

Telecommunications Council, Information and Communications Policy Committee
Digital Content Trading Promotion Committee 7th Meeting Minutes

1. Date and Time: Tuesday, December 19, 2006 16:30 – 18:00
2. Location: Large Conference Room, Mita Kyoyo Kaigisho (Japanese Government Conference Building)
3. Attendees (Honorifics omitted)
 - (1) Committee members (Including expert committee members)

Jun Murai (Chairman), Nagaaki Ohyama (Deputy Chairman), Mutsuya Asano, Tomoyuki Ikeda, Ryohei Ishii, Tsunetoshi Ishibashi, Yu Inaba, Gota Iwanami, Noriyuki Uei, Tetsuya Ohbuchi, Naotaka Kacho, Makiko Kawamura, Junichi Kishigami, Nobuhiko Sato, Kazuo Shiina, Mitsuo Sugawara, Yoshiyuki Seki, Nobuko Takahashi, Shinji Takada, Shuichi Tago, Mario Tokoro, Miwako Doi, Fujio Nakajima, Miki Nagata, Akio Nosaka, Hidetoshi Haeno, Toshio Fukuda, Yoshitaka Hori (A total of 28 persons)
 - (2) Observers

Yoshitaka Sugihara (Intel Corporation); Jun Takei (Intel Corporation); Yuichi Tsubouchi (Sony Corporation); Shuji Nakamura (Mitsubishi Research Institute, Inc.); Yoshiji Nakamura (Japan Association of Music Enterprises); Kohsaku Hatanaka (Intel Corporation); Keiya Motohashi (Japan Broadcasting Corporation [NHK]); Kensuke Yasue (Mitsubishi Research Institute, Inc.)
 - (3) Secretariat

Ogasawara, Director, Contents Development Office, Information Policy Division, Information and Communications Policy Bureau
 - (4) MIC

Suzuki, Director-General, Information and Communications Policy Bureau; Terasaki, Director-General for Policy Planning; Katsuno, Deputy Director-General, Minister's Secretariat; Sato, Director, Information Policy Division; Ando, Director, Terrestrial Broadcasting Division; Fujishima, Director, Regional Broadcasting Division

4. Agenda

(1) Concept regarding the use of content — Discussion (2)

- Based on Document 1, Mr. Sugihara and Mr. Hatanaka, observers, explained the content use

technologies.

- Based on Document 2, Mr. Ogasawara, Director of the Contents Development Office, explained the matters related to the consolidation of points at issue.
- EPN does not impose restrictions on generations or numbers of copies. It imposes output restrictions that disable the transmitting of videotaped broadcast programs to the Internet in a viewable state. I presume that EPN is a technical restrictive means that is effective to a certain degree against serious economic losses, since it is possible to prevent unlimited copying on the Internet. It is advisable in terms of striking a balance to apply EPN to terrestrial broadcasting, which is key broadcasting, when content protection and convenience are considered.
- It is very important to study new rules for the protection of all content in keeping with technological progress. In this regard, from the device manufacturers' viewpoint, new rules require development costs, and if products comprising contents different from conventional content are put on sale, there is a possibility of the market being confused. From the viewpoint of sound market development, it is necessary to gain the understanding of consumers and sales agencies in formulating rules. The current rules were established based on international rules and it is no mistake to say that the present rules are compatible with the requirements of the relevant organizations, resulting in the market not being significantly confused. I presume that the development costs of the current rules are absorbed on a global basis, since they are international rules.
- Device manufacturers are not in a position to answer the question of why the copy-once rule is actually applied at present. We would like to request broadcasters to give a definite answer to sales agencies and customers as to why the copy-once rule is applied.
- In every country, terrestrial broadcasting is key broadcasting and constitutes an important infrastructure. It was explained that the copy-free rule is applied in foreign countries, and that in the United States, arguments are made about the legislation for the broadcast flag. In the case of terrestrial broadcasting in Japan, arguments are made concerning not only scrambling broadcasts, but also application of the copy-one-generation rule. I presume that this is excessive by global standards.
- The relationship between user convenience, copyright, and devices has been discussed to a considerable extent, and points at issue have been consolidated. I presume that it is a fundamental mission of public broadcasting to allow the general public to freely discuss, review, study, and at times criticize the programs that are broadcast. There is an issue of how to strike a balance between copying and copyright protection. It is also necessary to hold discussions not only from the viewpoint of the relationship between user convenience and copyright, but also from the viewpoint of the roles of public broadcasting, copyright protection, and rules for copying.
- When seen from the point of view that terrestrial broadcasting is key broadcasting of an extremely high public nature, I presume that the copy-free rule is a bit too strict and therefore the EPN rule should be used. Broadcasters and copyright holders make arguments by referring to the peculiarities of Japan. In this regard, JEITA proposes an EPN-COG rule as a compromise, based on

the following reasoning. The COG rule or an amended COG rule based on partially modified interpretation should be used concurrently with the currently applied rule, and the items that have an extremely high public nature and those for which copyright holders' rights should be considered more deeply should be clarified through discussions.

- We cannot help saying that a situation where it is impossible to perform management of generations or numbers of copies, resulting in large numbers of copies being made, paves the way for possible serious violations of copyright. At present, we cannot take the standpoint that all broadcast programs should be subjected to the EPN rule and only the important ones should be subjected to the COG rule.
- We think that several sets of new rules are conceivable. If very competent and effective content protection can be provided in reality, it is not necessarily mandatory to apply the COG rule. We cannot help thinking that EPN is insufficient in terms of efficacy and effectiveness. Therefore, it is desirable that it be possible to develop a new protection technology which replaces the currently available copy-once scheme and which is highly effective and greatly convenient from the viewpoints of viewers and users.
- We are conducting studies on whether a changeover can be made to the EPN scheme in the case of educational programs of a high public nature and programs used in school classrooms, etc. If this is to be realized, we have to ask performers and those who collaborate in producing programs (program collaborators) to agree to an arrangement whereby such and such programs will be broadcast in accordance with the EPN scheme, which is a content protection method that differs from the conventional one. It is difficult to uniformly apply the EPN rule to all programs, since this matter affects not only the trust relationship with rights holders and program collaborators, but also all of the various contracts.
- It is true that terrestrial broadcasting in both Japan and the United States transmits many programs with a high rating, but this fact simply does not warrant the argument that it is permissible to apply the EPN rule to Japan as in the case with the United States. In the United States, terrestrial broadcasting is performed in an environment where remarkable progress is made in pay broadcast mass media and multichannel mass media including cable television and satellite broadcasting. When seen from the viewpoint of content production, structures have been established whereby budgets are recovered in such a way that expenses are recouped not only through terrestrial broadcasting but also through various other items, including the Internet, DVDs, and overseas sales. In the case of Japan, terrestrial broadcasting is still the center of focus. In terms of the viewer needs, great expectations are still entertained in regard to terrestrial broadcasting. From the viewpoint of content production, the greatest amount of money is spent on the production of terrestrial broadcast programs.
- From the standpoint of ensuring high quality content, it is necessary to implement copy controls. We believe that generation management is also very important. We are therefore contemplating whether it is possible to make improvements within the framework of the copy-one-generation scheme.

- In the case of EPN, output controls are implemented, but it is impossible to perform generation control, and there are practically no restrictions on numbers of copies. In other words, we feel that EPN is equivalent to copy-free. Therefore, we cannot approve EPN. In the case of concurrent use of the EPN rule and the COG rule, even though this is practiced at a private level, the rights of people including creators will naturally be violated significantly if large quantities of copies are made.
- We intend to formulate new rules by improving the copy-one-generation rule. We believe that all of you have come to have a deeper understanding of the necessity of copy controls and generation management. If the consent of the people concerned is obtained, we would like to seek the possibility of new rules and formulate them. The EPN scheme is practically incapable of implementing copy controls and virtually falls into the category of the copy-free scheme.
- In the case of concurrent use involving EPN or copy-one-generation, etc., if coordination with multiple rights holders is not conducted properly, there is a possibility that we will not be able to formulate what we consider to be good plans. It is very difficult to draw a line of demarcation between EPN and COG. There is a possibility that concerned rights holders for content subjected to EPN will express complaints, that future negotiations will become significantly severe, and that compensation will be demanded. Based on the above, it is considered possible that unit prices per program will rise so much that the scheduled number of programs will have to be decreased.
- It is very difficult to produce programs if the performance of some performers is subjected to the COG rule and that of other performers is subjected to the EPN rule in the same type of programs. It is true that there are fillers and the like that are supposed to be capable of being produced regardless of the protection status, but we presume that quality will be reduced even in the case of programs that can be produced in a relatively ready manner. This is because fillers and the like are quite limited in that they pertain to the selection of music, for example.
- We find it somewhat difficult to guess what programs viewers want subjected to the EPN rule and the percentage of such viewers. At present, commercial broadcasts that correspond to school education programs do not exist, therefore we have yet to conduct any studies in this field. When input errors are made with regard to COG and EPN, there is a possibility that claims for damages will be made. We wonder what actions will be available. Controls are implemented in terms of programs. Device manufacturers mentioned the issue of development costs. On the part of broadcasters as well, some costs will be incurred. We presume that in the end, rich content will be subjected to the COG rule, resulting in a fruitless outcome in that mere records of concurrent use of copy protection rules will remain.
- In the United States, in terms of legal controls, free broadcasts are subjected to the copy-free rule. I feel that in this country, all of society deals with this matter including the issues of the legal system, the social environment, various ways of thinking about literary works, and education. I believe that the DTCP rule was created in the American cultural climate. I think that in Japan, it is still necessary to perform enlightenment activities regarding copyright. If copy controls are to be implemented under such circumstances in Japan, I presume that it is necessary to impose certain

technical restrictions. In this sense, it seems to me that it is necessary to concurrently realize the following: Viewers' understanding will be obtained; enlightening activities will be performed; the issue of the legal system will be studied; and controls will be strengthened.

- Discharge of content to the Internet and to areas beyond the intended limits has a high possibility of directly leading to violation of copyright. It is therefore mandatory to apply protection technology to prevent the above, but this is still insufficient. It is necessary to keep guard against the copy-free function. Otherwise, the business of movie producers that subject copies to multiuse will be completely undermined. If the EPN scheme is thoroughly copy-free with respect to numbers of copies made and management of generations, we movie producers can never approve EPN, since the copy-never rule is part of our basics.
- It is very important to seek to establish new rules. However, if it takes so much time to review new rules that the realization or implementation of worked-out protection technology is delayed, I presume that large quantities of devices manufactured and sold in the meantime will turn into legacy devices, with the result that the effectiveness of any better rules worked out later will be lost.
- We can never approve the practice of leaving movie literary works copy-free. Digital technologies progressed, and the convenience of production-related functions has increased greatly. On this occasion, we would like to request that digital technologies be used to protect authors' rights to some extent, so that a balance will be struck between all parties in such a way as to prevent only a single party enjoying advantages.
- In the case of movies, there is a big difference in the windows for recovering invested capital between Japan and the United States. In addition, there is quite a difference in the priority of free television broadcasts in business. As you are aware, the movie productions of the Hollywood majors are marketed worldwide. Therefore, a large gap exists between those productions and Japanese equivalents from the viewpoint of scale, in that the market for Japanese movies is limited to the soil of Japan. I have my doubts about the simplistic way of thinking that such and such should be adopted in Japan since that is the case in the United States.
- In the case of EPN, it is infeasible to perform generation management and impose generation limitations. This fact means that reproduction masters, media usable as reproduction masters, and items delivered as reproductions eventually increase by geometrical progression. Individual users do not need such high quality. The kind of quality that is incapable of generation management is over-quality, and it does not agree with needs.
- I feel very happy that it was possible to find a new course of action in the stalemate argument involving an alternative of copy-once or EPN. There is a possibility that content protection rules and new laws that are closely related to the national life will greatly spoil consumer usability, resulting in the whole culture shrinking greatly. I have been speaking from the viewpoint that such a case should not be allowed to occur.
- Even if progress is made in technologies, resulting in increased convenience of reproduction for

consumers, there will not be a great change in the scale of users' acts of reproduction. Nevertheless, the total quantity of reproductions has increased as never before. It is therefore certain that mild compensation measures will become necessary to rectify this tendency. Starting next year, the Agency for Cultural Affairs will conduct studies on such matters. I would like to strongly request consumers to pass judgment on the statements of JEITA and rights holders in such a way as not to be misled by any preconceived notion.

- With regard to the issue of changing operations depending on broadcast programs, I have no knowledge of any problems regarding program procurement. In the first place, what broadcasting stations think is important. I would therefore like to abstain from making any comment on this matter.
- It is necessary to know what content is being run within the framework of the legal system and government administration. This information constitutes very important materials by which to pass judgment. I think that it is necessary to hold discussions on what the nature of content is and on what circumstances are involved in such content. Unless this is done, I presume that it is irrational to argue that what can be done in the United States can certainly be done in Japan.
- Before terrestrial digital broadcasting started in Japan, there was no case in the world where copyright protection was applied to terrestrial broadcasts and copying was restricted in any manner. It is not that a state where copies can be made without any restriction is wrong, but acts of making copies with no restriction are bad and illegal. If people intend to make money by illegal means, they have to put forth a lot of efforts. In this regard, it is very questionable whether the number of such people will increase if EPN is adopted and whether this can be prevented if EPN is not introduced.
- If there is a possibility of creating easy-to-understand rules to the extent that ordinary consumers do not perceive them as restrictions, I have no objection to seeking to establish such rules. The present situation is very confusing. If it is possible to prepare really good rules that are capable of solving this confusion, and if proper consideration is given to consumer utilization in such a way that the relationship between video recorders and broadcasting operations in Japan can be understood easily, and also if this cannot be realized unless new rules are set up, then I go so far as to think that new rules are worth being created even though new confusion occurs in consumers because of such new rules. If the fact that it is possible to perform high-definition videotaping is the only definite difference due to the transition to terrestrial digital broadcasting, then I presume that there is an option for establishing a new rule whereby restrictions are imposed only on high-definition videotaping.
- No definite answer was given to the question about the fact that all broadcast programs are subject to the copy-once rule. Therefore, the present situation is not well grounded. A question was raised as to whether it was possible to explain changes in the current conditions to performers in such a way that their understanding could be obtained. In this connection, I wonder if explanations were given to viewers. Current rules established for pay broadcasting are going to be applied, as they are, to terrestrial broadcasting and public broadcasting, without giving any explanation, and the

groundless copy-once rule is going to be changed without making any explanation. In addition, it is necessary to explain the above to performers. I cannot agree with this situation.

- We consumers are of the opinion that applying a new protection scheme like copy-one-generation is optional. If the necessity for such a new protection scheme can be explained, there is no change in our opinion. It is advisable to indicate at whose request reproduction restrictions are imposed.
- It was explained that rich content and first windows are features unique to Japan. However, based on surveys, this explanation was denied as not being factual. The basics of terrestrial broadcasting are that viewers can enjoy many aspects including videotaping. Thought should be given to returning to these basics. The fundamentals are that free commercial broadcasts and public broadcasts are being discussed. I presume that copyright should be discussed by going back to these fundamentals. Even if all broadcast programs involve rich content, logic does not hold that technical protection should be applied because of that. All literary works are protected by the Copyright Law and not by protection technology.
- In the public comment stage, many consumers chose EPN from among the four options by the process of elimination because they were not in favor of COG or copy-once. They feel that it is understandable that the rights holders are dissatisfied with the EPN scheme, which is incapable of preventing third-generation copies. That Item 2 was technically feasible was proved. It is desirable that progress be made in productive discussions toward the establishment of new rules in the short time remaining.
- I have not yet satisfied myself as to how to distinguish between “EPN” and “copy-one-generation,” depending on broadcast programs. After reading the opinions of the Japan and International Motion Picture Copyright Association, Inc. and the public comments regarding these opinions, as well as the supplementary opinions of the US Hollywood and the Japanese movie industry, many points arose with which I cannot satisfy myself. In looking at future trends in the United States, I presume that if persons who offer opinions are directly invited to give them, then many people will be able to share problems and awareness.
- It was mentioned that due to differences in industrial structures between Japan and foreign countries, Japanese terrestrial broadcasts involve rich content. In this connection, all members have the understanding that terrestrial broadcasting is key broadcasting. Viewers have been thinking that free terrestrial analog broadcasting is important in that it is very easy to use and view. In keeping with the transition to digital broadcasting, various rules were established behind closed doors and great trouble has occurred. At present, an unaccountably strange feeling is gradually spreading among the general public. I think that unless this issue is properly solved, free terrestrial broadcasting will be unable to remain positioned where it has so far been located.
- In relation to discussions to be held here on new rules and various topics, rights holders have been making frank statements regarding technical issues, various periods required for technical development, the issue of money, and various problems encountered. I would like to request that broadcasters and device manufacturers also provide information more properly. On that basis, it will be possible to hold discussions on how best to take action.

- I would like to request that specific information be provided, such as what effects will be exerted on existing machines and what should be kept in mind by people who are about to buy machines. Moreover, my understanding is that the content that will be run in new broadcasting styles will be capable of being viewed only by machines marketed around and after 2008 and not by those put on sale now. I would like to discuss this matter after information is properly offered.
- It is true that copyright should be protected, but this does not mean that it suffices to mechanically impose restrictions. I presume that it is impossible to realize digitization in 2011 unless a national understanding is gained, including the understanding of sales agencies and consumers, while both of the following items are neatly and carefully carried out: Copyright violations should be prevented; and the scope of permissible private videotaping and sound recording should be accurately understood.
- So far, there has been no change in the move provisions in the operating rules. Therefore, it is quite difficult for device manufacturers to completely prevent move failure by their own efforts. In this sense, they are endeavoring to make improvements in terms of hardware in order to minimize move failure as much as possible. In fact, according to JEITA's surveys of relevant manufacturers, as far as devices with integrated hard disks and tuners are concerned, progress is made in improvements, and currently, in the case of some of the manufacturers, there are no customer complaints at all about move failure.
- If the ARIB rules are newly changed, I think that the hurdles to clear may be high or low, depending on what the new rules will be like. It is therefore difficult to categorically state how many months or how many years it will take to meet the new rules. In any case, it will be a fact that some changes will need to be made to current products, and we can therefore say with certainty that development costs will naturally not be zero.
- If the ARIB rules are newly changed, broadcasters will only have to change CCIs, and therefore the effect on them will be minimal.
- Considerable progress has been made in what is called fact-finding aspects centering on technical matters, and a common awareness is forming in all members. This point is very important. Since points at issue have been consolidated, the foundation for further full-blown discussions has gradually been laid as to findings regarding what to discuss. I presume that if the outcomes are compiled in a paper, for example, it will greatly help hold congruent discussions in the future.
- There are differences in methods of protecting the content of terrestrial broadcasts between Japan and the United States. What matters in this context are not the general differences in legislation between the two countries, but the specific points constituting the disparities that warrant such differences in the above-mentioned protection methods. In preparation for conducting studies on whether the differences between the Japanese Copyright Law and the US equivalent are great enough to justify the differences in the protection methods, I would like to request that the differences, in what aspects, between the two Copyright Laws that lead to the differences in the protection methods be specifically pointed out. If this request is met, I think that I will be able to make a genuinely informative statement by focusing on that point. I hope that the requested point

will be clarified as early as possible.

- I have reservations about why it became necessary to discuss industrial standards like the ARIB rules at meetings of such a Council. I feel that it is necessary to reconsider technical standards, standardization frameworks, and processes, as well as transparency in addition. This is a good opportunity for reconsidering systems for administration and decision-making, including mechanisms for communication/broadcasting administration and copyright administration.
- I have come to understand that the business model for movies is one that is premised on secondary utilization and multi-use, and that copy management is an essential issue for the movie business. However, the business model for broadcasting is one that completes a cycle through primary utilization, and therefore, there are differences in copy management between movies and television programs. Consequently, it is impossible to discuss these content categories on a uniform basis. If it is necessary to subject broadcasting to the same controls as for movies, there is an issue of whether the business model for movies should be changed accordingly. If multi-use is to be promoted, there is an issue as to whether opportunities for secondary utilization will be properly guaranteed. I presume that these issues are closely related to the formation of trading markets, which belongs to a different theme of this committee.
- I highly appreciate the fact that rights groups and users as well meet together here to hold discussions. I even wonder why this was not done in the past. I appreciate the fact that it is possible to conduct very transparent discussions.
- If services are intended to be provided only for the convenience of suppliers, in such a way as to ignore the end users' intentions, then the market is certain to take revenge. Rights groups' concerns are well understandable. However, when end users' opinions are considered to be of primary importance, it is mandatory from now on to decide well-balanced methods that are capable of erasing rights groups' concerns as well. Under the current system based on COG, importance is attached to the viewpoint of preventing illegal copying by a small number of malicious people, resulting in inconvenience being caused to almost all people. It seems to me that this is excessive. Changes should be made in some way or another. Nevertheless, I presume that it is advisable for there to be well-balanced alternatives as well.
- Whether content is poor or rich depends on subjective standards, and the judgment differs from person to person. I think that it is high time to stop constructing arguments on content protection based on subjective standards. I presume that it is better to promote discussions on the optimal framework of content protection based on somewhat more objective standards.
- I felt that considerable progress was made in discussions of the awareness of fact-finding and technical matters, thus permitting very substantial discussions to be held. However, in the discussions held so far, there were requirements based on unidentified information and requirements based on the recognition of untrue matters. I feel that it is necessary to keep straightening out these requirements. In this sense, I hope that continuous efforts will be made to clarify them.
- My understanding of the introduction of new technologies and new rules is as follows: Rights

holders will suffer from any relaxation of rights; device manufacturers will incur new development costs; customers who bought current devices will blame manufacturers for the need to replace such devices; and thus all parties will incur losses in money or time. Therefore, at one time, I thought that no one would support new technologies or new rules, but after hearing the day's discussions, I feel that there is still an atmosphere that favors the studying of new technologies. I believe that there are still distances between parties in different positions. In this regard, I hope that one step forward will be made from the viewpoint of achieving the closest possible compromise.

- Dialogues were initiated based on my request that discussions be held from the following viewpoints: how developments will be made in the basic mass media markets such as the key or public terrestrial broadcasting market on the assumption that digital technologies will constitute the base; what effects will be exerted by the business using the mass media; and how developments will be rendered sound. Arrangements were made for sufficient time to be spent on hard-to-understand technical aspects so that you would be able to understand what would be different between the digital age and the analog age. Since such a process was followed, a common understanding was reached as to how the copy-once scheme was decided, what the grounds for the application of the copy-once rule were, which portions are covered by the ARIB rules, which portions are covered by the technical concept standardized as the DTCP rule, and the background where those technologies were applied. When digital broadcasting was initiated, the so-called copy-once scheme was pointed out as a task to be solved, thus there is an issue of what aspects should be improved from now on to solve this task. I presume that it is possible to consolidate the options for methods of solving this issue.
- In giving consideration to the options, arrangements were made for all members to participate as stakeholders. As a result, it also became clear that persons in respective positions have opinions on the individual options. In promoting discussions from now on, it is mandatory for participants to offer opinions, to state the reasons for them, and to propose methods of promoting discussions. It is therefore necessary that the opinions of individual persons concerned be coordinated with regard to the relevant points at issue.
- Now that the options have become clear, there is an issue of what specific effects will actually be exerted on viewers. I therefore feel that it is necessary to promote discussions in such a way that questions will be put to persons in relevant positions in the course of consolidation of the options. In this connection, I would like to ask the Secretariat to make arrangements whereby the options and their effects will be studied and the measures for them will be taken.
- A managerial opinion was expressed that it is better to directly conduct hearings from a number of persons. In this regard, I would like to request that arrangements be prepared where committee members will be asked to give comments and advice on matters such as orderly studies of the Japanese and US Copyright Laws in the course of promotion of future discussions.
- With regard to specific measures for the improvement of the copy-once scheme, committee members have shown most of the necessary information including options, facts, and opinions. I would like to request that such information be summarized. I would like to have relevant

discussions promoted in this committee in March of next year at the latest.

- If the fact that an unlimited number of copies can be made after copy-one-generation is a problem, then how about limiting the number of copies to five or ten, for instance? Is this not sufficient for ordinary people? Is it difficult to realize a method whereby content is erased after five or ten copies are made?

(2) Schedule of future studies

- Based on Document 6, Mr. Ogasawara of the Director, Content Development Office, explained the schedule of future studies.

End