant to the preceding paragraph, it may at the same time lodge a declaration with the CMO, reserving the right of later opposition.

### **Article 35**

A CMO shall warrant its authorization to manage the rights whose exploitation it is licensing under its individual license agreements or blanket license agreements. When a user is clearly aware at the time of execution of an agreement that the CMO has no such authorization to perform management, the CMO is not liable to make such a warranty unless otherwise stipulated in the agreement.

### **Article 36**

A CMO shall exercise the due care of a good administrator when providing collective management services.

### **Article 37**

A copyright user shall periodically provide the CMO concerned with a record of use as the basis for calculating

royalties to be distributed. When the license agreement stipulates otherwise, however, its provisions shall govern.

A CMO may, at its own cost, request a user at any time to provide a record of use.

If a user fails to provide a record of use or provides one that is materially incorrect or untrue, the CMO may terminate the license agreements executed with the user.

### **Article 38**

Based on its royalty collection and distribution rules, a CMO shall make periodic distribution of the balance of the royalties collected, after the deduction of management fees, to economic rights holders.

The "periodic distribution" referred to in the preceding paragraph shall take place at least once each year.

When a CMO distributes royalties, its board of directors shall, in accordance with its royalty collection and distribution rules, compile a table of royalty distributions that contains the following information, and submit it to the supervisors for auditing and confirmation after certification by a certified public accountant:

- 1.The names of the economic rights holders and the economic rights held thereby.
- 2.The amount of each royalty payment and the total amount of royalties received.
- 3.The amount of management fees deductible from each royalty or the total amount thereof.

4. The distributable balance after deduction of the total management fees under subparagraph 2 above from the total amount of royalty received under subparagraph 2.
5. The method of calculating the amount to be distributed to each individual.
6. The amount to be distributed to each individual.

A CMO shall distribute royalties in accordance with the table of royalty distributions audited and confirmed by its supervisors. It shall also have said table of royalty distributions placed at its principal office for review by the economic rights holders.

### **Article 39**

When providing collective management services, a CMO may initiate litigious or non-litigious actions in its own name on behalf of economic rights holders. The CMO, however, may initiate criminal proceedings only when it has an exclusive license or has received [the economic rights] by way of trust transfer.

The "litigious actions" mentioned in the preceding paragraph shall mean the institution of civil and administrative suits and complaints or private prosecutions in criminal cases. "Non-litigious actions" shall mean administrative appeal and other actions.

## **CHAPTER V REWARD, GUIDANCE, AND SUPERVISION OF COLLECTIVE MANAGEMENT ORGANIZATIONS**

### **Article 40**

The specialized agency in charge of copyright matters may reward a CMO for excellence in providing collective management services.

## **Article 41**

The specialized agency in charge of copyright matters may at any time audit or order the CMO to submit within a specific deadline the statements that CMOs are required to prepare or compile in accordance with applicable laws and regulations or their articles of organization. The specialized agency in charge of copyright matters may also at any time inspect the operational and financial status of a CMO or order it to report on its handling of operations within a specific deadline.

When performing the audits and inspections of the preceding paragraph, the specialized agency in charge of copyright matters may order a CMO to submit supporting documents, vouchers, statements, and relevant information, and shall return the same, after reviewing them, within one month from the date of receipt.

A CMO shall not evade, hinder, or refuse an audit or inspection made or order given by the specialized agency in charge of copyright matters pursuant to the preceding two paragraphs.

The specialized agency in charge of copyright matters, as it deems necessary in accordance with the state of a CMO's business and property, may order the CMO to change its method of operation or may issue other necessary dispositions.

## **Article 42**

If a CMO commits any act in violation of laws, regulations, or its articles of organization, the specialized agency in charge of copyright matters may order it to make corrections within a prescribed deadline.

If the CMO does not make the correction within the

prescribed deadline of the preceding paragraph, the specialized agency in charge of copyright matters may order it to replace the director, supervisor, complaint committee member, or staff member who committed the act, or to suspend him/her from duty.

### **Article 43**

When any of the following circumstances apply to a CMO, the specialized agency in charge of copyright matters shall revoke its establishment permit:

- 1.The CMO fails to carry out incorporation registration within the period of time prescribed in Article 9, paragraph 1.
- 2.The CMO fails to commence collective management services within one year after its incorporation registration.
- 3.The CMO is incapable of effectively performing collective management services.

## **CHAPTER VI PENAL PROVISIONS**

### **Article 44**

For a violation of Article 10, paragraph 1, the offender shall be punished with an administrative fine of not less than NT\$500,000 and not more than NT\$2.5 million.

When any of the following circumstances apply to a CMO, it shall be punished with an administrative fine of not less than NT\$100,000 and not more than NT\$500,000:

- 1.Violation of an order given by the specialized agency in charge of copyright matters pursuant to Article 41, paragraph 4.
- 2.Failure to make correction within the prescribed deadline in

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accordance with an order given pursuant to Article 42, paragraph 1.

A CMO violating the provisions of Article 41, paragraph 3 shall be punished with an administrative fine of not less than NT\$20,000 and not more than NT\$100,000.

The administrative fines under the preceding three paragraphs may be imposed for each successive infraction until correction is effected.

### **Article 45**

When any of the following circumstances apply to a CMO and are of a material nature, the specialized agency in charge of copyright matters shall void its establishment permit:

- 1.Failure to make a replacement or suspend duties of related persons in accordance with a disposition issued pursuant to Article 42, paragraph 2.
- 2.Failure to make correction in accordance with a disposition issued pursuant to Article 44, paragraph 2.

## CHAPTER VII Supplementary Provisions

### **Article 46**

For an organization for the management of economic rights on behalf of economic rights holders that was duly established prior to the 7 November 1997 date on which this Act was promulgated and took effect, it shall continue to handle any matters that were under its management and which had not terminated prior to the promulgation and taking effect of the Act.

If the organization of the preceding paragraph did not apply

for an establishment permit for collective management services within one year after this Act was promulgated and enforced, or if approval was denied for the application, then any agreement executed with a user in the name of the organization for licensed exploitation of economic rights before the date on which this Act was promulgated and enforced, and which had not yet expired by 31 December 1998, shall be terminated on that date.

#### **Article 47**

The provisions of Articles 24 through 26 will apply to royalty rates which were already implemented, or which were under application for review but where the review was not completed, prior to the enforcement of the amended articles of this Act on 12 January 2010, provided that this shall not apply to royalty rates which were determined through a review by the specialized agency in charge of copyright matters prior to the enforcement of the amended articles of this Act on 12 January 2010, and which at that time had been implemented for less than two full years.

#### **Article 48**

When, after approval for establishment of a CMO, the CMO's establishment permit is voided or revoked, then except under the circumstances of article 43, subparagraph 1, the specialized agency in charge of copyright matters shall order the CMO's dissolution, shall provide written notification of the reasons to the district court of the relevant jurisdiction and the CMO, and shall publish the same on its website.

When the dissolution of a CMO has been ordered, all of the CMO's management agreements shall be terminated when the administrative disposition ordering dissolution has become final

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and unappealable.

**Article 49**

Except where dates of enforcement have been otherwise provided, this Act shall be enforced from the date of promulgation.

## **THE ILLUSTRATED CONTENTS OF EACH KIND OF WORKS IN PARAGRAPH ONE, ARTICLE 5 OF THE COPYRIGHT ACT**

Promulgated on June 10, 1992 per Letter No. Tai-(81)-Nei-Chu-Tze 8184002.

1. These Illustrations are prescribed pursuant to the provisions of Paragraph Two of Article 5 of the Copyright Law (hereinafter abbreviated to "the Act").
2. The contents of the works set forth in Paragraph One of Article 5 of the Act are illustrated as follows:
  - (1) Oral and literary works: shall include any poem, verse, prose, fiction, play or scenario, academic thesis, lecture, and the other oral and literary works.
  - (2) Musical works: shall include any music score, lyrics, and the other musical works.
  - (3) Dramatic and choreographic works: shall include dancing, pantomime, opera, drama and the other dramatic and choreographic works.
  - (4) Artistic works: shall include any painting, plate painting, caricature, comic strip (cartoon), sketch, masterpiece of calligraphy (calligraphy), letter form drawing (typeface), sculpture, craftwork and the other artistic works.
  - (5) Photographic works: shall include any photograph, slide, and the other intellectual works produced by photograph.

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- (6) Pictorial works: shall include any map, chart, scientific or engineering design drawing, and the other pictorial works.
  - (7) Audio-visual works: shall include the images shown in any motion picture, videocassette, videodisc, on computer screen, and the other series of images which could be fixed to any medium with or without sound to be shown by a mechanical device or equipment.
  - (8) Sound recordings: shall include any work which contains a series of sound being fixed to any medium and to be presented by a mechanical device or equipment, except the sound which is concomitant with an audio-visual work.
  - (9) Architectural works: shall include any architectural design drawing, architectural model, building or construction, and the other architectural works.
  - (10) Computer programs: shall include any work composed of a set of instructions which is purposed to directly or indirectly cause a computer to bring forth a certain result.
3. The derivatives work prescribed in Article 6 and the compilations prescribed in Article 7 of the Act shall be categorized, according to their respective nature, into the various categories of works as set forth by the Items in the preceding Paragraph.

# **STANDARDS FOR COMPENSATION FOR FAIR USE OF WORKS IN PARAGRAPH FOUR, ARTICLE 47 OF THE COPYRIGHT ACT**

Promulgated on February 23, 1998 per Letter No. Tai-(87)-Nei-Chu-Tze 870 2053.

1. These standards are set pursuant to the provisions of Paragraph 4, Article 47 of the Copyright Act (hereinafter referred to as "the Act").
2. Except as otherwise provided under these standards the compensation for reproduction or compilation of works pursuant to the provisions Paragraph 1, Article 47 of the Act shall be calculated as follows:
  - (1) For literary and oral works: the calculation shall be based on the number of characters at the rate of one thousand New Taiwan Dollars for one thousand characters or fraction thereof.
  - (2) For photographic, artistic or pictorial works: the calculation shall be based on the number of items<sup>1</sup>, regardless of whether the item is in black and white or color, and regardless of the size of the plate, at the rate of five hundred New Taiwan Dollars per item, or if to be used on the front or back cover, one thousand New Taiwan Dollars.
  - (3) For musical works: lyrics and music shall be calculated separately at the rate of two thousand New Taiwan Dollars per title.
  - (4) For works other than those referred to in the preceding (1),

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(2) and (3): the calculation shall be based on the proportion of the exploited work occupying the surface space on the page or plate at the rate of one thousand New Taiwan Dollars per plate or page; or if a calculation can not be made on this basis, one thousand New Taiwan Dollars per piece.

3. Compensation for adaptations pursuant to Paragraph 1, Article 47 of the Act, shall be calculated based on the standards at one half of the amount specified under the provisions of 2.

4. Except as otherwise provided in these standards the compensation for editing of supplementary teaching aids pursuant to Paragraph 2, Article 47 of the Act shall be separately calculated as follows:

(1) For sound recordings and audio visual works: two thousand New Taiwan Dollars for each three minute period or fraction thereof.

(2) For works other than those specified in the preceding (1): one half of the amount specified in 2 and 3.

5. Compensation for the public broadcast of works pursuant to the provisions of Paragraph 3, Article 47 of the Act shall be calculated as follows:

(1) For on the air public broadcasts: lyrics and music of musical works shall be separately calculated at the rate of one New Taiwan Dollar per title per broadcast; for other works, one New Taiwan Dollar for each three minute period or fraction thereof.

(2) For TV public broadcasts: lyrics and music of musical works shall be separately calculated at the rate of forty New Taiwan Dollars per title per broadcast; for other works, thirty New

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Works In Paragraph Four, Article 47 Of The Copyright Act

Taiwan Dollar for each three minute period or fraction thereof.

6. With respect to reproductions or compilations for the purpose of editing textbooks or supplementary teaching aids pursuant to Paragraph 1 or Paragraph 2, Article 47 of the Act, where the work exploited is a derivative work, and be two or more instances of compensation are required to be paid for the original work and the derivative work, the amount shall be calculated as seventy five percent of the amounts set forth in the preceding 2 and 4.

1 "Items" is from the compound "張數" in Chinese.

## **THE CERTAIN AMOUNT IN ITEMS 2 AND 3 OF PARAGRAPH ONE OF ARTICLE 87 BIS OF THE COPYRIGHT ACT**

Promulgated on April 24, 1993 per Letter No. Tai-(82)-Nei-Chu-Tze 8274870.

1. This "Certain Amount" is prescribed pursuant to the provision of Paragraph Two of Article 87 bis of the Copyright Act ("the Act").
2. The certain amount provided in Items 2 and 3 of Paragraph One of Article 87 bis of the Act denotes:
  - (1) Importation of any audiovisual work for the archival purpose of an organization operated for scholarly, educational, or religious purposes and not for private gain, shall be limited to one copy.
  - (2) Importation of any work other than audiovisual work for the library lending or archival purposes of an organization operated for scholarly, educational, or religious purposes and not for private gain, shall be limited to no more than five copies.
  - (3) Importation of any work for the importer's private use and not for distribution, shall be limited to one copy of a work at any one time.
  - (4) Importation of any work forming part of the personal baggage of any person arriving from outside the territory, shall be limited one copy of a work at any one time.

# **REGULATIONS GOVERNING IMPLEMENTATION OF ISP CIVIL LIABILITY EXEMPTION**

## **Article 1**

These Regulations are adopted pursuant to Article 90terdecies of the Copyright Act (hereinafter, "the Act").

## **Article 2**

Contact window information prescribed in subparagraph 3, paragraph 1 of Article 90quinquies of the Act shall specify the following particulars:

- 1.Name of the individual or institution, address, contact telephone, fax number and electronic mail address of the contact window.
- 2.The format of electronic signatures accepted, or the information on willing to accept the notification document without electronic signature.

## **Article 3**

Any notification under Article 90septies through Article 90novies of the Act shall specify the particulars listed below, and shall be signed or sealed by the copyright holder, plate rights holder, or exclusive licensee (hereinafter, "the rights holder") or the rights holder's agent thereof:

- 1.The name, address, and telephone number or fax number or electronic mail address or description of other automatic communication of the rights holder or agent thereof.
- 2.The name of the copyrights or plate rights infringed.

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3. A statement requesting the removal of, or disabling of access to, the content that allegedly infringes copyright or plate rights.
4. Access or relevant information sufficient to enable the Internet service provider to identify the allegedly infringing content.
5. A statement that the rights holder or the agent thereof is acting in good faith and in the belief that the allegedly infringing content lacks lawful licensing or is otherwise in violation of the Copyright Act.
6. A declaration that the rights holder is willing to bear legal liability in the event there is misrepresentation with resultant injury to another.

A notification under the preceding paragraph shall be made in writing or in a document with an electronic signature, and delivered by post, fax, or electronic mail. If an Internet service provider has provided a mechanism verifying right owners or made an agreement with the rights holders or the agent thereof, it may implement such mechanism accordingly.

If a notification under paragraph 1 is issued under the name of an agent, it shall also expressly state that the agent has been authorized by the rights holder, and specify the rights holder's name.

If rights to multiple works or plates are allegedly infringed on the same system or network, the rights holder or the agent thereof may address them in a single notification.

### **Article 4**

If a notification issued by a rights holder or agent thereof does not comply with the provisions of the preceding article, the

## Regulations Governing Implementation of ISP Civil Liability Exemption

Internet service provider may notify the issuer to supplement or correct the notification.

The notification to supplement or correct described in the preceding paragraph shall be issued by the Internet service provider within 5 working days from one day after the date of receiving the notification issued by the rights holder or agent thereof.

The rights holder or agent thereof shall make the supplementation or correction within 5 working days from one day after the date of receiving the notice to do so. If failing in whole or in part to supplement or correct the notification within that period, it will be deemed not to have issued the notification.

The notification to supplement or correct described in paragraph 1 shall be issued in the same manner as was issued by the rights holder or agent thereof to the Internet service provider, unless otherwise agreed upon.

Notification described in paragraph 1 that does not comply with the provisions of Article 3 or fails to supplement or correct in whole or in part as described in paragraph 3, may not bear upon the consideration that an Internet service provider had knowledge of an infringement.

### **Article 5**

A "counter notification" under Article 90decies, paragraph 2 of the Act shall specify the particulars listed below, and shall be signed or sealed by the user or agent thereof:

1. The name, address, and telephone number or electronic mail address of the user or agent thereof.

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2. A statement of the request to replace the content that has been removed or to restore access to the content.
3. Relevant information sufficient to enable the Internet service provider to identify the content.
4. A statement that the user is acting in good faith and in the belief that the user has a lawful right to exploit the content, and that the removal or disabling of access to the content is the result of a misrepresentation or error on the part of the rights holders or agent thereof.
5. A statement giving consent for the information storage service provider to forward the contents of the counter notification and the user's personal information to the rights holder or agent thereof.
6. A declaration that the user is willing to bear legal liability in the event there is misrepresentation with resultant injury to another.

A counter notification under the preceding paragraph shall be made in writing or in a document with an electronic signature, and delivered by post, fax, or electronic mail; this shall not apply if Internet service provider is willing to accept the counter notification without an electronic signature.

If a notification under paragraph 1 is issued under the name of an agent, it shall also expressly state that the agent has been authorized by the user, and specify the user's name.

### **Article 6**

If a counter notification does not comply with the provisions of the preceding article, the information storage service provider shall notify the user to supplement or correct the notification.

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The notification to supplement or correct described in the preceding paragraph shall be issued by the information storage service provider within 5 working days from one day after the date of receiving the counter notification issued by the user or agent thereof.

The user or agent thereof shall make the supplementation or correction within 5 working days from one day after the date of receiving the notice to do so. If it fails in whole or in part to supplement or correct the counter notification within that period, it will be deemed not to have issued the counter notification.

The notification to supplement or correct described in paragraph 1 shall be issued in the same manner as was issued by the user or agent thereof to the information storage service provider, unless otherwise agreed upon.

**Article 7**

These Regulations shall come into force from the date of issuance.

# **REGULATIONS GOVERNING APPLICATION FOR APPROVAL OF COMPULSORY LICENSE OF MUSICAL WORKS AND ROYALTIES FOR USE THEREOF**

Promulgated on June 10, 1992

Amended and promulgated on January 23, 1998

Amended and promulgated on April 19, 2000

Amended and Promulgated by Ministry of Economic Affairs on February 20, 2002 per Letter No. Ging-Zhi-Tze 09104603141.

## **Article 1**

These Regulations are prescribed pursuant to Paragraph 2 of Article 69 of the Copyright Act (hereinafter referred to as "the Act").

## **Article 2**

In applying for approval of a compulsory license, the following documents shall be presented:

1. A written application form;
2. One sample copy of the musical work; and
3. Other relevant evidential documents.

## **Article 3**

Except as otherwise provided under these Regulations, the written application form in Item 1 of the preceding Article shall

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License of Musical Works And Royalties for Use Thereof

indicate the following matters and be signed or sealed by the applicant or his/her agent.

- 1.Applicant's name, date of birth or establishment, and domicile or residence, and, if the applicant is a juridical person, the name of its representative;
- 2.The agent's name and domicile or residence if the application is made by an agent, or, the name of its representative if the agent is a juridical person;
- 3.The title of the musical work;
- 4.The name and nationality of the author of the musical work;
- 5.The name, nationality, and domicile or residence of the owner of the economic rights to the musical work; also the agent's name and domicile or residence if there is an agent known by the applicant;
- 6.The title of the sound recording for sale which has been recorded with the musical work and a statement indicating that the sound recording has been publicly published for over six months;
- 7.A statement indicating that the applicant wishes to exploit the musical work to record and produce other sound recordings for sale;
- 8.The kind of carrier which will be recorded with the sound recording to be published and the wholesale price thereof;
- 9.The quantity of the sound recording to be published; and
- 10.The quantity of musical works which the applicant wants to exploit in the sound recording he/she plans to publish.

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Where the musical work does not indicate the matters in Item 3 of the preceding Paragraph, the matters may be omitted. The domicile or residence of the owner and his/her agent of the economic rights thereof may also be omitted if it is unknown.

Where the musical work is in conformance with the situation provided by Item 1 of Article 4 of the Act, the written application form shall indicate the country or area of its first publication and the date of publication as prescribed in that Item.

Where the musical work is in conformance with the situation provided by the proviso of Article 4 of the Act, the written application form shall indicate the relevant facts complying with that proviso.

### **Article 4**

Except as otherwise provided under these Regulations, the relevant evidential documents referred to in Item 3 of Article 2 include:

1. Evidential documents indicating that the sound recording for sale is recorded with a musical work; and
2. Evidential documents for the fact that the sound recording for sale as set forth in the preceding Item has been publicly published for over six months

### **Article 5**

Where an appointed agent files the application for a compulsory license, a power of attorney or an evidential docu-

ment for authorization shall be presented. When the agent is changed or discharged, the change or discharge shall not take effect before a written notice of such change or discharge is given

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License of Musical Works And Royalties for Use Thereof

to the Copyright Authority charged with copyright matters.

**Article 6**

Where the documents presented by the applicant are foreign official documents, the documents shall be authenticated by an ROC embassy/consulate, representative office, branch office, or other institute authorized by the Ministry of Foreign Affairs of the Republic of China, or verified by a court or a civil notary public of the Republic of China.

Where the documents presented by the applicant are in a foreign language, a Chinese translation thereof shall be submitted.

**Article 7**

After accepting the application, the Copyright Authority charged with copyright matters shall notify the owner and his/her agent of the economic rights to the musical work; if the domicile or residence of the owner is unknown, the Copyright Authority charged with copyright matters shall put the contents of the written application into a public notice.

The owner or his/her agent of the economic rights to the musical work may submit their opinion in writing to the Copy-

right Authority charged with copyright matters within thirty days after receiving the notification or the public notice set by the Copyright Authority charged with copyright matters.

Where the owner of the economic rights to the musical work appoints an agent or has an agent to submit his/her opinion, a power of attorney or an evidential document for authorization shall be presented. When the agent is changed or discharged, the change or discharge shall not take effect before a written notice of

such change or discharge is given to the Copyright Authority charged with copyright matters.

### **Article 8**

Under any of the following situations, the Copyright Authority charged with handling copyright matters should notify the applicant for collection by given deadline:

1. Where the application fee is not paid in compliance with these Regulations;
2. Where the written application form presented is not signed or sealed by the applicant or his/her agent;
3. Where the items required to be indicated in the written application form are missing or incomplete;
4. Where the items indicated in the written application form conflict with the evidential documents or the sample copy of the musical work;
5. Where the documents required to be subm.
6. Other situations that need to be corrected.

### **Article 9**

Under any of the following situations, the Copyright Authority charged with copyright matters shall reject the application:

1. Where the Copyright Authority charged with copyright matters has set a deadline demanding correction in accordance with the provisions of the preceding Article, but the applicant has failed to correct or complete the correction by the deadline;
2. Where the written application conflicts with Paragraph 1 of

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Article 69 of the Act; or

3. Where the items requested for recordation are untrue.

**Article 10**

Where the Copyright Authority charged with handling copyright matters does not approve the compulsory license, it shall notify the applicant, the owner and his/her agent of the economic right to the musical work with a written statement of reasons.

**Article 11**

Where the Copyright Authority charged with handling copyright matters approves the compulsory license, it shall put the approval decision into a public notice and notify the applicant, the owner and his/her agent of the economic right to the musical work.

**Article 12**

Upon approving a compulsory license, the Copyright Authority charged with handling copyright matters shall simultaneously inform the applicant of how the royalties will be calculated and in what manner the license is permitted to use.

The royalties paid by the applicant shall be calculated as follows:

Royalties =

The wholesale price of a sound recording which is scheduled to be published X 5.4% X the quantity to be published

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The quantity of the musical work which would be used for the sound recording to be published

In accordance with the formula of the preceding Paragraph,

where the amount of the royalties calculated is under twenty thousand New Taiwan Dollars, it shall be calculated as twenty thousand New Taiwan Dollars; provided, the applicant has special reason and provide evidence to demonstrate, may calculate according to the preceding Paragraph.

### **Article 13**

The applicant who has lodged royalties shall report to the Copyright Authority charged with handling copyright matters for its recordation.

### **Article 14**

Where the applicant has not paid royalties, he/she shall not use the musical work to record and produce a sound recording for sale.

### **Article 15**

The applicant who has obtained approval for a compulsory license from the Copyright Authority charged with handling copyright matters shall not transfer the approval or prohibit others from recording and producing another sound recording.

### **Article 16**

Where the estimated wholesale price that the applicant has submitted is lower than the actual wholesale price or the estimated quantities of the musical works that the applicant has applied to use is higher than the quantities of the musical works that actually have been used, resulting in the amount of the royalties being higher than what is calculated according to the provision of Article 12, the applicant shall make up for the deficiency.

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License of Musical Works And Royalties for Use Thereof

After the Copyright Authority charged with handling copyright matters has approved a compulsory license, the applicant who wishes to increase the quantity of publications originally approved shall apply to the Copyright Authority charged with handling copyright matters for change of the quantity of publication.

Where the Copyright Authority charged with handling copyright matters approves the change as set forth in the pre-

ceding Paragraph, it shall put the approval decision into a public notice and notify the applicant, the owner and his/her agent of the economic rights to the musical work.

**Article 17**

The sound recordings recorded and produced in accordance with these Regulations shall indicate the following matters:

- 1.The title of the musical work;
- 2.The name of the author of the musical work;
- 3.The date and document number of approval of the compulsory license by the Copyright Authority charged with handling copyright matters;
- 4.Areas of sales;
- 5.Serial number that is sufficient to identify the quantity to be published; and
- 6.The product title and code of the produced record work

Where the musical work does not indicate the matters in Item 1 of the preceding Paragraph, the matters may be omitted.

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The produced record work may also be omitted if it does not indicate the matters in Item 6 of the preceding Paragraph.

The applicant shall , in accordance with Paragraph 1, hand in a publication sample to the Copyright Authority, the owner and his/her agent of the economic rights to the musical work within 14 days, except where the domicile or residence of the owner or his/her agent is unknown.

### **Article 18**

Where the Copyright Authority charged with copyright matters revokes or abolishes approval in accordance with Article 71 of the Act, it shall put the decision into a public notice and notify the applicant, the owner and his/her agent of the economic rights to the musical work.

The Copyright Authority charged with copyright matters shall first inform the applicant to state his/her opinion within a specified deadline before the revocation or abolishment of approval stated in the preceding Paragraph.

### **Article 19**

These Regulations shall come into force from the date of promulgation.

Regulations Governing Application for Approval of Compulsory  
License of Musical Works And Royalties for Use Thereof

## **REGULATIONS GOVERNING REGISTRATION OF PLATE RIGHTS**

Promulgated on February 23, 1998 per Letter No. Tai-(87)-Nei-Chu-Tze 8785536.

Amended and Promulgated by Ministry of Economic Affairs on November 5, 2003 per Letter No. Ging-Zhi-Tze 09204612840.

### **Article 1**

These regulations are prescribed in accordance with Paragraph 5 of Article 79 of the Copyright Act (hereinafter referred to as "the Act").

### **Article 2**

An application for recordation of plate rights shall be filed by the plate-maker with the Copyright Authority charged with copyright matters.

An application for recording the assignment of plate rights shall be filed by the assignee with the Copyright Authority charged with copyright matters.

An application for recording the trust of plate rights shall be filed jointly by the trustor and the trustee with the Copyright Authority charged with copyright matters.

### **Article 3**

The following documents shall be submitted when applying for recordation of plate rights:

- 1.A written application for recordation of plate rights;

## Regulations Governing Registration of Plate rights

2. Evidential documents certifying that the plated literary work or artistic work has no economic rights or that such rights have been extinguished;
3. The original copy of the plated literary work or the original copy of the plated artistic work; and
4. A statement describing in detail the creation process of the said plate, together with one sample of the plated work.

In the absence of the evidential documents as set forth in Item 2 of the preceding Paragraph, an affidavit shall be submitted, stating that the plated literary work or artistic work has no economic rights or that such rights have been extinguished.

For the recordation of the plate rights of an artistic work, the evidential documents certifying the first publication of the reproduction of the original copy of the artistic work by photocopy, printing, or other similar means shall be submitted. In the absence of the said evidential documents, an affidavit stating the same shall be submitted.

### **Article 4**

In applying for registration of plate rights, the written application shall indicate the following particulars and shall be signed or sealed by the applicant or his/her agent:

1. The name, date of birth and address of the applicant; or, where the applicant is a juridical person, the appellation, date of establishment, address of the applicant and the name of the representative;
2. Where the application is filed by an agent, the name and address of the agent; or, where the agent is a juridical person, the appel-

- lation ,address of the agent and the name of the representative;
- 3.The title of the plated work;
  - 4.The category of the plate;
  - 5.The title of the plated original work and the name/appellation of the original author;
  - 6.The name/appellation and nationality of the plate-maker; and, the date the plate-making was completed.

### **Article 5**

In applying for registration of plate rights, a plated work which shall be examined pursuant to the law shall be accompanied with the approval documents issued by the relevant competent authority

### **Article 6**

Where it is practically inconvenient or impossible to submit the original copy of a literary work or the original copy of an artistic work due to its significant size or volume, fragility, expensiveness, or other special circumstances, the applicant may apply to the Copyright Authority charged with copyright matters for exemption from submission of the work, or submit a detailed statement describing the said original copy or original work, a set of photographic pictures from four, five, or six views, or other substitutes.

Where the sample copy of a plated work cannot be submitted as set forth in the preceding paragraph, the applicant may apply to the Copyright Authority charged with copyright matters for its approval for submitting part of the sample copy.

## **Article 7**

A sample copy of a plate work shall, in the appropriate place, indicate the following particulars:

- 1.The title of the plated original work and the name/appellation of the original author;
- 2.The name/appellation of the plate-maker; and
- 3.The date the plate-making is completed.

The matter as set forth in Item 1 of the preceding Paragraph may be omitted if the original work did not indicate such matter.

## **Article 8**

The following documents shall be submitted in applying for recordation of the assignment of plate rights:

- 1.A written application for recording the assignment of plate rights; and
- 2.Evidential documents certifying the assignment.

## **Article 9**

A written application for recording the assignment of plate rights shall indicate the following particulars and shall be signed or sealed by the applicant or his/her agent:

- 1.Matters specified in items 1 through 7 of Article 4;
- 2.Recordation number of the plate rights; and
- 3.Names, dates of birth, and addresses of the assignor and the assignee; or, where the assignor or the assignee is a juristic person, the appellation, date of establishment, address of the

juristic person and the name of representative.

### **Article 10**

The following documents shall be submitted in applying for recordation of the trust of plate rights, or invalidation of the trust of plate rights, or recordation of the trust ownership of plate rights:

- 1 A written application for recording the trust of plate rights; and
2. Trust agreement or other evidential documents.

### **Article 11**

A written application for recording the trust of plate rights shall indicate the following particulars and shall be signed or sealed by the applicant or his/her agent:

1. Matters specified in Items 1 through 7 of Article 4;
2. Recordation number of the plate rights; and
3. Names, dates of birth, and addresses of the trustor and the trustee; or, where the trustor or the trustee is a juristic person, the appellation, date of establishment, address of the juristic person and the name of representative.
4. If the trust relationship is extinguished and the ownership of the plate rights belongs to a third party, the applicant who applies for recording the trust ownership of the plate rights shall indicate the name, date of birth, and address of the third party; or where the third party is a juristic person, the appellation, date of establishment, address of the juristic person and the name of representative.

### **Article 12**

## Regulations Governing Registration of Plate rights

Where the number of applicants set forth in Article 2 is two or more, one or more of them may apply for recordation for the benefits of all the applicants.

### **Article 13**

Where an applicant applies for recordation of plate rights by presenting foreign official documents, such documents shall be authenticated by an ROC embassy, consulate, representative office, branch office, or other institute authorized by the Ministry of Foreign Affairs of the Republic of China, or shall be verified by a court or a civil notary public of the Republic of China.

Where the documents presented by an applicant are in a foreign language, a Chinese translation thereof shall be submitted.

### **Article 14**

Where an applicant presents documents which are issued by civil, juridical person, organizational and other agencies in mainland China, such documents shall be authenticated by an agency established or appointed by the Executive Yuan or a private organization commissioned by the Executive Yuan.

### **Article 15**

Under any of the following circumstances, the Copyright Authority shall notify the applicant for correction by a given deadline:

1. Where the applicant failed to pay the prescribed application fee, registration fee and/or publication fee;
2. Where the particulars required to be indicated in the written application for registration of plate rights are not indicated or incompletely indicated;

3. Where the documents required to be submitted are lacking; or
4. Other situations that need to be corrected.

### **Article 16**

Under any of the following circumstances, the Copyright Authority charged with copyright matters shall reject the application, and provide a written statement of reasons:

1. Where the applicant is not a person as set forth in Article 2;
2. Where the particulars indicated in the written application conflict with the documents submitted;
3. Where the items requested for recordation contravene the provisions of Paragraph 1, Article 79 of the Act, in the case of applying for recordation of plate rights;
4. Where the plate-making has been completed for more than ten years;
5. Where the items requested for recordation are untrue; or
6. Where the Copyright Authority charged with copyright matters has, in accordance with the preceding Article, set a deadline for correction, but the applicant has failed to correct or complete the correction by the deadline.

### **Article 17**

In approving the recordation of plate rights, the Copyright Authority charged with copyright matters shall, in addition to docketing the recorded particulars in the Register and publishing the recordation in an official gazette, give the applicant a written notice enclosed with a transcript of the Register.

### **Article 18**

If any error in the recorded particulars is found after the plate rights have been recorded by the Copyright Authority charged with copyright matters, the applicant may request correction of such an error by presenting evidential documents.

### **Article 19**

Where there are errors or omissions in the recorded particulars made by the Copyright Authority charged with copyright matters in accordance with these Regulations, the applicant may request the Copyright Authority charged with copyright matters to make corrections thereof. The Copyright Authority charged with copyright matters may also initiate such corrections and notify the applicant of the corrections.

### **Article 20**

Where after the recordation has been approved by the Copyright Authority charged with copyright matters, the recorded particulars have changed and the changes do not involve the acquisition, forfeiture, or alteration of any rights, the applicant may request the changes by presenting evidential documents.

### **Article 21**

After the Copyright Authority has approved a registration, the applicant shall not request return of the evidential documents, the detailed statements describing the process of plate-making, and the sample copy of the plate work, which were submitted along with the application for registration.

### **Article 22**

Where an application for registration is filed by an agent, a

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power of attorney or an evidential document for representation authority shall be submitted. Upon the change or discharge of the agent, the principal shall notify the Copyright Authority in writing.

### **Article 23**

The formats of the written applications for recordation, Register, and other necessary documents and forms set forth in these Regulations shall be prescribed by the Copyright Authority charged with copyright matters.

Applications requested under these Regulations shall use the documents and forms designated by the Copyright Authority charged with copyright matters.

### **Article 24**

These regulations shall come into force from the date of promulgation.

## Regulations Governing Registration of Plate rights

## **REGULATIONS OF COPYRIGHT DISPUTE MEDIATION**

Promulgated by Ministry of Interior on April 17, 1987 per Letter No. Tai-(76)-Nei-Chu-Tze 484790.

Amended and Promulgated by Ministry of Interior on September 23, 1992 per Letter No. Tai-(81)-Nei-Chu-Tze 8183331.

Amended and Promulgated by Ministry of Economic Affairs on June 9, 1999 per Letter No. Ging-Zhi-Tze 88012610.

Amended and Promulgated by Ministry of Economic Affairs on April 14, 2004 per Letter No. Ging-Zhi-Tze 09300532893.

### **Article 1**

These Regulations are enacted pursuant to the provisions of Article 83 of the Copyright Act. (hereinafter referred to as "this Act").

### **Article 2**

With any of the following situations, a party may apply to the specialized agency in charge of copyright matters for mediation in accordance with these Regulations:

1. Disputes over royalties between a copyright intermediary organization and the user.
2. Disputes over copyright or plate-right.

Where the disputes referred to in Item 2 of the preceding Paragraph are involved with criminal offenses, the mediation thereof should be restricted to the cases which could be prosecuted by the Public Prosecutor upon complaints initiated by the

victim.

### **Article 3**

This dispute mediation provided by the preceding Article shall be mediated by one to three Members ( hereinafter referred to as Mediation Member ) designated by Copyright Regulatory and Mediation Board (hereinafter referred to as Board) of the Intellectual Property Office of the Ministry of Economic Affairs according to the nature of incident or the category of works.

### **Article 4**

The application for mediation by a party should be made in writing, indicate the following items, and be signed or sealed by the party or his/her agent:

- 1.The names, birth date, domicile or residence, and the national ID card numbers; the name, office or business place, and the name, birth date, domicile or residence of the manager or the agent of a party where the party is a government authority, school, corporation or other juridical persons or organizations.
- 2.Where the party has a statutory or assigned representative, the representative's name, birth date, domicile or residence, and the national ID card numbers.
- 3.The incidents for mediation.
- 4.Issues of the dispute.

Duplicates of the written application set forth in the preceding Paragraph should be made one duplicate per person of the other party.

### **Article 5**

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Where a Party appoints an agent, it should present a Letter Power of Attorney.

Where the agent is changed or discharged, the principal should give a written notice to the specialized agency in charge of copyright matters.

### **Article 6**

When the specialized agency in charge of copyright matters accepts the application for mediation, it should send the duplicates of the written application for mediation to the other party and notify the other party that they shall express, by a deadline, whether they would proceed with mediation; failure to express such would be deemed as refusal of mediation.

### **Article 7**

Where a party's application for mediation is concurred by the other party, the specialized agency in charge of copyright matters should bring this case to the Board for mediation.

### **Article 8**

Regarding the application for mediation, unless the mediation is refused by the other party as provided by Article 6, the specialized agency in charge of copyright matters should designate a mediation date and notify the parties or their agent to be present.

The other party may submit written opinions to the specialized agency in charge of copyright matters before the mediation date.

A party or his agent's absence on the mediation date without reasonable justifications shall be deemed to be that the mediation

is not concluded. Nevertheless, if the Mediation Member considers that it is hopeful to reach a mediation, the specialized agency in charge of copyright matters may set another mediation date.

### **Article 9**

Mediation proceedings shall be conducted by Mediation Members at a place designated by the specialized agency in charge of copyright matters, which may be unopen to the public.

Mediation may still be proceeded with even if only one Mediation Member set forth in the preceding Paragraph attends the mediation.

Where the matters to be mediated are involved with Mediation Member himself or his cohabitants, the Mediation Member shall withdraw from this mediation upon a party's request.

### **Article 10**

Both parties may appoint one to three persons to attend the mediation meeting to assist in mediation. The specialized agency in charge of copyright matters may according to the nature of incident invite the people who have connection with the incident to attend the proceedings presenting their opinions.

### **Article 11**

The Mediation Member, the attendants or participants of a mediation meeting, and/or the persons who have handled the mediation affairs should keep confidential the incidents being mediated, except those matters having been open to the public.

### **Article 12**

Mediation Members should ask the opinions of both parties, give adequate advice to the parties, and proceed with the mediation by taking the actual situations and key issues into account.

### **Article 13**

When mediation agreement is reached, the specialized agency in charge of copyright matters should prepare a written agreement of mediation, indicating the following items, and the said agreement shall be signed or sealed by the parties or their agents, the Mediation Members and relevant attendants:

- 1.The names, birth date, domicile or residence, and the national ID card numbers; the name, office or business place, and the name, birth date, domicile or residence of the manager or the agent of a party where the party is a government authority, school, corporation or other juridical persons or organizations.
- 2.Where the Party has a statutory or assigned representative, the representative's name, birth date, domicile or residence, and the national ID card numbers.
- 3.The names, occupation and domicile or residence of the Mediation Members and of the attendants of the mediation.
- 4.The incidents for mediation.
- 5.The contents of the mediation agreement.
- 6.The place where the mediation is concluded.
- 7.The date when the mediation is concluded.

The original copies of the written agreement of mediation set forth in the preceding Paragraph should pursuant to the provisions of paragraph 1 of Article 82bis be sent to the court which has the

jurisdiction for review, within seven days starting from the date when the mediation is concluded.

#### **Article 14**

The specialized agency in charge of copyright matters shall return the written agreement of mediation within fifteen days from the date the mediation is received from the court which has the jurisdiction pursuant to the provisions of paragraph 2 of Article 82bis, or notify the parties of the reasons within fifteen days from the date the notification is received when the court decides not to ratify a mediation pursuant to the provisions of paragraph 3 of Article 82bis.

#### **Article 15**

When mediation fails, the specialized agency in charge of copyright matters shall notify the parties of the reasons within fifteen days from the date the mediation meeting decides the mediation fails.

#### **Article 16**

These Regulations shall come into force from the date of promulgation.

## **IMPLEMENTATION REGULATIONS FOR SUSPENSION OF RELEASE OF GOODS INFRINGING ON COPYRIGHT OR PLATE RIGHTS BY CUSTOMS AUTHORITES**

Promulgated by Ministry of the Interior and Ministry of Finance on June 8, 1998 per Letter No. Tai-(87)-Nai-Chu-Tze 8704665 & Tai-Tzai-Kuan-Tze 870378351.

Amended and promulgated by Ministry of Economic Affairs and Ministry of Finance on March 20, 2002 per Letter No. Ging-Zhi-Tze 09104604140 & Tai-Tzai-Kuan-Tze 0910550154.

Amended and promulgated by Ministry of Economic Affairs and Ministry of Finance on January 27, 2005 per Letter No. Ging-Zhi-Tze 09304609880 & Tai-Tzai-Kuan-Tze 09305506800.

### **Article 1**

These rules are prescribed in accordance with Article 90<sup>ter</sup> of the Copyright Act (hereinafter referred to as "the Act").

### **Article 2**

The copyright owner or the plate rights owner who applies, in accordance with paragraph 1 of Article 90<sup>bis</sup> of the Act, for suspension of release of the imported or exported goods that are suspected of infringing on his/her copyright or plate rights shall post a bond in an amount equivalent to the customs authorities-valued landed cost of imported goods or the F.O.B. price of exported goods to serve as a security for the party whose goods are subject to the suspension of release. In addition, the application shall be submitted in writing to customs authorities at the port where the goods are to be imported or exported indicating

## Implementation Regulations For Suspension of Release of Goods Infringing on Copyright or Plate Rights by Customs Authorities

therein the following items:

- 1.He/she is the owner of the said copyright or plate rights;
- 2.Descriptions which may sufficiently identify the infringing goods; and
- 3.The fact of infringement.

The matters as set forth in Items 1 and 3 of the preceding Paragraph shall be expressly explained.

The term “bond” in the first paragraph, could be substitute by the followings :

- 1.Government Bond;
- 2.Bank Time Certificates;
- 3.Credit Co-operative Association Time Certificates;
- 4.General Trust Receipt issued by investment & trust companies with more then one year tenure and
- 5.Lending institution margin.

The bonds Listed in the first to fourth item of the preceding Paragraph should be pledged at Customs authorities.

### **Article 3**

Where an application for suspension of release, after examination, complies with paragraph 2 of Article 90*bis* and the preceding Article, customs authorities shall forthwith proceed with the suspension.

Where an application for suspension of release needs to be made up, customs authorities shall immediately notify the

applicant to make up the requirements. Before the application has been made up, any of the customs clearance procedures shall not be affected.

**Article 4**

( deleted )

**Article 5**

In applying for inspection of goods, which are detained pursuant to Paragraph 4 of Article 90*bis* of the Act, the applicant or the party whose goods are subject to the suspension shall apply, in writing, to customs authorities at the port where the goods are to be imported or exported.

The inspection as referred to in the preceding Paragraph shall be performed in the manner and at the time and place as appointed by customs authorities.

While arranging the appointment as set forth in the preceding Paragraph, customs authorities are careful not to impair the protection of the confidential information of the detained goods.

**Article 6**

Where the detained goods have been given a final judgment from the court, which determined that the said commodities have infringed copyright or plate-right, customs authorities may, upon the written request of the applicant, notify him/her of the quantity of the detained goods, and the names/appellations and addresses of their consignor, importer, and consignee.

**Article 7**

These regulations shall come into force from the date of promulgation.

## **STANDARDS FOR APPLICATION FEES RELATED TO COPYRIGHT AFFAIRS**

Promulgated by the Ministry of Economic Affairs on July 29,2000 per Letter No. Ging-(89)-Zhi-Tze 89315424.

Amended and Promulgated by the Ministry of Economic Affairs on December 17,2003 per Letter No. Ging-Zhi-Tze 09204614560.

Amended and Promulgated by the Ministry of Economic Affairs on April 12,2010 per Letter No. Ging-Zhi-Tze 09904602080.

### **Article 1**

These Standards are enacted pursuant to the provisions of paragraph 2 of Article 105 of the Copyright Act.

### **Article 2**

The fees for applications related to copyright affairs are listed as follows :

- 1.Application for approval of compulsory license of musical works : NT\$3,000 per work.
- 2.Application for plate right recordals : NT\$3,600 per application ; NT\$100 per recordals; and NT\$100 per publication in gazette.
- 3.Application for plate right assignment recordals : NT\$1,200 per case.
4. Application for plate right trust recordals : NT\$1,200 per case.
- 5.Application for reviewing the plate right recordals : application

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for reviewing sample copy or evidential documents, NT\$100 per case; application for copying evidential documents, NT\$100 per case.

6. Application for transcription of plate right records : NT\$50 per case. For further search : an additional NT\$20 per page. However, no fees will be charged to the applicant if the transcription is issued with plate right recordal approval letter.

7. Application for copyright dispute mediation : NT\$4,000 per case.

### **Article 3**

These Standards shall come into force from the date of promulgation.

# **REGULATIONS FOR COPYRIGHT COLLECTIVE MANAGEMENT ORGANIZATION FEES**

Issued per July 5, 2000 Order No. (89) Jing-Zhi-Zi No. 89315371

Amended and issued per February 26, 2010 Order No. Jing-Zhi-Zi No. 09904600960

## **Article 1**

These Regulations are adopted pursuant to Article 10 of the Charges and Fees Act.

## **Article 2**

Application fees for copyright collective management organizations are as follows:

1. NT\$28,000 per application is charged when management for one category of work is requested in the application for establishment permit; an additional NT\$5,000 is charged for each additional category added.
2. Application to add a new category or categories of works to those managed: NT\$15,000 per application for adding one category of work; an additional NT\$5,000 is charged for each additional added.
3. Application for permission for merger: NT\$10,000 per case.

## **Article 3**

These Regulations shall come into force from the date of issue.

## **DIRECTIONS DEFINING THE CONTENT OF THE SUBPARAGRAPHS OF PARAGRAPH 3 OF ARTICLE 80-2 OF THE COPYRIGHT ACT**

Provisions	Comments
1. These Directions are pursuant to paragraph 4 of Article 80-2 of the Copyright Act (herein after referred to as "the Act").	These Directions are pursuant to paragraph 4 of Article 80-2 of the Copyright Act ("the Act") to elaborate the regulatory principles set out in paragraph 3 of Article 80-2 of the Act.
2. The terms "disarmed, destroyed, or by any other means circumvented" in paragraph 1 of Article 80-2 of the Act and "disarming, destroying, or circumventing" in paragraph 2 of the same article are referred to in these Directions by the abbreviated term "circumvent."	The term "circumvent" in these Directions means "disarm, destroy, or by any other means circumvent" referred to in paragraph 1 of Article 80-2 of the Act, and "disarming, destroying, or circumventing" referred to in paragraph 2 of the same article.

Directions Defining The Content of The Subparagraphs of  
Paragraph 3 of Article 80-2 of The Copyright Act

<p>3. The equipment, devices, components, technology, or information listed below may not be manufactured, imported, offered to the public for use, or offered in services to the public, except in the circumstances set out in paragraph 3 of Article 80-2 of the Act:</p> <ol style="list-style-type: none"><li>(1) That which is primarily for the purpose of circumventing a technological protection measure;</li><li>(2) That which has limited commercial purpose other than the purpose in the preceding subparagraph;</li><li>(3) That which is marketed for use in circumventing a technological protection measure.</li></ol>	<ol style="list-style-type: none"><li>1. Under the principle of technological neutrality, equipment, devices, components, technology, or information for circumventing technological protection measures are not uniformly all prohibited from being manufactured, imported, offered to the public for use, or offered in services to the public. Only those meeting certain criteria are rated negatively and subject to restriction. Relevant conditions are therefore prescribed after having reference to the US, European, Japanese, Korean, and Hong Kong regimes and the content of relevant free trade agreements.</li><li>2. The term "technological protection measure" in these Directions encompasses both technological protection measures to prohibit or restrict access to works ("access controls") and technological protection measures to prohibit or restrict exploitation of works ("exploitation controls").</li></ol>
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<p>4.The circumstances in the preceding point are also prohibited with respect to components, parts, or products of electronics, communications, or computing products, provided that the person who is manufacturing them, importing them, offering them to the public for use, or offering them in services to the public shall not have any duty, in the design or selection of such products and components and parts thereof, of providing for a response to any particular technological protection measure.</p>	<p>1.Among its various functions, a multifunction electronic device may have a function that circumvents a technological protection measure, although the device is not designed primarily for purposes of such circumvention. Therefore, clarification is required as to whether manufacture and distribution of such devices would be prohibited under the Act's protections for technological measures.</p> <p>2.The US Digital Millennium Copyright Act Section 1201 (c)(3) states in part, "Nothing in this section shall require that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such part or component, or the product in which such part or component is integrated, does not otherwise fall within the prohibitions of subsection (a)(2) or (b)(1)" [which corresponds to the prohibitions adopted in Point 3 regarding paragraph 3</p>
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Directions Defining The Content of The Subparagraphs of  
Paragraph 3 of Article 80-2 of The Copyright Act

	<p>of Article 80-2.]. Paragraph 48 of the preamble to the 2001 European Copyright Directive, states, "Such legal protection implies no obligation to design devices, products, components or services to correspond to technological measures, so long as such device, product, component or service does not otherwise fall under the prohibition of Article 6" [which corresponds to the prohibitions adopted in Point 3 regarding paragraph 3 of Article 80-2.]. The intent of these provisions is to strike a balance between the interests of economic rights owners and the interests of manufacturers and sellers of multifunction electronic devices. Given the necessity of this, the above legislation was taken into reference in drafting the Directions.</p>
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<p>5. "To preserve national security" in subparagraph 1 of paragraph 3 of Article 80-2 of the Act means lawfully authorized activities to protect information security or intelligence and other related matters for preserving national security. "Information security" in the preceding paragraph means acts carried out for purposes of identifying and handling vulnerabilities in government administered computers, computer systems, or computer networks.</p>	<p>1. This point applies to circumstances in which it is permissible to circumvent technological protection measures in lawfully authorized activities for purposes of preserving national security, including permissibly circumventing access controls, or manufacturing, importing, or providing equipment, devices, components, technology, or information for circumventing access or exploitation controls.</p> <p>2. Examples:</p> <p>(1) To prevent invasions by hackers of government administered computers, the Research, Development, and Evaluation Commission, Executive Yuan, may, itself or by outsourcing to contractors, carry out testing of computers administered by various government agencies, to identify or treat vulnerabilities in the computers and make improvements to safeguard information security.</p> <p>(2) To preserve national security, the National Security Bureau, upon identifying suspected threats to national</p>
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Directions Defining The Content of The Subparagraphs of  
Paragraph 3 of Article 80-2 of The Copyright Act

	<p>intelligence needs, may disarm suspicious computers or servers, or technological protection measures attached to specific documents or files therein, to ascertain whether there is an intended threat to the country.</p> <p>3.This point is adopted with reference to the US Digital Millennium Copyright Act Section 1201(e) concerning exemption for lawfully authorized intelligence and other government activity.</p>
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<p>6. "Done by central or local government agencies" in subparagraph 2 of paragraph 3 of Article 80-2 of the Act means any lawfully authorized prosecutorial, investigative, or other government activity of a central or local government agency.</p>	<p>1. This point applies to circumstances in which a central or local government agency may circumvent technological protection measures in lawfully authorized government activities, including permissibly circumventing access controls, or manufacturing, importing, or providing equipment, devices, components, technology, or information for circumventing access or exploitation controls.</p> <p>2. Example: A prosecutorial agency conducting an inquiry into a criminal offense under the Code of Criminal Procedure is exercising national public powers vested by the Code of Criminal Procedure or related special laws (e.g. the Communications Safeguards and Supervision Act), and so may circumvent technological protection measures for purposes of carrying out such lawfully authorized activities.</p> <p>3. This point is adopted with reference to the US Digital Millennium Copyright Act Section 1201(e) concerning exemption for lawfully authorized intelligence and other</p>
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Directions Defining The Content of The Subparagraphs of  
Paragraph 3 of Article 80-2 of The Copyright Act

	government activity.
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<p>7. "Done by file archive institutions, educational institutions, or public libraries to assess whether to obtain the information" in subparagraph 3 of paragraph 3 of Article 80-2 of the Act shall be subject to the following conditions:</p> <ol style="list-style-type: none"><li>(1) An identical copy of the accessed work is not reasonably available in another form;</li><li>(2) After accessing the work, it is not retained longer than necessary to make a good faith determination of whether to acquire the work, and is not used for any other purpose.</li></ol> <p>An institution accessing a work in compliance with the preceding paragraph may circumvent a technological protection measure prohibiting or restricting access to the work.</p>	<ol style="list-style-type: none"><li>1. This point applies to circumstances in which a file archive or other institution may circumvent access controls for purposes of assessing whether to obtain the information.</li><li>2. "File archive institutions, educational institutions, or public libraries" in this Point refers to those that are nonprofit, and whose collections are open to the public, or though not open to the public are available to researchers of the archives, educational institution, or library, and departments of its affiliated organizations and to other persons doing research in a specialized field.</li><li>3. Examples:<ol style="list-style-type: none"><li>(1) A certain publisher publishes an electronic encyclopedia, but there is no trial-use version, and a copy of the work is not reasonably available in any other form (e.g. a paper version), necessitating that a library buy the electronic version in order to ascertain and assess whether the content of the encyclopedia is worth buying. In these circumstances, if the elec-</li></ol></li></ol>
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Directions Defining The Content of The Subparagraphs of  
Paragraph 3 of Article 80-2 of The Copyright Act

	<p>tronic encyclopedia has access controls so that the library is unable to access the content of the work before actually buying it, for purposes of ascertaining and assessing whether the work is worth buying for its collection, it is permitted to access and examine the work after circumventing the controls for purposes of assessing whether to buy it, so as to avoid nonprofit archives, educational institutions, or public libraries wasting funds on the purchase of unneeded materials, thus balancing public and private interests.</p> <p>(2)The mechanical engineering department of a certain university wishes to assess whether certain software meets its needs for procurement purposes, but the manufacturer of the software has not provided a reasonable means of assessment and employs access controls. To prevent the university from buying software that does not meet</p>
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	<p>its needs, it is permitted to access and examine it after circumventing the controls, to assess whether to buy it, thus balancing public and private interests.</p> <p>4. This point is adopted with reference to the US Digital Millennium Copyright Act Section 1201(d) concerning exemption for nonprofit libraries, archives, and educational institutions.</p>
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Directions Defining The Content of The Subparagraphs of  
Paragraph 3 of Article 80-2 of The Copyright Act

<p>8. "To protect minors" in subparagraph 4 of paragraph 3 of Article 80-2 of the Act shall be subject to the following conditions:</p> <ol style="list-style-type: none"><li>(1) It has the sole purpose of preventing the access of minors to works on the Internet;</li><li>(2) It does not violate the provisions of the Act.</li></ol>	<ol style="list-style-type: none"><li>1. This point applies to circumstances in which it is permissible to circumvent access controls for purposes of protecting minors.</li><li>2. Under the circumstances set out in this point, it is permissible to circumvent access controls, and to manufacture, import, or provide equipment, devices, components, technology, or information for circumventing access controls.</li><li>3. Example: There are certain works on the Internet with pornographic or violent content that are unsuitable for access and viewing by minors. From the standpoint of protecting minors, under the Child and Youth Welfare Act and related laws and regulations, a rating system should be adopted. However, if such works, or a server on which such works are stored, is protected by encryption or other access controls, so that the content cannot be distinguished on a case-by-case basis, it becomes impossible to put ratings into practice to protect minors. For the</li></ol>
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	<p>purposes of protecting minors, it is therefore permissible to circumvent the technological protection measures.</p> <p>4.This point is adopted with reference to the US Digital Millennium Copyright Act Section 1201(h) concerning exemptions for protection of minors.</p>
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Directions Defining The Content of The Subparagraphs of Paragraph 3 of Article 80-2 of The Copyright Act

<p>9. "To protect personal data" in subparagraph 5 of paragraph 3 of Article 80-2 of the Act refers to the following circumstances:</p> <ol style="list-style-type: none"><li>(1) The technological protection measure or the work it protects has the capability of collecting or disseminating personal information reflecting the online activities of an individual natural person who seeks to gain access to the work;</li><li>(2) In the normal course of its operation, the technological protection measure or the work it protects does not provide notice of the capability described in the preceding paragraph, and does not provide the option of preventing or restricting that function;</li><li>(3) Circumvention has the sole effect of identifying and disabling the capability described in subparagraph (1), and has no other effect on the ability of any person to gain access to any work;</li><li>(4) The purpose of circum-</li></ol>	<ol style="list-style-type: none"><li>1. This point applies to circumstances in which it is permissible to circumvent access controls to protect personal information.</li><li>2. Example: A certain work or a technological protection measure of the work has the capability of automatically collecting or disseminating information about the online activities of a person accessing the work. However, it fails to provide notice to the user, causing the user to unknowingly have personal information reflecting his or her online activities collected or disseminated, seriously violating the individual's right of privacy. To protect the individual right of privacy and balance the legal protection of technological protection measures, it is therefore permissible to circumvent technological protection measures under the circumstances set out in this point, to avoid such collection or dissemination functions.</li><li>3. This point is adopted with reference to the US Digital</li></ol>
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<p>vention is solely for the purpose of preventing the capability described in subparagraph (1), and the act of circumvention is not in violation of any other law or regulation.</p> <p>Where all the circumstances in the subparagraphs of the preceding paragraph are met, it is permissible to circumvent a technological protection measure prohibiting or restricting access to a work.</p> <p>Paragraph 1 does not apply to a technological protection measure, or a work it protects, that does not collect or disseminate personal information, or that is disclosed to a user as not having or using such collection or dissemination capability.</p>	<p>Millennium Copyright Act Section 1201(i) concerning exemption for protection of personally identifying information.</p>
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Directions Defining The Content of The Subparagraphs of  
Paragraph 3 of Article 80-2 of The Copyright Act

<p>10. "To perform security testing of computers or networks" in subparagraph 6 of paragraph 3 of Article 80-2 of the Act means accessing a computer, computer system, or computer network, for the purpose of testing, inspecting, or correcting, a security flaw or vulnerability.</p> <p>The provisions of the preceding paragraph shall be subject to the following conditions:</p> <p>(1) The security testing is performed solely by the owner or operator of such computer, computer system, or computer network, or a person authorized thereby;</p> <p>(2) The information derived from the security testing information is used solely to promote the security of the owner or operator of such computer, computer system, or computer network, or shared directly with the developer of such computer, computer system, or computer network;</p>	<p>1. This point applies to circumstances in which it is permissible to circumvent technological protection measures to perform security testing of computers or networks, including circumventing access controls, and developing, manufacturing, or employing equipment, components, or technology for circumventing access controls.</p> <p>2. Example:</p> <p>To test whether the firewall of the website of a certain agency has any flaw or vulnerability, making it vulnerable to unauthorized hacking or invasion by others, it is permissible, for the sole purpose of security testing and where there is no violation of the Copyright Act or any other act or regulation, to circumvent a technological protection measure to access the computer, computer system, or computer network. This [point] is also applicable to developing, manufacturing, distributing, or employing, for the sole purpose of such security testing, equipment, devices, compo-</p>
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(3)The information referred to in the preceding subparagraph was used or maintained in a manner that does not infringe copyright, nor does it include any violation of privacy, breach of security, computer crime, or violation of any other act or regulation.

A person permitted to access a computer, computer system, or computer network in compliance with the preceding two paragraphs may circumvent a technological protection measure prohibiting or restricting access to a work, provided that the person's conduct does not infringe copyright or violate any applicable act or regulation.

It is permissible to develop, manufacture, distribute, or employ equipment, devices, components, technology, or information for circumventing technological protection measures prohibiting or restricting [access] to works for the sole purpose of performing security testing described in paragraph 1,

nents, technology, or information for circumventing technological protection measures prohibiting or restricting access to works, or to firms providing such services.

3.This point is adopted with reference to the US Digital Millennium Copyright Act Section 1201(j) concerning exemption for security testing.

Directions Defining The Content of The Subparagraphs of  
Paragraph 3 of Article 80-2 of The Copyright Act

provided that such equipment, devices, components, technology, or information do not violate Point 3.	
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<p>11. "To conduct encryption research" in subparagraph 7 of paragraph 3 of Article 80-2 of the Act means activities to identify and analyze flaws or vulnerability of encryption technologies applied to copyrighted works, where conducted for purposes of advancing encryption technology or developing encryption products, and where in compliance with the following conditions:</p> <ol style="list-style-type: none"><li>(1) The person has lawfully obtained the encrypted copy or content of the published work;</li><li>(2) The encryption research cannot be conducted without circumvention;</li><li>(3) The person attempted to obtain authorization to circumvent from the rights owner before taking the action, but did not receive consent;</li><li>(4) The act does not infringe copyright, nor does it include any violation of privacy, breach of security, computer crime, or violation of any other act or regulation.</li></ol>	<ol style="list-style-type: none"><li>1. This point applies to circumstances in which it is permissible to circumvent technological protection measures to conduct encryption research, including circumventing access controls, and developing or employing equipment, components, or technology for circumventing access controls.</li><li>2. Example: Collecting and studying works on the market that have technological protection measures attached, and use encryption technology, for purposes of researching new encryption technology to develop new technological protection measures or new network security mechanisms. Such research activity is beneficial to the development of encryption technology, so circumvention of technological protection measures attached to lawfully acquired copies of works and works for which authorization has been sought but could not be obtained is permitted for the sole purpose of such encryption technology research, provided that it does not violate the Copyright Act or any other act</li></ol>
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Directions Defining The Content of The Subparagraphs of Paragraph 3 of Article 80-2 of The Copyright Act

In determining whether encryption research complies with the subparagraphs of the preceding paragraph, the following factors shall be considered:

- (1) Whether the information derived from the encryption research was disseminated; if so, whether it was disseminated in a manner to advance encryption technology; whether it was disseminated in a manner that infringes copyright, or includes any violation of privacy, breach of security, computer crime, or violation of any other act or regulation;
- (2) Whether the research purpose of the person conducting the encryption research is lawful; whether the person is employed by another person; whether the person is appropriately trained or experienced;
- (3) Whether the person conducting the encryption research provides the copyright owner of the work to which the tech-

or regulation. For the sole purpose of conducting encryption technology research, it is also permissible to develop or employ technological means for circumventing technological protection measures, or to provide such technological means to other persons conducting encryption research.

3. This point is adopted with reference to the US Digital Millennium Copyright Act Section 1201(g) concerning exemption for encryption research.

nological measure is applied with notice of the findings or results of the research; the time when such notice is provided.

Where the provisions of the preceding two paragraphs are complied with, it is permissible to circumvent a technological protection measure prohibiting or restricting access to a work.

For the sole purpose of performing encryption research described in paragraph 1, it is permissible to develop and employ technological means to circumvent a technological protection measure prohibiting or restricting access to a work, and to provide such technological means to another person working collaboratively on the encryption research described in paragraph 1, or to another person working on encryption research described in paragraph 1 for the purpose of having that person verify the findings of the encryption research.

Directions Defining The Content of The Subparagraphs of Paragraph 3 of Article 80-2 of The Copyright Act

<p>12. "Reverse engineering" in subparagraph 8 of paragraph 3 of Article 80-2 of the Act means a person who has lawfully obtained the right to use a computer program identifying and analyzing elements of such computer program for purposes of achieving interoperability of an independently created computer program with other programs.</p> <p>Within the scope necessary to conduct reverse engineering described in the preceding paragraph, and where there is no infringement of copyright, it is permissible to circumvent a technological protection measure prohibiting or restricting access to a computer program.</p> <p>As necessary for identification and analysis to achieve the interoperability described in paragraph 1, and where it does not constitute copyright infringement, it is permissible to develop or employ technological means to circumvent technological protection measures prohibiting or restricting access to or exploita-</p>	<p>1. Paragraph 2 of this point applies to circumstances in which it is permissible to circumvent access controls for purposes of conducting reverse engineering.</p> <p>2. Paragraph 3 permits the development or employment of technological means to circumvent access controls and exploitation controls as necessary for identification and analysis to achieve the interoperability described in paragraph 1.</p> <p>3. Example: For purposes of developing a computer program that is interoperable with a computer program of another firm, e.g.: a firm that is developing a program for which interoperability with WORD or PDF programming [is sought] can utilize reverse engineering to develop an interoperable program. To conduct reverse engineering, after circumventing a technological protection measure attached to WORD or PDF programming, it can decode the other person's program to ascertain the</p>
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tion of a computer program.

A person acting in compliance with the preceding two paragraphs may provide to others information acquired through reverse engineering referred to in paragraph 2 or the technological means adopted under paragraph 3, where provided solely for the purpose of achieving interoperability referred to in paragraph 1, to the extent that there is no violation of the Act or any other act or regulation.

For purposes of this point, the term "interoperability" means the ability of computer programs to exchange information, and to use the information so exchanged.

structure and technology of the other person's program, but solely for purposes of developing an interoperable program.

4. This point is adopted with reference to the US Digital Millennium Copyright Act Section 1201(f) concerning exemption for reverse engineering.

Directions Defining The Content of The Subparagraphs of  
Paragraph 3 of Article 80-2 of The Copyright Act

<p>13. "Other circumstances specified by the competent authority" in subparagraph 9 of paragraph 3 of Article 80-2 of the Act includes the following circumstances:</p> <ol style="list-style-type: none"><li>(1) Lists of network locations blocked by commercial filtering software applications that are intended to prevent access to domains or websites, but not including lists of network locations blocked by software applications that operate exclusively to protect against damage to a computer or computer network, or exclusively to prevent receipt of email;</li><li>(2) Computer programs protected by dongles that prevent access due to malfunction, damage, or obsolescence;</li><li>(3) Computer programs or digital content in formats that have become obsolete and which require the original media or hardware as a condition of access;</li><li>(4) Literary works distributed in ebook format when all</li></ol>	<ol style="list-style-type: none"><li>1. This point applies to circumstances specified by the competent authority in which it is permissible to circumvent access controls.</li><li>2. Examples:<ol style="list-style-type: none"><li>(1) Where the webmaster of a certain non-pornographic website, for purposes of ascertaining whether that website is being improperly blocked by a commercial filtering program, circumvents an access control used by that filtering program.</li><li>(2) Where a program that a user has acquired lawful authorization to use is protected by dongles preventing use due to malfunction, and the user, for purposes of continuing to use the program, circumvents an access control used by that program.</li><li>(3) Where it is an act of circumventing an access control used by a computer program that is in a program format that has fallen out of general use and become obsolete, when it subsequently becomes necessary to use the program</li></ol></li></ol>
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<p>existing editions of the work, including digital text editions adopted by authorized entities, contain access controls that prevent the enabling of the ebook's read-aloud function and that prevent the enabling of screen readers to render the text into a specialized format, rendering blind or readers with disabilities unable to read the work, for purposes of enabling them to do so.</p> <p>Under any of the circumstances in the subparagraphs of the preceding paragraph, it is permissible to circumvent technological protection measures prohibiting or restricting access to a work.</p>	<p>format as a condition of access to the computer program.</p> <p>(4) Where it is an act of circumventing a technological protection measure used by an edition of an ebook that prevents the enabling of the ebook's read-aloud function and [prevents] the enabling of a screen reader to render the text in a specialized format, rendering blind readers unable to read the work, where done for purposes of enabling them to do so.</p> <p>3. This point is adopted with reference to the US Digital Millennium Copyright Act Section 1201(a) concerning exemptions for circumvention of commercial filtering software, computer program hardware, computer program formats, and ebooks.</p>
<p>14. These Directions shall be reviewed at least once every three years.</p>	<p>The paragraph 4 of Article 80-2 of the Act charges the competent authority with periodically reviewing the Directions, so the period for such review is specified here.</p>

Directions Defining The Content of The Subparagraphs of  
Paragraph 3 of Article 80-2 of The Copyright Act

# **ORGANIZATION REGULATIONS FOR THE COPYRIGHT REVIEW AND MEDIATION COMMITTEE OF THE INTELLECTUAL PROPERTY OFFICE, MINISTRY OF ECONOMIC AFFAIRS**

Approved by Executive Yuan on August 11, 1992 per Order No. Tai-(81)-Yen-Tsung-Tze3990; Issued by Ministry of Interior on August 28, 1992 per Order No. Tai-(81)-Nai-Chu-Tze 8183016.

Amended and Issued by Ministry of Economic Affairs on July 28, 1999 per Order No. Ging-(88)-Zhi-Tze 88461851.

Amended and Issued by Ministry of Economic Affairs on March 31, 2004 per Order No. Ging-Zhi-Tze 09304602820.

Amended and Issued by Ministry of Economic Affairs on August 24, 2010 per Order No. Ging-Zhi-Tze 09904605270.

## **Article 1**

These Regulations are adopted pursuant to Article 83 of the Copyright Act.

## **Article 2**

A Copyright Review and Mediation Committee (hereinafter, "the Committee") shall be established by the Intellectual Property Office (hereinafter, "TIPO") of the Ministry of Economic Affairs to handle matters under Article 82 of the Copyright Act and under Article 25, Paragraph 4, Article 26, Paragraph 2, and Article 30, Paragraph 5 of the Copyright Collective Management Organization Act.

## **Article 3**

The Committee shall consist of a chair to be concurrently assumed by the Director General of TIPO, and 21 to 29 members to be appointed by the Director General of TIPO from among relevant government agency representatives, scholars, experts, rights holder representatives, exploiter representatives, and relevant TIPO personnel, to serve term of two years concurrently with their regular positions.

#### **Article 4**

The Committee shall appoint one executive secretary, three secretaries, and two to six staff, all of whom shall be relevant TIPO personnel serving on assignment concurrently with their regular positions.

#### **Article 5**

Meetings of the Committee shall be convened and presided over by the chair. In the event that the chair is unable to attend a meeting, the chair shall designate one member to chair the meeting.

#### **Article 6**

A resolution on a matter under review by the Committee may be adopted only by the consent of a majority of the members in attendance at a meeting attended by one-half or more of all members.

A resolution on a matter under consultation by the Committee may be adopted only by the consent of a majority of the members in attendance at a meeting attended by one-third or more of all members. However, for consultation on matters set out in the Copyright Collective Management Organization Act, depending on the actual circumstances of a case, after giving consideration to the scope of the market for copyright exploitation and the affect on its licensing order, the Committee may designate three to five members to form a consultation subcommittee, which may adopt a resolution only by the

consent of more than two-thirds of the subcommittee members in attendance at a subcommittee meeting attended by two-thirds or more of the subcommittee members.

Members shall attend Committee meetings in person. However, government agency representative who is unable to attend may appoint a representative to attend on their behalf. That representative shall be counted among the members in attendance and have a voice and a vote at the meeting.

When the Committee handles dispute resolution matters, it shall do so in accordance with the Regulations of Copyright Dispute Mediation.

#### **Article 7**

The Committee may invite relevant persons to attend meetings and provide opinions.

#### **Article 8**

All personnel serving in a concurrent capacity on the committee do so in a pro bono capacity.

#### **Article 9**

The funds required by the Committee shall be allocated from TIPO's annual budget.

#### **Article 10**

The Committee has no capacity to issue any official documents externally. All resolutions of the Committee, after being approved by the Director General of TIPO, shall be issued in the name of TIPO.

#### **Article 11**

These Regulations shall come into force from the date of issue.

## NOTE

In case of discrepancies between the Chinese and this English version the Chinese version shall prevail.

The translations of the Act and regulations in this compilation is respectively drafted by the following Act firms (as listed beneath ) and later revised and concluded by the competent authority of the Copyright Act.

Name of the Act/Regulation	Translator
Copyright Act	Winkler Partners Attorneys at law of Taiwan and Foreign Legal Affairs
Copyright Intermediary Organization Act	Lee and Li Attorneys-At-Laws
The Illustrated Contents of Each Kind of Works In Paragraph One, Article 5 of the copyright Act.	Lee and Li Attorneys-At-Laws
Standards for Compensation for Fair Use of Works in Paragraph Four, Article 47 of the Copyright Act.	Qi Lin International Law Offices
Regulations Governing Application for Approval of Compulsory License of Musical Works and Royalties for Use Thereof	Lee and Li Attorneys-At-Laws
Regulations Governing Registration of Plate Rights	Lee and Li Attorneys-At-Laws
Implementation Regulations for Suspension of Release of Goods Infringing on Copyright or Plate Rights by Customs Authorities	Lee and Li Attorneys-At-Laws
Directions Defining the Content of the Subparagraphs of Paragraph 3 of Article 80-2 of the Copyright Act	Winkler Partners Attorneys at law of Taiwan and Foreign Legal Affairs

## **PUBLIC ANNOUNCEMENT BY THE MINISTRY OF ECONOMIC AFFAIRS**

Date issued: July 6, 2010

Ref.: Jing-Zhi-Zi No. 09904604090

**Subject:** The Minimum Number of Promoters Required for Various Categories of Works in Applying for Permission to Establish a Copyright Collective Management Organization is adopted and will take effect from February 12, 2010.

**Basis:** Article 4, Paragraph 3 of the Copyright Collective Management Organization Act

### **Announcement:**

1. When applying for permission to establish a Copyright Collective Management Organization, the minimum number of promoters required for each category of work is as follows:
  - (1) Oral and literary works: 120 persons
  - (2) Musical works: 120 persons
  - (3) Works in other categories: 30 persons
2. When applying for management of works in two or more categories, the minimum number of promoters in each category must satisfy the number of persons stipulate in the respective subparagraphs of the preceding point.
3. When applying to add a new category of works to those managed, the provisions of points 1 and 2 shall apply mutatis mutandis to the

Public Announcement by The Ministry of Economic Affairs

number of persons on the economic rights holder registry that is  
attached to the application.

# **REGULATIONS GOVERNING REGISTRATION AND REVIEW OF PLEDGES OF COPYRIGHT**

Adopted and issued on September 24, 2010, per Order No. Jing-Zhi-Zi-09904605970 of the Ministry of Economic Affairs

## **Article 1**

These Regulations are adopted pursuant to Article 23, Paragraph 3 of the Law for the Development of the Cultural and Creative Industries (hereinafter "the Act")

## **Article 2**

An application for registration of the creation, assignment, alteration, extinguishment, or restriction of disposition, of a pledge of economic rights may be made by one of the parties involved.

An application for registration of the assignment, alteration, extinguishment, or restriction of disposition, of a pledge of economic rights shall be made only after the application for registration of creation of the pledge.

## **Article 3**

An application pursuant to Article 23, Paragraph 1 of the Act for registration of a pledge of economic rights shall be made by submitting an application form with the following documents:

1. For registration of creation of a pledge, the pledge agreement or other document evidencing creation of the pledge.
2. For registration of an assignment of pledge, the assignment agreement and the original pledge agreement or other document

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of Pledges of Copyright

evidencing the creation of the original pledge.

3. For registration of the alteration of a pledge, documents evidencing the alteration.
4. For registration of the extinguishment of a pledge, documents evidencing the discharge of the obligation, documents evidencing the agreement of each party to the extinguishment of the pledge, a final and conclusive court judgment or other evidentiary document that has the same legal effect, pursuant to law, as to a final and conclusive court judgment.
5. For registration of a restriction of disposition of a pledge, documents evidencing the restriction of disposition.
6. Other relevant documents designated by the competent copyright authority.

First-time application for registration of creation of a pledge of a given work shall submit a sample of the work. If special circumstances such as the size, fragility, or cost of the sample make its submission either inconvenient or impossible, the applicant may state the reasons and enclose a detailed description of the work, photographs of the work taken from four, five, or six perspectives, or other substitutes for the sample of the work.

#### **Article 4**

Under any of the following circumstances, the competent copyright authority shall notify the applicant to supplement or correct the application within a specific deadline:

1. Fees have not been paid in accordance with regulations.
2. The application form has not been signed or sealed by the applicant or the applicant's agent.

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- 3.The information required in the application has not been provided, is incomplete, or does not conform to the documentary evidence provided.
- 4.Required attachments have not been provided.
- 5.Other matters that require supplementation or correction.

### **Article 5**

Under any of the following circumstances, the competent copyright authority shall reject the application with a written explanation of the reasons:

- 1.The applicant is not one of the persons designated by Article 2, Paragraph 1.
- 2.The subject of the application does not comply with Article 23, Paragraph 1 of the Act.
- 3.The application involves a dispute with an interested party and its content involves private rights.
- 4.The information set out in the application form contains misrepresentations.
- 5.The competent copyright authority has set a specific deadline for supplementation or correction in accordance with the preceding article, and the applicant has failed to meet the deadline for supplementation, or has met the deadline but the application nevertheless remains incomplete.

### **Article 6**

When the competent copyright authority approves a registration, it shall notify the applicant in writing and publicly announce the information on its website.

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of Pledges of Copyright

The competent copyright authority shall establish and maintain a registry of pledges of economic rights, including the reasons for the approval of each registration. Any person may apply to view the registry.

**Article 7**

Applications for registration submitted pursuant to these Regulations shall use the documents and forms designated by the competent copyright authority.

An applicant that submits any document in a foreign language shall also attach a Chinese translation or a translation of the relevant portions.

**Article 8**

These Regulations shall come into force from the date of their issuance.

# **REGULATIONS GOVERNING APPLICATION FOR APPROVAL OF LICENSE OF WORKS OF UNKNOWN OWNER OF COPYRIGHTS AND ROYALTIES FOR USE THEREOF**

Adopted and issued on September 24, 2010, per Order No. Jing-Zhi-Zi-09904605970 of the Ministry of Economic Affairs

## **Article 1**

These Regulations are adopted pursuant to Article 24, Paragraph 5 of the Law for the Development of the Cultural and Creative Industries (hereinafter "the Act").

## **Article 2**

Pursuant to Article 24, Paragraph 1 of the Act, the following documents shall be submitted when applying for a license:

1. An application form.
2. A sample of the work the applicant wishes to exploit.

When special circumstances such as the size, fragility, or cost of the sample make it either inconvenient or impossible to submit a sample of the work as required under subparagraph 2 of the preceding paragraph, the applicant may state the reasons and enclose a detailed written description of the work, photographs of the work taken from four, five, or six perspectives, or other substitutes for the sample.

## **Article 3**

The application form of Paragraph 1, subparagraph 1 of the

Regulations Governing Application for Approval of License of Works of unknown Owner of Copyrights and Royalties for Use Thereof

preceding article shall contain the following information, and shall be signed or sealed by the applicant or the applicant's agent:

- 1.The applicant's name or entity name, date of birth or date of establishment, and domicile or residence; in the case where the applicant is a juristic person, the name of the juristic person's representative.
- 2.When the application is filed by an agent, the agent's name or entity name and domicile or residence; in the case where the agent is a juristic person, the name of the juristic person's representative.
- 3.The type, name, and content of the work to be exploited, and the name or entity name of the economic rights holder and the author of the work; the names of the economic rights holder and the author need not be provided if unknown.
- 4.A statement of the cultural or creative product to be produced through exploitation of the work.
- 5.A statement of the method of calculating royalties.
- 6.A statement indicating all efforts have been exhausted to locate or contact the economic rights holder.
- 7.A statement of any prior public release of the work to be exploited.

The statement under subparagraph 5 of the preceding paragraph shall include each of the following:

- 1.The amount of royalties that have been paid for the exploitation of works of a similar type in the market.
- 2.The intended scope of exploitation of the work.
- 3.The anticipated valuable consideration or other means of yields by which the exploiter expects to benefit from the transactions

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involving the exploiter's cultural or creative product.

- 4.The number of times, and the period for which, the work is to be exploited.
- 5.The proportion of the work to be exploited that the exploiter intended to use in the cultural or creative product to be produced.
- 6.Any other explanatory statements as may be required by the competent copyright authority.

The statement under subparagraph 6 of Paragraph 1 shall at least include each of the following:

- 1.The applicant has inquired with a related copyright organization(s) or other agency(ies) regarding the name or entity name, domicile or residence, and other related information of the economic rights holder of the work to be exploited, and the organization(s) or agency(ies) concerned has responded that the desired information cannot be ascertained, or given no response after 30 days of receiving the documents requesting the information.
- 2.The applicant has advertised in a newspaper or has used other appropriate methods to search publicly for the economic rights holder or related information, and received no response after 30 days from the date the advertisement or other appropriate method of search was made.

Advertisement or other appropriate method of publicizing the search of subparagraph 2 of the preceding paragraph shall contain each of the following:

- 1.The applicant's name or entity name, date of birth or date of establishment, and domicile or residence; in the case where the applicant is a juristic person, the name of the juristic person's representative.

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- 2.The type, name, and content of the work to be exploited, and the name or entity name of the economic rights holder and the author of the work; the names of the economic rights holder and the author need not be provided if unknown.
- 3.The name and domicile or residence of the copyright organization(s) or other agency(ies) consulted, and the date on which the inquiry was made.

#### **Article 4**

Under any of the following circumstances, the competent copyright authority shall notify the applicant to make a supplementation or correction within a specific deadline:

- 1.Fees have not been paid in accordance with regulations.
- 2.The application form has not been signed or sealed by the applicant or the applicant's agent.
- 3.The information required in the application has not been provided or is incomplete.
- 4.The information provided in the application does not conform with the attached documents or the sample of the work provided.
- 5.Other matters that require supplementation or correction.

#### **Article 5**

Under either of the following circumstances, the competent copyright authority shall reject the application with a written explanation of the reasons:

- 1.The subject of the application does not comply with Article 24 of the Law for the Development of the Cultural and Creative Industries.

2. The competent copyright authority has set a specific deadline for supplementation or correction in accordance with the preceding article, and the applicant has failed to meet the deadline, or has met the deadline but the application nevertheless remains incomplete.

### **Article 6**

When the competent copyright authority approves the licensing of the work, it shall at the same time approve the royalty for its use. It shall notify the applicant in writing and publicly announce the information on its website.

The applicant may not exploit the work for which it has received licensing unless it has deposited royalties for its use in the amount approved pursuant to the preceding paragraph.

### **Article 7**

When the competent copyright authority handles an application for licensing pursuant to these Regulations, it shall still perform the necessary verification procedures.

### **Article 8**

Applications for licensing made pursuant to these Regulations shall be submitted using the documents and forms designated by the competent copyright authority.

An applicant that submits any document in a foreign language shall also attach a Chinese translation or a translation of the relevant portions.

### **Article 9**

These Regulations shall come into force from the date of their issuance.

# **REGULATIONS FOR APPLICATION FEE CONCERNING REGULATION OF PLEDGES OF COPYRIGHT**

Adopted and issued on September 24, 2010, per Order No. Jing-Zhi-Zi-09904605970 of the Ministry of Economic Affairs

## **Article 1**

These Regulations are adopted pursuant to Article 10 of the Charges and Fees Act.

## **Article 2**

Fees for applications for registrations of copyright pledges are as follows:

1. The fee for each application for creation of a pledge is NTD3,000.
2. The fee for each application for assignment, alteration, extinguishment, or restriction of disposition of a pledge is NTD2,000.

## **Article 3**

These Regulations shall come into force from the date of issuance.

# **REGULATIONS FOR APPLICATION FEE CONCERNING LICENSING OF WORKS FOR THE USE OF WORKS OF UNKNOWN OWNER OF COPYRIGHTS**

Adopted and issued on September 24, 2010, per Order No. Jing-Zhi-Zi-09904605970 of the Ministry of Economic Affairs

## **Article 1**

These Regulations are adopted pursuant to Article 10 of the Charges and Fees Act.

## **Article 2**

Application fee for permission to exploit works of which the economic rights holder cannot be identified or contacted ("orphan works") is NTD5,000 per work.

## **Article 3**

These Regulations shall come into force from the date of their issuance.

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