

**JAPAN AND INTERNATIONAL MOTION PICTURE COPYRIGHT ASSOCIATION, INC.**



[JIMCA 7/16/2013]

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 amendment of the "Interpretative Guideline on Electronic Commerce and Information Property Trading" (the "Guidelines").

**- Subjected Items (Please specify which parts are relevant to your opinion.)**

1. [4] II-1 Liability of Business Entities Providing Consumer Generated Media ("CGM") Service for Mediating Transmission of Illegal

## Information

2. [7] II-7 Providing IDs and Passwords on the Internet.
3. [9] II-10-1 The use of copyrighted works on the internet
4. [10] II-10-3 Disclosure of Photo or Image in which Copyrighted Work Appears

### 1. II-1 Liability of Business Entities Providing Consumer Generated Media ("CGM") Service for Mediating Transmission of Illegal Information

Citation of IP High Court judgment is good in footnote 5. This is an important precedence for the liability of the operator of internet shopping malls. However, from the theory in the said judgment, there should be cases where the internet shopping mall operator shall be liable for a seller's infringement of copyrights. We believe it should be added to the footnote as a general discussion.

### 2. II-7 Providing IDs and Passwords on the Internet

In 2 (4) ii and footnote 2, there are descriptions that the protection measures which has only access control function are not within the scope of the prohibition. We object to such descriptions.

Article 2 paragraph 1 item 20 does not use the term "access control" explicitly. From the language of the said item, there is no reason to say "the protection measures which has only access control function are not within the scope of the prohibition."

In the Intellectual Property Strategic Program 2010, it also said that certain restriction for the circumvention to access control was necessary for further protection of copyright. It is not necessary to state that the protection measures which has only access control function are not within the scope of the prohibition.

### 3. II-10-1 The use of copyrighted works on the internet

Commentary for 2012 Amendment of Copyright Act is inserted as "Explanation 2 (2)." The second paragraph says "Under the said amendment, reproductions necessary to unify file formats of the contents users posted or to sort out the data on the bulletin boards, video hosting sites or SNS can be made without permissions. (Article 47-9)." We are concerned that this description is too broad. In the Agency of Cultural Affairs commentary, which is cited in footnote 5 of II-10-3, says "for example, when reproductions are made within the servers for acceleration of distribution processing at various internet services." While unifying the formats is fine, "to sort out the data" in the proposed amendment is very different from ACA's example and may be misleading.

### 4. II-10-3 Disclosure of Photo or Image in which Copyrighted Work Appears

Footnote 3 is deleted and next foot number remains 4. We believe it should be renumbered.

Following 2012 Amendment of Copyright Act, (iii) Use of incidental objective works (Article 30-2) is added. It says in the second sentence, "if a copyrighted poster appears small in size in its background of another photograph or movie,". However it is a main issue "how small" the appearing images can be. As a interpretative guidelines, certain quantized standard should be shown here, such as area ratio. Also the focus should be an issue, unless otherwise, intentional use of the former image by sharp focusing will be allowed, which is inconsistent with the new Article.

#### **- Reasons (If possible please cite or attach the reference)**

Reasons are as stated above.

References are:

Commentary of 2012 Amendment of Copyright Act by Agency of Cultural Affairs

[http://www.bunka.go.jp/chosakuken/24\\_houkaisei.html](http://www.bunka.go.jp/chosakuken/24_houkaisei.html)

Intellectual Property Strategic Program 2010

<http://www.kantei.go.jp/jp/singi/titeki2/2010keikaku.pdf>