

**Council for Trade-Related Aspects of
Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS
NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT**

THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU

The present document reproduces the text¹ of the Copyright Intermediary Organization Act, as notified by the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, under Article 63.2 of the Agreement (see document IP/N/1/TPKM/1).

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À LA
PROPRIÉTÉ INTELLECTUELLE NOTIFIÉES AU TITRE DE
L'ARTICLE 63:2 DE L'ACCORD**

TERRITOIRE DOUANIER DISTINCT DE TAIWAN, PENGHU, KINMEN ET MATSU

Le présent document contient le texte¹ de la Loi sur l'organisation des intermédiaires en droit d'auteur, qui a été notifiée par le Territoire douanier distinct de Taiwan, Penghu, Kinmen et Matsu au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/TPKM/1).

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA PROPIEDAD
INTELLECTUAL NOTIFICADOS EN VIRTUD DEL PÁRRAFO 2
DEL ARTÍCULO 63 DEL ACUERDO**

TERRITORIO ADUANERO DISTINTO DE TAIWÁN, PENGHU, KINMEN Y MATSU

En el presente documento se reproduce el texto¹ de la Ley de Organizaciones Intermediarias en materia de Derecho de Autor, notificado por el Territorio Aduanero Distinto de Taiwán, Penghu, Kinmen y Matsu de conformidad con lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/TPKM/1).

¹ In English only. The text in the original language is available for consultation by interested Delegations at the WTO Secretariat./En anglais seulement. Les délégations intéressées peuvent consulter le texte, dans sa langue d'origine, au Secrétariat de l'OMC./En inglés solamente. Las delegaciones interesadas podrán consultar en la Secretaría de la OMC el texto en su idioma original.

COPYRIGHT INTERMEDIARY ORGANIZATION ACT

Promulgated by the President on November 5, 1997

CHAPTER I

GENERAL PROVISIONS

Article 1

This Act is enacted in accordance with Paragraph 2 of Article 81 of the Copyright Law.

For matters not included herein, other relating laws shall apply.

Article 2

The competent authority referred to in this Act shall be the Ministry of Interior.

Article 3

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

1. Copyright intermediary organization (hereinafter referred to as an intermediary organization): shall mean an organization which is organized and registered hereunder by owners of the economic rights to works of the same category and that has the capacity of managing said rights and exercises rights and performs obligations in its own name.
2. Copyright intermediary affairs (hereinafter referred to as intermediary affairs): shall mean affairs, in the name of an intermediary organization, relating to execution of individual or generalized license agreements with utilizers and collection, receipt and distribution of royalty.
3. Rate of royalty: shall mean the standard or the ratio for calculation of royalty.
4. Management fees: shall mean the fees an intermediary organization charges an owner of the economics right to a work for performing intermediary affairs.
5. Individual license agreement: shall mean an agreement between an intermediary organization and a utilizer for licensing use of the economic rights to a specific work under the management of the intermediary organization and payment of royalty by the utilizer.
6. Generalized license agreement: shall mean an agreement between an intermediary organization and a utilizer, without times limited, for licensing use of the economic rights to all works under the management of the intermediary organization within a specific period and payment of royalty by the utilizer.
7. Management agreement: shall mean an agreement between an owner of the economic rights to a work and an intermediary organization for management of such rights and distribution of the collected and received royalty to the owner of said economic rights by the intermediary organization.

CHAPTER II

ESTABLISHMENT

Article 4

For establishment of an intermediary organization, promoters thereof shall submit an application form, which includes the following information, to the competent authority for approval:

1. Roster of promoters which states names/titles, nationalities, date of birth, residences/domiciles of promoters, address of office/business place, and names and categories of works having economic rights;
2. Articles of organization;
3. Methods of collecting and receiving royalty as well as distribution thereof;
4. Rate or amount of royalty and management fees;
5. Standard samples of individual license, generalized license and management agreements; and
6. Other documents designated by the competent authority.

There shall be at least thirty promoters and more than half of them shall be the nationals of the Republic of China and have domiciles therein.

The application form mentioned in Paragraph 1 shall state the purposes of establishment and shall be signed or stamped by all promoters.

While approving an application for establishment of an intermediary organization, the competent authority shall refer the rate of royalty thereof to the Copyright Examination and Mediation Committee for examination.

Article 5

Under any of the following circumstances, one can not be a promoter of an intermediary organization:

1. Being incapable of disposing or having limited disposing capacity;
2. Having been declared bankrupt without rehabilitation of rights; or
3. Having committed crime of defraudation, perfidy of embezzlement, or violation of the Copyright Law and received a sentence of over six months imprisonment and within two years after having served such sentence; in case of a juridical person, having committed a crime of violation of the Copyright Law and received a final sentence and within two years after having served such sentence.

Article 6

The articles of organization of an intermediary organization shall include the following information:

1. Title;
2. Purpose;
3. Address of principal place of business and address of a branch office, if any;
4. Category of works and scope of rights in respect of the economic rights to works under its management;

5. Obtainment and forfeiture of membership;
6. Rights and obligations of members;
7. Number, function, term of office, election and commission as well as discharge of directors, supervisors and complaint committee members;
8. Title, employment and discharge of staff members;
9. Kinds, calling procedures and methods of meetings;
10. Source of funds and accounting;
11. Method of placing public notice;
12. Matters, procedures and methods of resolution in respect of handling disputes between any member and the intermediary organization by the complaint committee;
13. Procedures of amendment of the articles of organization;
14. Matters and reasons for dissolution, if any;
15. Other matters required by law; and
16. Date of enactment of the articles of organization.

Article 7

Under any of the following circumstances, the competent authority shall disapprove an application for establishment of an intermediary organization:

1. The title of the organization is the same as that of an approved intermediary organization.
2. The information supporting the application reveals that it is unable to effectively manage intermediary affairs.
3. Matters applied for are violating any law or ordinance or found untrue.
4. The statutory procedures are not met and no correction is made within a period given by the competent authority.

The competent authority shall notify the applicant in writing of approval or disapproval; in case of approval, it shall be published in the government gazette.

Article 8

An intermediary organization shall effect registration of juridical person within six months after the approval issued from the competent authority; otherwise, the competent authority shall revoke the approval.

The intermediary organization mentioned in the preceding Paragraph shall submit to the competent authority, within thirty days after its juridical person registration, a copy of the registration certificate for record. It should also place a public notice of the juridical person registration certificate, the articles of organization, method of collecting and receiving royalty and distribution thereof, rate of royalty, and rate or amount of management fees as well as sample copies of individual license.

The method of placing public notice mentioned in the preceding Paragraph shall be published in a notable part of a daily newspaper at the place where the principal place of business of the intermediary organization is located.

Article 9

An entity having not been registered in accordance with this Act shall not perform any intermediary affairs or perform any other legal act in the name of an intermediary organization.

In violation of the above provisions, the individual or generalized license agreement executed shall become null and void and the actor shall be liable for compensation for any injury arising therefrom to another person. In case of two or more actors, they shall jointly and severally be liable for the result.

CHAPTER III

ORGANIZATION

Article 10

A member of an intermediary organization must be an owner of the economic rights to a work.

An owner of the economic rights to a work shall not be at the same time a member of two or more intermediary organizations managing the same intermediary affairs of the same category of work.

If an owner of the economic rights to a work violates the provision of the preceding Paragraph, in case he/she joins two or more intermediary organizations at the same time, he/she shall be deemed having joined none of them; in case he/she joins two or more intermediary organizations at different time, he/she shall be deemed not having joined the one at a later time.

Article 11

An intermediary organization shall not reject anyone applying for membership who is qualified as a member in accordance with the articles of organization.

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

Article 12

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

1. Death, bankruptcy or dissolution; or
2. Forfeiture of qualification as a member.

Article 13

A member shall execute a management agreement with the intermediary organization concerned to entrust the latter with management of the economic rights to his/her works.

Within the scope of management by the intermediary organization concerned, a member shall not grant or cause a third party to grant any license on his/her behalf.

A member shall have the right, in accordance with the method of collecting and receiving royalty and distributing thereof, to request for distribution of the royalty and have the obligation to pay management fees and membership fees.

Article 14

The highest authority of an intermediary organization shall be its general meeting.

The Board of Directors of an intermediary organization shall have at least three directors elected by the general meeting among all members.

Supervisors of an intermediary organization shall be elected by the general meeting among all members and at least one of the supervisors shall have a domicile in the Republic of China.

Provisions in Article 5 shall apply mutatis mutandis to directors and supervisors.

Article 15

The general meeting shall be convened by the Board of Directors at least once a year except that the first general meeting shall be convened by promoters.

Unless otherwise provided, a resolution of the general meeting shall require a majority of votes cast at the meeting in favor of it and the meeting shall be attended by members representing a majority of the total voting power.

A resolution in respect of the following matters shall require more than two thirds of votes cast at the meeting in favor of it and the meeting shall be attended by members representing a majority of the total voting power:

1. Amendment of articles of organization;
2. Change of method of collecting and receiving royalty as well as distribution thereof;
3. Change of rate of royalty and rate or amount of management fees; and
4. Amendment of standard samples of individual license, generalized license or management agreements.

Members shall have equal voting power; however, if otherwise provided in the articles of organization, such provision shall apply.

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.

Provisions in Article 57 of the Civil Code shall apply to the dissolution of an intermediary organization.

In the event that the rate of royalty adjusted in accordance with Item 3 of Paragraph 3 is higher than the rate of royalty originally prescribed, the new one shall be reported to the competent authority, which, in turn, shall refer it to the Copyright Examination and Intermediary Committee for examination.

Article 16

The Board of Directors shall carry out its functions in accordance with laws, ordinances, articles of organization and resolutions of the general meeting.

In the event that a resolution made by the Board of Directors violates the provision in the preceding Paragraph and causes injury to the intermediary organization, directors participating in making said resolution shall be jointly and severally liable for damages. However, any director whose opposition

to the resolution is confirmed by the meeting minutes or a written statement, shall be exempted from responsibility for the damage.

Article 17

A supervisor shall carry out the following functions:

1. To investigate the intermediary affairs and financial conditions and to audit books and documents of the intermediary organization concerned by himself/herself or through an attorney or a Certified Public Accountant; and
2. To inspect by himself/herself or through a Certified Public Accountant the statements and documents submitted under Paragraph 1 of Article 20 and report the inspection results to the general meeting.

A supervisor shall be liable for any damage caused to the intermediary organization due to his/her negligence in performing duties.

A supervisor shall not act at the same time as a director, complaint committee member or staff member of the intermediary organization.

Article 18

If a director of an intermediary organization conducts negotiation with the intermediary organization for himself/ herself or a third party, a supervisor shall act as the representative of the intermediary organization in the negotiation.

Article 19

An intermediary organization shall have a complaint committee to manage disputes between members and the organization in accordance with the articles of organization; said committee shall have at least five members elected by the general meeting among members, impartial parties in society, or scholars or experts.

An intermediary organization may stipulate in its articles of organization that any dispute between a member and the organization shall not be brought up to the general meeting before handled by the complaint committee.

A director, supervisor or staff member of an intermediary organization shall not act as its complaint committee member.

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

An intermediary organization 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 to the general meeting for a final decision if the complaining member or the Board of Directors is opposed to the decision rendered by the complaint committee.

Article 20

At the end of each business year, the Board of Directors shall prepare the following statements and documents and refer them to supervisors for review at least thirty days prior to the date fixed for the general meeting:

1. Report of operation;
2. Balance sheet;
3. Property list; and
4. Final statement of revenue and expenditure.

The statements and documents mentioned above together with the supervisor inspection report shall be made available at the principal place of business of the intermediary organization ten days prior to the convention of a general meeting and members may at any time inspect and review the same by themselves or accompanied by attorneys or Certified Public Accountant retained by them.

Article 21

The Board of Directors shall submit the statements and documents mentioned in the preceding Article together with the supervisor inspection report to the general meeting for recognition. Upon recognition through a resolution of the general meeting, directors and supervisors shall be released from their responsibilities except that they have committed any unlawful acts.

CHAPTER IV

RIGHTS AND OBLIGATIONS OF AN INTERMEDIARY ORGANIZATION

Article 22

An intermediary organization shall perform intermediary affairs for members in accordance with laws, ordinances, articles of organization and resolutions of the general meeting.

An intermediary organization, when performing intermediary affairs under the preceding Paragraph, shall collect management fees according to stipulated rate or amount thereof.

The rate or amount of management fees mentioned above shall be stipulated based on expenses required for maintaining normal operation of an intermediary organization.

Article 23

An intermediary organization shall prepare a catalog of economic rights to works covering the following information:

1. Names or titles of authors and owners of economic rights to works;
2. Names of works;
3. Years of completion or first public release of works; and
4. Economic rights to works to be utilized under license.

An intermediary organization shall prepare a table of royalty for public review based on the rate of royalty and the catalog of economic rights to works as mentioned in the preceding Paragraph.

In respect of utilization of works for cultural, educational or other "public benefit" purposes, an intermediary organization shall make an appropriate reduction of royalty; if the utilizer thereof does not engage in any profit-seeking activity, the intermediary organization shall charge a reasonable amount of royalty. The standard as to that reduction rate and that reasonable amount paid for the utilization shall be clearly listed in the table of royalty.

Article 24

An intermediary organization shall execute individual or generalized license agreements in its own name with utilizers and collect and receive royalty based on the samples of individual license and generalized license agreements and the table of royalty.

Article 25

The following items should be covered in an individual license agreement

1. Name or title of the owner of economic rights to a work and title of the work;
2. Authorized economic right to the work to be utilized;
3. Authorized territory, term and method of utilization;
4. Calculation method and amount of royalty;
5. Method of royalty payment ;
6. Responsibility for default; and
7. Date of agreement.

Article 26

A generalized license agreement, in addition to Items 2 through 7 covered in the preceding Article, shall state that the licensee may utilize economic rights to all the works managed by the intermediary organization within a specified period and without limitation of times.

Article 27

When a member withdraws from an organization, the intermediary organization shall immediately inform utilizers concerned, terminate the management agreement, and cease to manage the said member's economic rights to works. However, the individual or generalized license agreements executed by the intermediary organization with utilizers before said member withdraws from the organization shall not be affected by the withdrawal.

The individual license agreements referred to in the preceding Paragraph shall be performed by the intermediary organization before the withdrawal. The generalized license agreements as far as the withdrawing member is concerned, shall be succeeded by said member upon withdrawal. In the event that said member joins another intermediary organization, the generalized license agreements shall be succeeded by the new organization.

In case of any damage to a member or a utilizer due to violation of the provision of Paragraph 1 by the representative or an employee of an intermediary organization through intention or negligence, the intermediary organization shall be jointly and severally liable for the damage together with the violator.

An intermediary organization shall distribute to a withdrawing member the royalty received under an individual license agreement which is executed before the withdrawal by said member. In case of

royalty received under a generalized license agreement, the distribution of royalty to the withdrawing member shall cover only the portion distributable before the withdrawal.

Article 28

An intermediary organization shall not refuse a request for management of the economic rights to works from a non-member owner of such rights.

Article 29

Provisions in Article 13, Paragraphs 1, 2 and 5 of Article 19, Paragraphs 1 and 2 of Article 22 and Article 27 shall apply mutatis mutandis to management of the economic rights to works between a non-member owner of such rights and an intermediary organization.

Article 30

In the event that a utilizer requests for execution of an individual or a generalized license agreement with an intermediary organization based on the standard sample of the individual or generalized agreements, the table of royalty and conditions other licensed utilizers have obtained and the request is refused by the intermediary organization or no agreement can be reached, said utilizer shall be deemed having obtained authorization if payment has been made before utilization according to the table of royalty.

If the refusal or non-agreement mentioned in the preceding Paragraph is due to disagreement in respect of the royalty between a utilizer and an intermediary organization, the utilizer may raise opposition to the intermediary organization after payment is made, if the payment has been made according to the rate of royalty maintained by the intermediary organization and a reserve has been declared thereof.

Article 31

An intermediary organization shall guarantee that it has the right to manage the rights of utilization under an individual or a generalized license agreement. However, if a utilizer is aware that an intermediary organization has no such management right at the time of execution of an agreement, the intermediary organization shall undertake no guarantee liability unless otherwise provided in the agreement.

Article 32

An intermediary organization shall exercise due care of a good administrator when performing intermediary affairs.

Article 33

A utilizer shall periodically provide the intermediary organization concerned with a utilization list for basis to calculate royalty to be distributed. An intermediary organization may also at its own cost request a utilizer at any time to provide a utilization list.

If a utilizer fails to provide or provides incorrect or untrue utilization lists and the case is considered serious, the intermediary organization may terminate its individual or generalized license agreement executed with said utilizer.

Article 34

An intermediary organization shall, based on the methods of collecting and receiving royalty as well as distribution thereof, periodically distribute the balance of the received royalty after deduction of management fees to owners of the economic rights to works.

The periodic distribution mentioned in the preceding Paragraph shall mean at least once a year.

When an intermediary organization distributes royalty, its Board of Directors shall, based on the method of collecting and receiving royalty as well as distribution thereof, compile a table of royalty distribution containing the following information and send it to the supervisors for review and confirmation after authentication by a Certified Public Accountant:

1. Names or titles of owners of economic rights to works and their economic rights concerned in the distribution;
2. Amount of each royalty and the total amount received;
3. The amount of management fees deductible from each royalty or the total amount of said deductibles;
4. The distributable amount of balance after deduction of the total management fees mentioned in Item 3 above from the total amount of royalty received mentioned in Item 2;
5. Method of calculation of the amount to be distributed to each individual; and
6. The amount distributed to each individual.

An intermediary organization shall distribute royalty in accordance with the table of royalty distribution reviewed and confirmed by supervisors. It shall also have said table of royalty distribution placed at its principal place of business for review by owners of the economic rights to works.

Article 35

An intermediary organization shall allocate 10% of its management fees received annually for the following purposes:

1. Living, medical, emergency or disaster relief and assistance to members;
2. Rewards for good works of members;
3. Promotion of copyright;
4. Sponsoring of or assistance to cultural activities;
5. Research of matters relating to copyright and cultural development; and
6. Other public benefit affairs approved by the competent authority.

Article 36

An intermediary organization when performing intermediary affairs, may in its own name, conduct litigation or non-litigation acts for the best interests of owners of the economic rights to works.

The litigation acts mentioned in the preceding Paragraph shall mean instituting civil, administrative and criminal actions and private prosecutions thereof and the non-litigation acts shall mean administrative appeal, re-appeal and other acts.

CHAPTER V

REWARD, ASSISTANCE AND SUPERVISION TO INTERMEDIARY ORGANIZATIONS

Article 37

The competent authority may reward an intermediary organization for its excellent performance in carrying out intermediary affairs.

Article 38

The competent authority may at any time inspect the table and catalog which shall be prepared or compiled by an intermediary organization in accordance with applicable law and ordinance or its articles of organization, or order the organization to submit the same within a given time. The competent authority may also at any time dispatch any of its officers to inspect the business and financial conditions of an intermediary organization.

The competent authority when performing the above inspection, may order an intermediary organization to submit certification papers, bills, tables, books and relevant information and shall return the same after review thereof within one month from the date of receipt.

An intermediary organization shall not hinder or refuse the inspection made or order given by the competent authority under the preceding two Paragraphs.

According to the operational and financial conditions of an intermediary organization, the competent authority, if it deems necessary, may order the organization to change the method by which it performs business, or make other depositions.

Article 39

If an intermediary organization has any act violating laws, ordinances or its articles of organization, the competent authority may order it to make corrections within a prescribed time limit.

In case no correction is made in the prescribed time limit by the intermediary organization, the competent authority may order it to replace the director, supervisor, complaint committee member or staff member who performed the act, or to suspend his/her duties.

The punishment referred to in the preceding two Paragraphs shall be published in the government gazette.

Article 40

Under any of the following circumstances, the competent authority shall order dissolution of an intermediary organization:

1. Found after approval of establishment that there is any situation prescribed in Paragraph 1 of Article 7;
2. Failing to start performing intermediary affairs within one year after registration of establishment;
3. In violation of the provisions of Paragraph 2 of Article 39; or
4. Unable to effectively perform intermediary affairs.

When revoking the approval or ordering dissolution of an intermediary organization in accordance with provisions in Paragraph 1 of Article 8 or the preceding Paragraph, the competent authority shall provide the intermediary organization with a written notice stating reasons in addition to notifying the district court of jurisdiction of the matter and publishing the same in the government gazette.

Provisions in Article 9 shall apply mutatis mutandis to an intermediary organization of which the approval of establishment is revoked or which is ordered to dissolve.

When an intermediary organization is ordered to dissolve, all management agreements shall be terminated at the time when the administrative punishment of dissolution is finalized.

CHAPTER VI

PENALTY

Article 41

In violation of the provision in Paragraph 1 of Article 9, the offender shall be punished with imprisonment for not more than one year, detention or in lieu thereof or in addition thereto a fine of not more than NT\$200,000.

Article 42

In violation of any of the following provisions, the offender shall be punished with a fine of not less than NT\$40,000 and not more than NT\$200,000:

1. Provisions in Paragraph 3 of Article 40 for which Paragraph 1 of Article 9 is applicable mutatis mutandis; or
2. Provisions in Paragraph 1 of Article 43.

An intermediary organization violating provisions in Paragraph 3 of Article 38 shall be punished with a fine of not less than NT\$10,000 and not more than NT\$50,000.

If any fine imposed under the preceding two Paragraphs is not paid within a given time limit, the case shall be referred to a court for compulsory execution.

CHAPTER VII

SUPPLEMENTARY PROVISIONS

Article 43

An entity organized by law before the effective date of this Act to manage the economic rights to works for owners of such rights shall stop management of such rights from the effective date of this Act; provided that it may still continue to complete the unfinished management affairs which started before the effective date of this Act.

In violation of the provisions in the preceding Paragraph, provisions in Paragraph 2 of Article 9 shall apply mutatis mutandis.

Article 44

The entity mentioned in Paragraph 1 of the preceding Article if wishing to perform intermediary affairs, shall submit within one year from the effective date of this Act an application form, information and documents prescribed in Items 2 through 6 of Paragraph 1 of Article 4, draft of amendment of articles of organization, and the catalog of the economic rights to works currently under its management to the competent authority to apply for approval.

The entity mentioned in the preceding Paragraph if approved by the competent authority shall amend its articles of organization within two months and submit the amended articles of organization to the competent authority for record. It shall also effect registration of a juridical person place a public notice in accordance with provisions in Article 8.

In the event that the entity mentioned in the preceding Paragraph fails to apply for approval within the prescribed time limit or its application is dismissed and the term of any agreement executed in the name of said entity with a utilizer for license of utilization of the economic rights to any work before the effective date of this Act exceeding the date of December 31st of the following year of the effective date of this Act, said agreement shall be terminated on that date.

Article 45

One who applies for approval in accordance with this Act shall pay an application fee in the amount to be stipulated by the competent authority.

Article 46

The Act shall come into force as of the date of promulgation.

This translation is drafted by Lee and Li Attorneys-At-Laws and later revised and concluded by Ministry of Interior, the then competent authority of the Copyright Law.
