

Submitted to the Intellectual Property Strategy Headquarters on November 17

Subject: Opinions on the Report Issued by the Expert Panel on Intellectual Property Systems in the Digital/Internet Age

Name of the Company/Organization: Japan Intellectual Property Association

Contact Point:

(Name) Tanekazu Taisa, Chairperson, Digital Contents Committee

(Address) Asahi Seimei Otemachi Bldg.18F, Otemachi 2-6-1,

Chiyoda-ku, Tokyo, 100-0004 JAPAN

(Phone No.) (03) 5205-3321

(Opinion 1)

Relevant part of the report:

II Establishment of general provisions concerning restrictions on rights (Japanese version of fair use provision)

Relevant pages: 11-13

Summary of Opinion (within 80 Chinese characters):

While agreeing to the proposed establishment of general provisions, we consider it necessary to carefully design the entire system in order to avoid any inconvenience that could be caused by contrary interpretation of specific provisions. Therefore, general provisions should be designed in such a way to ensure more stable interpretation of the provisions.

Full Text of Opinion:

We agree to the conclusion that “It would be appropriate to establish, in addition to the existing provisions concerning restrictions on rights that specifically list those restrictions, general provisions (a Japanese version of fair use provision) concerning restrictions on rights that would comprehensively permit fair use as long as the use does not unjustly damage the benefits of the right holder” (page 12). The existing provisions concerning restrictions on rights that specifically list those restrictions have failed to catch up with the speed of technical innovation and the development of a digitized and networked society. In order to efficiently cope with the changing environment and increase Japan’s industrial competitiveness, the establishment of general provisions is indispensable.

We also generally agree to the basic principle that “After the establishment of general provisions concerning restrictions on rights, additional specific provisions

concerning restrictions on rights may be established, if necessary, to permit acts that should be considered legal within the framework of the copyright system” (page 13). However, we consider it necessary to carefully prevent the coexistence of specific provisions and general provisions from giving rise to the case where an act of use that should be considered legal under the general provisions is judged as illegal based on contrary interpretation (of specific provisions) or the case where the scope of general provisions is interpreted in an excessively limited manner.

While agreeing to the idea that “concrete criteria should be specified” (page 13) in the general provisions, we have noticed that criteria such as “the nature of a work” and “the purpose of and the manner of its exploitation” suggested in the report are just copies of the criteria regarding the right to maintain integrity (Article 20, paragraph 2, item 4). Due to the difference in the nature of rights, the copied criteria would be insufficient. Further study in consideration of moral rights and the corresponding legal systems of other countries would be necessary to create a system that ensures a more stable interpretation of the general provisions.

(Opinion 2)

Relevant part of the report:

III-1 Restrictions on circumvention of content control technologies

Relevant page: 17

Summary of Opinion (within 80 Chinese characters):

While agreeing to the overall idea, we consider it indispensable to examine the effectiveness of the current system before taking any legal measures. Further study would be necessary before determining whether the issue of access control circumvention should be subject to the Copyright Act.

Full Text of Opinion:

While agreeing to the idea that “restrictions on any act that could damage the economic value of contents need to be revised without unjustly limiting public access to information,” we consider it indispensable to carefully “examine the effectiveness of the current system” before concluding that legal “measures are necessary to prevent damage.” In particular, careful examination would be necessary before deciding to subject the issue of access control circumvention to the Copyright Act because such a decision would have a profound impact on the Act. As mentioned in the report, the fact that the “contents protected by access control are not necessarily copyrighted works” and that the “home use of audio-visual contents and the implementation of programs would not violate any rights specified in the Copyright Act” must be taken into

consideration in making such a decision.

(Opinion 3)

Relevant part of the report:

III-2 Liability of Internet service providers

Relevant pages: 18-22

Summary of Opinion (within 80 Chinese characters):

It would be desirable to promote further initiatives in the private sector within the current framework rather than revising the Provider Liability Limitation Act. Careful study would be necessary before deciding to oblige every provider to take technical measures to prevent infringements.

Full Text of Opinion:

In an effort to implement the Provider Liability Limitation Act, the private sector, i.e., providers, right holders, etc., voluntarily created the “Guidelines for Protecting Copyrights under the Provider Liability Limitation Act,” based on which providers promptly delete illegal contents. This private-sector initiative has achieved a certain level of success.

In view of this situation, the report points out that “infringements are often committed via a small minority of providers that do not belong to the industry organization” (page 21) and proposes that “providers should be obliged to take reasonable and standard technical measures to prevent infringements” (page 22). The idea of requiring every provider to adopt the technical means to prevent infringements in order to stop the infringements committed via a small minority of providers would be unreasonable because such a new requirement would impose additional burdens on a majority of providers, although they have been making sincere efforts to prevent infringements. Even if technical measures against infringements were implemented, the endless development of circumvention technologies would necessitate the “reasonable and standard technical measures” to change continuously. Therefore, such a new requirement would impose excessive burdens on providers, negatively affecting the industrial policy as a whole.

Thus, the most desirable approach to the issue of provider liability would be to promote initiatives by the private sector within the framework of the current system. Careful study would be necessary before deciding to oblige every provider to take technical measures to prevent infringements.