IAJ THIRD STUDY COMMISSION QUESTIONNAIRE

November 11 2012- November 15 2012 Washington DC, USA

TOPIC 2012

The infringement of copyright and other intellectual property rights, especially through the use of the internet

In today’s world the internet is an indispensable source of information to mankind. It is simply unimaginable how the world existed without it. The internet has been an important force in creating the global village and without it we would surely be at a loss.

In 1987 and 2003 the Third Study Commission discussed several aspects of organized crime, such as new methods of investigation and the gathering of evidence, safeguarding of human rights and the protection of witnesses. At the annual meeting in 2011 the Third Study Commission looked into another aspect of organized crime under the title “Organizations: Identification, Seizure and Forfeiture”. The Third Study Commission explored different legislative responses to what is considered to be a serious issue that transcends national borders.

This year the US Patent and Trade Office will host the IAJ annual conference. The questionnaire will enable the Third Study Commission - in cooperation with the US Patent and Trade Office - to examine whether, and how, legal systems of member countries cope with cybercrime relating to copyright and other intellectual property rights. The purpose of the questionnaire is to explore the extent to which member countries have implemented legislation that deals with this subject, and whether such legislation is effective in addressing these offences.

QUESTIONNAIRE

Question 1

- Does your country have specific legislation dealing with:

1.1. The violation of copyrights?

Yes.

1.2. Other intellectual property rights?

Yes.

1.3. If so, could you specify to what extent?

Patent right (Patent Act), utility model right (Utility Model Act), design right (Design Act), layout-design exploitation right (Act on the Circuit Layout of a Semiconductor Integrated Circuits), breeder’s right (Plant Variety Protection and Seed Act), trademark right (Trademark Act), and so on.
1.4. Do specific rules exist for criminal investigation?

Our organization understands that the investigation authorities conduct the necessary criminal investigation upon crime relating to copyright and other intellectual property rights as in the case of other types of crimes. Our organization does not know if there are any specific rules for criminal investigation.

1.5. If not, is any such legislation under consideration?

Our organization does not know.

Question 2

- Does your country have specific legislation dealing with:

2.1. Trademark

Yes.

2.2. Patent

Yes.

2.3 If so, do these laws include specific punitive measures?

Yes. There are penal provisions to punish a person who has intentionally infringed another person’s trademark right or patent right (imprisonment with work for a term not exceeding ten years or a fine not exceeding 10 million yen in the case of an individual (Article 78 of the Trademark Act, Article 196 of the Patent Act), and a fine not exceeding 300 million yen in the case of a juridical person (Article 82 of the Trademark Act, Article 201 of the Patent Act).

Penalties shall also be imposed on a person who has intentionally imported or exported goods that infringe another person’s trademark right, patent right, etc. (imprisonment with work for a term not exceeding ten years or a fine not exceeding 10 million yen, or both, Article 108–4, paragraph (2) and Article 109, paragraph (2) of the Customs Act). As border enforcement, the Director-General of Customs may take measures such as confiscation, disposal and return of shipment with regard to such imported or exported goods that infringe a trademark right, patent right, etc. (Article 69-2, paragraph (2) and Article 69-11, paragraph (2) of the Customs Act).

Question 3

- Does your country have specific legislation dealing with:

3.1. The protection of copyrights based on the use of internet?

Yes.
3.2. If so, could you specify and give a concrete example?

The Copyright Act.

Question 4

- Does your country have specialized agencies to investigate and identify the violation of copyrights and other intellectual property rights, especially through the use of the internet?

As far as our organization understands, the government of Japan is promoting comprehensive measures in cooperation with the World Intellectual Property Organization (WIPO) and other relevant agencies.

Question 5

5.1. To what extent does your country have jurisdiction over issues of, for instance, intellectual property theft?

For instance, protection under the Copyright Act of Japan covers works of Japanese nationals and works first published in Japan, as well as works for which Japan has the obligation to grant protection under the Berne Convention (Article 6 of the Copyright Act). Accordingly, Japan has jurisdiction over infringements of copyrights for these types of works. The penal provisions shall also apply to crimes prescribed in the Copyright Act which are committed by Japanese nationals outside Japan (Article 27, item (i) of the Act for Enforcement of the Penal Code, Article 3 of the Penal Code).

In connection with copyrights for trade secrets, the penalty for violation of a protective order issued by a court (imprisonment with work for a term not exceeding five years or a fine not exceeding five million yen, or both; Article 122-2, paragraph (1) of the Copyright Act) shall also apply to such violation committed outside Japan (paragraph (2) of said Article).

5.2 Should the principle of universality apply for specific types of cybercrime relating to the infringement of copyright and other intellectual property rights?

This principle does not apply at the present stage. After Japan concludes the Cybercrime Convention, however, if an act of infringement of a copyright or any other intellectual property right is regarded as constituting unauthorized access (as defined in Article 3, paragraph (1) of the Act on the Prohibition of Unauthorized Computer Access), a person who has committed such act outside Japan will be subject to the penal provisions for unauthorized access under Japanese law.

5.3. Is there a need to establish rules of international criminal law to regulate these aspects of cybercrime?

Our organization is not in the position to give an opinion on this issue because it is an issue of criminal policy.

5.4. Should there be an international authority to handle the violation of copyright and other intellectual property rights through the use of the internet?
Our organization is not in the position to give an opinion on this issue because it is an issue of criminal policy.

Question 6

6.1. Did your country sign and/or ratify international agreements or treaties relating to the violation of copyright and other intellectual property rights through the use of the internet?

Yes. Japan has concluded the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty, and also signed the Anti-Counterfeiting Trade Agreement (ACTA). On November 23, 2001, Japan signed the Cybercrime Convention but has not ratified it yet.

6.2 Does your country participate in any other form of international cooperation relating to this subject?

Yes. For example, the government of Japan has taken various measures such as supporting Asian countries in establishing their copyright systems.

Question 7

7.1. Is it your opinion that your country could and/or should be more active in dealing with this issue?

Our organization is not in the position to give an opinion on this issue because it is an issue of legislative policy.

Question 8

8.1. Is it your opinion that you could and/or should be more active in dealing with this issue as a judge?

Our organization is not in the position to give an opinion on this issue because it is an issue of legislative policy.

8.2. Do you have sufficient means – instruments and qualifications – to address the violation of copyright and other intellectual property rights through the use of the internet?

Our organization thinks that courts have duly tried cases relating to infringement of copyrights and other intellectual property rights through the use of the internet in accordance with the laws passed by the Diet, which serves as the legislative branch of government.

8.3. Is addressing this issue in Court considered to be a specialisation?

The Diet has enacted laws to deal with infringement of intellectual property rights through the use of the internet, such as the Patent Act and the Copyright Act. Courts deal with cases relating to infringement of intellectual property rights in accordance with these laws, as they deal with ordinary cases.

Question 9
Is there any other comment on the subject that you would like to make?

Our organization does not have any specific comment.

The Presidency of the Third Study Commission looks forward to receiving your answers in a timely manner.

On behalf of the Commission,

Frans G. Bauduin – President,

March 2012.