

Telecommunications Council, Information and Communications Policy Committee Digital
Content Trading Promotion Committee 3rd Meeting Minutes

1. Date: 16:00 – 17:30, Friday, October 24, 2006
2. Location: CDE Conference Room, Mita Kyoyo Kaigisho (Japanese Government Conference Building)
3. Attendees (Honorifics omitted)
 - (1) Committee members (Including expert advisors)

Jun Murai (Chair), Nagaaki Oyama (Vice- Chair), Mutsuya 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 Doi, Fujio 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.), Yoshiji Nakamura (Japan Association of Music Enterprises), Keiya Motohashi (Japan Broadcasting Corporation [NHK]), Kensuke Yasue (Mitsubishi Research Institute, Inc.)
 - (3) Secretariat

Ogasawara, Director of the Contents Development Office, Information Policy Division, Information and Communications Policy Bureau
 - (4) Ministry of Internal Affairs and Communications

Katsuno, Deputy Director-General, Minister's Secretariat; Minami, Director of the Broadcasting Policy Division; Onishi, Director of the Regional Broadcasting Division

4. Agenda

- (1) Matters such as trends in foreign countries regarding the use of content (1)
 - Based on Document 1, Mr. Yasue, an observer, explained the digital broadcasting copy control trends in foreign countries by taking instances in the United States, France, and South Korea as examples.

- Mr. Ogasashara, Director of the Content Development Office, gave a supplementary explanation on the contents of Document 1.
- The Third Interim Report states that in foreign countries, content protection itself is not performed and schemes based on EPN are going to be introduced. In this connection, is there any country where any restrictions are imposed? The report also states that in South Korea, broadcasters requested device manufacturers and the government to take some measures. What are such measures like?
- My understanding is that copy controls are not carried out in any major country. In South Korea, four terrestrial broadcasters including KBS asserted to the government that it was necessary to apply copy controls to terrestrial digital broadcasting. In addition, those broadcasters requested device manufacturers to take steps, if possible, to impose restrictions on items such as copy functions in terrestrial digital broadcasting for mobile terminals.
- The legal system regarding copyright in the United States is quite different from that in Japan. For example, in the United States, fair use is allowed, and copyright exists with no neighboring rights in existence, while in Japan, this is not the case. Do device manufacturers believe that there is no problem even if EPN is introduced by ignoring these differences?
- I understand the fact that there are differences between the copyright law in Japan and that in the United States. In this regard, my understanding is that the degree of difference is not high, when this matter is seen from the point of view of what should be done for the spread of terrestrial digital broadcasting. In the United States, the argument is made that only prevention of Internet transmission is desired. In Japan, the argument is that it would probably be too severe if the copy controls that are applied to pay broadcasting were to be imposed on public broadcasting.
- In the United States, opinions were expressed around 2001, by Hollywood and by broadcasters, to the effect that it might probably be necessary to take protective measures accompanied by scrambling. However, digital broadcasting had already been started in 1998, thus there was the issue of legacy receivers. Therefore, it was inevitably impossible to take technical protective measures. We should share an awareness of this fact. It is not that the MPAA and broadcasters agreed to the broadcast flag, which was understood to be equivalent to EPN.
- [Trends in France] Article 122-5 of the French Copyright Law and Article 30 of the Japanese Copyright Law are mentioned as provisions for private use. In this regard, it is not meant that these two articles are in close agreement with each other. There is an issue of whether copy-never DVDs violate the amended French Copyright Law that is to be applied. My understanding is that

this Copyright Law is not violated, provided that such DVDs are protected by effective technical means, and that there is no problem with the way the content is used or with the contracts concluded with consumers.

- The latest amendment of the French Copyright Law was made basically for the purpose of amending this law based on the pertinent EU Directive. In this regard, the EU directive does not cover all the items of domestic copyright laws. The Directive, which contains principles, allows room for individual discretion in relevant countries.
- In the United States, terrestrial radio waves do not hold a very strong position. For example, full coverage is provided by entities that provide satellite broadcasting services, for which subscribers have to pay, including the following: providers of channels dedicated to sports, such as ESPN; cable television companies; and DBS. It is true that some of the drama content that is brought to Japan is broadcast over terrestrial radio wave networks, but most of it is broadcast on pay channels like HBO. Television viewing trends in the United States differ greatly from those in Japan, where terrestrial radio waves are centered.
- NHK's public comments say that adverse effects will be exerted if no effective content protection is provided in terrestrial digital broadcasting, which will handle the first output by which contents are handled. On the other hand, U.S. consumer groups' public comments say that high quality contents have not disappeared from television broadcasting. In this connection, I would like to request that investigations be made of instances in the United States.
- We will conduct investigations, to the extent feasible, with regard to the following questions, for example: What items are run through television programming? What items are provided by Hollywood? How are they evaluated in Japan? Is it that the primary windows are pay broadcasts, as in the case of HBO, or are they so-called free commercial broadcasts, as in the case of CBS? We will provide relevant information after identifying networks and broadcasting areas.
- I feel that Japanese television stations provide very attractive content. I would like to know whether content as attractive as that in Japan is run in large numbers in foreign countries and whether the content to be protected is not protected in such countries although it is run.
- In France, there was a lawsuit over DVD copy guard. If I remember right, a decision was handed down last year to the effect that DVD copies would impede the normal use of literary works and that the authors' due benefits would be unduly impaired. My understanding is that in this case, judgment was passed strictly based on the economic effect on rights holders, that the amended law was in line with this legal precedent, and that this issue is not a matter of contracts.

- It was mentioned that at present, there is no country where copy controls are carried out in regard to digital broadcasting. Am I right to understand that this applies to public broadcasting and free commercial broadcasting? I would like to request that a search be made for any country where legal restraints are going to be imposed with regard to copy controls. Was there not any argument in the United States calling for measures other than the broadcast flag? It was mentioned that in France, the copyright Law was amended based on the pertinent EU directive. I would like to request that supplementary information be provided as to the background that led to the legislative action.
- We will conduct investigations on copy controls in digital broadcasting on the assumption that such broadcasting refers to public broadcasting and free commercial broadcasting. We will also conduct supplementary investigations on a separate basis regarding the trends of studies conducted by technical bodies.
- In the United States, discussions are held exclusively on the broadcast flag and on copy controls regarding digital radio broadcasting as related to sound recorders. Since the discussions were held at a public hearing, these were the only items that were discussed. In France, the Copyright Law was amended because of its obligations as an EU member country, and in the discussions held in Parliament, various people including members of the ruling party and the opposition parties gave opinions.
- Since 1994, information has been exchanged every month on a periodic basis among the ARIB in Japan, the ATSC in the United States, and the DVB in Europe. When copy controls were discussed in the course of information exchange, we said that we were thinking of implementing copy controls by scrambling broadcasts. Both DVB and ATSC then said that they were concerned that the implementation of such copy controls would cause all receivers to be blacked out. This is the reason why they were unable to take copy control measures meeting their standards, such as DTCP, at that stage.
- Public comments of the Motion Picture Producers Association of Japan, Inc. say, “We, as holders of movie copyrights, can never approve the adoption of EPN, since this will impede normal use as referred to in three-step tests.” On the other hand, public comments of the Japan and International Motion Picture Copyright Association, Inc. say, “It is considered that by adding EPN to existing COG, the flexibility of content protection will be reinforced, thereby bringing benefits to consumers.” I think that both associations are bodies related to movies. Why do they differ in their ways of thinking about EPN?
- The Japan and International Motion Picture Copyright Association, Inc. is a local agency of the MPAA. Those public comments were stated by the MPAA in the United States and not by people

in Japan. On the other hand, Japanese movie producers stated the public comments of the Motion Picture Producers Association of Japan, Inc. There are differing opinions between the United States and Japan due to dissimilarities in the movie business schemes.

- If I remember correctly, in the United States, the DMCA provides that copy controls shall not be applied to public broadcasting. I presume that EPN in the United States is discussed strictly based on this provision, and that the people concerned are not in an environment where discussions are held on the imposition of copy controls.
- The CEO of Intel Corporation in the United States visited Japan in February of 2004 and held a “digital home press” seminar in Tokyo for the news media. In the seminar, he explained that the characteristics of digital content were not capable of being fully exploited within the framework of copy-once, and that it was necessary to open content within homes. I would like, by all means, not only to solicit Intel’s public comments but also to be provided explanations by Intel.
- It was mentioned that DTCP could not be used when broadcast radio waves are encrypted after receivers have appeared on the market. In this regard, under orders of the FCC in the United States, it is possible to use DTCP as output after flags have been detected. If laws or the like impose the obligation, it is possible to use DTCP for output even if broadcast radio waves are not encrypted. DTCP can thus be used for copy-one-generation or for EPN. Accordingly, it is therefore necessary to watch to see whether arguments at the relevant stage will turn toward using DTCP.
- I would like to request that investigations be conducted as to how television dramas are broadcast at the beginning in the United States.
- There are many areas of large difference in copyright laws between Japan and the United States. Particularly, in the United States, the application of copy controls to free broadcasts, which are distinct from pay broadcasts, is prohibited. This point accounts for a large part of the difference in legal systems between the two countries. I do not think that this is a trivial problem that can be overlooked.
- In the near future, I would like to hear comments from someone in the position of a content producer, such as Mr. Takashiro of Future Pirates, Inc. Accordingly, I would like to request that steps be taken to make those arrangements.
- This statement concerns DTCP. The talk in the United States at that time was not about DTCP as a whole. Besides, at that time, it was possible under the DTCP rules to use legal backups only by scrambling, that is, by providing protection. This point was the premise for this matter.

- That was the case at that 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. Such being the case, we filed a request with the FCC in the United States to authorize the DTCP technology.
- There were two topics of discussions. One was “What type of controls should be employed for copy-one-generation and EPN?” The other was “Is scrambling necessary or unnecessary as technical enforcement to eliminate non-responsive devices? Where there is legal force, scrambling is not necessary.” The fact that discussions have been split into two levels or two phases is difficult to understand.
- The biggest difference between Japan and the United States lies in the presence or absence of scrambling. In this regard, in Japan, content cannot be watched if no B-CAS card is available. However, no discussions are being held about whether this is in fact allowable.
- Copy-one-generation caused move failures to occur. In this sense, discussions turned to EPN. Nevertheless, DVD device drivers are supposed to have commands pertaining to modes for verifying that recording is performed. If such verification is conducted, move failures are not supposed to occur, in principle. I hear that demands for cost reduction or for competitive writing speeds resulted in the occurrence of move failures. I would like to request that the circumstances, including the technical background, be clarified where moves based on the copy-once rules were established.
- Discussions are held on the assumption that the age of full digitalization will be entered in 2011, that digital content will grow abundantly, and that terrestrial digital broadcasts will form a very important market. It is true that the circumstances in various foreign countries serve as nothing more than reference information, but I believe that such information will become necessary in the course of making various convincing explanations. In this sense, I think that it is advisable to hold discussions based on surveys, as has been the case today, thereby leading all committee members to have a common understanding.
- I would like to request that the actual conditions and essential meanings of technologies be explained at the next meeting. International competitiveness will become very important. In this sense, it will be necessary for explanations to be given about relevant information with differences in environments, cultures, and laws kept in mind. Moreover, I think that differences in television cultures, including relationships between programming and pay broadcasts, will also constitute a very important background. I hope that explanations will be given after as much knowledge as possible is gained on this point.

(2) Schedule of future studies

- Mr. Ogasawara, Director of the Content Development Office, explained the schedule of future studies based on Document 5.

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