

JSIP 2025 Ministry of Justice Part

Sharing Experiences on the Enforcement of Intellectual Property Rights Infringement Cases in ASEAN Countries and Japan

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**Kozo Yabe, Attorney-at-law
JFBA IP Committee/IPLNET**

Sub-Theme 1: Border Enforcement of Intellectual Property Rights Infringing Goods

- Each panelist will provide an overview of the current status of border enforcement measures against goods infringing intellectual property rights in their respective countries.
 - **Atty. Kayrel V. Padilla**, Attorney III, Bureau of Customs
 - **Mr. Kansakol Indrasawat**, Section Director, Enforcement Division, Royal Thai Customs
 - **Ms. YOKOGOSHI Ayu**, Deputy Director, Office of Intellectual Property Rights, Customs Clearance Division, Customs and Tariff Bureau, Ministry of Finance

Sub-Theme 2: Countermeasures against Internet-based Intellectual Property Infringement

- Each panelist will provide an overview of the current situation and countermeasures concerning intellectual property rights infringements on the internet in their respective countries.
 - **Mr. Romandelas Manurung**, IP Investigator / Legal Analyst, Directorate of Law Enforcement, Directorate General of Intellectual Property, Ministry of Law of Republic of Indonesia
 - **Mr. Shamsul Nizam Khalil**, Deputy Director General, Enforcement Division, Ministry of Domestic Trade and Cost of Living
 - **Mr. Vignesh Vaerhn**, Counsel, Allen & Gledhill LLP
- Brief explanation on the status of discussions in Japan
 - Comprehensive Countermeasure Menu Against Online Piracy
 - Status of discussions regarding the responsibility of platform operators

Comprehensive Menu of Measures against Online Piracy

- As the digitalization of the content industry advances, infringements of copyrights and other rights related to Japan-originated content such as animation, manga, and films have expanded across borders, with methods becoming increasingly diverse and sophisticated.
 - **Countermeasures against online piracy are essential.**
- In 2019, the Japanese Government formulated for the first time a **“Comprehensive Menu of Measures against Online Piracy” (“Countermeasure Menu”)** and has continued to update it since then.
 - The latest update was made in May 2024.
- The Countermeasure Menu examines actions to be taken from the following perspectives:
 1. Initiatives to **deter user access to pirated content**
 2. **Enforcement measures against copyright infringement**, such as cracking down on operators of piracy sites
 3. **Measures to address the harmful ecosystem of private services** that support piracy sites
- Regarding **site blocking**, concerns remain over infringement of the secrecy of communications, freedom of expression, and potential censorship, and legislation has not yet been enacted.

1. Initiatives to deter user access to pirated content

- **Domestic Copyright Education and Awareness-Raising:** In collaboration between the public and private sectors, further promote effective copyright education and awareness-raising, including **dissemination and public awareness of measures introduced by the 2020 Copyright Act amendment, such as countermeasures against link sites and the prohibition of downloading infringing content.**
- **Search Engine Measures:** Promote consultations between search engine operators and copyright holders to **encourage initiatives for removing or suppressing the display of piracy sites in search results.**
- **Access Warning Method:** Through consultations with security service providers, further promote the introduction of access-blocking functions in security software.
- **Filtering:**
 - Based on the Act on Development of an Environment that Provides Safe and Secure Internet Use for Young People, further promote youth filtering and improve user convenience through strengthened collaboration with relevant businesses.
 - Build a cooperative framework between rights-holder organizations and security software companies to utilize filtering through security software.

(Note) Regarding the establishment of a legal framework for blocking, consideration will be given based on the effectiveness of other measures and the extent of damage.

2. Enforcement measures against copyright infringement

- **Understanding the Actual Harm:** **Continuously assess the actual harm caused by online piracy of Japanese content**, including consideration of whether it is possible to calculate the extent of harm by category (e.g., whether the distribution targets overseas audiences, including Japan, or is exclusively domestic).
- **Strengthening International Cooperation and Enforcement:**
 - **While respecting international jurisdiction and applicable laws, encourage private businesses to use civil procedures abroad and advance investigations through mutual legal assistance.**
 - Gather information and support copyright holders in enforcing rights via the piracy countermeasure portal and consultation services.
 - Promote international digital forensic investigations with private businesses to identify operators of piracy sites and hosting servers.
 - Investigate malicious link sites.
 - Use bilateral consultations and international conferences to advocate stronger global anti-piracy measures
- **Enhancing Identification of Infringers:** **Simplify and expedite procedures for disclosure of sender information for those who committed rights infringements, and conduct outreach and coordination regarding the 2021 amendment to the Provider Liability Limitation Act.**
- **Speed and Transparency in Platform Operators' Responses:** To address illegal and harmful information on the Internet, advance the development of a system that obligates large-scale platform operators to take measures ensuring: (i) faster response and (ii) greater transparency in operational practices.

3. Measures to address the harmful ecosystem of private services that support piracy sites

- **Restricting Advertising on Piracy Sites:** Promote voluntary restrictions on placing advertisements on piracy sites by facilitating the sharing of piracy site lists through joint meetings between rights holders and advertising-related organizations, encouraging the formulation and dissemination of voluntary guidelines by advertising associations, and considering legal arrangements related to advertising revenue.
- **Preventing the Misuse of CDN Services for Piracy Sites:** Through joint meetings between rights holders and telecommunications operators, promote the sharing of lists of individual piracy sites and advance necessary measures to prevent the misuse of CDN services such as those provided by companies like Cloudflare, which are exploited to facilitate the distribution of infringing content.
- **Promoting the Distribution of Legitimate Versions:** With an eye toward capturing overseas markets, promote activities such as local awareness-raising and facilitate the distribution of legitimate versions of content in forms that are highly convenient for users.

Ongoing Discussions on Platform Liability

- In areas of copyright law where provisions on indirect infringement do not exist, there is ongoing discussion about the “normative entity theory,” which holds that when a platform operator is recognized as a normative infringer, the platform operator should bear responsibility as the liable party.
 - Generally, it is considered that such determination takes into account factors such as the subject and method of the infringing act, as well as the nature and degree of involvement in the infringement (see *Supreme Court decisions of January 20, 2011 [Rokuraku II case] and October 24, 2022 [Music School case]*).
- As an example of a judicial precedent stating that a shopping mall operator may bear responsibility for trademark infringement committed by a store within an online shopping mall, there is *the Intellectual Property High Court decision of February 14, 2012 [Chupa Chups case]*.

“When the operator of a web page not only provides the environment for a store to open a web page but also exercises control and management by offering the operating system, deciding whether to accept store applications, temporarily suspending or terminating services to stores, and receiving profits such as basic store fees and system usage fees, and when that operator knows or has sufficient reason to be deemed capable of knowing that a store is committing trademark infringement, if the infringing content is not removed from the web page within a reasonable period thereafter, it is appropriate to interpret that, after the lapse of said period, the trademark holder may seek an injunction and claim damages against the web page operator on the same grounds as against the store.”

Ongoing Discussions on Platform Liability (Cont'd)

■ Act on Measures against Infringements caused by Information Distribution through Specified Telecommunications (“Information Distribution Platform Act”)

(Limitation of Liability for Damages)

*Article 3: When the rights of another person are infringed due to the transmission of information through specified telecommunications, the specified telecommunications service provider that uses specified telecommunications facilities for such transmission (hereinafter referred to in this paragraph as “relevant service provider”) shall not be liable for damages arising therefrom **unless it is technically possible to take measures to prevent the transmission of the infringing information to unspecified persons** and one of the following conditions applies. However, this shall not apply if the relevant service provider is the sender of the infringing information.*

- (1) The relevant service provider **knew that the rights of another person were being infringed** by the transmission of information through specified telecommunications.*
- (2) The relevant service provider was aware of the transmission of information through specified telecommunications and **had reasonable grounds to recognize that such transmission was infringing the rights of another person.***