

JAPAN AND INTERNATIONAL
MOTION PICTURE COPYRIGHT ASSOCIATION, INC.



[JIMCA 5/16/2014]

Opinions about “For the International Expansion of the Music Industry”

The Japan and International Motion Picture Copyright Association (JIMCA) is a subsidiary of the Motion Picture Association which is a trade association representing six international producers and distributors of filmed entertainment for theatrical exhibition, television, home video, and internet delivery. The MPA member companies include:

Paramount Pictures Corporation;
Sony Pictures Entertainment Inc.;
Twentieth Century Fox Corporation;
Universal City Studios LLC;
Walt Disney Studios Motion Pictures; and
Warner Bros. Entertainment Inc.

We are truly grateful for the opportunity to submit our comments concerning the Intellectual Property Strategy Program 2014.

In “Intellectual Property Policy Vision” and “Intellectual Property Strategic Program 2013,” there are sections such as “Facilitating countermeasures against counterfeits and pirated goods,” and in “Examples of Measures,” “unified efforts by the public and the private sector, and in affiliation with other countries,” and “Intensifying domestic crackdowns” are specifically listed.

Protection of copyright is very important matter for promotion of intellectual properties. It is appreciated that Japanese Government is fully aware of this and has a paragraph for specific measures. We, JIMCA, have also been aggressively working on the outreach efforts from a private sector, as quoted in Agency for Cultural Affairs’ report “Study about enactment situation of Amended Copyright Act” (December 2013) (page 10, and page 12).

However, current copyright protection in Japan is not sufficient yet and there are still ongoing infringements of copyrighted works. Especially illegally uploaded contents on foreign video hosting sites are causing unrecoverable damages to copyright holders. This issue is also shared in the Task Force Report (page 23) We would like to take this opportunity to propose further specific measures to reinforce copyright protection.

1. Introduction of site blocking

Online content theft around the world continues to undermine national economies, threaten high-wage jobs and cause consumer confusion.

The rogue websites, whose content is hosted and whose operators are located throughout the world take many forms, but have in common the simple fact that all materially contribute to, facilitate, and/or induce the distribution of copyrighted works, such as movies and television programming. Moreover, given the increasing prevalence of fast broadband networks, television and movie content is easily accessible on these rogue sites and the impact on legitimate businesses is significant and growing.

If these rogue sites were located in Japan, we are confident the authorities would shut them down. However traditional means of cracking down against these rogue sites -- enforcement under domestic Copyright or Broadcasting Law -- is typically not effective, given that the content feeds are from illegal sites overseas. Site blocking is therefore an important tool to combat rogue sites as it offers a simple and effective method for preventing internet users from accessing unauthorized and illegal content, including copyrighted content, hosted on foreign websites.

At first blush, any attempt to block access to rogue sites which host or causes to be hosted infringing contents may seem to violate Japan's Telecommunication Business Act, however when properly designed, such blocking would be permissible under the "Kinkyuu Hinan" exception under the Penal Code.

Site blocking for certain types of crime, such as accessing child pornography, is

already accepted in Japan as Kinkyuu Hinan in the Telecommunication Business Act. Provided similar procedures are followed, for example ISPs only block access to a rogue site after a notification to the rogue site operator is ignored by the operator, site blocking of rogue sites via the Kinkyuu Hinan exception can also be achieved. As the Penal Code stipulates that Kinkyuu Hinan can be constituted for property damages, and considering the huge damages for contents, it is an urgent matter to introduce site blocking for copyright infringement in Japan.

A number of countries, including UK, France, Denmark, Austria, Norway, Italy, Spain and in the Asia-Pacific region, India, Indonesia, South Korea and Malaysia, have already followed this path. In March 27, 2014, EU Court of Justice rendered a judgment ("Kino case," CJEU Case C-314/12) that the site blocking against copyright infringement sites are legal. Many other countries around the world will seriously considering site blocking based on this judgment. If Japan considers protecting intellectual property rights as important, it is essential to catch up to those countries who are advanced in protection of copyright.

Furthermore, the site blocking is useful from the standpoint of consumer protection. Under the Amended Copyright Act, a downloading knowing that a file was illegal uploaded is subject to criminal penalties. The site blocking will prevent consumers to conduct criminal offences by an act of impulse. The issues of whether blocking access to copyright infringing sites would be a disadvantage to users or a restriction of freedom of speech were considered in the Kino case decision above. While the court considered there was a need to balance between the right to freedom of information and the need to protect Intellectual property rights, the court held that by ending copyright infringement through site blocking, end users should not be prohibited from accessing lawful content. In saying this the court were indicating that the blocking of copyright infringing sites is proportionate (i.e. is neither a disadvantage nor a restriction of freedom of speech) as long as the information is available through other sources"

2. Prohibition of Import of Pirated Discs for private use purposes

Article 113 paragraph 1 item 1 stipulates that:

The following acts are deemed to constitute acts of infringements on the moral rights of author, copyrights, rights of publication, moral rights of performer or neighboring rights, as applicable:

(i) the act of the importing, for the purpose of distribution in this country, objects made by an act which would have constituted an infringement on the moral rights of author, copyrights, rights of publication, moral rights of performer or neighboring rights had it occurred in this country at the time of importation;

Current law says that import of pirated copies of contents for purposes other than further distribution in Japan is not an infringement of copyright. We think this is not appropriate.

2 years ago Copyright Act was amended and now downloading of contents knowing that such contents were uploader without permission of a rightholder is subject to criminal penalties. Import of pirated copies should be handles in the same manner. At least it should be declared in the Act that such import is illegal even if it is not subject to criminal penalties.