Study Group on the Promotion of Digital Content Distribution, Telecommunications Policy Subcommittee, Telecommunications Council

Summary of Minutes (3rd meeting)

1. Date: Friday, October 24, 2006, 4 to 5:30 p.m.

2. Location: CDE Conference Room, Mita Kaigisho

3. Attendees (honorifics omitted)

(1) Study Group members (including expert advisers)

Jun Murai (Study Group Chair), Nagaaki Ooyama (Vice-Chair), Mutsuhachi Asano, Tomoyuki Ikeda, Ryohei Ishii, Tsunetoshi Ishibashi, Yuu Inaba, Gota Iwanami, Yoshiyuki Uei, Tetsuya Obuchi, Naotaka Kacho, Makiko Kawamura, Junichi Kishigami, Nobuhiko Sato, Kazuo Shiina, Yoshiyuki Seki, Nobuko Takahashi, Shinji Takada, Shuichi Tago, Mario Tokoro, Miwako Tsuchii, Fumio Nakajima, Miki Nagata, Hidetoshi Haeno, Toshio Fukuda, Yoshitaka Hori (26 members)

(2) Observers

Makoto Kawase (Agency for Cultural Affairs), Mako Kawakami (Sony Corporation), Shuji Nakamura (Mitsubishi Research Institute, Inc.), Kichiji Nakamura (Japan Association of Music Enterprises), Keisuke Motohashi (NHK), Kensuke Yasue (Mitsubishi Research Institute, Inc.)

(3) Secretariat

Ogasawara (Head of the Content Distribution Promotion Office, Information Policy Division, Information and Communications Policy Bureau)

(4) MIC representatives

Katsuno (Deputy Director-General, Minister's Secretariat), Minami (Director, Broadcasting Policy Division), Onishi (Director, Regional Broadcasting Division)

Murai (*Study Group Chair*) — Please allow me to open this, the third meeting of the Study Group on the Promotion of Digital Content Distribution under the auspices of the Telecommunications Policy Subcommittee of the Telecommunications Council. I'd like to thank all of you for taking time out of your busy schedules to attend today's meeting.

Today's absentees are members Sugawara, Takenaka, Ichiya Nakamura, Nosaka, and Yoda. Also, as indicated in the handouts on your desks, we have six observers in attendance. Welcome to all.

The last meeting dealt with the current state of rules in Japan associated with content use. At today's meeting, the following three study items are scheduled: first, a look at the current state of rules on content use in other countries; second, a presentation on the copy-once section in the third interim report, which was distributed at the last meeting, and also some of the public comments on this section; and third, a review of the facts related to the current situation in other countries and the public comments. I presume we are in agreement with this.

As for how we will proceed today, we'll begin with an explanation of some facts and figures from the Mitsubishi Research Institute, one of our observers here today, and the Secretariat. Following this, I hope to have a free discussion with the participation of all our members. Since the intent of today's discussions is to ascertain the facts regarding trends overseas and public comments and to strive for a common understanding among all members, I'll ask you to keep your questions and comments to these points.

With that, I'd like to start our proceedings. The Secretariat and the observers from the Mitsubishi Research Institute will now give presentations including a quick review of the materials handed out.

Ogasawara (*Secretary and Head of the Content Distribution Promotion Office*) — Allow me to first go over with you the materials from the Secretariat with a brief explanation.

I'll begin with Reference 1. This is a document on trends and developments seen in other countries that our observers from Mitsubishi Research Institute will go into more deeply in a few moments. Underneath this are references that were already handed out previously, but since they concern the U.S. Copyright Act and

the judicial precedent of time-shifting, I've reprinted them just in case because we are going to examine circumstances in the States and other countries today.

Next is an extract from the third interim report on "Trends in the U.S." Page 3 in this reference contains a brief summary of the history of copy and content protection schemes in U.S. digital broadcasting, and page 4 presents the discussions that occurred at the inquiry. (1), (2), and (3) are brief recapitulations of the respective points brought up by members.

Turning to Reference 2, this was also distributed last time, but what is different this time is that we've included company names and other organization names. The public comments were collected under the disclaimer that individual names and organization names may be disclosed together with responses from MIC in reports. The names of individuals remain under wraps because the MIC responses have yet to be disclosed in the interim report, but all names of organizations that submitted comments have been listed in this updated version.

Next, references 3 and 4 are procedure outlines and everyone should go through and confirm each of these, but I hope to announce these today during these proceedings.

Finally Reference 5 is the upcoming schedule with dates, which are tentative for the moment, for meetings in November and December that were not given last time. Today, October 24, is labeled Trends in Other Countries (1), and two meetings are scheduled for November. November 21 is set aside for examining the current state of content protection technologies. Since many questions and opinions on overseas trends and technology trends will probably emerge today and at the next meeting, we won't be able to handle these matters in just two meetings. Therefore, I've scheduled the fifth session on November 27 to deal with each of these matters. For the time being, this is the complete schedule for the year. Some examination issues for this study group for January and beyond that have been raised are content distribution rules, such as copy-once, for content usage and market configurations. I hope to incorporate these topics in the schedule for the coming year.

That's all I have concerning the references. I'll now ask Mr. Yasue from the Mitsubishi Research Institute for his presentation on these materials. Thank you.

Yasue (*observer from Mitsubishi Research Institute*) — I am Kensuke Yasue from the Mitsubishi Research Institute. Thank you for having me here today.

I'd like to jump right in and start my presentation following along in Reference 1. Page 1, you'll see, is entitled "Trends in Foreign Countries on Content Usage." Three countries were selected — the U.S., France, and South Korea — as countries typifying the overseas trends in copy control of digital broadcasts. Allow me to start with a summary of these trends.

First, I'll speak about the development of terrestrial digital broadcasting in the U.S. Digital broadcasting started in November 1998 and analog broadcasts must be completely phased out by February 2009. At the present time, no copy controls exist on digital broadcasts. The FCC [Federal Communications Commission] did make a ruling on a broadcast flag in 2003, but as the result of a court decision that found the FCC ruling invalid, no copy control in the broad sense is currently being exercised. There are opinion leaders insisting on the necessity of a broadcast flag and there are bills containing legislation on the broadcast flag currently being deliberated in both houses of the U.S. Legislature, but it is reported that there is no prospect for the bills to come into existence.

Both the Senate and the House of Representatives are conducting public hearings on the issue, and the House of Representatives is holding hearings limited especially to the broadcast flag and the audio (radio broadcast) flag. Movie production companies along with broadcasters, device manufacturers, and consumer groups have lodged their respective positions at these hearings. I'll go into this more on the next page.

In France, on the other hand, digital broadcasts have just got underway, in March of 2005. Analog broadcasts are slated to be completely phased out by January 2012. Not unexpectedly, no copy control is in effect. On August 3 this year [2006], France amended its copyright law [DADVSI]. Much attention has been focused on this bill since the start of the year, and the law has just come into effect so its full ramifications are yet unknown. The portion that deals with copy control does give technical measures and defines these as copy control or access control, but it does permit the enjoyment of an exemption for private-use copying: in short, though the legalese is quite difficult, provisions were added that ensure that copy controls do not hinder the enjoyment of the right to copy for personal use where

recognized by law. France has created an independent administrative authority, a technical protection method regulator, to monitor that copy controls do not hinder personal copying rights. I'll fill in more detail on this later on.

Digital broadcasting in South Korea started in October 2001. Later, in December 2005 terrestrial broadcasts known as DMB to portable devices and mobile phones were launched. As outlined in the footnote at the bottom of the page, DMB is an acronym for digital multimedia broadcasting and over-the-air DMB is a broadcasting service for mobile phones and other portable devices. Currently there are two DMB modalities: subscription-based broadcasts using satellites and free broadcasts using terrestrial signals. Copy controls on terrestrial digital broadcasts, including terrestrial DMB, are not in place in South Korea.

When I looked into what sort of copy-control debate has taken place in South Korea, I was told that not much debate has emerged concerning copy controls on terrestrial digital broadcasts. There has been, however, some controversy about copy controls on terrestrial DMB. But this too has been limited: rather than a debate encompassing all stakeholders, it has been a matter of broadcasters sending claims to device manufacturers — who have incorporated recording capabilities in various portable terminals and who are selling these terminals — to place restrictions on these recording functions. Thus, South Korea is still at the very beginning of the copy-control debate.

That is a brief look at the situations in the U.S., France, and South Korea. Continuing on, I'll give a bit more detailed explanation of the movements in each country.

Turning first to the U.S., you'll see on page 2, just in case, a brief summary of the broadcast flag development from 2003 to 2005 as a backgrounder. In November 2003, the FCC announced that it was going to make the broadcast flag an FCC rule. One of the points asserted by the FCC was that the broadcast flag would not affect the ability of consumers to make digital copies and the aim was to prevent mass distribution of pirated copies over the Internet. This assertion is given in detail at the Web site address indicated at the bottom.

Just for the record, I'll briefly go over how the broadcast flag mechanism works. Broadcast stations assert the flag in programming that does not permit unrestricted redistribution but do not assert the flag in programming that can be

redistributed freely. Receiving devices, and this includes all receivers that can receive digital TV broadcasts even computers with TV tuners, detect the state of the flag. The FCC rule stipulates that receiving devices can make digital recordings or outputs only in the given technology — separately the FCC has approved 13 technologies for copy control — when the receiving device detects an active flag or when the flag is absent. The regulations do allow for outputs or recording in degraded form.

But how could this be used in practice with consumer devices? On a home network, consumers can freely copy or move content between devices with the FCC-approved storage technology or between devices with other storage technologies authorized by the original storage technology. Consumers are permitted to distribute a limited number of copies over the Internet as well. In particular, there is no problem with sending flagged content from your own device to another device over the Internet. Furthermore, the FCC rule had an exemption for digital TVs and digital video recorders shipped prior to the regulations' term of enforcement. There were also settlements on other exemptions, on analog outputs for instance.

There were plenty of consultations by the FCC about whether these regulations were acceptable, but nevertheless, in May 2005, the U.S. Court of Appeals handed down a decision that the FCC rule was invalid. The appeal seeking that the rule be struck down was launched by library organizations, free speech advocates, and consumer groups, but paradoxically enough the court based its decision on the grounds that the FCC was not legally authorized to stipulate regulations on the broadcast flag in this way. Regardless of this court finding, however, no copy controls, even including the broadcast flag, at all were in place in U.S. terrestrial digital broadcasts. And I think it can be said that even if the broadcast flag rule had been ratified, the rule's objective would have been to prevent unrestricted redistribution over the Internet.

This is the history of the broadcast flag up to this point. Bills have been presented in both houses of the U.S. legislature to grant the FCC the authority to regulate on such matters as the broadcast flag. I said before that the prospects for these bills being passed are slim. The reason why is less to do with problems with the broadcast flag per se and more to do with the nature of the bills, which are

attempting a wholesale revision of the FCC. As the result of much controversy over other parts of the bill, particularly the network neutrality provisions, debate has now come to a standstill on the entire bill.

As for what the broadcast flag consists of, for example in the bill presented to the Senate committee, the broadcast flag incorporates the following details. In addition to giving the FCC the mandate to rule on the broadcast flag, the bill allowed the copying and transfer of digital TV content over a home network and allowed the Internet distribution of extracts and digests of digital TV content. The bill also incorporated provisions so that news programs and programs dealing with public issues normally would not have the flag set. Both the Senate and the House have opened public hearings where stakeholders have stated their opinions. You can read the details of these opinion statements at the Web site address at the bottom.

Since the Senate is taking a comprehensive view of the entire bill, its committee is considering a wide range of issues and not just the broadcast flag. The Lower House, as I mentioned before, is theme focused. The four organizations giving statements, as mentioned in Note 2, are the National Association of Broadcasters (NAB) — representing the broadcasters, the Motion Picture Association of America (MPAA) — speaking for the rights holders, the Consumer Electronics Association (CEA) — representing device manufacturers, and Public Knowledge, a consumer rights advocacy organization.

Summaries of the opinion statements given at the Lower House's public hearings have been assembled on page 3, titled Trends in the U.S. (2).

First, NAB agreed with the broadcast flag concept and stated that the flag should be introduced. MPAA, naturally enough, also agreed with the flag and thought that it should be adopted. The CEA, while not opposing the flag, took a neutral stance after suggesting several conditions on the flag. The Public Knowledge group opposed the flag and stated that the very existence of this sort of regulation was problematic.

I've taken the main points of each group and listed them on the right. NAB's main point was that the flag is necessary to protect the revenue and the rights of TV stations, especially local stations. Virtually the only copyrighted works of local stations are news and public programming; most dramatic programming and other shows are obtained from the station's affiliated TV network or through syndication.

Thus, NAB asserted that if the flag does not cover access programming it would present difficulties for stations from a business point of view.

On the other hand, NAB observed that the fair-use right must be protected. It said the unauthorized redistribution of large amounts of programming over the Internet was watering down rights in local markets and there were fears of shrinking revenue in the time-shift service industry as well as concerns of disruption in TV ratings and a decline in their credibility.

As for the MPAA, it stated that the flag was necessary to prevent a reduction in the profits and in the desire of content producers and rights holders to make new works due to the unauthorized redistribution of content over the Internet. I've put more details about this argument on the next page, so I'll speak about this again on the next page.

The MPAA's second point was that the broadcast flag will not necessarily have to be an inconvenience to consumers. It said that the flag would not affect the recording of TV programs nor would it restrict private use and that users would be able to make a limited number of digital copies and use content on their home networks. The MPAA also emphasized that the flag would not affect existing consumer electronics. By ensuring a safer distribution method, consumers would benefit from an increase in the distribution of paid content and greater selection. Conversely, without a safe distribution method, companies would be forced to provide high-quality content to only a limited number of users and to pay-TV subscribers in order to preserve the value of their content. A lack of a secure distribution method would also compromise the public's right to know. For these reasons, the MPAA insisted, the flag is indispensable.

The CEA stated that the regulations should not exceed the goal indicated in the 2003 FCC broadcast flag rule — preventing the mass indiscriminate redistribution of content over the Internet. The group laid out some conditions on the flag, such as that clear exceptions must be granted for fair use, news and other programming on public issues, and distance learning and that protection of normal consumer rights to make private and non-commercial copies at home must be enshrined in the regulations.

Finally, the consumer advocacy group, Public Knowledge, argued that regulations like the broadcast flag are problematic. The government should not

intervene in the market and the government should not license and make a certain technology compulsory. The broadcast flag limits consumers' fair use rights, the right to know, and programming selection, among other things, and infringes upon legitimate activities. This places an extra burden on customers, who have to purchase new devices because of a decline in device compatibility. High-quality content will not disappear from television broadcasts, as claimed by content producers and rights holders. The group stated that high-quality programs are being broadcast without flags. Additionally, the broadcast flag may potentially slow down the movement to digital television. If, the group argued, consumers believe new digital TVs are less functional than their current analog TVs, they may hold off buying digital TVs. The group also emphasized that what the problem boils down to is that giving the FCC excessive authority means that the FCC will have the right to stipulate matters that should, by nature, be determined by the Legislature.

The details mentioned on this page are given by points 1 through 5 on page 4. I'll let you read the details later, but I feel that points 4 and 5 presented by the consumer group need more elaboration. The group asserted that despite not having a flag high-quality TV programs have not disappeared from the airwaves and many high-definition (HD) programs are being produced: 50% of TV shows and 66% of prime-time programs are broadcast in high definition. Furthermore, all leading sports events are broadcast in HD, from Monday Night Football, the Super Bowl, to the NBA finals, the final four men's college basketball tournament, the World Cup of soccer, and the baseball all-star game.

The group also claimed that in fact digital TV receivers were growing steadily in number and that the lack of a broadcast flag was not a problem in the changeover from analog to digital.

The points made by the broadcasters, the rights organization, and the manufacturers group are given in 1, 2, and 3. I think they are straightforward enough that if you read through them you can understand them on your own.

One more point, on page 5, is the date November 4, 2003. This is the date the FCC first published its Notice of Proposed Rule-Making, which is abbreviated as NPRM. An NPRM is a way of obtaining certain public comments before the FCC makes a new regulation. It indicates that the FCC wishes to make a certain rule and invites comments on the plan. FCC gives its thoughts on the comments and then

eventually makes the regulations. This is the rule-making process. I'll describe briefly the debate over the NPRM here.

The content owners need to guarantee the convenience of digital content with high value to consumers in a safe, protected format. On the other hand, there are fears that the technical means used to protect content will restrict content functionality that consumers find convenient. Thus, to promote the move to digital TV, a fine balance must be struck between these two contradictory concepts. The FCC collected a broad range of opinions and comments from this understanding of the problem.

The conclusion was that a flag was necessary because without a protection mechanism the potential threat of mass indiscriminate redistribution from broadcast channels would hinder the production of high-quality digital content by content owners. So while the threat of high-quality content being redistributed indiscriminately on a wide scale is not imminent, high-quality content is very visible and with the growth of terrestrial TV broadcasts, preemptive measures are called for to prevent potential harm. The FCC also concluded that it was confident that, of the current available mechanisms, a mechanism based on the ATSC flag would gain consent from content owners because the mechanism would protect consumers' use and enjoyment of broadcast programs while not allowing the indiscriminate redistribution of broadcast content.

There were two points of debate in this conclusion. The first was the question of what is the appropriate type of content protection for digital broadcasts. The FCC said that restricting mass redistribution over the Internet was a more appropriate protection configuration than copy control, and the interested parties said much the same thing in principle.

As for the second point, a study of the potential vulnerabilities of indiscriminate redistribution recognized that in the near term technical limitations would hinder the redistribution of HDTV content over the Internet, but it predicted that the potential for acts infringing on copyrights would expand with technical advances. Thus, the FCC said it wanted to clarify the intent that the objective of restricting redistribution of digital TV broadcasts was to hinder this sort of indiscriminate redistribution over the Internet.

The FCC stated it wanted the objective of the flag to be the appropriate protection from indiscriminate redistribution of content using the Internet without interfering with consumers' private use given in (1). The stakeholders indicated that this was well understood, but rights holders and broadcasters said that this was indeed difficult without some protection mechanism. This prompted a reaction from other parties, claiming that this was an exaggeration.

I'll now move on to developments in France. The reason why I brought up France, as I said earlier, was that regulations have just been formed, as the result of an extensive amendment to the copyright law, that define the relationship of the prerogative of private use versus copyright protection and access control.

If you read through page 6, I think you will get a good understanding of the background to the copyright law amendment. Basically, though, France rushed the amendment through because it was nearing a deadline for it to revise its domestic laws in line with an EU directive. The amendment went into effect on August 3 this year [2006].

I'll explain the points of the amendment on the next page, but before that I'd like to describe the French private use regulations. These are given at the bottom left of page 6. Article L 122-5 of the copyright law states that once a work has been disclosed, the author may not prohibit the acts given in the next paragraph and then goes on to list five items. The first is private and gratuitous performances carried out exclusively within the family circle. The second is copies or reproductions reserved strictly for the private use of the copier and not intended for collective use, with the exception of copies of works of art to be used for purposes identical with those for which the original work was created and copies of software other than backup copies, as well as copies or reproductions of an electronic database. Here "purposes for which the original work was created" refers to, for example, copies of paintings used for decorating. However in the two items above, users can do this for private use. Legally speaking these are exceptions for private copies, but these are established as the authority over private use. On the right, you will find Japan's regulations for your reference.

There are two major points on page 7 about what this legislation has meant. You'll see companies A and B on the left. These are businesses that possess content or transmit content. On the right, you'll see the users. When providing content

between these two sides, it is possible to establish technical protection methods — this includes DRM, CAS, and other technologies — and it is explicitly stipulated that effective technical protection methods are legally protected. There are two major things about this. The first is between companies. If Company A establishes a technical protection method or DRM, then Company B has the right to obtain the technical information about the specific DRM. This made the news because Apple would be obligated to disclose its DRM that it uses in iTunes and the iPod. Because of this controversy, France decided to mediate on this issue.

More about this theme is given on the right side. These technical protection methods must not hinder the enjoyment of private use as stipulated in the copyright law. This means that a company, such as A or B, that introduces some technical protection method is able to limit the number of copies that can be made to five, for instance, but the company must establish an alternative method that, overall, functions in the same way as if there was no copy limit on the content. Thus the regulations require, for example, that if only five copies of a DVD can be made, some alternative measure must be established, such as making the content downloadable over a network. Where a technical protection method places restrictions on the use of content, this information must be publicized so that the user can know this. At the very top is Article L 331-8, which sets out the Technical Protection Method Regulator as the institution that monitors protection schemes to ensure the enjoyment of private use is not obstructed. This is the point of these regulations, though they do include penal provisions as well. When users are displeased with the regulator, they can file writs individually at the Paris high court or court of appeal.

The last country I will deal with is South Korea. As I mentioned at the beginning, South Korea has yet to see significant debate on copy control, in particular. The government, however, is focused on the development and international standardization of digital broadcast content protection technologies. This statement was placed in IT839, the South Korean government's national IT strategy, signaling its intent to connect copy control with the growth of the country's IT industry. While overall there has not been any large debate about copy control, some contention appeared about terrestrial broadcasts and terrestrial DMB for mobile phones. However, the penetration rate of DMB cannot be said to be high —

somewhere around 600,000 units, although there are no definite figures — and thus is not a significant part of the market. For this reason, broadcasters have been content to simply send requests to device manufacturers asking them to limit the recording capabilities of their devices.

Going into this in a little more detail, you'll see the government's road map on the next page. The road map consists of three stages until the end of 2008. It states that associated technologies will be developed from 2006 and in 2007 and that the aim is to build a broadcast content protection management system by the end of 2008. We don't know much or indeed anything about the details of these projects, but these headings have been spelled out. The ETRI [Electronics and Telecommunications Research Institute] has also announced it is pursuing the development and standardization of DRM in this area.

As for the broadcasters, KBS and others are apparently developing operating policies but have yet to disclose them to the public. The big four terrestrial broadcasters have said they are planning to propose the necessity of copy controls to the government. As I've repeated before, broadcasters have requested limits on the recording capabilities of terminals in regard to terrestrial DMB and they view mass copying between devices and via computer networks as a problem.

Some manufacturers and large enterprises are going along with the requests, but many are insisting that any copyright issues that emerge are the responsibility of users, partially because recording and data-transfer functions are hot-selling features.

Rights organizations have yet to openly participate in the debate.

Finally, consumer groups in South Korea are tending to advocate that consumers be allowed to make personal recordings and data transfers of terrestrial DMB content and some advocates are opposing the restrictions on device functionality. Nevertheless, no sort of open, wide-ranging movement has emerged yet.

I know I've taken a lot of your time today. That's all I have.

Murai (*Study Group Chair*) — Thank you very much. To continue, I'll ask our Secretariat to add some supplementary explanations.

Ogasawara (*Secretary and Head of the Content Distribution Promotion Office*) — Allow me to add a few words from the Secretariat about the sections of the explanation we've just heard that relate to the reference materials.

I went over the materials with you earlier, but let me give a little more explanation of those parts that relate to the explanation Mr. Yasue from the Mitsubishi Research Institute gave us today. On page 3 is an extract of the section written on the U.S. in the third report. The second paragraph on page 3 describes the FCC's decision in November 2003 as a copyright protection measure on the Broadcast Flag Rule, assuming the use of EPN (encryption plus non-assertion), with the objective of preventing unlimited redistribution of broadcast content over the Internet. Mr. Yasue described the November 2003 FCC decision in his explanation just now. Prior to this — and this is found on page 5, "Trends in the U.S. (4)," of Mr. Yasue's reference — the FCC on August 20, 2002, invited opinions and public comments concerning the broadcast flag and FCC's rule-making. After collecting opinions from many organizations, the FCC announced a "Report and Order," which is essentially a compilation of submitted opinions and the FCC's findings, on November 4, 2003. Mr. Yasue has just described the details of this.

The November 4 decision, as Mr. Yasue has said about examples of discussion points, begins with a section that summarizes the details of the first Order and a second section that gives the basic thinking on content protection for digital broadcast television, which is to say digital broadcasts. This is followed by selected examples of the points raised in the discussions, for example, "Are there no alternative measures to the broadcast flag?" The points discussed are particularly wide ranging; in this case, considering the worth of other measures such as watermarks or digital watermark protection. This I believe is written first with a summary section, as I said before, then a section on content protection for digital broadcasts, and then some selected examples of discussion points.

Then turning to page 4 again, this is a compilation of selected points from those presented on the situation in the U.S. given by several members in the proceedings of the Terrestrial Digital Broadcasts Study Group, which led eventually to the Third Report. This repeats some other material a little but it includes various points that were raised: for example, is a logical explanation really necessary about the state of affairs in other countries — in this case, including Europe and the U.S.

— which are different from Japan both in terms of not having protection per se and taking EPN as their foundation? Is an explanation necessary on the differences from the U.S. in terms of the reasons for maintaining copy one generation? Currently in the U.S., Hollywood provides a very large share of content to the four major networks. It was even brought up that from Hollywood's perspective the broadcast flag alone may not deliver sufficient protection. Points such as these were collected in the process leading up to the Third Interim Report.

At the time, it was pointed out that we were greatly lacking information on conditions in the U.S. as well as the process of deliberations in the U.S. Thus, we have examined the U.S. situation more closely and today reported on that situation.

I touched on this next point before, but to reiterate, the public comments with organization names are simply listed in the order in which they were submitted. So, for the time being, we've handed these out again in this sequence, with "Individual" stated for submissions made by individuals and the organization name stated for the other submissions.

That's all I have to add on the materials.

Murai (*Study Group Chair*) — Thank you very much. I think that ends our explanation of Reference 1 and Reference 2 from the Mitsubishi Research Institute and the Secretariat.

Now, let's open the floor to any questions about any uncertainties or points needing clarification in the presentations we've heard so far.

Nagata (*Study Group member*) — If I can, I'd like to ask a couple of rather elementary questions. Your presentation covered the U.S., France, and South Korea, and in the discussion of the materials just now, we've heard that in other countries content protection itself has not been implemented and that EPN is taken as the basic assumption. I'd like to know if there are any countries where some sort of restrictions are placed on digital broadcasts. Even if none of these three countries have content protection in place, perhaps there is another country somewhere in the world that does.

Second, I think it was said somewhere that in South Korea broadcasters had made overtures to device manufacturers and also to the government. I think it was

said that the broadcasters were demanding some measures from the government. Maybe this was covered in your explanation, but I'd like to hear exactly what is being planned with respect to this.

Yasue (*observer from Mitsubishi Research Institute*) — None of the leading nations as far as I am aware are using copy controls at the present time.

As for developments in South Korea, four terrestrial broadcasters, including the public broadcaster KBS, have said to the government that it may be necessary to incorporate copy controls into terrestrial digital broadcasts. I don't know any more than this without a little bit more study, but this is what I was told. Furthermore, an organization of broadcasters has decided to ask device manufacturers if they will place restrictions on the program recording functions, the data transmission functions, and the copy functions of portable devices with respect to terrestrial DMB and terrestrial digital broadcasts to portable terminals.

Ogasawara (*Secretary and Head of the Content Distribution Promotion Office*) — I'll add a few more comments here. As Mr. Yasue has said, we have not been able verify at this time any major country that has copy controls in place on digital broadcasts. We hope to continue studying this a little further while taking advantage of the Study Group members' expertise.

With respect to your question about South Korea, we are in the midst of making inquiries to South Korea, as Mr. Yasue said in his report. What we do know is that a department has been formed under the Information Security and Privacy Bureau in the Ministry of Information and Communication to deal with protection technology for convergent broadcasting and communication content and the construction of distribution management systems. Unfortunately, we do not have clear information today on Mr. Nagata's question about the details of the requests from the broadcasters or what the government is planning to do about it. We will continue our investigations in this area and I hope to report on this as soon as we have established these answers.

Shiina (*Study Group member*) — Time and time again we've had citations of the situation in the U.S. and elsewhere and I understand that device manufacturers have

in the same way proposed EPN, but looking more carefully, the fact is that the legal systems for copyrights in Japan and the U.S. are completely different, especially on things like approaches to fair use. I'd like to hear some more on whether device manufacturers think it is okay to ignore these differences and adopt EPN.

Tokoro (*Study Group member*) — Can you point out the specific differences between the U.S. copyright law and the Japanese copyright law?

Shiina (*Study Group member*) — It's a bit overwhelming to be suddenly asked to explain where all the differences lie, but I am aware of such things as the admission of fair use and the existence of copyrights but not related rights. Even looking at the citation of the provisions on fair use, the wording is different from the Japanese Copyright Act and the scopes of protection are different as well. I think we agree in recognizing these are discrepancies, but I asked whether manufacturers think it is all right to not treat these areas as a problem. Do you think these are not discrepancies?

Tokoro (*Study Group member*) — I understand there are differences, but working from the premise of what we should do to propagate terrestrial digital broadcasts, I do not think these differences are enormous. In America, they had a discussion about at least curbing Internet distribution starting from a situation where there was absolutely no protection. And we too are involved in a discussion of bringing to Japan a situation where a broadcast flag is set in much the same configuration as the EPN that we are dealing with here now. We are now discussing whether conversely applying some very rigorous protection method like the copy controls applied to pay-TV to public broadcasting would be overkill. And in regard to this point, we are discussing trying to bring to Japan some of the things talked about here. I cannot imagine there being a large difference in reality on this point.

Shiina (*Study Group member*) — I see your point.

Murai (*Study Group Chair*) — Okay, now Mr. Motohashi, go ahead please.

Motohashi (*observer from NHK*) — Our understanding is a little different from what Professor Tokoro has just indicated, and I'm afraid this may be a rebuttal of sorts. Professor, you spoke of starting from a situation with no copy controls and indeed you are right in the fact we are beginning from nothing. But I think we need to gain a common understanding of the events prior to 2003, the point where Mr. Yasue started his explanation.

Interested parties in the U.S. were already beginning to discuss what should be done about protecting broadcasts from around 2001, based on the FCC and the U.S. House Committee on Energy and Commerce. At that time, Hollywood, broadcasters, and others on the content side in the U.S. undoubtedly asserted that some technical protection method together with scrambling was needed like that in Japan. But since digital broadcasts had already started in 1998 and more than a few digital receivers had already appeared on the market, introducing scrambling and a technical protection method at that point would run into the problem of legacy receivers. Consequently, or inevitably if you prefer, the discussions continued on the premise that a technical protection method or something like the DTCP [digital transmission content protection] rule in Japan was unachievable. This is why recently the MPAA and broadcasters have been saying the broadcast flag is appropriate. But this is not a position they've held for years; rather at the outset they were aiming for something else — whether what we have in Japan, or something more rigorous, or a different configuration altogether, I don't know — and at first never agreed to the broadcast flag, though they acknowledged the broadcast flag to be something similar to EPN. I think it is important to understand this point.

Murai (*Study Group Chair*) — Next, Mr. Ishii. Please go ahead.

Ishii (*Study Group member*) — I'd like to bring up a different point, if I may.

Murai (*Study Group Chair*) — We'll summarize everything at the end, so please go ahead with your comment.

Ishii (*Study Group member*) — Then, I'd like to ask a couple of questions about developments in France. The provisions for the private use premise are given on

page 6. But I think this Article L 122-5 Paragraph 1 on performances should be compared with Article 38 of the Japanese Copyright Act on non-commercial, free presentations instead of with Article 30. I feel the provisions in Article 30 Paragraph 1 correspond to the copies or reproductions reserved strictly for the private use of the copier in the French law. Furthermore, if anyone knows, I'd like to hear which of the French law or the Japanese Copyright Act is stricter and how great the differences are.

My second question is if the amended French copyright law is applied strictly, will it become impossible to sell things like DVDs, which are sold in Japan as copy-never, because they violate the copyright law in France.

Finally, I realize that European countries are now moving ahead with extensive amendments to their respective copyright laws based on the EC directive of 2001 or 2002, but is the French amendment direction in line with the movements in other countries or is this a sort of special French situation? I'd appreciate it if someone could answer this.

Yasue (*observer from Mitsubishi Research Institute*) — About your first question, the reason why I raised France's Article L 122-5 and Japan's Article 30 was not because their conditions were closely related but because they both are provisions on the aspect of private use. We still don't know much about how, for example, Article L 122-5 Paragraph 1 will be applied in France, so I think this is something we must study. I brought it up, however, because the provision is as it is at the moment.

Next, are copy-never DVDs in violation of the copyright law? Well, as you can see at the very top of page 7, effective technical methods are protected so the existence of DRM is not denied in anyway. The way I understand it, from the start, if there are no problems based on what kind of contract there is with the consumer that stipulates how the content is used, the copyright law has no impact on DRM. Thus, I don't think, for example, copy-never DVDs will violate the copyright law.

To your third question, as you pointed out, France's copyright law amendment was an amendment of domestic law based on an EU directive. The EU directive, however, does not spell out how every item of domestic laws should be, but only how things should be in principle. Thus, there remains leeway for each country to make individual conclusions of the final form of their laws. I don't know whether all

aspects of the French law follow the EU directive, but basically the legal amendments were carried out in line with the policy of the EU directive.

Murai (*Study Group Chair*) — A lot of you had your hands up a moment ago. Could you raise your hands again? Okay, Mr. Kacho and Ms. Kawamura.

Kacho (*Study Group member*) — This is a simple question but is there any difference in how programs are scheduled at TV stations in Japan, the U.S., France, and South Korea? I don't know much about France because I've watched very little French TV, but if the content is not worth protecting, then there is no need to safeguard it. I think it's important that we scrutinize the differences in programming. I feel that the situation in the U.S. is fairly similar to that in Japan, but in the section "Trends in the U.S. (3)–4" near the bottom it says that sports events are covered perfectly, but I don't believe this is really relevant because sports events are meaningless unless viewed in real time. Another difference from Japan is how well developed pay-TV is in the U.S., which makes me think we ought to scrutinize TV station programming. I wonder if there is anyone knowledgeable about this. Perhaps some of our broadcaster representatives are informed about this.

Motohashi (*observer from NHK*) — I can't say I'm an expert on terrestrial broadcast programming in the U.S., but I'll speak from what I do know. First, I think you are right when you say that sports events are meaningless unless broadcast live, but unfortunately the four major networks in the U.S. that dominate terrestrial broadcasting do not hold that strong a position in sports. This means, taking football, which is illustrated here, for example, ABC or CBS are only able to broadcast live about one game a week, whereas a dedicated sports channel like ESPN, for instance, provides full coverage although you have to subscribe for a fee through cable or to DBS [direct broadcast satellite] services. This is the same for the World Cup and the Olympics. Hugely influential content like TV shows that are brought to Japan are created by Hollywood studios and, although they may be broadcast over terrestrial networks, the most popular, talked-about programs and hit series are often broadcast by pay-TV channels such as HBO. So although much of what Mr. Kacho says is correct, we can still say that the situation surrounding terrestrial broadcast

programming and the positioning of programs within the programming is quite a bit different from that in Japan, where much of the investment in content production is focused on terrestrial broadcasting — for example, you watch *Nichiyou Gekijyou* [Sunday Playhouse] at 9 p.m. on Sundays and you watch Fuji TV's soap opera at 9 p.m. on Mondays — and much of the TV audience viewing trends are centered on terrestrial broadcasting.

Kacho (*Study Group member*) — Thank you very much.

Murai (*Study Group Chair*) — Ms. Kawamura. Please proceed.

Kawamura (*Study Group member*) — Page 3 of the reference on other countries states that the reason U.S. consumer groups gave for opposing copy controls was that "high-quality content will not disappear from television broadcasts, as claimed by content producers and rights holders." Note 4 follows this up with a whole list of high-quality content. On the other side, we have the NHK saying in the public comments distributed today — on the continuation part on page 10 — that "unless effective content protection is put in place, etc., etc., there will be an adverse effect on terrestrial digital broadcasting, which is the first output by which content reaches viewers." We've heard observers here and other study groups and committees many times characterize Japan's terrestrial TV as the first output or the first window for high-value content. Even Mr. Motohashi has said just now that popular Hollywood-produced TV series are sometimes broadcast over U.S. terrestrial TV — "sometimes," but we've also heard words to the effect that it doesn't happen that often. Instead of these imprecise, ambiguous expressions, and also because U.S. consumer groups claim that high-quality content will not disappear from television broadcasts, I wonder if we can't study some examples where terrestrial TV is used as the first window for high-quality content in the U.S.

Ogasawara (*Secretary and Head of the Content Distribution Promotion Office*) — Based on your question, and Mr. Kacho's point about studying what is being broadcast in terms of programming and scheduling in a number of countries, the Secretariat hopes to study first of all in the U.S., for example, what content is being

broadcast in terms of programming and, for example, what content is being provided by Hollywood, and then, for example, how well this content does in Japan. Then, we'd like to examine whether pay-TV channels like HBO, as Mr. Motohashi said, or else so-called free, advertising-sponsored channels like CBS are being used as the first window for this content. So I'd like to address your question after studying these points over as wide a scope as possible.

Murai (*Study Group Chair*) — Is there anyone else with questions? Mr. Hori, please go ahead.

Hori (*Study Group member*) — When talking about surveying broadcast programming in the U.S., we should keep in mind that the U.S. networks are primarily news networks and in some states all programming decisions are entrusted to the local affiliate station. Results of such a study will vary tremendously depending on the cities you survey. The programming aims in New York and Nebraska are completely different, and there are even places that still today rebroadcast in black and white. So it's probably impossible to categorically spell out the situation in the U.S. as being this or that. In France, South Korea, and the U.S., programming varies enormously by region. So to do a proper study you would have to examine TV stations in every state. For this reason, we would end up with different conclusions if we took as our reference what is being broadcast in the New York area by the big three networks or what is being broadcast in the Los Angeles vicinity. So I think it is somewhat risky to argue that such and such is true across the board in the U.S.

Ogasawara (*Secretary and Head of the Content Distribution Promotion Office*) — Based on what you said, we would be prepared to disclose the broadcasts by network and area used in any characterizations drawn from collected information, regardless of whether any characterizations are possible or not.

Kacho (*Study Group member*) — I believe the content from Japanese TV stations to be exceptionally attractive. What I'd like to know is just this: is there that much attractive content being shown like in Japan? In short, is there no protection despite broadcasting content that should protected?

Haeno (*Study Group member*) — Going back to what Mr. Yasue said concerning copying DVDs, what he said is slightly different from my understanding so I'd like to confirm some things. There were some things said about copy-protected DVDs being dependent on a contract. There was a lawsuit in France over copy-protected DVDs and a decision was handed down last year. The decision said that DVD copying was warranted in cases where it met the three-step test — in other words, whether DVD copying hinders the normal use of copyrighted works or unfairly impairs the legitimate interests of the author. In the end, the decision hinged on whether DVD copying has an economic impact on the rights holder. Since the recent amendment follows this precedent, I don't think it is a question of contracts.

Yasue (*observer from Mitsubishi Research Institute*) — You may well be right. I'll look into this point more closely.

Takahashi (*Study Group member*) — I'm afraid I may be repeating some of our initial discussion. We were talking about whether there were any countries presently implementing digital broadcasts with copy controls. Just to confirm, can we say that these digital broadcasts refer to free, advertising-sponsored broadcasts or public broadcasts? I believe that all of these countries are in the present progressive tense now, so to speak. Even though there are no countries with some sort of legal system on copy control of digital broadcasts, I'd like to find out if there are any countries attempting to establish such a legal system. If such an example exists, I'd be thankful to know a little more about how the regulations are phrased or worded — whether such and such is not allowed or whether such and such must be done.

Another question I have concerns the U.S. example. The description on page 3 in the distributed reference deals entirely with the House of Representatives' debate on the broadcast flag, but I wonder if there were any arguments calling for measures other than the broadcast flag. I apologize for bringing up the minutes, but I'd really like to know if there was actually debate on this.

Finally, there was a discussion about how France rushed through its amendment based on an EU directive. If this was policy and an amendment of what

was a very clear copyright law, then I'd like to hear a bit more of an explanation about the standpoint of the parties whose demands led to this legislation.

Yasue (*observer from Mitsubishi Research Institute*) — First, about France, you can interpret from what standpoint the legislation was made in several ways. But basically EU member states had to revise their domestic laws within a certain timeframe in line with the directive. Thus, France made the amendment because of its obligation as an EU member. In the lawmaking process, and this is shown in the table on page 6, there was a lot of debate on the amendment in the French parliament, and both the majority and minority parties in parliament submitted positions and a wide range of people gave their opinions.

Next, about your question concerning whether the debate in the U.S. went beyond the broadcast flag. The Lower House debate was a venue for debate exclusively on the broadcast flag and on the audio flag — copy controls for digital radio broadcasts. Since it was a public hearing, this was the only topic for discussion.

Shuji Nakamura (*observer from Mitsubishi Research Institute*) — We have based our studies on the assumption that digital broadcasts refer to public broadcasts and free broadcasts. Worldwide, there are three digital broadcasting formats: the U.S. and South Korea use the same method, and then there is Japan's format and the European DVB format. As for development trends, related technical organizations have studied DRM-style of copy protection for the DVB format and draft specifications have been made. We will make an additional investigation of this matter.

Seki (*Study Group member*) — This may add a bit of information to this conversation and to what Mr. Motohashi said. We, at the ARIB [Association of Radio Industries and Businesses], Japan's private-sector standards body, have been involved in regular yearly exchanges with the U.S. private institute ATSC, the Advanced Television Systems Committee, and the European private organization DVB, Digital Video Broadcasting, which Mr. Nakamura mentioned, since 1994 and conduct various liaison activities with these organizations. ATSC has been governing the

ATSC format since before 2000, and DVB has been responsible for determining all the provisions of the European format. During our exchange process, which we do every year so I can't be certain of the exact date, from somewhere around 1998 there was some discussion about items that included copy control and this was way before any discussion of this U.S. broadcast flag. At the time, as Mr. Motohashi has indicated, we told the others that in Japan we intended to implement copy controls by scrambling broadcasts in such and such a format. But both DVB and ATSC were concerned that if they implemented such a scheme the receivers already on the market would be blacked out. I distinctly remember ATSC saying at the time that there were already two million receivers on the market. I think this is the reason why they couldn't adopt some copy control like DTCP for their standards at that stage.

Later, in the U.S., talk turned to EPN or the broadcast flag method, whereas in Europe, around 2000, DVB announced it would try implementing copy control. Although there were about 16 formats left at the end, it's true that the DVB at that stage had standardized copy controls, but this did not lead to application of the specification. I've never heard exactly why the specification was not applied, but it certainly fell apart there. Then, about two years ago, there was talk again about re-examining content protection and, as Mr. Nakamura has just said, the specification has still not been finalized as of their meeting in September this year, but there were indications of completing the standard by around November or within the year. I haven't got a hold of the details of their plan but this is how it has developed. You can take this as fact.

Murai (*Study Group Chair*) — Thank you very much. Next, Ms. Kawamura.

Kawamura (*Study Group member*) — At very end of its public comment, the Motion Pictures Producers Association of Japan says: "adopting EPN will conflict and impair this packaged product business and hinder normal use under the so-called three-step test. Therefore, as movie copyright holders, we cannot possibly accept EPN."

Yet the Japan and International Motion Picture Copyright Association, at the end of its public comment, Number 66 on page 19, says: "Employing only the COG

[copy one generation] signal format brings with it the unfortunate side effect of constraining the flexibility of content owners and broadcasters to address the various needs of consumers for the different types of content arising from the diversification of copy control regulations. Instead of abandoning the use of the COG signal format and redirecting the abilities of broadcasters to compete with conditional access systems, the better option is to complement the existing COG signal format with the voluntary use of a signal format with output protection but no copy control (EPN). We feel that adding EPN to the existing COG signal format will enhance the flexibility of content protection and will benefit consumers through broad access to TV programs with a wide range of options." Sorry for the length of that quote.

Reiterating, the first comment was by the Motion Pictures Producers Association of Japan and the second comment was by the Japan and International Motion Picture Copyright Association, both of which I believe are supposed to be organizations related to the Japanese movie industry. Yet they take opposite stands on EPN. I'd like to hear an explanation of this.

Kacho (*Study Group member*) — The Japan and International Motion Picture Copyright Association, or JIMCA, is a branch of the MPAA. So what is written in this public comment is the opinion of the MPAA in the U.S. This is not the opinion of the Japanese MPA. The opinions of the Motion Pictures Producers Association of Japan are those of Japan's movie producers. Why are they different? Despite the fact that the MPAA's comment can be read to mean either that EPN is good or copy-once is good, the structures of the movie business in the U.S. and Japan are completely different. The divergence in opinions can be attributed to the different circumstances in the two countries.

Murai (*Study Group Chair*) — Anyone else with comments or questions?

Ikeda (*Study Group member*) — I'm not positive, but I remember that somewhere in the DMCA [Digital Millennium Copyright Act] in the U.S., it was set out that placing copy controls on public broadcasting was prohibited. I wonder how this has affected things in the U.S. In other words, is it because of this premise that debate in the U.S. has been fixated on EPN?

Murai (*Study Group Chair*) — Can anyone reply to this question?

Yasue (*observer from Mitsubishi Research Institute*) — I've forgotten the number of the provision, but there is a stipulation to this effect.

Ikeda (*Study Group member*) — So, does that mean the debate on enacting copy controls in the U.S. was groundless from the beginning?

Yasue (*observer from Mitsubishi Research Institute*) — As far as free public broadcasting, that's true.

Takahashi (*Study Group member*) — Public comments have been mentioned. Last time I said I hoped we could invite the manufacturer that made comment 38 on page 11 of the public comments and I've learned that Intel made the comment. I searched on the Internet and found that Intel U.S. came to Japan in February 2004 and held a digital home press seminar in Tokyo for the news media. At the seminar, Intel's CEO explained that the characteristics of digital content could not be fully exploited within the framework of copy-once and that it was necessary to open content within the home. In other words, he claimed that the copy-once framework was not viable. I regret repeating my request, but I'd like to ask the Secretariat for its assistance since I think we'd benefit from hearing Intel's point of view.

Ogasawara (*Secretary and Head of the Content Distribution Promotion Office*) — We will contact Intel and confirm whether it is possible to address your request.

Next, about what Mr. Ikeda indicated, I happen to have the original of the aforementioned November 4, 2003, report in front of me. Just from what I've read, there is a statement in which the FCC decides to prohibit the use of copy destruction and copy protection in unencrypted digital TV because it is unencrypted digital broadcast television. I'd like to check further whether or not this is prohibiting ordinary copy control for public broadcasts, as has been said, and report back to you.

Murai (*Study Group Chair*) — Are there any more comments or questions? Yes, go ahead Ms. Kawakami.

Kawakami (*observer from Sony*) — I have just one clarification I'd like to make. Regarding the point that DTCP cannot be used when moving to encrypt broadcasts once receivers have already appeared in the market, even in the FCC's order, it is possible to use DTCP as an output after detecting the flag. Therefore, if made compulsory by law or whatever, it is possible to use DTCP for outputs even if the broadcasts are not encrypted. Thus, if someone should investigate the details of the ongoing DVB debate, I think they should watch to see whether the debate at this stage turns towards using copy-one-generation or EPN because technically it can be used.

Takahashi (*Study Group member*) — Looking at the Lower House Opinions (4) on page 4 of Reference 1, the main thrust of the argument for Hollywood's broadcast flag mechanism is that without reducing the threat of indiscriminate redistribution of high-quality high-definition TV content, broadcasters would not be able to use this content and America's overall move to digital TV would be delayed. In contrast to this, we've heard from Ms. Kawamura that consumer groups insist this will not happen. What I would like to know is what is the initial situation of TV shows in the U.S. I realize there are all kinds of shows including those made by Hollywood, but, for example, in Japan we watch shows like *24* or *The West Wing* on DVD or TV. What's the situation in the U.S.? If no one knows at the present time, then please look into this. Someone mentioned that the circumstances in the U.S. are extremely broad, but nonetheless I'd appreciate someone looking into some very straightforward TV series that we are familiar with.

Ogasawara (*Secretary and Head of the Content Distribution Promotion Office*) — I understand what you are saying. Along with what Mr. Hori pointed out, we will try to look into the several examples you have mentioned.

Uei (*Study Group member*) — Mr. Shiina first spoke about this, and now as Mr. Ikeda has also said there are many areas of large, fundamental differences in American

and Japanese copyright law. Especially the provision in the DMCA that prohibits applying copy controls to any free broadcasts other than pay-TV. The existence of this accounts for an extremely large part of the differences in the legal systems, and of course programming. I don't think this is a trivial problem that can be overlooked as Mr. Tokoro has suggested. What are your thoughts on this?

Murai (*Study Group Chair*) — Does anyone have comments on this? Then, let's put this issue aside and move to other questions. Yes, go ahead Ms. Kawamura.

Kawamura (*Study Group member*) — Thinking ahead, it's my hope that we can invite someone from the position of content producers again to this Study Group to hear their comments. We've heard from broadcasts, manufacturers, and rights holders so far, and in the past content producers as observers — for example, Mr. Takashiro of Future Pirates — spoke during the examinations for the Third Report, which I participated in. I wonder if we could look into getting such an observer.

Ogasawara (*Secretary and Head of the Content Distribution Promotion Office*) — We'll contact the person you mentioned and check whether we can schedule him in.

Seki (*Study Group member*) — I can't let what Ms. Kawakami has just said create any misunderstanding about my original statement. The talk in the U.S. at the time was not about DTCP as a whole but about Japan thinking of doing 40 or 50. It was not a conversation about what to do with the whole of DTCP.

One more thing, though now there is mysterious talk coming from the governance side, at the time legal backups were premised on the notion that the DTCP rules could only be used for scrambling, that is for protection.

Kawakami (*observer from Sony*) — That was true at the time, but in response to the U.S. moves, DTCP can now be triggered at an intermediate stage in cases where there are legal constraints. Because this is now possible, we have, in the U.S., asked the FCC to make DTCP an authorized technology.

Seki (*Study Group member*) — Ah, *legally*. But at the time, there was no such conversation.

Kawakami (*observer from Sony*) — That's how it was. That's what led to the change in the interim.

Seki (*Study Group member*) — But factually, at the time, that's the way it was.

Kawakami (*observer from Sony*) — Yes, that's right.

Motohashi (*observer from NHK*) — I think it's appropriate for someone not on the side of the consumers or the manufacturers to comment on this conversation. I think what we are getting confused about, and this includes myself as well, is the difficulty in understanding that the conversation is split into two levels or two phases. One is the discussion of what type of controls to employ, copy control, copy-one-generation, EPN, or some other, and the other discussion is whether scrambling is needed or not as a technical enforcement to screen out non-responsive devices. Where there is legal force, scrambling is not necessary. Because of this confusion, I think it is best if we can discuss these technical issues at the next meeting or the meeting following that and work toward gaining a clear mutual understanding by all.

Murai (*Study Group Chair*) — Yes, Mr. Tago. Go ahead.

Tago (*Study Group member*) — As mentioned, the biggest difference between Japan and the U.S. is, in fact, the presence or absence of scrambling. I don't know what will happen in the future with the broadcast flag itself, but scrambling is the biggest difference. In other words, in Japan you can't watch this content without a B-CAS card. Now there hasn't been much debate here about whether this is in fact a good thing or not, but at any rate this is the biggest difference. At the next meeting, if possible, I'd like to give a brief explanation about this area.

Murai (*Study Group Chair*) — Thank you very much. Mr. Shiina, go ahead.

Shiina (*Study Group member*) — I have a request now that our conversation has covered technical explanations. “Move failure” was repeatedly quoted during the course of the examination of EPN. This got started when, after it was pointed out that copy-one-generation produced this move failure, the discussion moved to EPN. Anyway, as far as I understand, and I apologize for being a novice in this area, DVD drives and other device drives should have commands such as compare or test and a mode that verifies such recordings. If such safeguards are in place, move failures in principle should not occur. What I’ve heard is, however, that with demands for cheaper devices or because of competition in writing speeds, these safeguards have been removed, which means that move failures can occur. Because of this, at the next meeting I’d like a clarification of the technical background and the circumstances when this move function that conforms to the copy-once rules was established.

Murai (*Study Group Chair*) — Thank you very much. Are there any more comments? Ok? Thank you for all your discussions.

Allow me to summarize the several themes discussed today. Today, we had a presentation on the circumstances in other countries concerning content usage as how they compare to the circumstances in Japan. As many of you indicated during the discussions, Japan and these countries are different in terms of both law and culture. Our present discussions are premised on the desire to develop abundant Japanese digital content in keeping with the arrival of the full-digital era starting in this country in 2011 and on the assumption that terrestrial digital broadcasts will be an extremely important market for the abundant development of such digital content. Within these premises, our mission is to consider the method by which this country’s terrestrial digital broadcasts will aid the development of digital content. For this reason, I believe the circumstances in other countries are best taken as nothing more than references, though they should be taken into consideration wherever possible. Nevertheless, although many questions were tabled today, I think it has become absolutely necessary to have a process going forward to explain or convince people about various questions so that we can continue to press ahead with rulemaking on content usage. In this sense, having discussions and surveys of rules

in other countries like today and reaching a common understanding among all the members, in order to be able to explain definitively the rules in this country, and then receiving consent through such a process, I think, is best.

At the present time, I have the hope that the understanding of various content protection mechanisms is gradually getting deeper. There is, however, still some commentary that discussions of problems of encryption, that is to say scrambling, over-the-air broadcast signals and problems of handling such signals after they have been received by tuners is confusing and difficult to understand. Since the technologies that are behind these various issues are very important factors — along with legislation and culture — in the discussions at hand, I hope to further the understanding of these technologies at the next opportunity by preparing explanations of the essential meaning of these technologies beginning from a slight abstract division of technology.

Descriptions of technologies will include some explanation of content protection standards debated on the international scene. This has also become one more essential factor with regard to the international competitiveness of digital content. From this international perspective, I believe there will be expectations for more detailed examinations of these points and a necessity for explanations of information on overseas trends as called for, while keeping in mind the differences in the soil, the culture, and the law. Therefore, I thank those people involved in these matters in advance.

As it was pointed out, I believe differences in the culture of TV with other countries, such as the relationship between programming and pay-TV, are very important contextually. So I'd ask everyone to make their explanations with the understanding, wherever possible, of the differences in TV cultures.

One more point. There were several questions raised today that have not been answered. Since there was provision made for an extra meeting in the schedule given out at the first meeting, I will take advantage of this opportunity and ask the Secretariat to prepare an extra meeting where answers can be presented among this Study Group and the process advanced with a common understanding by all.

Finally, as I said last time, in the interest of efficient discussions, anyone having questions or items that should be debated, or knowing of people whose opinions this Study Group should hear — even today several such people were

mentioned — should direct those comments to the Secretariat as necessary. We will proceed while trying to fit these suggestions in as best we can. This also includes opinions, and several were advanced today, about the proceedings of the debate itself. At this stage, are there any comments about this procedure?

I ask that you work with the Secretariat as they proceed with the summarization work, and cooperate as you may be given some requests now and then by the Secretariat.

Finally, Mr. Ogasawara, do you have anything to add?

Ogasawara (*Secretary and Head of the Content Distribution Promotion Office*) — About Reference 5 handed out just now, the next meeting is on Tuesday, November 21st, and following that there are four more meetings in November and December. The times and locations are summarized for your information.

The next meeting will deal with the state of content protection technology. Some members at the start of the Study Group have already mentioned several topics they wish to hear, for example, details of EPN or, as Mr. Shiina pointed out, the several technical problems in copy-once that should be cleared. The Secretariat has also already considered some topics to be confirmed technically since the Terrestrial Digital Broadcasting Study Group. We will put these topics together and be speaking with some of you, including those making presentations. In any case, we hope to start the discussions from an accurate foundation on both EPN and copy-once. Also, we are considering putting together outstanding matters from today's discussion about foreign countries and perhaps outstanding matters from the next meeting and dealing with them at the November 27th meeting.

Furthermore, we had suggestions today of inviting a manufacturer and a content producer to these proceedings. The Secretariat will get in touch with these parties and see if we can schedule them in. Thank you very much.

Murai (*Study Group Chair*) — Thank you very much, everyone. This adjourns today's meeting.