

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

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SPECIAL MENTION

JAPAN

IIPA accords Special Mention to Japan in this report to call attention to several areas in which Japan is lagging in its efforts to keep its Copyright Law up to date with 21st century realities. We urge USTR to escalate its bilateral engagement with Japan in order to encourage positive action in the following areas, among others:

- Statutory damages: Japan's own IP strategy plan gave high priority to reform of damages provisions for its intellectual property laws, but key changes are yet to be made. We urge Japan to move more quickly to implement a system of pre-set statutory damages for copyright infringement, at levels sufficient to achieve deterrence.
- Copyright term extension: Japan recently increased the term of copyright protection, but only for cinematographic works. It should now follow through and get in step with most other OECD members by extending the term for all copyrighted works, as well as for producers of phonograms and performers.
- Technical protection measures: Current laws (the Copyright Act and the Anti-Unfair Competition Law) do not fully meet Japan's obligations under the WIPO Internet treaties. For instance, there are no criminal remedies for trafficking in tools to circumvent access controls, and no civil remedies for dealing in copy control devices or services.
- Private use exception: The broad provision of Japanese copyright law on this topic (Article 30(i)) must be narrowed to take into account the ability of home users to make digital copies that can be easily re-disseminated, such as over peer-to-peer networks. The status quo threatens to undermine the prohibition on unauthorized uploads (the "making transmittable" right).
- End-user infringement: Article 113 of the copyright law should be re-examined to ensure that it covers all knowing unauthorized use of software programs, and possession of infringing copies with intent to violate any exclusive right of copyright owners.
- Exceptions to protection: Japan should do more to clarify the applicability of its expanded education exceptions (Article 35) to textbooks and course packs, and should build in technological safeguards to reduce the risk of infringement in the distance learning environment. It should also further assess the impact of proposed new exceptions that could allow widespread unauthorized copying of scientific, technical and medical publications by pharmaceutical companies,

patent applicants, and others. In both these areas, Japan should ensure that current and proposed exceptions do not undermine or discourage licensing arrangements and that they meet international standards.

- Rental right: The existing exclusive rental right for sound recordings is limited to one year, and thereafter becomes a remuneration right. Japan should finally modify its law to be consistent with that of other nations by providing an exclusive rental right for the full term of protection.
- Compulsory licensing: Press reports indicate that Japan is considering introducing a form of compulsory licensing provisions for retransmission of television broadcasts onto mobile telephones and other technology. This proposal must be closely monitored to ensure compatibility with applicable provisions of the Berne Convention and WIPO Internet Treaties.
- Anti-camcording legislation: Master copies for the vast majority of pirate audiovisual materials are stolen right off the screen by professional camcorder pirates who use video cameras to illicitly copy a movie during exhibition in a movie theatre – usually very early in its theatrical release or even prior to the film’s release (e.g., at a promotional screening). Camcorder pirates are often sophisticated criminals and typically sell the master recordings to illicit “source labs” where they are illegally duplicated, packaged, and prepared for sale on the black market, then distributed to bootleg “dealers” throughout the world. As a result of camcorder piracy, many motion pictures become available over the Internet – on peer-to-peer networks, file transfer protocol (FTP) sites, Internet Relay Chat (IRC) rooms, or auction sites – as well as on street corners and in night markets around the world well before their international debuts. An essential element in the fight against camcorder piracy is the enactment of legislation to prevent the unauthorized operation of audiovisual recording equipment in motion picture theaters while a motion picture is being exhibited. We urge the Government of Japan to take whatever steps are necessary to ensure that adequate protection against camcording piracy is reflected in its national legislation.