

# COMPUTER PROGRAMS PROTECTION ACT

## INTRODUCTION

### Details of Enactment and Amendment

- Enactment: This Act was enacted on December 31, 1986 as Act No. 3920 in order to contribute to the sound development of the national economy by advancing the computer- program-related industries and technologies through protection of the rights of the authors of computer program works and promotion of fair use of the programs.
- Amendment: This Act has arrived at its present form as a result of being amended on December 30, 2002 to bring up the level of copyright protection to the international level in accordance with the recent technological development in the field of computer programs and the subsequent diversification in the forms and methods of infringement on copyrights.

### Main Contents

- Copyrights on a computer program work shall be valid for fifty years after its publication, and the program author shall have the right to disclose, indicate the name of the author of, maintain the identity of, and reproduce the program work and the right to adapt, translate, distribute, and transmit the program.
- Copyrights of foreigners' computer programs shall be protected in accordance with the treaties which the Republic of Korea has joined or concluded.
- If it is necessary in a trial or criminal investigation, necessary for educational purposes, or being used in a family setting for personal purposes, a disclosed computer program may be reproduced or distributed; and a person who uses a program with his justifiable title may do the reverse engineering of program codes only for the part necessary for compatibility of the relevant program.
- If a computer program is intended to be inserted in textbooks, a specified amount of compensation shall be paid to the program author.
- A computer program copyright may be transferred or permitted for use in whole or in part, and an exclusive right to monopolistically reproduce and distribute or transmit the program may be established.
- If the author of a computer program cannot be known despite considerable efforts, the program may be used after obtaining approval of the Minister of Information and Communication through a certain process.
- When a person imports a computer program that violates a program copyright with the purpose of distributing it in Korea, or when a person acquires a reproduction of such program with the knowledge of the circumstances and uses it for his business, the copyright has been violated.
- Any act of incapacitating the technical protection measures for prevention of illegal reproduction by such a method as removing or evading them is prohibited.
- The Minister of Information and Communication may remove, delete or discard an unjustly reproduced computer program.
- Where any provider of on-line services has become aware of an infringement on the rights of a

program copyright owner, etc. due to a reproduction or transmission of programs by a user of the on-line services and has suspended such reproduction or transmission, his responsibilities may be reduced or exempted in connection with infringement of rights by the user.

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## COMPUTER PROGRAMS PROTECTION ACT

Wholly Amended by Act No. 6233, Jan. 28, 2000  
Amended by Act No. 6357, Jan. 16, 2001  
Act No. 6843, Dec. 30, 2002

### CHAPTER I GENERAL PROVISIONS

#### Article 1 (Purpose)

The purpose of this Act is to contribute to the sound development of the national economy by protecting the author's rights in computer program works and other related rights and encouraging the fair use thereof to promote relevant industry and technology.

#### Article 2 (Definitions)

For the purpose of this Act, the definitions of terms shall be as follows,

1. The term "computer program works" means creative works expressed as a series of instructions and commands used directly or indirectly in an apparatus having data processing capacity such as a computer, etc. (hereinafter referred to as "computer") for the purpose of obtaining a certain result;
2. The term "program author" means a person who has created a computer program work (hereinafter referred to as "program");
3. The term "reproduction" means any act of reproducing a program by fixing it in a tangible medium without addition of any new creativity;
4. The term "adaptation" means any act of creating a new program using the whole or significant

part of a series of instructions and commands from another original program;

5. The term "disclosure" means any act of publishing a program or presenting it to the public;

5-2. The term distribution means any act of transferring or leasing the original program or its reproductions to the public with or without receiving the prices;

6. The term "publication" means any act of reproducing or distributing a program in order to meet the demand of the public;

7. The term "transmission" means any act of transmitting a program or providing it for use through information communication means for the reception or use by the public;

8. The term rights management information means any information falling under any of the following items or the numerals or marks indicating said information, which are to be attached to the original program or its reproductions or to accompany with their execution or transmission:

(a) Information on the program works;

(b) Information for identifying the author or right holder of a program work; and

(c) Information on the methods or conditions for using the program works;

9. The term "technical protection measure" means any measure to effectively protect a program copyright through inputting an identification number or an authentication number, encryption, and key technologies or devices protecting rights prescribed by this Act, of the program;

10. The term "reverse engineering of program codes" means any act of reproducing or converting program codes in order to obtain information necessary for the compatibility of independently created programs with other programs; and

11. The term on-line service provider means any person who provides the services to make other persons capable of reproducing or transmitting programs through the information and communications network (referring to the information and communications network under Article 2 (1) 1 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc.; hereinafter the same shall apply).

### Article 3 (Scope of Application)

(1) The provisions of this Act shall not be applied to the matters falling under any of the following subparagraphs, which are used in preparation of a program:

1. Programming languages : characters, signs and a system thereof as a means to express a program;

2. Rules: a specific convention on the usage of programming language in a specific program; and

3. Algorithms : a method of combining instructions and commands in a program.

(2) An adapted program shall be protected as a separate program.

### Article 4 (Presumption of Program Author)

(1) Any person whose name (hereinafter referred to as "real name") or well-known pen name, its abbreviation, etc. (hereinafter referred to as "alias") is indicated as a program author in a general manner on the original program or its reproduction, or in disclosing the program, shall be

presumed to be the program author.

(2) In the case of a program without an indication of the program author under the provisions of paragraph (1), the person who discloses or publishes it shall be presumed to own the program copyright.

#### Article 5 (Author of Program Created in Course of Business)

In the case of a program created in the course of business by a person who is employed by a corporation under the planning of the national government, corporation, organization or other employer (hereinafter referred to as "corporation, etc."), the corporation, etc., shall be the author of such program unless otherwise specified in the agreement or in the employment regulations, etc.

#### Article 6 (Program of Foreigners)

(1) The program copyright of foreigners (including foreign juridical persons, hereinafter the same shall apply) shall be protected by the treaties which the Republic of Korea has joined or executed.

(2) The programs created by a foreign corporation having a principal office in the Republic of Korea, and the program first published by a foreigner in the Republic of Korea (including the programs published in the Republic of Korea within thirty days after the date on which the programs are published in a foreign country), shall be protected under this Act.

(3) Even in case a foreigner's program falls under the provisions of paragraphs (1) and (2), if the foreign country concerned does not protect the programs of nationals of the Republic of Korea, the protection accorded by treaty or under this Act may be correspondingly restricted.

### CHAPTER II PROGRAM COPYRIGHT

#### Article 7 (Program Copyright)

(1) The program author shall have the rights as provided in Articles 8 through 10 and the rights to reproduce, adapt, translate, distribute, publish and transmit the program.

(2) The program copyright shall take effect from the time on which the program is created, and no procedure or formality needs to be fulfilled.

(3) The program copyright shall last for fifty years from the year following the year in which the program is published: Provided, that if it is not published within fifty years after it is created, it shall last for fifty years from the year following the year in which it is created.

## Article 8 (Rights to Disclose)

- (1) The program author shall have a right to decide whether he discloses the program or not.
- (2) If a program author transfers or rents a program which has not been disclosed, or he has permitted to use it under Article 17, he shall be considered to have consented to the other party's disclosure of the program, unless there is any special agreement to the contrary.
- (3) In case where a program has not been disclosed but an adapted program created with the consent of the original program author has been disclosed, only that part of the original program which is used for the adaptation shall be considered to have been disclosed.

## Article 9 (Rights to Indicate Name)

- (1) The program author shall have a right to indicate his real name or alias on the program or its reproduction, or in disclosing the program.
- (2) Any person who uses a program shall indicate the real name or alias of the program author as indicated by the program author unless the program author expresses a special intention to the contrary.

## Article 10 (Rights for Maintenance of Identity)

Except as provided in any of the following subparagraphs, the program author shall have a right to maintain the identity of the title, contents and form of his program:

1. Modification of a program unusable in any computer other than a specific one to the extent necessary to make it usable in other computers;
2. Modification of a program to the extent necessary to make it usable in a more effective way in a specific computer; and
3. Modification to the extent deemed inevitable in the light of the nature of a program or the purpose of use thereof.

## Article 11 (Joint Creation Program)

- (1) The copyright of a program which is created jointly by two or more persons, and in which the parts contributed by each person may not be separately used (hereinafter referred to as "joint creation program"), shall be owned jointly by those who create it jointly, and their portions of co-ownership shall be considered to be equal unless there is any special agreement among them.
- (2) The copyright of the joint creation program shall not be exercised without an agreement of all

the copyright co-owners, and each co-owner shall not transfer his portion or make it an object of pledge rights without consent of the other co-owners. In this case, each co-owner shall not unreasonably withhold or refuse his consent, in violation of good faith.

(3) If one of the copyright co-owners in the joint creation program dies without leaving an heir, or gives up his portion, the portion shall be distributed to other co-owners in proportion to their pro-rata portion.

#### Article 12 (Restriction on Program Copyright)

In case of any of the following subparagraphs, the disclosed program may be reproduced or distributed within the scope necessary for their purpose: Provided, That the same shall not apply to any case where the interests of copyright owners are unjustly impaired in view of the type and usage of programs, the relative importance occupied by the reproduced portions in the programs, and the number of reproductions, etc.:

1. Where it is reproduced for a trial or criminal investigation;
2. Where an educator reproduces or distributes for the purpose of offering it to the course of study in a class;
3. Where it is reproduced in order to insert in the textbooks for educational purposes;
4. Where it is reproduced for individual purposes (excluding the case of profit-making purpose) in a limited place such as a household;
5. Where it is reproduced or distributed for entrance examinations of the schools under the Elementary and Secondary Education Act and the Higher Education Act and schools equivalent thereto, or any other test or inspection regarding knowledge and skills (excluding the case of profit-making purpose); and
6. Where the functions of programs are reproduced for the purpose of survey, research and test to confirm the ideas and principles that constitute the basis for programs (limited to a case where a person who uses programs according to his justifiable title is making use of the relevant programs).

#### Article 12-2 (Reverse Engineering of Program Codes)

(1) Any person who use a program according to a proper legal basis or any other person who uses the program with the former's consent may, if he is unable to easily obtain information necessary for the compatability and he needs to obtain such information, do the reverse engineering of program codes without the consent of the program copyright holder only for the part necessary for such compatability of the relevant program.

(2) Any information obtained as a result of the reverse engineering of program codes under paragraph (1) shall not be used if such information falls under the case falling under any of the following subparagraphs:

1. Where it is used for other purpose than the purpose of compatability or provided to any third person; and
2. Where it is utilized for performing the act of developing, producing and selling a program that

is practically similar in expression to a program subject to the reverse engineering of program codes or infringing on other program copyrights.

#### Article 13 (Payment of Compensation, etc. Due to Insertion in Textbooks)

(1) A person who intends to insert a program in textbooks under subparagraph 3 of Article 12 shall pay or deposit compensation as determined by the Minister of Information and Communication via the deliberation of the Program Deliberation and Mediation Committee as prescribed in Article 35 to a program copyright owner within thirty days from the day when the amount of the compensation is determined.

(2) Matters necessary for the determination, etc. of compensation as prescribed in paragraph (1) shall be prescribed by the Presidential Decree.

#### Article 14 (Reproduction by Program User)

(1) Any person who possesses and uses a reproduction of the program under a proper title may reproduce the reproduction within the scope necessary to prepare for the destruction, damage, alteration or etc. of the reproduction.

(2) If a person who possesses and uses a reproduction of a program loses the rights to possess and use it, he shall destroy the reproduction reproduced under the provisions of paragraph (1), unless the program copyright owner manifests other intentions: Provided, that if the rights to possess and use the reproduction of a program are lost owing to the destruction of it, this provision shall not be applied to such a case.

#### Article 15 (Transfer of Program Copyright)

(1) The program copyright may be transferred in whole or in part.

(2) Where the whole of program copyright has been transferred, it shall be presumed unless there exists a special contract that the right to adapt the relevant program has been concurrently transferred.

#### Article 16 (Exclusive Program Publication Right, etc.)

(1) A program copyright owner may establish an exclusive right for any person to distribute or transmit the reproduced program works on an exclusive basis (hereinafter referred to as the exclusive program publication right ).

(2) A person who obtains the exclusive program publication right, etc. in accordance with

paragraph (1) (hereinafter referred to as the exclusive program publication right owner, etc. ) shall have the right to exercise the exclusive program publication right, etc. within the scope attributable to the act of establishing such right.

(3) In case where a pledge is encumbered upon the right to copy the program, a program copyright owner may establish the exclusive program publication right, etc. only with the consent of the pledgee.

(4) An exclusive program publication right owner, etc. may not pledge the exclusive program publication right, etc. or transfer the exclusive program publication right, etc. to a third party without the consent of the program copyright owner.

(5) The exclusive program publication right, etc. shall be effective for a period of 3 years unless there is a special agreement in the act of establishing such right.

#### Article 17 (Permission for Use of Program)

(1) The program copyright owner may permit other persons to use his program.

(2) Any person who is permitted to use the program under the provisions of paragraph (1) may use it within the scope of the permitted methods of use and conditions, and may not transfer the rights to use to a third person without consent of the program copyright owner.

#### Article 18 (Use of Program where Program Copyright Owner is Unknown)

(1) In cases where a person who desires to use a program is unable to receive permission for use from the program copyright owner because he does not know the program copyright owner or his residence, despite his reasonable efforts, he may use it by obtaining an approval of the Minister of Information and Communication in accordance with the Presidential Decree and thereafter depositing for the program copyright owner the amount notified publicly by the Minister of Information and Communication via the deliberation of the Program Deliberation and Mediation Committee as prescribed in Article 35 within thirty days after the date of receipt of the approval of the Minister of Information and Communication.

(2) The fact that the Minister of Information and Communication has approved and the date of such approval shall be indicated on the reproduction of program used under paragraph (1).

#### Article 19 (Offer of Program to Transaction)

(1) In a case where any original program or its reproduction is offered for sale, under the permission of the program copyright owner or the exclusive program publication right owner, etc., it may be distributed continuously.

(2) Notwithstanding the provisions of paragraph (1), if any program for sale is rent for a profit-making purpose, it shall be permitted by the program copyright owner or the exclusive program

publication right owner, etc.

#### Article 20 (Designation, etc. of Program Copyright Trust Management Agency)

(1) In order to promote the use of programs and foster the programs-related industry, the Minister of Information and Communication may designate an organization for the trust management of the program copyright (hereinafter referred to as a "trust management agency"), and have it conduct the business of trust management of the program copyright in conformity with such requirements and formalities as prescribed by the Presidential Decree.

(2) Any person who wants to conduct the business of acting as an agent or a broker for program copyright shall make report to the Minister of Information and Communication in accordance with the Presidential Decree.

(3) The matters concerning the operation, fee, etc. of the trust management agency shall be prescribed by the Presidential Decree.

#### Article 20-2 (Deposit of Program)

(1) A program copyright owner and a person obtaining a permit for program use may deposit the original code of program and its technological information, etc. with the person as prescribed by the Presidential Decree (hereafter in this Article, referred to as the depositary ), by mutually agreeing with the depositary.

(2) Any person who has obtained a permit for program use may request the depositary to furnish the original code of program and its technological information, etc., when the causes set forth by the agreement under paragraph (1) have occurred.

#### Article 21 (Exercise, etc. of Program Copyright which is Object of Pledge Rights)

(1) The program copyright which is the object of the pledge rights, shall be exercised by the program copyright owner unless there is any special agreement in the act establishing such pledge rights.

(2) The pledge rights of which object is the program copyright, may also be exercised on money or other things to be received by the program copyright owner in case of a transfer of the program copyright, a transfer or a rent of the program, and the permission for use under the provisions of Article 17: Provided, that the money or things to be received shall be attached before a payment or delivery of things.

## Article 22 (Extinction of Program Copyright)

The program copyright shall be extinguished in the cases falling under any of the following subparagraphs:

1. Where the program copyright owner has died without leaving an heir, and his rights are reverted to the national government under the provisions of the Civil Act and other Acts; and
2. Where a corporation or an organization which is the program copyright owner is dissolved, and its rights are reverted to the national government under the provisions of the Civil Act and other Acts.

## CHAPTER III REGISTRATION

### Article 23 (Registration of Program)

(1) The program author may register with the Minister of Information and Communication the matters falling under any of the following subparagraphs: Provided, that in case where one year has elapsed after the creation of a program, the program author may not carry out such registration:

1. Name or title of the program;
2. Nationality, real name and address of the program author;
3. Creation date of the program; and
4. Outline of the program.

(2) If the program author dies, the person designated by his will or his heir may make the registration as provided in paragraph (1), unless the program author has manifested any other special intention.

(3) The registration as provided in paragraph (1) shall be executed by the Minister of Information and Communication by recording it in the Program Register.

(4) The Minister of Information and Communication shall publish a Program Gazette for the registered program under the provisions of paragraph (1), and notify publicly the fact of such registration.

(5) Any person who desires to request for the registration of a program or the review or issuance of copy of the Program Register shall pay the fee.

(6) Those matters necessary for the registration of a program, the Program Gazette, the request for review or issuance of copy of the Program Register, etc., shall be prescribed by the Presidential Decree; Provided that the fee under paragraph (5) above shall be prescribed by the ordinance of the Ministry of Information and Communication.

### Article 24 (Submission of Program)

(1) Any person who makes a registration under the provisions of Article 23 (1) and (2) shall submit a reproduction of the program to the Minister of Information and Communication at the time of registration.

(2) In cases where there is a submission under the provisions of paragraph (1), any registered program shall be presumed to be created on the registered creation date.

(3) The matters necessary for the submission of program shall be prescribed by the Presidential Decree.

#### Article 25 (Duty to Maintain Secrecy)

Any public official who is engaged in the management of the reproduction of programs presented under the provisions of Article 24, or any person who was in such position, shall not divulge to other persons secrets which he has acquired in the course of his duties.

#### Article 26 (Registration of Transfer of Program Copyright)

(1) If a person fails to register the matters falling under any of the following subparagraphs, he may not claim a priority against a third party:

1. Grant of exclusive program publication right, etc.;
2. Transfer (excluding the cases of inheritance and other general succession) of program copyright or exclusive program publication right, etc. or restriction on disposal thereof; and
3. Establishment, transfer, modification, extinction, or restriction on disposal, of the pledge right of which object is the program copyright or the exclusive program publication right, etc.

(2) The provisions of Article 23 shall be applied mutatis mutandis regarding the registration of program copyright in accordance with the provisions of paragraph (3) In this case, "program" shall be deemed as "program copyright" and "Program Register" as "program copyright registry" and "Program Gazette" as "program copyright gazette."

#### Article 27 (Entrustment of Duties)

The Minister of Information and Communication may, in accordance with the Presidential Decree, entrust duties falling under any of the following subparagraphs to the Program Deliberation and Mediation Committee established under Article 35:

1. Registration of program under Article 23;
2. Receipt of a reproduction of the program under Article 24; and

3. Registration of transfer, etc. of program copyright under Article 26.

#### Article 28 (Program Registration by Computer Information Processing Organization)

(1) Program registration affairs may be handled in whole or in part by a computer information processing organization.

(2) The Program Register under paragraph 3 of Article 23 and the Program Gazette under paragraph 4 of Article 23 may be published in an electronic medium as prescribed by the Ordinance of the Ministry of Information and Communication.

(3) In case where a Program Gazette is published in an electronic medium, the Minister of Information and Communication shall widely publicize the contents using information communication network.

(4) The procedures of program registration affairs under the provisions of paragraph (1) shall be prescribed by the Ordinance of the Ministry of information and Communication.

### CHAPTER IV REDRESS FOR INFRINGEMENT OF RIGHTS

#### Article 29 (Act of Infringement, etc. of Program Copyright)

(1) No person shall infringe upon the program copyright of another person without proper legal basis through means such as reproduction, adaptation, translation, distribution, publication and transmission or infringe the exclusive program publication right, etc. of another person by means of reproduction, distribution and transmission.

(2) The modification or concealment of the real name or alias of the program author or the modification of the name or title of the program shall not be made without proper legal basis.

(3) An act falling under any of the following subparagraphs shall not be done fraudulently:

1. An act of making a registration of program under Article 23;

2. Act act of submitting the reproduction under Article 24; and

3. Act act of making a registration of transfer of the program copyright under Article 26.

(4) Any act falling under the following subparagraphs shall be deemed as the infringement of the applicable program copyright:

1. An act of importing a program, which infringes a program copyright, for the purpose of distribution in Korea.

2. An act of using for business purpose a reproduction of a program made in infringement of a program copyright (including the imported program under subparagraph 1) by a person who

acquires such reproduction with the knowledge of such circumstances.

3. An act of removing or modifying intentionally the rights management information without proper legal basis or distributing the original program or its reproduction with the knowledge of such fact or importing or transmitting the original program or its reproduction for the purpose of distribution with the knowledge of such fact.

#### Article 30 (Restriction on Disarmament of Technical Protection Measure, etc.)

(1) No person shall disarm technical protection measures without proper legal basis through means such as avoidance, removal, damage, etc. (hereinafter referred to as "technical protection measure disarmament"); Provided, That any of the cases falling under the following subparagraphs shall be an exception:

1. In case the identity of a program is modified in accordance with the provisions of Article 10;
2. In case a program is reproduced and used under each subparagraph of Article 12;
3. In case a reproduction is made by a program user within the necessary scope in accordance with the provisions of Article 14;
4. In case it is necessary for a person using a program with proper legal basis to do so to maintain the compatibility with other program;
5. In case a revision or update of the program is requested by the end user with proper legal basis; and
6. In case it is necessary for a person using a program with a proper legal basis to analyze the encryption in connection with the program for the purpose of study and education, etc.

(2) No person shall manufacture, import, or transfer, rent or distribute to public, the equipments, devices or parts, etc. that are considerably dedicated to disarm the technical protection measures or shall transmit or distribute a program that disarms the technical protection measures, or provide the technology that dedicated to disarm the technical protection measures.

#### Article 31 (Request for Discontinuance, etc. of Infringement)

(1) The program copyright owner or the exclusive program publication right owner, etc. may request a person who infringes his rights or may infringe his rights to discontinue or prevent the infringement.

(2) In case where the program copyright owner or the exclusive program publication right owner, etc. makes a request under the provisions of paragraph (1), he may request discarding of the articles made pursuant to an infringement and the instruments, etc. which are used for the act of infringement, or request to take other measures necessary to prevent the infringement.

## Article 32 (Claim for Damages)

(1) The program copyright owner or the exclusive program publication right owner, etc. may make a claim for damages against the person who has infringed his rights on purpose or by negligence.

(2) Any person who has infringed a registered program copyright or an exclusive program publication right, etc. of another person shall be presumed to be negligent in his act of infringement.

(3) The amount of profits which a person who infringed a program copyright or an exclusive program publication right, etc. has received by his act of infringement shall be presumed to be the amount of damage which the program copyright owner has sustained.

(4) The program copyright owner or the exclusive program publication right owner, etc. may claim as damages the amount corresponding to the amount provided in paragraph (3) or the amount gainable ordinarily through the exercise of his right as damages.

(5) If the occurrence of damages is recognized but it is difficult to assess the amount of damages as prescribed in paragraphs (3) and (4), the court may admit a reasonable amount of damages in consideration of the pleading and the examination of evidence.

## Article 33 (Request of Discontinuance of Infringement on Joint Creation Program & Claim for Compensation)

Each co-author or each co-copyright owner of a joint creation program may make a request as referred to in Article 31 without the consent of other co-authors or co-copyright owners, and may claim compensation for the damages pursuant to the provisions of Article 31 for the infringement of his program copyright with respect to his relative portion.

## Article 34 (Measure, etc. of Removing Unjust Reproduction, etc.)

(1) The Minister of Information and Communication may have the public official concerned remove, delete and discard a program, information or equipment, etc. that falls under any of the following subparagraphs:

1. A program reproduced by a person without any proper legal basis for the profit-making purposes such as distribution or offer for use, etc.;
2. A program transmitted through information and communications network by a person without any proper legal basis for the profit-making purposes such as sale or offer for use, etc.;
3. A program used for business by a person who acquired it knowing that it is made by means that infringe on the program copyright;
4. Information to disarm the technical protection measures to be transmitted through the information and communications network; and
5. Equipments, devices, parts or programs, etc. made to disarm technical protection measures.

(2) In case where the relevant programs or equipments, etc. are removed by the relevant public

officials pursuant to the provisions of paragraph (1), the removal certificate shall be issued to the owner or the possessor thereof.

(3) The Minister of Information and Communication may request the Program Deliberation and Mediation Committee under Article 35 or the organizations, such as the association, etc. relating to a protection of the program copyright to provide assistance when the technological advice and the assistances corresponding thereto are necessary for the removal, etc. by the relevant public officials under paragraph (1).

(4) Relevant public officials who engage in the removal, etc. in accordance with paragraphs (1) and (2) shall retain and show to the relevant persons the certificate of their authority.

(5) Where the program or information under any subparagraph of paragraph (1) has been transmitted or presented through the information and communications network, the Minister of Information and Communication may order the provider of on-line services to make the refusal, suspension or limitation, etc. thereof, under the conditions as prescribed by the Presidential Decree, by going through a deliberation by the Program Deliberation and Mediation Committee under Article 35.

#### Article 34-2 (Liabilities, etc. of Provider of On-Line Services)

(1) Where the rights are infringed by the reproduction or transmission of programs through the information and communications network without proper title, the program copyright owner or the exclusive program publication right owner, etc. may request the provider of on-line services to suspend the reproduction and transmission of relevant programs, by vindicating that he is the holder of said rights.

(2) Where there exists a request under paragraph (1), the provider of on-line services shall promptly suspend the reproduction and transmission, and notify the person who reproduces or transmits the relevant programs of such facts.

(3) Any person who has received a notice under paragraph (2) may request a resumption of said reproduction or transmission, by vindicating that his reproduction or transmission are based on the proper title. In this case, the provider of on-line services shall promptly notify the program copyright owner or the exclusive program publication right owner, etc. of the fact of a request for resumption and the scheduled date of resumption, and have the reproduction or transmission resumed on the said scheduled date.

(4) The provider of on-line services shall designate the person who is to receive a request for the suspension of reproduction or transmission under paragraphs (1) and (3) and for its resumption (hereafter in this Article, referred to as the recipient ), and make a public notification of him so as to have the users of his services easily learn thereof.

(5) Where the provider of on-line services has made a public notification under paragraph (4) and made a reproduction or transmission of programs suspended or resumed under paragraphs (2) and (3), his responsibilities for any infringement on the rights of a program copyright owner or an exclusive program publication right owner, etc. due to a reproduction or transmission of programs by other persons, and for any losses incurred to the person who reproduces or transmits

programs, may be reduced or exempted.

(6) Any person who has requested, without proper title, the suspension or resumption of a reproduction or transmission of programs under paragraphs (2) and (3) shall make the compensation for any losses incurred thereby.

(7) Matters necessary for the vindication, suspension, notification, resumption of a reproduction or transmission, designation and public notification of a recipient, etc. under paragraphs (1) through (4) shall be prescribed by the Presidential Decree.

#### Article 34-3 (Reduction or Exemption of Responsibilities of Providers of On-Line Services)

(1) Where any provider of on-line services has become aware of an infringement on the rights of a program copyright owner or an exclusive program publication right owner, etc. due to a reproduction or transmission of programs by other persons, and has prevented or suspended it, his responsibilities may be reduced or exempted.

(2) Where any provider of on-line services intended to take measures under paragraph (1), but it has been technologically impossible, the responsibilities of the provider of on-line services for any infringement on the rights of a program copyright owner or an exclusive program publication right owner, etc. shall be exempted.

### CHAPTER V PROGRAM DELIBERATION AND MEDIATION COMMITTEE

#### Article 35 (Program Deliberation and Mediation Committee)

(1) In order to deliberate on the program copyright and other matters relating to the programs, and to reconcile or mediate any dispute on the rights protected under this Act (hereinafter referred to as a dispute ), the Program Deliberation and Mediation Committee (hereinafter referred to as the Committee ) shall be established.

(2) The Committee shall be composed of ten to twenty members for deliberation and mediation (hereinafter referred to as "members"), including the chairman.

(3) The members shall be commissioned from among persons falling under the following subparagraphs by the Minister of Information and Communication and the chairman shall be nominated by the said Minister from among the members:

1. A person who serves or has served as a public official of Grade 3 or higher;
2. A person who serves or has served as an associate professor or higher in a college or officially-recognized research institute or at a post equivalent thereto, and who has majored in the program copyright and other field relating to the programs;
3. A person who serves as a judge or public prosecutor;
4. A person who has the qualification for a lawyer or a patent attorney;
5. A person who serves or has served as an officer of the organization relating to the program copyright and other programs; and

6. Other persons who have the knowledge and experience in the programs or matters relating to the programs.

(4) The term of office of members shall be two years: Provided, that the term of a members who is commissioned for a designated position shall be the period in which he serves in such a designated position.

(5) In case there is a vacancy in members, a supplementary member shall be commissioned under the provisions of paragraph (3), and the term of such supplementary member shall be the remaining period of his predecessor's term.

(6) Subcommittees may be established by field in order to efficiently perform the functions of the Committee.

(7) A secretariat shall be established in the Committee in order to deal with its affairs, and a research office shall be established in order to perform survey and research.

#### Article 36 (Function)

In addition to reconcile or mediate the disputes, the Committee shall deliberate the matters falling under any of the following subparagraphs, which are related to the program copyright and other programs:

1. Matters concerning the compensation under the provisions of paragraph (1) of Article 13 and paragraph (1) of Article 18;
2. Policy matters and technical matters concerning the protection of the program copyright;
3. Matters concerning the appraisal of a program and electronic information related to a program, etc.; and
4. Other matters prescribed by the Presidential Decree.

#### Article 36-2 (Reconciliation)

(1) Any person intending to refer disputes to a reconciliation may apply for a reconciliation by submitting to the Committee a written application for reconciliation.

(2) When the Committee has received an application for reconciliation under paragraph (1), the chairman shall nominate a reconciliation member from among the committee members, and let him to deal with the reconciliation.

#### Article 36-3 (Suspension of Reconciliation)

(1) The reconciliation member may suspend the reconciliation in case where he deems that there exists no possibility to settle the disputes by a reconciliation.

(2) When there exists an application for mediation under Article 38 with respect to the disputes

under reconciliation, the relevant reconciliation shall be deemed to have been suspended.

#### Article 36-4 (Effectuation of Reconciliation)

When a reconciliation has been effected, the reconciliation member shall prepare a written reconciliation and sign and seal thereon concurrently with the related parties.

#### Article 37 (Mediation Department)

In order to carry out the dispute mediation affairs of the Committee efficiently, the mediation department which is composed of three members shall be established within the Committee, provided that one of them shall be qualified as a lawyer.

#### Article 38 (Application for Mediation)

(1) Any person who desires to refer any dispute to mediation may request a mediation of the dispute by submitting an application for mediation stating the purpose and reason for the request to the Committee.

(2) The mediation of dispute as provided in paragraph (1) shall be conducted by the mediation department as provided in Article 37.

(3) The Committee shall carry out mediation within three months after mediation is requested: Provided, that if there exists any special reason, such period may be extended only once for a period not exceeding one month with the consent of both interested parties.

(4) If the period prescribed in paragraph (3) expires, the mediation shall be deemed not to be completed.

#### Article 38-2 (Appraisal)

(1) The Committee may conduct an appraisal of the program and electronic information, etc. relating thereto when deemed necessary for a mediation of disputes under Article 38, by obtaining the consent of both parties.

(2) When the Committee has received a request for appraisal of the program and electronic information, etc. relating thereto from the court or criminal investigation agency for the purpose of trial or criminal investigation in addition to the cases under paragraph (1), it may conduct an appraisal.

#### Article 39 (Demand for Attendance)

(1) If the Committee deems it necessary for a mediation of dispute, the Committee may demand the party concerned, his representative or the interested persons to attend the Committee, or to present the necessary related documents.

(2) If the party to the mediation does not comply with the demand for attendance as provided in paragraph (1) without any justifiable right, the mediation shall be considered not to be completed.

#### Article 40 (Completion of Mediation)

(1) The mediation shall be completed by recording the matters agreed between parties concerned in the record of mediation.

(2) The record of mediation referred to in paragraph (1) shall have the same effect as that of the settlement in court: Provided, That the same shall not apply to a matter that parties concerned are unable to dispose of at will.

#### Article 41 (Expenses for Mediation)

(1) The expenses for mediation shall be borne by the applicant: Provided, that when the mediation is completed, each of parties concerned shall bear equally such expenses, unless there is any special agreement.

(2) The amount of the expenses for mediation as provided in paragraph (1) shall be determined by the Committee.

#### Article 42 (Subsidy of Expenses)

The national government may contribute or subsidize the expenses necessary for the operation of the Committee within the scope of the budget.

#### Article 43 (Organization, etc. of Committee)

The organization and operation of the Committee, the procedure for reconciliation and mediation, the payment method of mediation expenses, and other necessary matters shall be prescribed by the Presidential Decree.

## CHAPTER VI SUPPLEMENTARY PROVISIONS

### Article 44 (Consultation with Other Relevant Government Departments)

If the Minister of Information and Communication desires to decide and execute important matters concerning the program copyright under the provisions of this Act, he shall consult with the Minister of Culture and Tourism in advance.

### Article 45 (Relation with Other Acts)

Except as provided in this Act, if there are provisions concerning the protection of a program in the Copyright Act, such provisions shall apply.

### Article 45-2 (Delegation of Authority)

The Minister of Information and Communication may delegate a part of his authorities under this Act to the head of agency under his command or the Administrator of Communications Office.

## CHAPTER VII PENAL PROVISIONS

### Article 46 (Punishment)

(1) Any person who falls under any of the following subparagraphs shall be sentenced to imprisonment for not more than three years, or fine not exceeding fifty million won, or both:

1. A person who has violated the provisions of paragraph (1) of Article 29
2. A person who has committed an act falling under the provisions of subparagraphs 1 or 2 of paragraph (4) of Article 29.
3. A person who has violated the provisions of Article 30.

(2) Any person who has violated the provisions of Article 25 shall be sentenced to imprisonment for not more than two years, or fine not exceeding twenty million won.

(3) Any person who falls under any of the following subparagraphs shall be sentenced to imprisonment for not more than one year, or fine not exceeding ten million won:

1. A person who conducts the business of trust management of the program copyright without obtaining the designation pursuant to the provisions of paragraph (1) of Article 20.

2. A person who has violated paragraph (2) of Article 29.

3. A person who has violated paragraph (3) of Article 29.

4. A person who has committed an act falling under the provisions of subparagraph 3 of paragraph (4) of Article 29.

(4) Any person who conducts the business of acting as an agent or a broker for the program copyright without making a report pursuant to the provisions of paragraph (2) of Article 20 shall be sentenced to a fine not exceeding five million won.

#### Article 47 (Habitual Offender)

A person who has habitually fallen under paragraph (1) of Article 46 shall be sentenced to imprisonment for not more than five years or fine not exceeding seventy million Won or both.

#### Article 48 (Criminal Complaint)

With respect to the offenses as provided in Articles 46 (1) (from among the cases under subparagraph 3, excluding those violating the provisions of Article 30 (2)) and 46 (3) 2 and 4, the prosecution may be made only when there is a criminal complaint filed by a program copyright owner or exclusive program publication right owner, etc.

#### Article 49 (Treatment as Public Official in Application of Penal Provisions)

The members and staffs of the Committee shall be deemed to be public officials in applying Article 25 of this Act and Articles 129 through 132 of the Criminal Act.

#### Article 50 (Joint Penal Provisions)

If a representative of a corporation, or an agent, servant or employee of a corporation or individual, commits an offense with respect to the business of the corporation or individual as provided in Article 46, a fine as provided in the same Article shall be imposed on the corporation or individual, in addition to punishing the offender.

#### Article 51 (Fine for Negligence)

(1) Any person who has failed to comply with the orders under Article 34 (5) shall be punished by a fine for negligence of not more than 5 million won.

(2) The fine for negligence under paragraph (1) shall be imposed and collected by the Minister of Information and Communication under the conditions as prescribed by the Presidential Decree.

(3) Any person who is dissatisfied with a disposition of fine for negligence under paragraph (2) may raise an objection to the Minister of Information and Communication within 30 days from the date of receiving a notice of such disposition.

(4) When any person subjected to a disposition of a fine for negligence under paragraph (2) raises an objection under paragraph (3), the Minister of Information and Communication shall promptly notify the competent court thereof, and the court in receipt of said notice shall bring the case to a trial for the fine for negligence under the Non-Contentious Case Litigation Procedure Act.

(5) If neither an objection is raised nor is a fine for negligence paid within the period as prescribed in paragraph (3), such fine for negligence shall be collected by referring to the practices of dispositions on default of national taxes.

#### ADDENDA

(1) (Enforcement Date) This Act shall enter into force upon elapse of six months following the date of its promulgation.

(2) (Transitional Measures for Penal Provisions) The application of penal provisions to any act committed prior to the enforcement of this Act shall be governed by the previous provisions.

#### ADDENDA <Act No. 6357, Jan. 16, 2001>

#### Article 1 (Enforcement Date)

This Act shall enter into force six months after the date of its promulgation.

## Article 2 (Application Example)

The amended provisions of Article 40 shall apply to that mediation which has been made since this Act entered into force.

ADDENDA <Act No. 6843, Dec. 30, 2002>

(1) (Enforcement Date) This Act shall enter into force on July 1, 2003.

(2) (Transitional Measures) The amendments to Articles 34-2 and 34-3 shall not apply to the cases where there exist any infringing acts against the program copyright, exclusive program publication right, and other rights, on account of the reproduction, transmission or resumption of programs through the information and communications networks prior to the enforcement of this Act.