

JAPAN AND INTERNATIONAL
MOTION PICTURE COPYRIGHT ASSOCIATION, INC.



[JIMCA 3/22/2013]

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 2013.

In “Intellectual Property Strategy Plan 2012,” there is a section “II Two comprehensive IP strategies that contribute to strengthening international competitiveness,” “2. Comprehensive content strategies to boost Japan,” “A. Improving the copyright system in response to digitization and networking, and strengthening measures to prevent the infringement of content” and “Comprehensively promoting measures to prevent content infringement and facilitate regular delivery on the Internet” is specifically referred to in “Example measures.”

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.

However, current copyright protection in Japan is not sufficient yet and there are

still ongoing infringements of copyrighted works. According to JIMCA's survey in 2011, negative financial impact to entire Japanese economy is 56.4 billion yen per year only in movie works.

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.

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 Austria, Norway, Italy, Spain and in the Asia-Pacific region, India, Indonesia, South Korea and Malaysia, have already followed this path. 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 who are advanced in protection of copyright.

2. Limitation of non-profit exhibitions

Article 38 paragraph 1 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 Bluray 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 Bluray discs. This is not the law expected when it 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 the space.

3. Expansion of the scope of “Public Transmission”

Article 2 paragraph 1 item 7-2 stipulates that:

"public transmission" means the transmission, by wireless communications or wire-telecommunications, intended for direct reception by the public; excluding, however, transmissions (other than transmissions of a computer program work) by telecommunication facilities, one part of which is located on the same premises where all remaining parts are located or, if the premises are occupied by two or more persons, all parts of which are located within the area (within such premises) occupied by the same person(s);

We think the exclusion of “the same premises” should be deleted. In 2012 there was a criminal case of an internet café, where the café owner made the copyrighted movies transmittable within the café without permission by rightholders. We understand the making transmittable within the same family house may be allowed though such making transmittable within the same business premise should be not be allowed.

4. 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.

Last year 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.

5. Introduction of Statutory Damages

Once a copyrighted work is infringed, equitable remedies and legal remedies are available. However, for legal remedies, it is difficult and time consuming for victims to calculate the amount of damages. We would like to propose introduction of pre-established damages in infringement of copyrights. This will work as better remedies for copyright holders, as well as deterrence of further infringement in the future.

Pre-established damages shall be in an amount sufficiently high to constitute a deterrent to future infringements and to compensate fully the right holder for the harm caused by the infringement. A number of other jurisdictions around the world, including the United States, have incorporated the concept of statutory damages into their copyright laws.