

## 5. Enforcement and Promotion of Copyright: Japanese Experience

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### 1. Significance of Enforcement and Promotional Efforts for the Copyright System

Perfect copyright legislation does not guarantee a perfect copyright system, because we need enforcement and promotion of copyright in order to give life and teeth to the legislation. It is enforcement and promotion of copyright that makes a copyright system complete.

### 2. Enforcement Measures

#### 2.1 Infrastructure and Statistics of Enforcement

##### 2.1.1 Court System in Japan



(the Supreme Court of Japan)

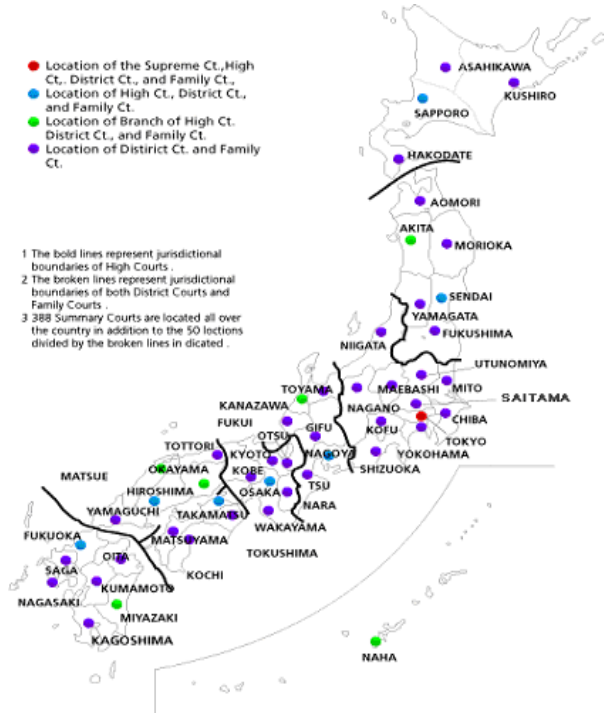


Fig.2 (Source (Fig.1,2): Supreme Court of Japan website)

- Intellectual Property High Court (established on April 1, 2005):
  - Special branch of the Tokyo High Court.
  - Dealing with Intellectual Property cases succeeding all the cases pending at the IP division of the Tokyo High Court as of the end of March 2005.

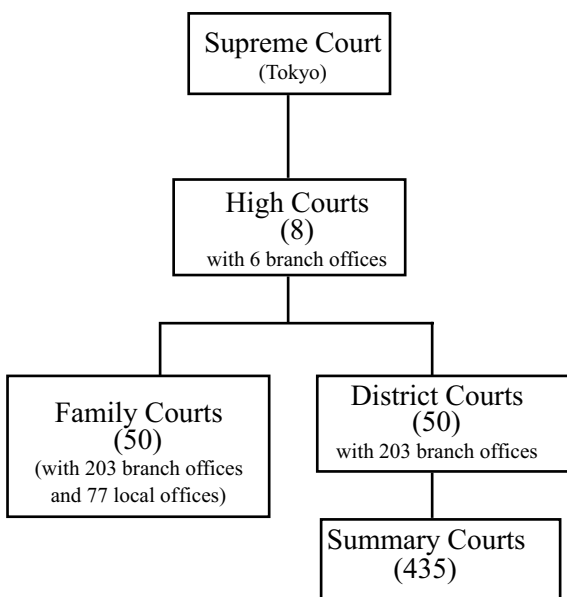


Fig. 1

## 2.1.2 Police System

- National Police Agency: National central police organization supervising Prefectural Police Organizations
- 6,500 Police boxes, or iKobanî, and 7,600 Residential Police Boxes; 45,000 police officers posted at the former, 8,000 at the latter

### Number of Arrest of Cybercrime

	2000	2001	2002	2003	
Unauthorized Computer Access	67	67	105	145	+40
Crime against Computer/Data	44	63	30	55	+25
Computer Fraud	33	48	18	34	+16
Illegal Production/Destruction of electro magnetic data	9	11	8	12	+4
Obstruction of business by destroying computer	2	4	4	9	+5
<b>Internet Crime</b>	<b>802</b>	<b>1,209</b>	<b>1,471</b>	<b>1,649</b>	<b>+178</b>
Child Prostitution	8	117	268	269	+1
Child Pornography	113	128	140	102	-38
Fraud	306	485	514	521	+7
Distribution of Obscene Object	154	103	109	113	+4
Violation of juvenile protection ordinance	2	10	70	120	+50
Intimidation	17	40	33	38	+5
<b>Infringement of Copyright</b>	<b>80</b>	<b>86</b>	<b>66</b>	<b>87</b>	<b>+21</b>
Defamation	30	42	27	46	+19
Others	92	198	244	353	+109
<b>Total</b>	<b>913</b>	<b>1,339</b>	<b>1,606</b>	<b>1,849</b>	<b>+243</b>

(Source: National Police Agency <http://www.npa.go.jp/cyber/english/statics/2003.htm>)

- Major Cases of Cybercrime (violation of Copyright Law) in 2003 [NPA website]
  - (日) A person made it possible for everyone to download the game software on the internet using the online storage service without permission of the copyright holder. (Arrest in April 2003, Kyoto prefecture)
  - (月) A person made it possible for everyone to download the files of movie and game on the internet using the file-sharing software iWinnyî without permission of the copyright holder. (Arrest in November 2003, Kyoto Prefecture.)

## CHAPTER II

### 2.1.3 Customs Office

Customs Tariff Law prohibits importation of goods infringing copyrights, neighboring rights, etc. and grant authorities to the customs to confiscate and destroy such infringing goods, or issue an order to the importer to reship.

**Fig.3 Customs Cases (Exclusion Based on Infringement of Various IP Rights )**

(upper columns: number of cases/ lower: number of infringing items)

	2000	2001	2002	2003	2004	Share
Patents	2	1	7	1	80	0.9%
	1,036	5,000	39,200	550	107,600	10.4%
Designs	15	14	13	12	39	0.4%
	13,289	74,445	41,693	42,641	62,794	6.1%
Trademarks	1,478	2,727	6,859	7,332	8,922	97.4%
	484,731	239,879	611,100	591,061	690,749	66.6%
Copyrights/Neighboring Rights	108	76	108	80	119	1.3%
	602,830	690,654	318,751	136,094	174,594	16.8%
Total	1,589	2,812	6,978	7,412	9,143	100.0%
	1,099,001	1,009,958	992,908	771,306	1,036,997	100.0%

(Source: Ministry of Finance, Customs Division )

\* A case may include more than single infringement, and therefore, total number of cases for each category of rights and the grand total of cases. Utility model and Breeder's rights are excluded from the original figure.

## 2.2 Enforcement Measures

### 2.2.1 Obligations of Member Countries under TRIPS (Part III: Enforcement of Intellectual Property Rights)

- In General: Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays. (Art.41 (2))
- Civil and Administrative Procedures
- Provisional Measures
- Border Measures
- Criminal Procedures

### 2.2.2 Available Measures under Japanese Copyright System

#### A. Criminal Sanctions : fines, imprisonment

##### 1) Copyright Law

- (1) Criminal Sanctions against ordinary infringements (Sec.119)(only upon the complaint of the injured person): imprisonment up to 5 years, or fine up to 5 million yen, or both.
- (2) Special provisions for infringements
  - Infringement of moral rights after the author's death; fine up to 5 million yen.
  - Transfer to the public the ownership of, and manufacture, etc. of, a device having a principal function for the circumvention of technological protection measures.
  - To remove or alter intentionally rights management information attached to the work and the rightholder: imprisonment up to 1 year or fine up to 1 million yen, or both.
  - Distribution of copies with false name: imprisonment up to 1 year or fine up to 1 million year, or both.
  - Violation of the compulsory indication of sources: fine up to 500 thousand yen.
- (3) Criminal sanctions against body corporate: fine up to 150 million yen imposed on the entity in addition to the infringer.

##### 2) Criminal Code and other criminal legislations: e.g. forfeiture

##### 3) Acts regarded as infringements under the Copyright Law

- (1) the importation of objects into Japan for distribution which are produced by an act which would constitute an infringement if they were produced in Japan.
- (2) the distribution or the possession for distribution of objects produced by an act of infringement by a person who is aware of the infringement.
- (3) an act of using copies of a computer program on a computer in the conduct of business, which are produced by an act of infringement (so long

as the user is aware of the infringement at the time when he has acquired an authority to use them).

- (4) an act to remove or alter rights management information attached to the work etc. (which identifies such as the name of the work and the rightholder).
- (5) an act of importing records distributed in foreign countries (commercial musical records identical to records distributed in Japan and purported for distribution solely outside Japan) into Japan for distribution in Japan, distributing them in Japan, or possessing them for the purpose of distribution in Japan by a person who is aware of such conditions, as long as such import caused damage to right owners' profit to be gained.

#### B. Civil Remedies

- Damages
- Permanent Injunction
- Destruction
- Recovery of Honor
- Provisional Remedies: Preliminary injunctions and Impoundment order

### 2.2.2.3 Border Measures (Customs Tariff Law) (cf. 2.1.3)

## 3. Promotion of Copyright

### 3.1 International Efforts

#### 3.1.1. Government

#### 3.1.2. Private Sector

### 3.2 Domestic Efforts

#### 3.2.1. Government

- JCO/ Ministry of Education, Culture, Sports Science, and Technology (MEXT)
- Ministry of Economy, Trade and Industry (METI)
- Prime Minister's Office/ Cabinet Secretariat (Intellectual Property Strategy Headquarters, IIP-based National Policy)

#### 3.2.2. Educational Institutions

- Universities
- High schools
- Junior High schools
- Primary schools

#### 3.2.3 Related Organizations

- CRIC (Copyright Research and Information Center) <http://www.cric.or.jp/>
- SARA (Society for the Administration of Remuneration for Audio Home Recording)
- SARVH (Society for the Administration of Remuneration for Video Home Recording)

## CHAPTER II

- NIME (National Institute of Multimedia Education)
  - Right-holders Organizations
- 1) Anti-Counterfeiting Association <http://www.aca.gr.jp/events.htm>
  - 2) JASRAC (Japanese Society for Rights of Authors, Composers and Publishers)
  - 3) GEIDANKYO (Japan Council of Performers' Organizations)
  - 4) RIAJ (Recording Industry Association of Japan)

### **4 . Conclusion: What Do We Need for the Better Future of Our Copyright Systems ?**