

Question and Answer Form for Public Comment Regarding Illegalizing Download of Infringed Contents, etc. (English Translation)

1. Basic Consideration

(1) How do you feel about illegalizing download of infringed contents (expanding the application from sound or visual recorded works to cover all copyrighted materials) in a way that balances and meets the two needs of "taking effective measure against serious damages from pirated works" and "not causing chilling effect to the legitimate information collection by citizens". Please select one answer from the below 1 to 5, and indicate your choice in answer column.

- 1) Agree
- 2) Tend to agree
- 3) Tend to disagree
- 4) Disagree
- 5) Do not know

<Answer Column>

2. Concerns and Setting of Requirements

(1) Please select from the below 1-5 on the level of your concerns regarding each of the items from below (i) to (vii) on concerns arising from illegalizing download of infringed contents.

- (i) Given that it is difficult to judge whether or not the many contents uploaded on internet are legal (or illegal), there will be a tendency to refrain from downloading.

- 1) Very concerning
- 2) Tend to be concerning
- 3) Not that concerning
- 4) Not concerning at all
- 5) Do not know

<Answer Column>

- (ii) Upon trying to save important information as screen shot, if illegal images and etc. (example: icon of SNS) are included in the screen shot, the act of saving will become illegal.

- 1) Very concerning
- 2) Tend to be concerning
- 3) Not that concerning
- 4) Not concerning at all
- 5) Do not know

<Answer Column>

(iii) Minor downloading of part of copyrighted works will also become illegal. For example, a scene of 'manga' (Japanese cartoon) or an illegal extract of copyrighted work by others in research papers.

- 1) Very concerning
- 2) Tend to be concerning
- 3) Not that concerning
- 4) Not concerning at all
- 5) Do not know

<Answer Column>

(iv) The downloading of derivative works and parodies that did not obtain authors' approval will become illegal.

- 1) Very concerning
- 2) Tend to be concerning
- 3) Not that concerning
- 4) Not concerning at all
- 5) Do not know

<Answer Column>

(v) The downloading of contents illegally uploaded and offered for free (ex: magazines, 'manga', internet article distributed/transmitted free of charge) will become illegal.

- 1) Very concerning
- 2) Tend to be concerning
- 3) Not that concerning
- 4) Not concerning at all
- 5) Do not know

<Answer Column>

(vi) Even if copyright holders do not find the uploading to be problematic (unspoken approval), the downloading will be illegal.

- 1) Very concerning
- 2) Tend to be concerning
- 3) Not that concerning
- 4) Not concerning at all
- 5) Do not know

<Answer Column>

(vii) There may be potential abuse of enforcement rights exercised by copyright holders or the stipulation of criminal penalties to be expanded without due cause.

- 1) Very concerning
- 2) Tend to be concerning
- 3) Not that concerning
- 4) Not concerning at all
- 5) Do not know

<Answer Column>

(viii) Please indicate any other concerns

<answer column> (free format)

(2) Based on the above concerns, please indicate what will be the desired requirements. Please select from the below (i), and based on that answer, select from (ii) to (vi).

(i) What is your thoughts on the draft proposal from Bunkacho on illegalizing download of infringed content. Please select one from below 1-6 and indicate in answer column.

- 1) It is appropriate (the current draft from Bunkacho is fine).
- 2) The scope that falls as illegal is broad (the scope should be narrowed than the current draft).
- 3) The scope is narrow (the scope should be expanded than the current draft).
- 4) Not certain whether the specific requirements are appropriate or not, but should be balanced (will leave to the discussion by the government).
- 5) Regardless of requirements, illegalizing the downloading of infringed contents should not be implemented.

<Answer Column>

(ii) If 1) was selected in (i), please indicate the reason. Please take into consideration on balancing the two needs: "taking effective measure against serious damages from pirated works" and "not causing chilling effect to the legitimate information collection by citizens".

<answer column> (free format)

(iii) If 2) was selected in (i), please indicate your thought on what kind of requirements should be set. Please describe the reason and please consider balancing the two needs: "taking effective measure against serious damages from pirated works" and "not causing chilling effect to the legitimate information collection by citizens".

<answer column> (free format)

- (iv) If 3) was selected in (i), what kind of requirement should be set up? Please indicate your answer with a reason, and please take into consideration on balancing the two needs: "taking effective measure against serious damages from pirated works" and "not causing chilling effect to the legitimate information collection by citizens".

<answer column> (free format)

(v) If 4) was selected in (i), please indicate the reason.

<answer column> (free format)

(vi) If 5) was selected in (i), please indicated the reason.

<answer column> (free format)

3. Others

(1) If you have any other opinion beside the above on illegalizing infringed contents, please indicate.

<answer column> (free format)

(2) If you have any opining on measures against leech site, please indicate.

<answer column> (free format)

(3) If you have any other opinion on overall measures against pirated works, please indicate.

BSA | The Software Alliance* welcomes Agency of Cultural Affairs' (Bunkacho) approach to amend the Copyright Act to be in alignment with the revised Unfair Competition Prevention Act (UPCA). The revised UCPA reflects the fact that the software industry enables users to acquire licensed software online via electronic downloads. Through a variety of license authentication mechanisms, the software publisher may confirm the right of the legitimate licensee to access and use the software through technical means. The distribution of crack programs (e.g. software designed to circumvent, or "crack", authentication mechanisms) or the unauthorized distribution of both illegal and legitimately generated serial or other authentication codes through on-line platforms such as auction sites are common means by which users may circumvent the license authentication methods and download and use unauthorized copies of software.

We are encouraged to see Bunkacho moving to revise the definition of technical protection measures/technical utilization restriction measures under the Copyright Act to include license authentication mechanisms related to access controls which prevent the unauthorized use of content. Similarly, we support proposals to prohibit the offering of unauthorized serial codes that circumvent such access controls.

As we indicated in our earlier [submission in January,**](#) we would like to take this opportunity to reiterate the importance of prohibiting not only the offering of illicitly generated serial codes, but also, illicitly offering legitimately-generated serial codes. Under the amended UCPA, given that there are many cases in which serial codes or decryption keys are offered to users to illicitly circumvent technological restriction measures applied to software, not only is offering illicitly generated serial codes subject to the restriction, but also illicitly offering legitimately-generated serial codes is prohibited as an act of unfair competition (Clause-by-Clause Interpretation of Unfair Competition Prevention Act (November 29, 2018 version, p105-106, Intellectual Property Policy Office, Ministry of Economy, Trade and Industry (METI) Edition).

We urge Bunkacho to clearly articulate in the amended Copyright Act, or at least in the Bunkacho's guidance on the amended Copyright Act that, not only will offering illicitly generated serial codes be subject to the restriction, but also, illicitly offering legitimately-generated serial codes will be prohibited as well.

* BSA | The Software Alliance (www.bsa.org) is the leading advocate for the global software industry before governments and in the international marketplace. Its members are among the world's most innovative companies, creating software solutions that spark the economy and improve modern life. With headquarters in Washington, DC, and operations in more than 60 countries, BSA pioneers compliance programs that promote legal software use and advocates for public policies that foster technology innovation and drive growth in the digital economy. BSA's members include: Adobe, Akamai, Amazon Web Services, Apple, Autodesk, AVEVA, Bentley Systems, Box, Cadence, Cisco, CNC/Mastercam, DataStax, DocuSign, IBM, Informatica, Intel, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, ServiceNow, Siemens Industry Software Inc., Sitecore, Slack, Splunk, Symantec, Synopsys, Trend Micro, Trimble Solutions Corporation, Twilio, and Workday.

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