

Promulgated on June 18, 2012, Effective on July 1, 2012

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 Right·Exclusive License Infringement (Design Protection Act, Article 82, paragraph 1), Trademark Right·Exclusive License Infringement (Trademark Act, Article 93), 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), Using Badges or Marks (Unfair Competition Prevention Act, Article 18, Paragraph 3, subparagraph 2).

I. TYPES OF OFFENSE AND SENTENCING PERIODS

01 | REGISTERED RIGHTS INFRINGEMENTS

| Classification | Mitigated Sentencing Range | Standard Sentencing Range | Aggravated Sentencing Range |
|-------------------------------------|----------------------------|---------------------------|-----------------------------|
| Act of Infringing Registered Rights | - 1 yr | 10 months - 2 yrs | 1 yr 6 months - 3 yrs |

▷ This includes the conducts of infringing a patent right·exclusive license, utility model right·exclusive license, design right·exclusive license, 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·Organized Crime ● 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 Harm) | <ul style="list-style-type: none"> ● Repeated Offenses of the SameType Under the Criminal Act ● More Than Three Incidents of Criminal History of the Same Type |
| General Sentencing Determinant | Conduct | <ul style="list-style-type: none"> ● Passive Participation ● Offense Committed for Basic Living Expenses | <ul style="list-style-type: none"> ● Repeated or Prolonged Commission of the Offense ● Inflicting Serious Harm |
| General Sentencing Determinant | Actor /Etc. | <ul style="list-style-type: none"> ● Expresses Sincere Remorse ● Efforts to Reverse Harm (Significant Amount of Money 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 months | 8 months - 1 yr 6 months | 1 yr - 3 yrs |
| 2 | Act of Infringing Other Rights Related to Copyright | - 8 months | 6 months - 1 yr 4 months | 10 months - 2 yrs |

▷ Type 2 includes act of infringing author's moral right, filing a deceitful registration, infringing the right of a database producer, disturbing the exercise of copyright, 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 · Organized Crime 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 Harm) | <ul style="list-style-type: none"> Repeated Offenses of the Same Type Under the Criminal Act More Than Three Incidents of Criminal History of the Same Type |
| General Sentencing Determinant | Conduct | <ul style="list-style-type: none"> 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 Harm (Significant Amount of Money 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) |

03 | TRADE SECRET INFRINGEMENTS

| Type | Classification | Mitigated Sentencing Range | Standard Sentencing Range | Aggravated Sentencing Range |
|------|-------------------------------------|------------------------------|-----------------------------|-----------------------------|
| 1 | Infringement Within the Country | - 10 months | 8 months - 1 yr 6 months | 1 yr - 3 yrs |
| 2 | Infringement Outside of the Country | 10 months - 1 yr 6 months | 1 yr - 3 yrs | 2 yrs - 5 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 Holder of a Right Offenses Regarding the Trade Secrets Have Significant Effect Nationally and Socially |
| 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 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"> 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 Was Acquired or Used Economic Profits Gained From Offense |
| General Sentencing Determinant | Actor /Etc. | <ul style="list-style-type: none"> Expresses Sincere Remorse Efforts to Reverse 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 months | 6 months - 1 yr 4 months | 10 months - 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 - Organized Crime 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 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"> 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 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 (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 82, paragraph 1 |
| Act of Infringing Trademark Right· Exclusive License | Trademark Act, Article 93 |

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) 3-1. Act of Incapacitating Technical Protection for Business or Profit 3-2. 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 | The 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 | The 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 | The 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 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 aParty in Violation to the Paris Convention | Unfair Competition Prevention Act, Article 18, paragraph 3, subparagraph 2 |

[DEFINITION OF SENTENCING FACTORS]

01 | 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, 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 · service so that 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 as a result.
 - When the infringement involves only a small portion of the object of copyright, or other rights.
 - Other cases with comparable factors.

02 | SPECIAL CONSIDERATION CAN BE TAKEN INTO ACCOUNT FOR ENGAGING IN OFFENSE

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

03 | 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.



04 | VICTIM OPPOSES PUNISHMENT (THIS INCLUDES GENUINE EFFORTS TO REVERSE HARM)

- This means cases where the offender expresses signs of remorse and the member of the deceased victim or the victim acknowledges this and objects punishing the offender.
- This includes cases where deposits are made on a considerable amount of money comparable to reaching of an agreement with the family of the deceased victim or the victim as a result of the offender's genuine efforts to reverse harm.

05 | PREMEDITATED·ORGANIZED CRIME

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

06 | DECEPTION AGAINST MULTIPLE VICTIMS OR USING ACTIVE MEANS OF DECEPTION

- This means cases where 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.

07 | INFLICTING SERIOUS HARM TO THE HOLDER OF THE RIGHT

- This means one or more of the following factors apply:
 - The proportion of profit gained from the act of infringement·unfair competition constitutes most part of the total sales of the offender, or considerable part of the total sales of the holder of a right.

- The offender established corporation or place of business solely for the purpose of infringing specific right.
- The business of holder of a right faced bankruptcy crisis or fatal financial problems due to serious decline in sales.
- The offender infringed trademark rights with substantial recognition of the trademark in the marketplace.
- The offender infringed patent right which became the basis of specific industry area, or which brought innovative advance in special field
- Other cases with comparable factors.

08 | DISCLOSURE DID NOT OCCUR EXTERNALLY AND WAS RECOVERED

- This means cases where the offender did not disclose the trade secret or industrial technology that was gained, which caused 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 but received 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 that was transferred to the current holder of a right, but instead disclosed or used them.



[ASSESSING PRINCIPLES APPLICABLE TO THE SENTENCING FACTORS]

01¹ DETERMINING APPROPRIATE SENTENCING RANGE

- In determining the appropriate sentencing range, the judge must only consider the special sentencing determinants.
- However, in cases involving more than two special sentencing determinant, the applicable sentencing range is adjusted after assessing the factors as set forth below:
 - ① The same number of conduct factor shall be considered with greater significance than the actor/etc. factor. However, this shall be assessed equally to the victim or the family member of the deceased victim's objection to the punishment.
 - ② Each factor within the relevant categories of conduct or actor/etc. factors should be treated as equal.
 - ③ If the applicable sentencing range is unable to be determined by the aforementioned principles ①, ②, the judge is to decide the applicable sentencing range through a comprehensive comparison and assessment based on the principles set forth in ①, ②.
- It is recommended that when the assessment reveals greater aggravating factors to select the aggravated zone, the mitigating factors is greater to select the mitigating zone, and the same number of aggravating factors and mitigating factors to select the standard zone as a sentencing range.

02¹ DETERMINING THE APPLICABLE SENTENCE

- The judge should select the proper point within the sentencing range as assessed in accordance with the above principles, along with the special sentencing determinant and general sentencing determinant taken together.
- When the maximum of the sentencing range exceeds twenty-five years, the judge may impose a life imprisonment.

[GENERAL APPLICATION PRINCIPLES]

01 | SPECIAL ADJUSTMENTS TO THE SENTENCING RANGE

- ① In cases where the aggravating factor is selected and the assessment of the special sentencing determinant reveals only two or more special aggravating factors or the special sentencing determinant outnumbers the special mitigating determinant by two or more, then the sentencing range should be increased up to 1/2 from the maximum level.
- ② For cases where the mitigating factor is selected as a result of assessment of the special sentencing determinant, and there are two or more special mitigating determinant or the special mitigating determinant outnumbers the special aggravating determinant by two or more, the sentencing range should be decreased up to 1/2 from the minimum level.

02 | RELATION BETWEEN THE RECOMMENDED SENTENCING RANGE GUIDELINES AND APPLICABLE SENTENCING RANGE BY LAW

When the sentencing range under this guideline conflicts with the range drawn in accordance with the aggravation and mitigation of applicable law, the sentencing range prescribed by applicable law governs.

03 | APPLICATION OF STATUTORY MITIGATING FACTORS AS DISCRETIONARY

When the judge declines to apply the optional mitigation factor under the applicable law as listed in the sentencing table of this guideline, this shall be considered as the discretion for mitigation.



[GUIDELINE ON MULTI-COUNT CONVICTIONS]

01 | APPLICABLE SCOPE

- This part on multi-count convictions applies to concurrent crimes prescribed in the first part of Article 37 of the Criminal Act as set forth in this sentencing guideline. However, in cases of this article's concurrent crimes where offenses that fall within and outside of the sentencing guidelines are involved, the minimum level should be the minimum of the sentencing range of the offense that is set forth in this sentencing guideline.

02 | DETERMINING BASE OFFENSE

- The “base offense” means the most severe offense that results after the selection of penalty and statutory aggravation and mitigation as prescribed in Criminal Act, Article 50. However, in cases where the maximum sentencing range is lower than that of the maximum sentencing range of the other counts as provided in this guideline, then such other count becomes the base offense.

03 | CALCULATING SENTENCING RANGE

- For purposes of calculating sentencing range for multi-count conviction cases with the different offense, the judge shall apply the following principles unless the offenses are deemed as a single offense under the sentencing guideline:
 - ① In setting sentencing range for an offender convicted of two counts, the sentencing range should be the total sum of the maximum sentencing range of the base offense and the 1/2 of the maximum sentencing range of the second count.
 - ② In setting sentencing range for an offender convicted of three or more counts, the sentencing range should be the total sum of the following: (1) maximum sentencing range of the base offense, (2) 1/2 of the maximum sentencing range of the count with the highest sentencing range, and (3) 1/3 of the maximum sentencing range of the remaining count with the second highest sentencing range.

- ③ For cases where the minimum sentencing range of the other count is higher than that of the base offense, the minimum sentencing range resulting from the multi-count offense should be the minimum sentencing range of the other count.
- However, when the multi-count conviction is composed of two or more offense of extortion and other different offenses, first set the sentencing range for multi-count conviction of the same offense and then use the resulted point range to calculate the sentencing range for multi-count conviction with different offenses.



II. SUSPENSION OF SENTENCE GUIDELINES

| Classification | Adverse | Affirmative |
|---|--|--|
| <p align="center">Primary Consideration Factor</p> | <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 ● Lack of Compensation for the Damage Caused ● Criminal History of the Same Offense (Suspension of Sentence or More Severe Punishment Within Five Years) | <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 Harm) ● No Prior Criminal History |
| <p align="center">General Consideration Factor</p> | <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 More Severe Punishment ● Absence of Efforts to Reverse Harm | <ul style="list-style-type: none"> ● Passive Participation As an Accomplice ● Offense Committed for Basic Living Expenses ● Strongly-Established Social Ties ● Expresses Sincere Remorse ● Efforts to Reverse Harm (Significant Amount of Money Deposited, Etc.) ● No Criminal History of Suspension of Sentence or Imposing of Other Sentences More Severe ● Cases of Old-Aged Offenders ● Physically-ill Offenders ● Cases where the Arrest of the Offender would Cause Severe Hardship to the Offender's Dependent Family Member |

[DEFINITIONS OF CONSIDERATION FACTORS FOR SUSPENSION OF SENTENCE]

- In cases where the consideration factors for suspension of sentence of sentencing 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 involving suspension of sentence, calculate from the date the defendant’s suspension of sentence was affirmed up to the date of the commission of the offense. In cases imposing imprisonment, calculate from the final date of the completion of the sentence up to the date of the commission of the offense.



[ASSESSING PRINCIPLES APPLICABLE TO THE SENTENCING FACTORS]

- For cases where the imposing penalty is imprisonment, in deciding whether the suspension of sentence is appropriate, the primary consideration factor should be taken into account with greater importance than the general consideration factors. This is further specified as follows:
 - ① In cases where only two or more primary affirmative factors exist or when primary affirmative factors outnumber the major adverse factor by two or more, suspension of sentence is recommended.
 - ② In cases where two or more primary adverse factors exist or when primary adverse factors outnumber the primary affirmative factor by two or more, imprisonment is recommended.
 - ③ In cases other than ①, ②, or even if cases of ①, ②, if the difference between the number of general adverse(affirmative) factors and general affirmative (adverse) factors is greater than that of adverse and affirmative factors of the primary consideration, then the judge shall decide whether to suspend the sentencing after assessing and comprehensively taking into account the factors listed under the suspension of sentence section.

