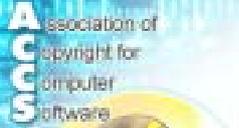


7. Development and Copyright Execution of Contents Distribution Industry in Japan

WEI Feng, Director of Shanghai Office, Association of Copyright for Computer Software



Development and Copyright Execution of Contents Distribution Industry in Japan

May 31, 2006

Feng WEI, Director of the Shanghai Office of the ACCS

社団法人 コンピュータソフトウェア著作権協会



Lecture Menu

- 1. Introduction**
 - * Introduction to ACCS
 - * The spread of content delivery in Japan
- 2. The practical side (practical business) of content delivery in Japan**
 - * Business scale
 - * Introduction of a typical business scheme
 - * The technical protection means adopted for the contents delivery business
- 3. Japanese content delivery and enforcement**
 - * Types of rights infringement that can occur in connection with content delivery
 - * The practical business of coping with rights infringement

社団法人 コンピュータソフトウェア著作権協会



Introduction to ACCS (1)

- ◆ **Formal name**
Association of Copyright for Computer Software
- ◆ **Establishment: October 1985**
 - Original name at the time of its establishment "Supervisory Organization for Legal Protection of Software"
 - Renamed as current name in September 1990
 - Licensed from the Ministry of Education (the current Ministry of Education, Culture, Sports, Science and Technology) in September 1991 to become an incorporated association

社団法人 コンピュータソフトウェア著作権協会



Introduction to ACCS (2)

- ◆ **Vision and Mission**
Make contribution to cultural development of computerized society through copyright protection of digital works and propagation of copyright idea.
- ◆ **Activities** relating software copyright
 - Promotion of education and public relations
 - Research and surveys
 - Assistance in enforcement
- ◆ **Members (As of April 1, 2006)**
 - totally 302 companies among which
 - Regular members 258 companies
 - Supporting members 44 companies

社団法人 コンピュータソフトウェア著作権協会



Introduction to ACCS (3)

ACCS' Shanghai Office

This office aims at resolving copyright issues in China through a wide range of activities including local information collection, keeping in touch with relevant organs and organizations, and conducting educational and public relations activities. It is through these efforts that the Office hopes to help promote the growth of the economy and culture of both China and Japan.

Address: Room 809, Baili Building, 2310 Yangshupu Road, Yangpu District, Shanghai, PRC

Tel: +86(21)6121-1136

Fax: +86(21)6121-1137

E-mail: shanghai@accsjp.or.jp

社団法人 コンピュータソフトウェア著作権協会



3 Key Points to Copyright Protection

```

    graph TD
      A([Laws and Rules]) --- B([Technical protection])
      A --- C([Education])
      B --- C
      A --- D[Copyright laws  
Security policies]
      B --- E[Prevention of illegal reproduction and print  
User management and access control  
Encryption  
Digital Rights Management  
Digital Information Protection Technology]
      C --- F[Cultivation of "information ethics"]
    
```

社団法人 コンピュータソフトウェア著作権協会

Development of Content Delivery in Japan

Environment and Background in Japan

- ◆ Estimated number of Internet users:
Approx. 70 million (February 2005)
- ◆ The household penetration rate of broadband is 36.2% (February 2005)
- ◆ Broadband is about to be the mainstream of Internet connection, which underlies distribution of huge-volumed voice data and video data.

Source: *Internet White Paper 2005*, Edited by the Internet Association

Contents Delivered on the Internet

- ◆ Video: Video delivery
- ◆ Music: Music/MIDI data delivery
- ◆ Games: Online games
- ◆ Books, images, etc.: E-books, etc.

Market Scale of Digital Contents

Unit: Billion Yen

	2002 Estimate	2003 Estimate	2004 Estimate	2005 Estimate
Video	3.9	14.7	17.3	19.4
Music (music delivery)	1.1	1.7	3.6	8.5
Music (MIDI data delivery)	1.4	1.5	1.4	1.2
Game	6.0	12.9	19.3	24.3
Image and text (E-books)	0.5	0.6	2.0	2.7

Source: *Digital Contents White Paper 2005*, Digital Contents Association

Video Delivery

- ◆ The number of companies participating in video delivery by broadband has been increasing since 2004.
- ◆ With regard to “fusion of broadcasting and telecommunications,” studies including the revision of copyright laws are being carried out.

Major Video Delivery Services

Name of Service	Video Genre	Number of Titles	Fee
GyaO	— No specific field	—	free
Yahoo! Motion Pictures	— No specific field	Approx. 100,000	free/fee
Bandai Channel	Animation	158	105~525 yen
Movie Circus	Toei works (contemporary dramas, period dramas, special effects, animation)	618	400 yen

Agreement with Copyright Groups

- ◆ In March 2005, an agreement was reached between a consultative assembly of user groups and right holder groups with respect to payment of streaming service of TV plays produced by TV stations.
- ◆ In order to make contents distribution smoother under the age of broadband, users and right holders should make every effort to reach essential agreements on visible details in the process of video delivery.

Summary of Usage Charge of TV Play Delivery

(Applicable period: Until March 31, 2006)

Field	Groups Consulted	Content of the Agreement (Total of the Amount of Fees for Said Field)
Arts and Literacy	Japan Writers' Association, Writers Guild of Japan, and Japan Writers Guild	2.8% of the information service revenue
Music	Japanese Society for Rights of Authors, Composers and Publishers (JASRAC)	1.35% of the information service revenue and advertisement revenue
Records	Record Industry Association Japan, Japan Council of Performers' Organizations, and Center for Performers' Rights Administration	1.8% of the information service revenue
Live performances	Japan Council of Performers' Organizations, Center for Performers' Rights Administration, etc.	3.0% of the information service revenue

Source: Data published by the Broadband Content Distribution Study Group, Nippon Keidanren

Distribution Model of Internet Video Delivery

- ◆ **Content Direct Delivery Model**
By this model content is directly delivered to end users with a reasonable charge.
- ◆ **Content + Advertisement Model**
By this model, content is freely available with embedded advertisements. Revenue comes from the advertiser.
- ◆ **Content = Advertisement Model**
A company sponsors to produces the content.

Business Model of Yahoo! Motion Pictures

- ◆ There are 2 kinds of content delivery, namely charged and free.
- ◆ Free content are delivered with embedded advertisement. Thus revenue is derived from the advertisers.
- ◆ Charged content delivery is categorized into "Direct Delivery Model", whereby the viewing fees from the users comprise the revenue.
- ◆ The advertising revenue and the viewing fee are divided proportionally to the content providers in accordance with the access number and turnover, after service charges are deducted.
- ◆ More than 70 animation production companies and TV stations are content providing partners of Yahoo!

Music Delivery

- ◆ Internet music delivery in Japan began in 1997.
- ◆ Since iTunes Music Store started music delivery service in Japan in 2004, this industry is growing rapidly. Currently at least 10 major players are running at this market.
- ◆ In Japan, music delivery (ring melodies, ring songs) via cellular phones has taken the lead, and is competing with Internet music delivery.

Major Music Delivery Services

Name of Service	Service Started	Number of Songs Provided	Unit Price (yen)	DRM Technology
Music.co.jp	Apr. 1997	8,000 (Jun. 2005)	About 210	WMDRM
Mora	Apr. 2004	At least 100,000 (Jun. 2005)	210~270	OpenMG
MSN Music	Oct. 2004	At least 50,000 (starting time)	158~367	WMDRM
Yahoo! Music Download	Feb. 2005	94,326 (Jun. 2005)	158~368	WMDRM
ORICON MUSIC TOWN	Mar. 2005	More than 100,000 (Jun. 2005)	Averagely 200	WMDRM
iTunes Music Store	Aug. 2005	At least 1 million (Aug. 2005)	150~200	FairPlay

Source: Digital Contents White Paper 2005, Digital Contents Association

Online Games

- ◆ The market scale of online games of Japan has been growing since 2003 along with the spread of broadband connection.
- ◆ However, compared with some other Asian countries, the speed of shift of users from traditional arcade games and video games is not so fast in Japan.

Online Game Market

Number of online games and titles	187
Number of registered members (gross)	19,420,000
Billed members	2,660,000
Average monthly turnover per member	1,437 yen
Turnover of items, avatars, etc. per member	4,728 yen

Source: Digital Contents White Paper 2005, Digital Contents Association

Image and Text Delivery (E-books)

- ◆ The e-book market in Japan began to grow in 2003, when the broadband connection started to spread.
- ◆ In Japan, the e-book market for cellular phones has grown considerably in addition to that of delivery via Internet.

Major E-Book Sales Sites

Name of Site	Sales Growth (year-on-year)	Total Number of Titles	New Publications/ Month	Number of DL/Month
eBook Shop Papyrus	200%	44,599	600	84,000
eBookJapan	240%	7,674	250	120,000
Bitway Books	140%	10,000	300-400	—

Source: Internet White Paper 2005, Edited by the Internet Association

Content Delivery and DRM ① Video Delivery

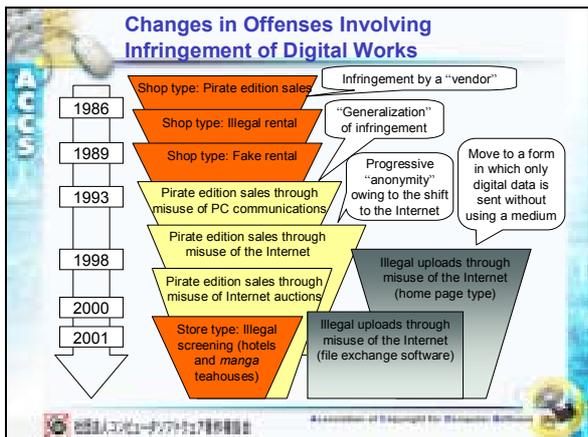
- ◆ There are two ways to deliver video content, streaming and download, among which streaming is mostly adopted since the probability of redistribution or further alteration of the content by end users is considered to be very low.
- ◆ “License key” is most widely used DRM technology in video delivery, which is released individually to the licensed end user.

Content Delivery and DRM ②: Music Delivery

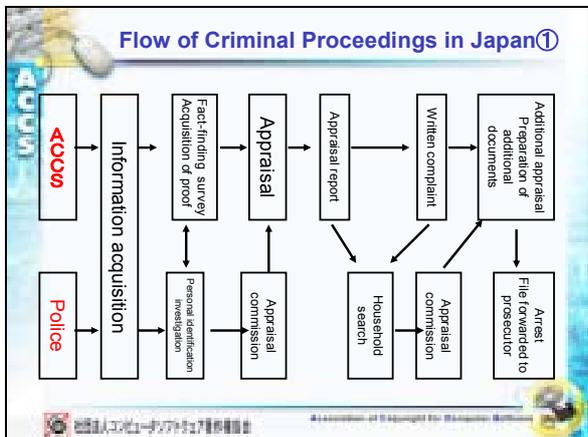
- ◆ Major DRM technology used in music delivery via Internet in Japan
 1. Windows Media DRM (WMDRM) (Microsoft)
 2. Fairplay (Apple) --- iPod/iTunes
 3. Open MG (Sony) --- Walkman/Sonic Stage

Japanese Content Delivery and Enforcement

- ## Possible Right Infringement Cases in the Field of Content Delivery
- ◆ Unauthorized delivery (downloads) on a website
 - ◆ Unauthorized uploads using file sharing software
 - ◆ Unauthorized distribution (Internet auction, web, street vendor, etc.) through hard media (CD-R, DVD, etc.)
 - ◆ As a feature peculiar to Japan, it is very rare to find pirated contents or software on the web due to high likelihood of disclosure and restriction of traffic volume. However unauthorized uploads of animation characters to personal blogs seem to be growing.



- ## Legal Measures in Japan
- ◆ Criminal proceedings
 - Crime involving personal accusation (accusation by right holder is required)
 - Penalty provision are incorporated in the Copyright Law (prison term of a maximum of 5 years and/or a fine of a maximum of 5 million yen)
 - Preventive effect
 - ◆ Civil proceedings
 - Requests for disclosure of infringer's information
 - Right to demand suspension, right to claim compensation for damages, right to demand restitution of unjust enrichment, right to demand measures for rehabilitation of one's honor, etc.
 - Suspension of current infringement, ex post facto rehabilitation effects



- ## Flow of Criminal Proceedings in Japan ②
- ◆ Investigations conducted by private entities (rights holders and associations)
 - Information acquisition
 - ➔ Collection of preliminary information through the web (general and group member)
 - ➔ Careful check of the specifics of the information and examination of measures (warning, notification, etc.)
 - Fact-finding survey, acquisition of proof, appraisal
 - ➔ The case of pirate edition sales
 - ➔ Investigation and purchase of evidence (pirate edition), etc.
 - ➔ The case of illegal uploads
 - ➔ Acquisition of evidence (downloads), etc.

Flow of Criminal Proceedings in Japan ③

- ◆ Cooperation between private entities (rights holders and groups) and investigative organizations
 - Cooperation in public information and enlightenment activities relating to intellectual property rights
 - Anti Counterfeiting Association (ACA)
 - Content Overseas Distribution Association (CODA), etc.
 - Lectures to investigative organizations like the National Police Academy
- ➔ By daily exchanges, a relationship whereby we can sit at the same table and share such problems as technical issues and such problems as revision of the laws and actual business is built.

Circumstances of Support by ACCS in Criminal Cases

As of April 2006 (in Japan)

Total Number of Cases	337
Pirate edition sales	252
Unauthorized rentals	42
Unauthorized uploads (Internet)	21
Other	22

Warnings, etc., by ACCS about Copyright Infringement

Response to copyright infringement on the Internet (January 1991 ~ March 2006)	
Warnings and requests for deletion	15,658 instances
Notifications sent to users of file exchange software	9,189 instances
Requests for deletions based on agreement with Yahoo	33,666 instances
Sending of certification of contents from legal advisors	15 instances

Recent Cases Involving ACCS Members

- February 2006
Sending comics via the Internet without permission
- June 2005
The web photographs of Japanese TV personalities were reproduced without their permission and sold by auction
- October 2004
Game images were processed into standby images for cell phones and uploaded
- April 2004
Sale of a kind of "pirate edition" that combined an Internet auction and downloading
- November 2003
First criminal indictment for infringement on the right of public transmission by using the file exchange software "Winny"

Case (1) Arrested for File Exchange Software

- ◆ In November 2003, an unemployed male A (19 years old) and a self-employed male B (41 years old) were arrested on suspicion of copyright infringement (infringement of the right of public transmission) involving the use of the file exchange software "Winny".
- ◆ A had reconfigured game software and the like such that it could be sent to unspecified Internet users.
- ◆ A sentence of 1 year of imprisonment (sentence suspended for 3 years) was handed down for the unemployed male.
- ◆ "File exchange software" makes it possible to send and receive data directly between the computers of users that are connected via the Internet.

Case (2) Pirate Edition "Upload" Sales

- ◆ In April 2004, an unemployed male (41 years old) who allowed customers invited to participate in an Internet auction to download for a fee software that he uploaded to his home page was arrested on suspicion of violating the Copyright Law.
- ◆ The male "offered" the software at the auction, and received proceeds from the successful bidders in exchange for telling them the URL information about the home page to which he had uploaded the software.

Case (3) Upload of Images Used by Cell Phones

◆ In October 2004, a male university student (21 years old), who had processed character images extracted from game software into standby images used by cell phones and uploaded these without permission, had his file referred for prosecution for violating the Copyright Law (infringement of the right of public transmission).

Approximately 90 kinds of game images had been uploaded to the home page of the university student, and were configured such that they could be perused or downloaded from a cell phone. Owing to pieces about the student's home page in magazines and so on, it was accessed more than 26,000 times.

Case (4) Reproduction without Permission of the Web Photos of TV Personalities

◆ In June 2005, a male staff member (30 years old) of a membership-based website operated by Shogakkan KK reproduced the video data, etc., of female TV personalities distributed on the site on CD-R disks and sold these through a Yahoo auction, and the Fukuoka prefectural police referred his file for prosecution on suspicion of violation of the Copyright Law.

This website was providing a service that enabled members to view and download for a monthly fee the image data of TV personalities to which watermarking technology had been applied. It was confirmed that the image data that the male had been selling was data that had been delivered at the same site by this watermarking technology.

Case (5) Sending without Permission of Comics by the Internet

◆ In February 2006, 3 self-employed males, who had configured data wherein a large volume of comic works were digitally scanned so that it could be sent automatically to an unspecified number of Internet users through a home page, were arrested by the Fukuoka prefectural police on suspicion of infringement of copyright (reproduction rights and the right of public transmission).

The 3 males had shared the work of operating the home page, constructing the server and scanning the comics, and uploaded the works of approximately 650 comic writers and artists. This site had become the subject of conversation on the Internet half a year before the 3 were charged, and written warnings had been sent to the 3 several times by publishing houses and groups of comic writers and artists.

File Exchange Software (Conception)

The diagram shows two network topologies. On the left, an 'Ordinary network (with a server)' is depicted with a central server icon connected to several client icons. On the right, a 'P2P (peer to peer) network (no server)' is shown with multiple client icons interconnected in a mesh-like structure, with no central server.

Actual State of Use of File Exchange Software in Japan

ACCS/Recording Industry Association of Japan Survey

- ◆ People currently using file exchange software: 2.7% of Internet users in Japan (approximately 1.27 million people)
- ◆ People who have used file exchange software at some time: 6.3% of Internet users in Japan (approximately 2.97 million people)
- ◆ It is estimated that 90% of the music files and 86% of the video files that are the targets of file exchange involve rights like copyrights, and moreover, that there is no permission from the rights holders.

Responding to Infringements that Use File Exchange Software (1)

Charges against individuals who have used "WinMX" (November 2001)
 Charges against individuals who have used "Winny" (November 2003)

Charges against individuals who have developed and distributed "Winny" (May 2004)

↓

- Arrested in May 2004, indictment in June 2004
- Hearing of the facts at present
 - ➔ The case is expected to be protracted (Reason) An investigation by public trial of almost all the evidence is required

Responding to Infringements that Use File Exchange Software (2)

Charges against individuals who have developed and distributed "Winny" (May 2004)

- Is it possible to press charges of criminal responsibility for providing software that can be used for legal behavior as well?
- The investigative authorities are bringing public prosecutions by applying the general notions to date about "help"
- It is difficult to believe that general criteria will arise from judgments in particular cases

If we consider trends in public opinion, the reaching of a result in the case of the developers and distributors of "Winny" will be a watershed.

Responding to Infringements that Use File Exchange Software (Other Groups) (1)

- ◆ The response of the Recording Industry Association of Japan
 - The following responses are being adopted for users who are uploading (making public) without permission the sound sources of marketed music CDs by using file exchange software
- ◆ Demands for disclosure of sender information to ISPs (Provider Liability Limitation Law)
 - November 2004
Start of demands for disclosure of sender information
 - May 2006
Since the ISPs that were asked to disclose information avoided disclosing this by their own independent judgment without abiding by the judgment of the courts, a lawsuit will be brought against them.

Responding to Infringements that Use File Exchange Software (Other Groups) (2)

- ◆ Negotiations relating to users whose information was disclosed
 - July 2005
Separate negotiations with 7 users whose information was disclosed. Agreement reached on the payment of compensation for damages of an average of approximately 450,000 yen per user.
 - May 2006
Separate negotiations are slated to be conducted in the future with 8 users whose information was disclosed.
- ◆ Reminders by instant messages (IMs) to the users
 - Started from March 2004. The total number of messages sent to date exceeds 11 million.

Thank You for Your Kind Attention

Association of Copyright for Computer Software

Location: Tomonari Foresight Building, 5th Floor,
5-40-18 Otsuka, Bunkyo-ku, Tokyo

Telephone: 03-5976-5175

Fax: 03-5976-5177

Home page: <http://www2.accssjp.or.jp/>

(Original Text in Chinese)

Questions from the participants to Mr. WEI

Q. In Japan, when the copyright of a right holder is infringed in the network environment, is the matter pursued as infringement of the right to communicate via network? Are there other ways to pursue the matter? In your remarks you stated that the filing of private complaints by right holders is one of the main means of remedy, but are infringers subject to criminal prosecution?

A: As for your first question, it is my understanding that such infringements are not usually treated in Japan as violation of the right to communicate via network. Instead, legal liability is pursued by treating the act of transitory reproduction as a violation of the right holder's right to reproduction. Of course, there are other avenues of remedy as well.

(Dr. NOGUCHI) I believe it is also possible to pursue an infringer's liability by focusing on the distribution or sales of CDs or other audio-visual products. And the ISPs and other service providers that provide services to infringers can also be held to joint and several liability for damages.

A. *(Mr. WEI)* With regard to criminal liability, Japan does provide for criminal liability in its Copyright Act. When an agency or collective management organization believes that an infringement constitutes a crime, it is sure to notify the police, who will take responsibility for investigating.

As for the second question, the filing of private complaints by right holders is one of the main means of remedy in Japan because most copyright holders in Japan are copyright agencies or other collective management organizations. These companies or organizations have big and powerful monitoring networks, so it's much easier for them than for individuals to discover, investigate, and press charges for infringement.

Q. I would like to ask a question about online book sales. Suppose an online bookstore, acting without the right holder's permission, attempts to sell a copyrighted book by putting part of the book online for buyers to browse. Would this be seen in Japan as infringement?

A: If a seller discloses part of a right holder's book online without the right holder's permission, it ought to be regarded as infringement even though the purpose of disclosure is to sell the product. If it constitutes a crime, then it would also be possible to ask the police to investigate and pursue criminal

liability. It is my understanding that the book sales contracts of Amazon and other online booksellers contain provisions authorizing partial online browsing. This avoids any possibility of the occurrence of infringement.