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Chapter 17

Crimes Related to Intellectual Property

This guideline applies to adult offenders (nineteen years of age or older) who committed any offense of Patent Right, Exclusive License Infringement (Patent Act, Article 225, paragraph 1), Utility Model Right, Exclusive License Infringement (Utility Model Act, Article 45, paragraph 1), Design Right, Exclusive License Infringement (Design Protection Act, Article 220, paragraph 1), Trademark Right, Exclusive License Infringement (Trademark Act, Article 230), Author's Property Right Infringement (Copyright Act, Article 136, paragraph 1), Author's Moral Right Infringement, Filing Deceitful Registration, Infringing the Right of a Database Producer, Disturbing the Exercise of Copyright, Commission of an Act Deemed as an Infringement (Copyright Act, Article 136, paragraph 2), Acquiring, Using, Leaking Trade Secrets (Unfair Competition Prevention Act, Article 18, paragraph 1, 2), Divulging and Infringing Industrial Technology (Industrial Technology Act, Article 36, paragraph 1, 2), Divulging or Making Fraudulent Use of Secrets (Industrial Technology Protection Act, Article 36, paragraph 5), Commission of Unfair Competition (Unfair Competition Prevention Act, Article 18, Paragraph 3, subparagraph 1), and Using Badges or Marks (Unfair Competition Prevention Act, Article 18, Paragraph 3, subparagraph 2).

PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

01¹ REGISTERED RIGHTS INFRINGEMENTS

CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
Act of Infringing Registered Rights	- 1 yr.	10 mos. - 2 yrs.	1 yr. 6 mos. - 3 yrs.

* This includes the conducts of infringing a patent right, exclusive license, utility model right, exclusive license, design right, exclusive license, and trademark right, exclusive license.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Actual loss is insignificant Special consideration can be taken into account for engaging or participating in the offense Non-distribution of infringed goods 	<ul style="list-style-type: none"> Premeditated or organized crimes Deception against multiple victims or using active means of deception Inflicting serious harm to the holder of a right Continuous act of infringement after the demand to cease while apparent infringement takes place
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> Those with hearing and visual impairments Those with mental incapacity (cases where the offender cannot be held liable) Voluntary surrender to investigative agencies The victim opposes punishment (including genuine efforts to reverse the harm) 	<ul style="list-style-type: none"> Repeated offenses of the same type under the Criminal Act More than three incidents of the criminal history of the same type
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Offender's passive participation Offense committed for basic living expenses 	<ul style="list-style-type: none"> Repeated or prolonged commission of the offense Inflicting serious harm



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> Expresses sincere remorse Efforts to reverse the harm (a significant amount of money was deposited, etc.) No prior criminal history 	<ul style="list-style-type: none"> Criminal history of the same type (This applies when the criminal history is within ten years after the completion of the sentence)

02¹ COPYRIGHT INFRINGEMENTS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Act of Infringing Author's Property Right	- 10 mos.	8 mos. - 1 yr. 6 mos.	1 yr. - 3 yrs.
2	Act of Infringing Other Rights Related to Copyright	- 8 mos.	6 mos. - 1 yr. 4 mos.	10 mos. - 2 yrs.

* Type 2 includes an act of infringing author's moral right, filing a deceitful registration, infringing the right of a database producer, disturbing the exercise of copyright, and performing an act deemed an infringement.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Actual loss is insignificant Special consideration can be taken into account for engaging or participating in the offense Not-for-profit use 	<ul style="list-style-type: none"> Premeditated or organized crimes Inflicting serious harm to the holder of a right Continuous act of infringement after the demand to cease while apparent infringement takes place
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> Those with hearing and visual impairments Those with mental incapacity (cases where the offender cannot be held liable) Voluntary surrender to investigative agencies The victim opposes punishment (including genuine efforts to reverse the harm) 	<ul style="list-style-type: none"> Repeated offenses of the same type under the Criminal Act More than three incidents of the criminal history of the same type

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Offender's passive participation Offense committed for basic living expenses 	<ul style="list-style-type: none"> Repeated or prolonged commission of the offense Inflicting serious harm Infringement of a registered right
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> Expresses sincere remorse Efforts to reverse the harm (a significant amount of money was deposited, etc.) No prior criminal history 	<ul style="list-style-type: none"> Criminal history of the same type (This applies when the criminal history is within ten years after the completion of the sentence)

03¹ TRADE SECRET INFRINGEMENTS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Infringement Within the Country	- 10 mos.	8 mos. - 2 yrs.	1 yr. - 4 yrs.
2	Infringement Outside of the Country	10 mos. - 1 yr. 6 mos.	1 yr. - 3 yrs. 6 mos.	2 yrs. - 6 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Actual loss is insignificant Special consideration can be taken into account for engaging or participating in the offense Disclosure did not occur externally and was recovered 	<ul style="list-style-type: none"> Premeditated, organized crime Inflicting serious harm to the victim Offenses regarding industrial technologies under the Act on Prevention of Divulgence and Protection of Industrial Technology or trade secrets that have significant effect nationally and socially



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none">• Those with hearing and visual impairments• Those with mental incapacity (cases where the offender cannot be held liable)• Voluntary surrender to investigative agencies• The victim opposes punishment (including genuine efforts to reverse the harm)	<ul style="list-style-type: none">• Repeated offenses of the same type under the Criminal Act• Offense committed by a person with special duties to maintain confidentiality
General Sentencing Determinant	Conduct	<ul style="list-style-type: none">• Offender's passive participation• Negligence in supervising the trade secrets	<ul style="list-style-type: none">• Actual use of disclosed trade secrets• Extent of damage is significant• Disclosure of trade secrets that were acquired or used• Economic profits gained from an offense
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none">• Expresses sincere remorse• Efforts to reverse the harm• No prior criminal history	<ul style="list-style-type: none">• Criminal history of the same type (This applies when the criminal history is within ten years after the completion of the sentence)

04¹ COMMISSION OF UNFAIR COMPETITION

CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
Act of Unfair Competition	- 8 mos.	6 mos. - 1 yr. 4 mos.	10 mos. - 2 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Actual loss is insignificant Special consideration can be taken into account for engaging or participating in the offense 	<ul style="list-style-type: none"> Premeditated or organized crimes Inflicting serious harm to the victim Deception against multiple victims or using active means of deception Continuous act of infringement after the demand to cease while apparent infringement takes place
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> Those with hearing and visual impairments Those with mental incapacity (cases where the offender cannot be held liable) Voluntary surrender to investigative agencies The victim opposes punishment (including genuine efforts to reverse the harm) 	<ul style="list-style-type: none"> Repeated offenses of the same type under the Criminal Act
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Offender's passive participation Offense committed for basic living expenses 	<ul style="list-style-type: none"> Repeated or prolonged commission of the offense Extent of damage is significant
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> Expresses sincere remorse Efforts to reverse the harm No prior criminal history 	<ul style="list-style-type: none"> Criminal history of the same type (This applies when the criminal history is within ten years after the completion of the sentence)



DEFINITION OF OFFENSES

01¹ REGISTERED RIGHTS INFRINGEMENTS

- This includes offenses with the following statutory elements of offense under the applicable laws (This applies to all offenses).

ELEMENTS OF THE OFFENSE	APPLICABLE LAW
Act of Infringing Patent Right, Exclusive License	Patent Act, Article 225, paragraph 1
Act of Infringing Utility Model Right, Exclusive License	Utility Model Act, Article 45, paragraph 1
Act of Infringing Design Right, Exclusive License	Design Protection Act, Article 220, paragraph 1
Act of Infringing Trademark Right, Exclusive License	Trademark Act, Article 230

02¹ COPYRIGHT INFRINGEMENTS

TYPE	ELEMENTS OF THE OFFENSE	Applicable Law
1	Act of Infringing Patent Right, Exclusive License Act of Infringing Author's Property Right and Other Property Rights (Except Rights Under Article 93) Protected by This Statute	Copyright Act, Article 136, paragraph 1
2	1. Act of Infringing Author's Moral Right 2. Filing a Deceitful Registration 3. Act of Infringing the Right of a Database Producer (Article 93) 3-3. Act of Incapacitating Technical Protection for Business or Profit 3-4. Act of Deleting Rights Management Information for Business or Profit 4. Person Who Performs an Act Deemed as an Infringement	Copyright Act, Article 136, paragraph 2

03¹ TRADE SECRET INFRINGEMENTS

TYPE	ELEMENTS OF THE OFFENSE	APPLICABLE LAW
1	Acquiring, Using or Leaking Useful Trade Secrets of Any Enterprise for the Purpose of Making an Illegal Profit or Causing Damage to the Enterprise	Unfair Competition Prevention Act, Article 18, paragraph 2
	Act of Divulging and Infringing Industrial Technology	Act on Prevention of Divulgence and Protection of Industrial Technology, Article 36, paragraph 2
	Act of Divulging or Making Fraudulent Use of Secrets Learned While Conducting Duties	Act on Prevention of Divulgence and Protection of Industrial Technology, Article 36, paragraph 5
2	Using Useful Trade Secrets of Any Enterprise Abroad for the Purpose of Making an Illegal Profit or Causing Damage to Such Enterprise or Acquiring, Using, or Leaking Such Trade Secrets To Any Third Party With Knowing That They Are Used or Will Be Used Overseas	Unfair Competition Prevention Act, Article 18, paragraph 1
	Divulging and Infringing Industrial Technology for The Purpose of Using It Overseas	Act on Prevention of Divulgence and Protection of Industrial Technology, Article 36, paragraph 1

04¹ REGISTERED RIGHTS INFRINGEMENTS

ELEMENTS OF THE OFFENSE	APPLICABLE LAW
Person Who Commits an Unfair Competition Act Under Subparagraph 1 of Article 2 (Excluding Items (h) and (i))	Unfair Competition Prevention Act, Article 18, paragraph 3, subparagraph 1
Act of Using Trademark, Contrary to Article 3, An Identical or Similar Badge or Mark of a Party in Violation to the Paris Convention	Unfair Competition Prevention Act, Article 18, paragraph 3, subparagraph 2



DEFINITION OF SENTENCING FACTORS

01¹ ACTUAL LOSS IS INSIGNIFICANT

- This means one or more of the following factors apply:
 - When the holder of a right did not actually use the right concerned, or the trade secrets or industrial technology (except when the right is in use or it is a foundational aspect of the secret for developing trade secrets, industrial technology)
 - When the infringed right, trade secrets or industrial technology is used in merely one process of the product or service so that the offender could produce products or services using other alternative technology even without the right or trade secrets and the decline in sales by the offense is insignificant
 - When the infringement involves only a small portion of the object of copyright or other rights
 - Other cases with comparable factors

02¹ SPECIAL CONSIDERATION CAN BE TAKEN INTO ACCOUNT FOR ENGAGING IN THE OFFENSE

- This means one or more of the following factors apply:
 - Participation in the crime was forced by another person or as a result threats (This excludes cases where the Criminal Act, Article 12 is applicable)
 - The offender merely agreed to participate in the crime but did not lead in committing the crime or actually participate
 - When the offender used the work protected by copyright to help the cultural life of the children, disabled, or senior citizen
 - Other cases with comparable factors

03¹ NON-DISTRIBUTION OF GOODS

- The whole products made from infringing rights, trade secrets, or industrial technology are not transferred or possessed by the third party but are still under the offender's control.

04¹ VICTIM OPPOSES PUNISHMENT (THIS INCLUDES GENUINE EFFORTS TO REVERSE THE HARM)

- This indicates cases in which the offender expresses remorse for committing the crime, and the family of the deceased victim or the victim acknowledges this and objects to punishing the offender.
- This includes cases in which an agreement was not reached with the deceased's family or the victim, and the offender deposited a considerable amount of money to reach an agreement with the family of the deceased or the victim as a genuine effort to reverse the harm.

05¹ PREMEDITATED, ORGANIZED CRIME

- This means cases with one or more of the following factors:
 - The means and methods for the commission of the offense were meticulously done in advance
 - There were multiple persons involved in an organized manner for the purpose of committing the offense
 - Other cases with comparable factors

06¹ DECEPTION AGAINST MULTIPLE VICTIMS OR USING ACTIVE MEANS OF DECEPTION

- This indicates cases in which the offender deceived consumers and caused confusion in the market by using pictures of authentic goods in advertisements or by displaying counterfeit goods together with authentic ones.

07¹ INFLICTING SERIOUS HARM TO THE HOLDER OF THE RIGHT (VICTIM)

- This means one or more of the following factors apply:
 - The proportion of profit gained from the act of infringement, unfair competition constitutes most of the total sales of the offender, or a considerable part of the total sales of the holder of a right
 - The offender established a corporation or place of business solely to infringe the specific right
 - The business of a right holder faced bankruptcy crisis or fatal financial problems due to severe decline in sales
 - The offender infringed trademark rights with substantial recognition of the trademark in the marketplace
 - The offender infringed patent rights, which became the basis of a specific industry area or brought innovative advances in a special field
 - Cases where large enterprise infringes or leaks technology of small or medium enterprise that is under the protection under the Framework Act on Small and Medium Enterprises and the large enterprise is in competition or a supplier and/or in contract with the small or medium enterprise under the Framework Act on Small and Medium Enterprises
 - Other cases with comparable factors

08¹ DISCLOSURE DID NOT OCCUR EXTERNALLY AND WAS RECOVERED

- This indicates cases in which the offender did not disclose the trade secret or industrial technology that was gained, which caused a relatively low risk of harm to the holder of a right.

09 | OFFENSE COMMITTED BY A PERSON WITH SPECIAL DUTIES TO MAINTAIN CONFIDENTIALITY

- This means cases when the offender is the person prescribed in the Industrial Technology Act, Article 34, or is a person who is not employed to the holder of a right. The offender received a considerable price for developing the technology by participating as a subcontractor, or when the offender promised not to use the industrial technology or trade secrets transferred to the current holder of a right but instead disclosed or used them.



ASSESSING PRINCIPLES APPLICABLE TO SENTENCING FACTORS

01¹ DETERMINING THE SENTENCING RANGE

- When determining the appropriate sentencing range, the court must consider only the special sentencing determinants.
- However, in cases involving more than two special sentencing determinants, the applicable sentencing range is adjusted after assessing the factors as set forth below:
 - ① The same number of conduct factors shall be considered with greater significance than the actor or other factors. However, the victim opposing the punishment of the offender can match the conduct determinant.
 - ② The same number of conduct factors reciprocally, or the actor, or other factors reciprocally shall be treated as the same.
 - ③ If the sentencing range applicable cannot be determined by the aforementioned principles in ① and ②, the court is to decide the sentencing range by a comprehensive comparison and assessment based on the principles set forth in ① and ②.
- After an assessment, if a greater number of aggravating factors than the mitigating factors exist, then the aggravating zone is recommended when determining the sentencing range. If a greater number of mitigating factors exist, then a mitigating sentencing range is recommended. For other cases, the standard sentencing range is recommended.

02¹ DETERMINING THE SENTENCE APPLICABLE

- In determining the sentence, the court should consider comprehensively both the general and special sentencing determinants that are within the sentencing range as assessed under above 1.

GENERAL APPLICATION PRINCIPLES

01¹ SPECIAL ADJUSTMENTS TO THE SENTENCING RANGE

- ① When only two or more special aggravating factors apply, or the special sentencing determinant outnumber the special mitigating determinants by two or more, then increase the maximum level of the recommended sentencing range up to $\frac{1}{2}$.
- ② When only two or more special mitigating factors apply, or the special sentencing determinant outnumber the special aggravating determinants by two or more, then reduce the minimum level of the recommended sentencing range down to $\frac{1}{2}$.

02¹ RELATION BETWEEN THE RECOMMENDED SENTENCING RANGE UNDER THE GUIDELINES AND THE APPLICABLE SENTENCING RANGE BY LAW

- When the sentencing range under this guideline conflicts with the range determined according to the aggravation and mitigation of the applicable law, the sentencing range prescribed by the applicable law shall govern.

03¹ APPLICATION OF STATUTORY MITIGATING FACTORS AS DISCRETIONARY

- When the court declines to apply a permissive mitigating factor under applicable law as listed in this guideline's sentencing table, the factor shall be treated as a discretionary mitigating factor.



GUIDELINES ON SENTENCING MULTIPLE OFFENSES

01¹ APPLICABLE SCOPE

- This section applies to concurrent crimes prescribed in the first part of Article 37 of the Criminal Act. However, when concurrent crimes under the first part of Article 37 of the Criminal Act involve an offense set forth in the sentencing guidelines, as well as an offense the sentencing guidelines do not cover, then the minimum level should be the minimum of the sentencing range of the offense that is set forth in this sentencing guideline.

02¹ DETERMINING THE BASE OFFENSE

- The “base offense” indicates the most severe offense that results after selecting the penalty and determining the statutory aggravation and mitigation. However, in cases in which the maximum sentencing range is lower than that of the maximum sentencing range of the other offense as set forth in this guideline, the offense resulting in the concurrent crime becomes the base offense.

03¹ CALCULATING THE SENTENCING RANGE

- To calculate the sentence of an offender convicted of multiple offenses that is not treated as a single offense under this guideline, the court shall apply the following principles:
 - ① In setting the sentencing range for an offender convicted of two offenses, the sentencing range should be the total sum of the maximum sentencing range of the base offense and the $\frac{1}{2}$ of the maximum sentencing range of the second offense.

- ② In setting the sentencing range for an offender convicted of three or more offenses, the sentencing range should be the total sum of the following: (1) of the maximum sentencing range of the base offense, sum of $\frac{1}{2}$ of the maximum sentencing range of the offense with the highest sentencing range, and (2) $\frac{1}{3}$ of the maximum sentencing range of the remaining offense with the second-highest sentencing range.
- ③ For cases in which the minimum sentencing range of the other offense is higher than that of the base offense, the minimum sentencing range resulting from the multiple offense should be the minimum sentencing range of the other offense.



PART B — GUIDELINE ON SUSPENDING A SENTENCE

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> • Premeditated, organized crime • Inflicting serious harm to the victim • Continuous act of infringement after the demand to cease while apparent infringement takes place • Offense committed by a person with special duties to maintain confidentiality (trade secret infringements) • Offenses regarding trade secrets have significant effect nationally and socially (trade secret infringement) • Lack of compensation for the damage caused • A criminal history of the same offense (imposing of suspension of sentence or more severe punishment within five years; or a more than three incidents of fines) exists 	<ul style="list-style-type: none"> • Actual loss is insignificant • Special consideration can be taken into account for engaging or participating in the offense • Non-distribution of infringed goods • Not-for-profit use • Voluntary surrender • Victim opposes punishment, or the harm is significantly reversed (includes genuine efforts to reverse the harm) • No prior criminal history
General Consideration Factor	<ul style="list-style-type: none"> • Condemnable motives • Lack of social ties • Absence of remorse • Active participation as an accomplice • Repeated or prolonged commission of the offense • Extent of damage is substantial • Criminal history of the same offense (This applies when the criminal history is within ten years after completion of sentence) or more than two incidents of suspension of sentence or a more severe punishment • Absence of efforts to reverse the harm 	<ul style="list-style-type: none"> • Offender's passive participation as an accomplice • Offense committed for basic living expenses • Strongly established social ties • Expresses sincere remorse • Efforts to reverse the harm (a significant amount of money was deposited, etc.) • No criminal history of the suspension of sentence or imposing of other sentences more severe • Cases of elderly offenders • Physically ill offenders • Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member

DEFINITIONS OF FACTORS TO CONSIDER IN SUSPENDING A SENTENCE

- In cases in which the factors to consider in suspending a sentence and the sentencing factors are identical, refer to the definitions set forth in the *Definition of Sentencing Factors*.
- Determining Criminal History
 - Prior criminal history is calculated as follows: In cases that involve a suspension of the sentence, the prior criminal history is calculated from the date the defendant's suspension of the sentence was affirmed until the date of the commission of the offense. In cases that impose imprisonment, prior criminal history is calculated from the final date of the completion of the sentence up to the date the offense was committed.

ASSESSING PRINCIPLES APPLICABLE TO THE FACTORS TO CONSIDER IN SUSPENDING A SENTENCE

- In deciding whether the suspension of a sentence is appropriate in cases in which imprisonment is imposed, the court should give the primary consideration factor greater importance than the general consideration factors. The following principles should be considered:
 - ① In cases in which only two or more primary affirmative factors exist or when the primary affirmative factors outnumber the major adverse factors by two or more, it is recommended to suspend the sentence.
 - ② In cases in which two or more primary adverse factors exist or when the primary adverse factors outnumber the primary affirmative factor by two or more, imprisonment is recommended.
 - ③ In cases in which ① or ② apply, but the difference between the number of general adverse (affirmative) factors and general affirmative (adverse) factors is greater than the difference between the number of primary affirmative (adverse) factors and primary adverse (affirmative) factors, or in cases other than ① or ②, the court shall decide whether to suspend the sentence after comparing and assessing the factors listed under the suspension of sentence section comprehensively.