

JAPAN AND INTERNATIONAL MOTION PICTURE COPYRIGHT ASSOCIATION, INC.



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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 represents the interests of:

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 2015.

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. We therefore are

encouraged by the measures taken by the Japanese Government to combat illegal file sharing, in particular via the 2012 amendments to the Copyright Act that provided for the criminalization of unauthorized downloading.

While these measures are welcomed, we believe attention must also be given to illegal websites and the damage they do. Particularly pernicious is the form of online piracy that occurs through the use of "rogue" websites. These 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.

Rogue sites cause serious economic damage to rightholders. Many people access content on rogue sites without paying appropriate fees to rightholders. If rightholders cannot make sufficient revenue to cover the cost of bringing content to the public it will become increasingly difficult to create future works. If they cannot create future works, it also damages consumers who cannot see the new works. It is one of the Japanese Government's main policies to promote Japanese content to foreign countries and of course in a way that should benefit the creators of that content. However, if rogue sites are left as they are without any effective measures to stop such illegal activities, such policy will not be fulfilled. This will adversely affect Japan's national interest. New legislation providing rightholders and/or an empowered government organization an ability to obtain or issue orders requiring ISPs to block such rogue sites outside the realm of existing legislation may be contemplated.

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.

A number of countries, 32 countries in Europe have legislation that incorporates provisions for the blocking of infringing overseas websites pursuant to EU Copyright Directive, including the United Kingdom, France, Germany, Austria, Norway, Italy, Spain among others. In the Asia-Pacific region, India, Indonesia, South Korea, Malaysia, and Singapore all have either judicial or regulatory remedies available for blocking access to overseas infringing sites. Many other countries around the world and in the region are also seriously considering site blocking. If Japan considers protecting intellectual property rights as important, it is essential to catch up to those countries that are advanced in protection of copyright.

2. Limitation of non-profit exhibitions

Article 38 paragraph 1 of Copyright Act stipulates that:

It shall be permissible to publicly perform, present and/or recite a work already made public, for non-profit-making purposes and if no fees are charged to the audience or spectators ("fees" includes consideration of any kind whatsoever for the offering and the making available of a work to the public; the same shall apply below in this Article), to audiences or spectators. The foregoing, however, shall not apply when the performers or reciters concerned are paid any remuneration for such performance, presentation or recitation.

We think this paragraph should be amended. When movies were offered only by the film, this paragraph may have been appropriate since rightholders could control the form of exhibitions when they rented films. However now Blu-ray discs or online distributed materials can be used for large scale exhibitions. In

some cases, public performance of films for non-profit purpose for more than 1,000 audiences is carried out without permission of rightholders, using Blu-ray discs. This technological development was not anticipated when the law was established.

We would like to propose that such non-profit exhibition should be limited to certain numbers of audiences such as less than 100 or limited by a defined -space.

3. Increase of IP Class in Elementary School and Junior High School

Education of importance of copyright and other intellectual property rights for younger generation is very important. "Curriculum Guidelines" issued by Ministry of Education, Culture, Sports and Technology has description about copyright education for junior high school and high school, though it is not sufficient.

We propose to amend "Curriculum Guidelines to provide copyright education to elementary school too with certain number of classes per year, such as 2 hours at least.

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

Article 113 paragraph 1 item 1 of Copyright Act 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.

In 2012 Copyright Act was amended and now downloading of contents knowing that such contents were uploaded without the rightholder's permission is subject to criminal penalties. Import of pirated copies should be handled 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.

Also it is a known fact that most of pirated discs for Japanese consumers are imported from China. We hereby request that governments of Japan and China jointly make effort to suspend the export of pirated discs at China customs.

5. **Criminalization of index sites.**

As correctly cited in METI's "Interpretative Guidelines on Electronic Commerce and Information Property Trading," it is a court's judgment that if an uploader of an illegal file has a hyperlink to such file in his/her website or blog, it is an infringement of copyright and it is illegal.

However, it is not sufficient. As a result of right holders' long efforts, domestic UGC sites are getting cleaner and P2P networks now have less and less illegal files for Japanese users. Instead, those uploaders are moving to foreign cyberlockers and foreign UGC sites to upload their illegal files.

We understand that Copyright Committee of Agency for Cultural Affairs is working on such "indirect infringement." We hereby request that setting up a hyperlink to illegal files, whether the uploader and the person who sets up the hyperlink are the same or not, should be criminalized by amendment of Copyright Act.

[Summary]

It is important to promote Japan's intellectual property strategy by reinforcement of the countermeasure against global copyright infringement, taking countermeasures against online piracy and promotion of legitimate online distribution. We hereby submit an opinion to propose several specific countermeasures against online copyright infringement, such as reinforcement of countermeasure against online piracy, limitation of non-profit exhibitions, increase of IP class in elementary school and junior high school, prohibition of import of pirated discs for private use purposes and countermeasures against index sites.