

Taiwan decriminalises specific types of secondary use of works

[Formosa Transnational](#) - Taiwan

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Changes to Copyright Act

On 10th February 2010 Article 37 of the Copyright Act was amended and promulgated by Presidential Order Hua-Zong-(1)-Yi-Zih 09900029991 in order to decriminalise certain specific types of secondary use, with the intention of improving the stability of the licensing market. Under the amended Article 37, the criminal penalty provisions of Chapter VII of the Copyright Act no longer apply to the rebroadcast of an original broadcast or the communication of sounds or images of an original broadcast to the public with loudspeaker or other equipment or of works to the public through public broadcasting or simultaneous public transmission of advertisement by a broadcaster, where such works have been reproduced under authorisation, except for works subject to the management of copyright collective management organisations (CMOs).

In Taiwan, radio or TV programmes are usually broadcasted in business places such as restaurants, hospitals, hotels, cafés, department stores and buses. However, it is nearly impossible for these enterprises to obtain complete licences from all rights holders because they are unable to predict the content of the television or radio broadcasts. Television and radio stations encounter similar difficulties; they are unable to obtain licences from individual rights holders for such works within the advertisements. In the past, due to the criminal penalty provisions in the Copyright Act, these enterprises may experience excessive fear on receipt of a warning letter or have been subject to unreasonable compensation or premiums under the risk of criminal liability. On such grounds, the Legislative Yuan passed the amendment to subparagraphs 2, 3 and 4 of paragraph 6 of Article 37, which abolish criminal penalties and should increase free market power.

Under the amendment, if works are not subject to the management of CMOs the criminal penalty provisions do not apply to enterprises for specific types of secondary use, but enterprises must still pay a premium or compensation to the rights holders. However, the criminal penalty provisions and civil compensation apply to the secondary use by enterprises of works managed by CMOs.

New CMO regulations

In addition, the Copyright Collective Management Organisation Act was announced and promulgated on 10th February 2010 by Presidential Order Hua-Zong-(1)-Yi-Zih 09900030011 in order to simplify the royalty rates and organise collectors into a single group. The law has been made to replace the previous law, the Copyright Intermediary Organisation Act. It is expected that this new law will stimulate market activities in terms of licensing and effectively reduce copyright infringements. Currently, there are seven CMOs in Taiwan and their royalty rates differ, which results in difficulties for rights holders with regard to licensing and increases the risk of copyright infringement by enterprises. Therefore, Article 30, representing a major change from the previous act, stipulates that the specialised agency in charge of copyright matters may designate relevant CMOs to adopt a joint royalty rate with respect to a specific type of exploitation. The designated CMOs must engage in consultation in order to adopt the joint royalty rate and the methods of royalty distribution. Furthermore, under Article 30, if an agreement cannot be reached by consultation pursuant to the foregoing, any of the CMOs may apply to the specialised agency in charge of copyright matters for a determination. Due to the complexity of designating a reasonable joint royalty rate, which should be calculated based on the percentage of exploitation of the works in the market, Article 30 will not take effect until 10th February 2012.

The Taiwan Intellectual Property Office expects the amendments to both acts to produce bilateral benefits for both rights holders and enterprises. The aim is to improve the free market mechanism through the spirit of user fees and the principle of a harmonious market.

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