

Subject: Comments on the Interim Report Issued by the Subcommittee on Legal Issues

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Organization

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5. Relevant Pages and the Titles of Relevant Sections

5-1. Section 1 “Legislation to Promote the Distribution of Digital Contents” (p.3-)

[Comment]

In order to devise a strategy to promote the development of contents in view of the current progress in digitization and Internet connectivity, it would be indispensable to take some measures to promote contents distribution. For example, while it would be useful to establish a special law concerning “digital contents,” a currently proposed draft of the law does not seem feasible at this moment. To improve the feasibility, further study would be necessary.

The existing Copyright Act, which is lagging behind the current trend of increasing digitization and Internet connectivity, could impair the creation, distribution, and use of contents. Therefore, we agree to the conclusion of the study that “more comprehensive study needs to be conducted to identify the copyright system that is suitable to the current trend of increasing digitization and Internet connectivity” (p.10).

5-2. Section 2 Measures to prevent the spread of counterfeit products

[Comment]

1) Measures to prevent the act of announcing the transfer of a counterfeit product

(p.11-)

Having concern about the spread of products infringing copyrights or other rights (Counterfeit products), we consider it necessary to urgently devise measures to reduce the distribution of counterfeit products. As a part of this effort, this section of the report proposes to establish a provision specifying that the act of announcing the transfer of a counterfeit product shall be deemed to constitute an infringement of a right. This conclusion is agreeable to us because it is expected to protect the effect of a right. However, we think it necessary to restrict the scope of such act to some extent because this provision, depending on the degree of restriction it imposes, could cause the whole of advertising activities to shrink. The restriction could be placed by imposing certain criteria such as requiring a person to have made such announcement “intentionally.” In addition to this issue, the issue of whether to apply the provision exclusively to a case where such announcement is made through the Internet should be further studied carefully.

2) Review of the scope of an act that may be regarded as an offense subject to prosecution on complaint (p.18-)

In view of the current application and enforcement of punishment for copyright infringement, we do not see any urgent need to permit third parties to take legal action against an infringement. Supporting the current Copyright Act, we think that careful study should be conducted on the effect and implications of making a copyright infringement indictable without a complaint from the infringed party.

5-3. Section 3 Review of the provision imposing restrictions on the exercise of rights

[Comment]

1) Pharmaceutical affairs (p.27-)

We support the presumption that restrictions should be imposed on the exercise of rights in consideration of the facts that documents on medical topics need to be promptly reproduced to provide information to healthcare professionals to protect the lives and bodies of patients and that it is difficult to obtain prior consent of right holders to those documents. Regarding the section entitled “(2) Measures to be taken to restrict the exercise of rights” (p.29-), however, the amount of compensation and other details should be further discussed in the Subcommittee on Legal Issues.

2) Welfare for the handicapped (p.31-)

We support the presumption that restrictions should be imposed on the exercise of rights in order to ensure that handicapped persons (regardless of the type of handicap) and able-bodied persons are given equal access to works in light of the highly public

nature of the welfare for the handicapped.

Moreover, this field is unique in that entities such as public social welfare institutions, public libraries, and volunteers make reproductions of works on behalf of the handicapped. Therefore, we think it necessary to study the possibility of restricting the exercise of rights in such a way that said reproduction is permitted.

3) Internet auction (p.42-)

In the case of the sale of a product between parties at distant locations, it is necessary for the seller to post an image of the product on the Internet to provide information on the product because the seller is unable to show the product to a possible purchaser in person. For this reason, we agree to the idea that restrictions should be imposed on the exercise of rights to permit the reproduction and posting of an image of the product.

However, we do not consider it meaningful to restrict the exercise of rights only in a case where an “art object” is transferred on the “Internet” because this issue is not limited to transactions through Internet auctions. For example, the same issue could arise in a transaction conducted by use of any other medium or at an art gallery or other places. Furthermore, the type of product subject to a transaction is not limited to art objects. Transactions could involve other types of works including not only tangible objects but also intangible objects such as digital contents. In a case where restrictions are placed on the exercise of rights, if sellers are obliged to take technical protection measures that are beyond their normal business practices, it could dampen the entire transaction market.

In principle, we agree to the idea of restricting the exercise of rights, but we consider that further study is necessary to set specific requirements.

5-4. Section 4 Legal issues concerning search engines (p.45-)

[Comment]

Search engines function as a guidepost that enables us to quickly and accurately identify a particular website from among numerous sites on the Internet. In this respect, Search engines greatly contribute to the public and cultural development. We agree to the idea that legal changes need to be urgently made in order to ensure the legal stability of search engines.

If the exercise of rights is restricted too much, the progress of technology would be impaired. Therefore a careful study should be conducted to identify an appropriate level of restrictions.

Regarding the section entitled “ii) Indication of an intention by a means other

than a technical means of prevention” (p.58), further study should be made to devise a well-balanced reasonable system that protects the interests of right holders and, at the same time, keeps the neutrality of searches in order to maintain the convenience of search engines to users.

5-5. Section 5 Protection of licensees (p.62-)

[Comment]

As is the case with industrial property laws, the Copyright Act should also provide licensees with protection. Therefore, we agree to the basic idea that legal modifications are necessary to protect licensees.

However, we do not agree to the approach that requires each licensee to “register” to receive protection for his/her status. The requirement of “registration” would newly create a complicated procedure that does not fit well into the copyright system, which does not require “registration” for a copyright to take effect in the first place. Such complication would cause a great deal of confusion in the application of the Copyright Act. Moreover, the effectiveness of the system to protect licensees is questionable because, in the case of a copyright to a program (including a database), which sometimes requires the involvement of many people in its creation, it is extremely difficult to accurately identify the right holders from whom licenses should be obtained and to obtain the licenses in reality. (e.g., in the case of a program containing a module that is used with the consent of a third party other than the licensor).

Furthermore, even more confusion is expected in practice because it is likely that the scope of protection that a licensee intends to obtain for a copyright by way of “registration” is inconsistent with the actual license agreement. To avoid such confusion, it is desirable to establish a system to protect, without registration, the status of licensee within the scope specified in an agreement in consideration of the actual circumstances.

A “registration” system should not be established simply as a means of licensee protection without taking into account the usage and characteristics of the work and without sufficiently reflecting the needs of users of the system.

5-6. Issues regarding so-called “indirect infringement” (p.71-)

[Comment]

We agree to the idea to add a provision about indirect infringements to the Copyright Act in order to prevent the so-called “*Karaoke doctrine*” from increasing the applicability of the Copyright Act excessively because it would result in unpredictability and damage in business practice.

Since works, etc., are used in many ways, it is difficult to find patterns in the act of exploitation. Therefore, in order to modify the system appropriately, one needs to take into consideration not only the relevant precedents but also the ways in which works are currently used and could be used in the future. Since a provision concerning indirect infringements has a great effect on both right holders and users, we hope to be given an opportunity to submit comments at a stage where specific requirements are drafted.

5-7. Section 7 Other matters to be discussed (p.77-)

[Comment]

The remaining matters mentioned in this section of the report need to be further studied carefully because each of them presents an important issue.

In particular, regarding the sections entitled “Ephemeral recordings at the time of using a device or in the process of telecommunication” and “Review of the act of reproduction for private use,” discussions should be made in consideration of the ways in which works are used or exploited so that the discussions would not lead to a conclusion that fails to reflect the actual situation and could have a negative effect on the general public and the industry. In the discussions, a wide range of possibilities should be explored. For example, it would be useful to study the concept of “fair use” adopted in the U.S. copyright law and to examine the possibility of introducing a similar provision of general limitation on copyrights to the Japanese Copyright Act.