

**Reinforcement of Actions of Public and Private
Sectors on Piracy in Asia**

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Liaison Council for Anti-piracy Actions

Recently, as cultural exchanges in Asia have been increasing, including those with China, South Korea, Taiwan, and Hong Kong, interest in Japanese culture has also increased, and the distribution of such works as music, films, TV dramas, animations and game software created in Japan has been expanding. Due to recent advances in digitalization and networking, it has become easier to reproduce works, without any deterioration of quality, and works are also being distributed across borders through the Internet. Under such circumstances, the production and the distribution of pirated products (illegal reproduction) of Japanese works, such as CDs, DVDs, and game software, have rapidly increased in Asia. In addition, in areas where broadband has advanced, not only pirated goods that reproduce the contents (intangible information property) of tangible materials, such as disks, but illegal use of the contents via the Internet has been rising sharply.

Pirated goods that are produced without a license from the copyright holder such as computer programs, music, and films, and counterfeits such as motorcycles and home electric appliances, that are produced without a license from patent right holders have in common the fact that they are produced by illegal acts, but there are also differences in their nature.

That means licensed products, tangible goods that use a patent, which is an intangible idea, are products, but in copyright law, intangible information property (content) itself is the subject of protection. Tangible goods, such as disks on which information is recorded are like containers, thus they are merely media that provide opportunities for people to use their contents. Therefore, while to produce counterfeits, including motorcycles, large-scale and systematic processes are required from installation of an assembly plant to procurement of parts and materials, pirated goods in violation of copyright can be produced by anyone with only one PC, and can be easily distributed through the Internet.

Therefore, it is natural that, as part of the strategy of the Intellectual Property Right State, sufficient protection should be provided to works abroad, for which Japanese people and companies have rights, as well as other intellectual property rights. But, it is necessary to give consideration to the nature of copyright when taking specific actions.

1. Situation of Damage from Piracy in Asia

With respect to damage to producers in Japan caused by pirated goods, the following situations are specifically reported.

Looking at violations involving records and CDs, etc. in East Asia, in China, of the total music market for records and CDs amounting to about ¥103.0 billion, about 90% (¥94.4 billion) consists of the infringing market (piracy market). In Taiwan, about 45% (¥25.9 billion) of a music market worth about ¥57.6 billion, and in South Korea, about 50% (¥14.1 billion) of a music market worth about ¥28.2 billion are estimated to be infringing markets respectively. In this connection, among the infringing markets in this region, about 30% are estimated to involve the piracy of Japanese music (2000, International Federation of Record Industry).

In China, best hits albums, compiling popular songs of singers of different companies, including Utada Hikaru, Hamazaki Ayumi, and “Koyanagi Yuki, are sold at around ¥200. In addition, pirated software of a producer in Japan for Play Station is sold at ¥75 ~ ¥150 (legitimate software is ¥6,800 ~ ¥7,800), and software for Gameboy is sold at around ¥700 (legitimate product is ¥3,000 ~ ¥4,800).

Pirated video CDs and DVDs are also distributed in large quantities, and

Japanese animations and films of Kitano Takeshi and Kurosawa Akira are very popular. They are sold at around ¥75 ~ ¥375 per disk (in Japan the sales price of a DVD is about ¥5,000). (Council for Actions on Illegitimate Goods)

In Korea, a pirated game software product for Play Station 2 is sold at around ¥2,500 (a legitimate product is ¥6,800 ~ ¥7,800). With regard to hit software, in particular, pirated goods often come onto the market two weeks to one month before the official release of legitimate products. It is estimated that the infringing ratio is about 90% on the basis of market distribution (Corporate Aggregate: Computer Software Copyright Association)

In Southeast Asia, cases were reported of video tapes reproduced by video taping the film “Spirited Away,” which was still being shown in theaters, being file-exchanged on the Internet (Council for Actions on Illegitimate Goods).

As can be seen from the above, piracy, which has been prevalent in Asia in recent years, infringes upon the rights of authors and performers of Japan, and prevents the creation and the distribution of good content, as well as threatens the Japanese content industry, which is striving to

develop business in the region. Therefore, it is an urgent task for public and private sectors to take actions that prevent and eliminate piracy, including piracy through the Internet in Asia in coordination between them, in order to properly protect the rights of authors and the interests of the content industry of Japan, and to encourage quality creative cultural activities in promoting sound international cultural exchanges.

2. Background of Pirated Products Flooding Asia and Tasks for Prevention and Elimination

(1) Background of Flood of Pirated Products

Insufficient comprehension of and countermeasures for the actual infringements of Japanese right holders and businesses

In recent years, the distribution of pirated goods has certainly tended to increase in Asia, but it is difficult for local government and domestic right holders and businesses to accurately comprehend the actual infringement situation. While some right holders are in a situation where they have difficulty recognizing the damage caused, sufficient countermeasures for piracy have not been taken so far.

Low Awareness of Copyright Protection in Many Countries of Asia

In many countries of Asia, as the awareness of people and businesses of copyright protection has not developed well, it is impossible to eliminate people who purchase pirated goods simply because they are cheap, or businesses that attempt to make easy profits through the production and the sale of pirated goods.

Underdevelopment of Copyright System and Immaturity of Right Management Organizations in Asia

In Asia, many countries do not have effective copyright systems compared to international standards for copyright protection. In particular, few countries are member states of “WIPO Copyright Treaty” and “WIPO Performers and Phonograms Treaty,” which respond to the Internet age. If copyright law has been developed, private organizations that manage the rights of right holders have not been developed, or if such organizations exist, the number and the experience of their staff are often insufficient.

Insufficient Enforcement by Police and Customs, etc. and Coordination in Asia

Among enforcement bodies such as police and customs in Asia, in many cases, appropriate investigations or seizures have not been made against pirated goods, as a result of an inadequate understanding of the copyright system and damage caused by pirates.

Hesitation in Development of Business and Providing Legitimate Products in Asia, where Copyright Protection is Insufficient

As mechanisms of copyright protection, including enforcement, have not been well developed in Asia, there have been some sectors and corporations of our content industry that have been unable to actively develop business due to differences in levels of economic development and immoral trading practices, etc., in spite of the increase in local needs for works from Japan. As a result, a sufficient volume of legitimate products has not been supplied to local countries, which in turn feeds the vicious circle of increasing the distribution of pirated goods.

Ease of Producing Pirated Goods along with Advances of Digitalization and Networking, and Expansion of Distribution across Borders

With rapid advances in digitalization and networking in recent years, it has become possible to produce pirated goods without any deterioration to their quality, and to transmit pirated goods instantly at low cost through the Internet all over the world.

(2) Tasks for Prevention and Elimination of Piracy

Implementation of Anti-Piracy Measures by Right Holders and Businesses

As a matter of course, it is essential that every right holder and business takes the initiative, in coordination and cooperation, to comprehend the reality of copyright infringements and institute litigation to protect their own rights. It is also necessary for the Japanese government to improve the environment in which right holders and businesses can expeditiously take countermeasures, using civil and criminal remedies and administrative enforcement system where infringements occur.

Development of Dissemination and Promotion Program Related to Copyright

To prevent and eliminate copyright infringements, it is necessary for the pertinent country to arrange a legal copyright system and develop appropriate management organizations, and further raise the consciousness of copyright among every national, including accession to international treaties concerning copyrights, so that the rights of Japanese right holders can be properly protected. It is also essential for Japan to actively support such efforts in Asia.

Implementation of Intergovernmental Policy Consultations and Establishment of International Cooperation

With respect to right infringements caused by piracy in Asia, it is

important for the Japanese government to strongly demand that its counterparts fully protect the copyrights of Japanese works, and take decisive actions for infringing offenses. If the legal system of the countries concerned, and its enforcement, are the causes of infringements, it is important for the Japanese government to request improvement measures through multilateral and bilateral frameworks, including World Trade Organization (WTO), World Intellectual Property Organization (WIPO), and Asia and Pacific Economic Cooperation (APEC).

Reinforcement of Actions by Local Police and Customs, etc.

To prevent and eliminate piracy, thorough investigative activities of enforcement authorities, such as local police and customs, are important. It is essential for the Japanese government to encourage the promotion of investigative activities by such enforcement bodies in the pertinent areas in coordination with the local authorities responsible for copyrights.

Response to Piracy through the Internet

For piracy through the Internet, which has caused great damage recently, actions using new technologies and measures will be necessary, which differ from actions for piracy in the form of the

reproduction of tangible materials, such as disks. It is essential to study anti-piracy measures, corresponding to the Internet age, with coordination between public and private sectors so that right holders and businesses can take appropriate legal and technical countermeasures for piracy, using rapidly advancing information technologies.

3. Specific Actions on Preventing and Eliminating Piracy

(1) Implementation of Anti-Piracy Measures by Right Holders and Businesses

<New Actions>

Establishment of Coordination and Cooperation System between Public and Private Sectors for combating Piracy

→ To establish a council, comprising Agency for Cultural Affairs and Ministries and Agencies concerned, private copyright related organizations and relevant businesses to build a system that combats piracy with cooperation between relevant organizations, right holders and businesses, etc. Copyright-related organizations, right holders, businesses and relevant ministries and agencies will hold symposiums and seminars to share the latest information on the reality of damage caused by piracy, reality of copyright system and operation of enforcement system, and specific measures for violations. The government will use the information obtained during bilateral negotiations between the governments etc.

Compilation of Specific Cases related to Anti-Piracy Measures

→ Agency for Cultural Affairs/Private Sector

To support future specific actions of individual companies for piracy, information on successful and unsuccessful cases will be collected on specific litigation instituted by the copyright organizations or the relevant businesses, and requests to local governments. The information will be shared by the organizations and the businesses concerned.

Implementation of Countermeasures for Piracy by Right Holders and Businesses → Private Sector

For violations in Asia, copyright-related organizations and relevant corporations will jointly take such active measures as promoting local actions for piracy or instituting local litigation and encouraging local governments to undertake administrative enforcement in cooperation with local law firms.

<Actions to be enhanced>

Enhancement of Research and Study for the Comprehension of Actual Infringements in Asia

Agency for Cultural Affairs and copyright-related organizations, etc. will, in coordination and cooperation, conduct research and studies to

comprehend the actual situation of piracy in Asia. For the time being, the Copyright Information and Research Center will take the lead in research and studies on damage caused by piracy in China as soon as possible, on the basis of requests from copyright-related organizations etc.

Support to Enforcement of Rights of Copyright Holders

→ Agency for Cultural Affairs, National Police Agency and Private Sectors

Agency for Cultural Affairs and copyright-related organizations etc. have, in coordination and cooperation, summarizes information necessary for enforcing rights by our right holders in Asia, on the basis of the legal systems of respective countries and treaties, and have prepared a guidebook. The guidebook will be enhanced and updated in line with the latest trends, and is intended to be positively used by the companies concerned.

Besides, National Police Agency will actively promote regulatory actions for copyright offenses in cooperation with right holders, and support publicity and educational activities of copyright-related organizations, etc.

(2) Development of Dissemination Program concerning Copyright

<New Actions>

Holding Symposium on Dissemination of and Education on Copyright Systems in Asia

→ Agency for Cultural Affairs, the relevant Ministries and Agencies and Private Sector

Symposia etc. will be held for disseminating information and providing education on the copyright system in Asia, using the opportunities provided by the International Exchange Year etc. For this purpose, using programs related to the China-Japan Cultural Exchange Year etc., a symposium will be held in China for disseminating information on copyright systems, enhancing consciousness of copyright protection and promoting cultural exchanges between China and Japan, with the aim of raising the consciousness of copyright protection among the people.

Creation of Project for Developing Copyright Materials in Asia

→ Agency for Cultural Affairs and Private Sector

Based on the nature of copyright violation that anyone can easily prepare and distribute pirated goods without feeling guilt, it is important to educate the significance of copyright protection from an

early stage and taking various opportunities. For this purpose, Japan and other countries will jointly create the Asian Copyright Materials Development Project in Asia, mainly in ASEAN countries and China and South Korea, which will develop materials and instruction methods on copyright, and encourage action.

<Actions to be enhanced>

Facilitation of Programs for Dissemination and Promotion of Copyright System in Asia, focusing on Enforcement of Laws and Regulations → Agency for Cultural Affairs

With a view to disseminating and promoting copyright systems in Asia, Asia Pacific Copyright Systems Enhancement Program (APACE Program), which has been continuously conducted by the Agency for Cultural Affairs since 1993, with the cooperation of WIPO, will be enhanced and expanded. Programs, keeping in mind the exercising of rights, shall be enhanced by reinforcing training for enforcement officials, including judges, customs officers and police officers, and collective management organization staff in Asia. In countries where pirated products of the Japanese works are freely circulated, seminars will be held and copyright experts dispatched in preference to other

measures. Further, preparation of country reports on improvements to copyright systems in Asia will be made based on previous programs.

(3) Implementation of Intergovernmental Consultations and Establishment of International Cooperation

<New Actions>

Implementation of Policy Consultations on Copyright with the Chinese government and the Korean government

→ Agency for Cultural Affairs

As for such issues as appropriate enforcement of laws, use of right management organizations and copyright protection in the Internet environment, in terms of preventing piracy, policy consultations with the responsible departments of the governments of China and South Korea will be promptly commenced, which will be held regularly. Negotiations will be held with the governments of other countries on requests from domestic organizations concerned and businesses, and to support resolving pending infringement cases.

Implementation of Three Party Consultations among China, Korea, and Japan on Promotion of Content Industry

→ Ministry of Economy, Trade and Industry

To promote collaboration between content industries across borders and development of the content industry in Asia as a whole, regular policy consultations with the responsible departments of the governments of China and South Korea will start this year. As part of efforts to improve the business environment, negotiations will be held to improve the system that has deterred actions on piracy and sales of legitimate products.

Information Exchanges on Anti-Piracy Measures in Taiwan and Hong Kong, etc.

→ Agency for Cultural Affairs and the relevant Ministries and Agencies, and Private Sector

To resolve piracy issues in Taiwan and Hong Kong, etc., by promoting enforcement of laws and coordination with local police and customs, etc., information exchanges will be made between the local private organizations and the agencies concerned to formulate cooperation.

<Actions to be enhanced>

Active Use of International Organizations such as WTO and WIPO

→ Agency for Cultural Affairs and relevant Ministries and Agencies

Using the audit system under the TRIPS Agreement (Agreement on

Trade-Related Aspects of Intellectual Property Rights), improvement and management of copyright systems in Asia, including China and Taiwan, will be monitored, and actions for resolving disputes (bringing cases before WTO etc.) will be taken, as is appropriate. Japan will positively participate in efforts for enforcing intellectual property rights by WIPO (including compilation of successful cases of anti-piracy measures).

Reinforcement of Coordination with International Copyright Organizations → Private Sector

To ensure concerted international efforts to take actions on piracy in Asia, coordination and cooperation will be reinforced between Japanese copyright organizations and businesses and such international copyright organizations as Confederation Internationals des Societes des Auteurs et Compositeurs (CISAC), International Federation of Phonogram Industry (IFPI), Bureau International de L'edition Mechanique (BIEM) and Motion Picture Association (MPA), and local copyright organizations in Asia.

(4) Reinforcement of Actions for Local Police and Customs, etc.

<Actions to be enhanced>

Coordination with Local Investigative Authorities of Piracy Offenses through International Criminal Police Organization, etc.

→ National Police Agency

Request for mutual investigation assistance and provision of relevant information will be provided through ICPO to the investigative authorities in the countries manufacturing and shipping pirated goods that are circulated in Japan.

Support to Reinforce Border Measures for Goods Infringing Intellectual Property Rights in Asia

→ Ministry of Finance (Customs)

To reinforce border regulations for goods infringing intellectual property rights under the TRIPS Agreement in developing countries and least-developed countries in Asia, active technical assistance will be continuously provided to customs officers in developing countries etc., including training.

(5) Actions on Piracy through the Internet

<New Actions>

Implementation of Research and Studies with Cooperation between Public and Private Sectors for Infringements on the Internet

→Agency for Cultural Affairs and the relevant
Ministries and Agencies and Private Sector

As for piracy on the Internet, damage from which has been rapidly increasing in recent years, public and private sectors will jointly conduct research and studies. Based on such studies, public and private sectors will jointly conduct research and studies on effective countermeasures and preventive measures for piracy on the Internet.

Improving Ability to Respond to Piracy Offenses on the Internet

→ National Police Agency

In response to piracy offenses on the Internet, which have been increasing, the organization of police agencies will be improved to conduct appropriate investigations.

<Actions to be enhanced>

Enhancement and Reinforcement of Actions for Piracy on the
Internet

→ Private Sector

Prevention and elimination of piracy on the Internet will be pursued by providing rights management information on content, promotion of use of technical protection tools, including copy protection, and

discovery of pirated goods and issuing of warnings, etc. on the Internet by a search robot.

Positive Contribution to Development of New WIPO Treaty

→ Agency for Cultural Affairs and the relevant
Ministries and Agencies

At World Intellectual Property Organization (WIPO), treaty preparation has been underway to build a new framework of copyright protection that responds to the Internet age. “World Intellectual Property Organization Copyright Treaty (WCT)” and “WIPO Performers and Phonograms Treaty (WPPT)” have been developed to date, and preparatory work has been done to develop “Audio Visual Performance Treaty” and “Broadcasting Organization Treaty.”

For right holders to exercise their rights properly in a situation where pirated products are distributed across borders through the Internet, it is essential for as many countries as possible to sign the said treaties. Japan will encourage Asian countries to accede to the treaties. With respect to treaties concerning audio-visual performance and broadcasting organizations, Japan will actively participate in discussions at WIPO toward their early adoption.

In promoting Japan's strategy for Intellectual Property State, it is important to improve the environment in which overseas business development of the content industry is facilitated and expanded. For that purpose, comprehensive actions are required to protect the rights of people related to copyright and anti-piracy measures in Asia.

To promote various measures in the copyright field, it is essential for right holders, businesses, and organizations concerned to further establish departments responsible for anti-piracy measures and to staff them with responsible personnel. It is also required for the government to improve and strengthen the organization, including personnel and budget.

We hope anti-piracy actions will be reinforced, and cooperation between public and private sectors and coordination among ministries and agencies concerned will be promoted.

Reinforcement of Actions of Public and Private Sectors on Piracy in Asia

(Gist of Report of Liaison Council on Anti-Piracy Measures)

Recently, as cultural exchanges have been growing in Asia, distribution of Japanese works such as music, films, TV dramas, animated movies, and game software has been increasing.

In parallel, pirated goods of Japanese works, including CDs, DVDs, and game software have been increasing. In addition, in areas where broadband access has been developed, illegal use of digitized data through the Internet has grown rapidly.

While producing counterfeits that infringe patent rights requires a large-scale and organized set-up including assembly plant, pirated products that infringe copyrights can be made by anyone with only one PC, and it is possible to easily distribute the results through the Internet.

In taking specific measures for the overseas protection of Japanese works, consideration is necessary that takes into account the nature of copyright.

1. Situation of Damage from Piracy in Asia

There is a large quantity of pirated Japanese works including music CDs, video CDs, DVDs, and game software in China and South Korea, etc.

(Examples of Piracy)

【China】

- A best hits album of singers, belonging to different companies, is sold at around ¥200.
- A game software for Play Station is sold at ¥75 ~ ¥150 (1~2% of the price of legitimate software).
- A video CD or DVD of an animated movie is sold at ¥75 ~ ¥375 (about 10% of the price of legitimate product).

【South Korea】

- A game software for Play Station 2 is sold at around ¥2,500 (about 30% of the price of legitimate software).

To encourage quality creative cultural activities and promote sound international cultural exchanges, it is an urgent task to take actions for preventing and eliminating piracy in Asia with cooperation between public and private sectors.

2. Background of Prevalent Piracy in Asia and Tasks for Preventing and Eliminating Piracy

(1) Background of Flood of Pirated Goods

Insufficient comprehension of actual infringements and countermeasures by Japanese right holders and businesses

Low consciousness of copyright protection in many countries of Asia

Insufficient development of copyright system and immaturity of right management organizations in Asia

Insufficient regulations and coordination of police and customs, etc. in Asia

Hesitation to develop business and supply legitimate goods in Asia, where copyright protection is insufficient.

Easy production of pirated goods due to advanced digitization and networking, and expansion of distribution across borders.

(2) Tasks for Preventing and Eliminating Piracy

Implementation of anti-piracy measures by right holders and businesses

Development of dissemination and promotion program on copyright

Implementation of intergovernmental policy consultations and establishment of international cooperation

Reinforcement of efforts to encourage local police and customs, etc.

Response to piracy through the Internet

3. Specific Actions toward Preventing and Eliminating Piracy

(1) Implementation of Anti-piracy Measures by Right Holders and Businesses

【New Actions】

Establishment of coordination and cooperation system between public and private sectors to combat piracy

Compilation of specific cases on anti-piracy measures

Implementation of anti-piracy measures by right holders and businesses

【Actions to be enhanced】

Enhancement of research and studies to comprehend the reality of violations in Asia

Support to enforce rights of copyright holders

(2) Development of Dissemination and Promotion Program on Copyright

【New Actions】

**Holding symposiums to disseminate information and provide education
on copyright in Asia**

Creation of a project to develop copyright materials in Asia

【Actions to be enhanced】

**Facilitating dissemination and promotion program for copyright
systems in Asia, focusing on the enforcement of laws and regulations**

(3) Implementation of Intergovernmental Policy Consultations and Establishment of International Cooperation

【New Actions】

**Implementation of policy consultations on copyright with the
governments of China and South Korea**

**Implementation of tri-party consultations among China, South Korea
and Japan on promotion of content industry**

**Information exchanges on anti-piracy measures in Taiwan and Hong
Kong, etc.**

【Actions to be enhanced】

Active use of international organizations such as WTO and WIPO

Reinforcement of coordination with international copyright organizations

(4) Reinforcement of Actions for local Police and Customs, etc.

【Actions to be enhanced】

Coordination with local investigative bodies for piracy offenses through International Criminal Police Organization

Support to strengthen border regulations on goods infringing intellectual property rights in Asia

(5) Responses to Piracy through the Internet

【New Actions】

Implementation of research and studies with cooperation between public and private sectors for violations on the Internet.

Improvement of abilities to respond to piracy offenses on the Internet

【Actions to be enhanced】

Enhancement and reinforcement of actions on piracy on the Internet

Positive contribution to developing new WIPO treaties etc