

# Explanation of the Act Partially Amending the Copyright Act and the Act on Special Provisions for the Registration of Works of Computer Programming



The purpose of the amendment is to take measures to ensure the appropriate protection of copyrights, etc., including measures against piracy on the Internet, and measures to facilitate the use of copyrighted works, etc., in order to appropriately respond to recent changes in the social situation surrounding copyrighted works, etc.

## 1. Enhancement of **measures against piracy on the Internet**

(\*): Matters changed from the initial draft of February 2019

- 1) Measures against index sites\* [Date of enforcement: October 1, 2020]  
[Paragraphs (2) to (4), Article 113; items (iv) and (v), paragraph (2), Article 119; item (iii), Article 120-2, etc.]
- 2) Illegalization of downloading of infringing content\* [Date of enforcement: January 1, 2021]  
[Item (iv), paragraph (1), Article 30; paragraph (2), Article 30; item (ii), paragraph (3), Article 119; paragraph (5), Article 119, etc.]

## 2. Other amendments

- (1) **Measures to facilitate the use of copyrighted works** [Date of enforcement: October 1, 2020]
  - 1) Expansion of the scope of restrictive provisions on rights pertaining to photo or image in which the general public appears\* [Article 30-2]
  - 2) Development of restrictive provisions on rights pertaining to administrative procedures (related to the Act on Protection of Names of Specific Agricultural, Forestry and Fishery Products and the Foodstuffs and Plant Variety Protection and Seed Act) [Paragraph (2), Article 42]
  - 3) Introduction of a system of countermeasures regarding the right to exploit a copyrighted work [Article 63-2]
- (2) **Measures to ensure appropriate protection of copyrights** [Date of enforcement: January 1, 2021]
  - 4) Improvement of evidence collection procedures in copyright infringement litigation [Article 114-3]
  - 5) Improvement of access control protection [Items (XX) and (XXI), paragraph (1), Article 2; paragraph (7), Article 113; item (iv), Article 120-2, etc.]
- (3) Other [Date of enforcement: Date specified by Cabinet Order within 1 year from the date of promulgation, January 1, 2021]
  - 6) Establishment of a registration system for works of computer programming (Act on Special Measures Concerning Program Registration) [Article 4, Article 26, etc., of the Act on Special Measures Concerning Program Registration]

# The actual situation of damage from pirated copies and the need for urgent development of legislation

[Pirated copies of manga and magazines] \*Surveys and estimates by rights holder organizations

◆ "Mangamura": According to one calculation, about 300-billion-yen worth of publications were read for free.

It is also estimated that revenues and sales of cartoonists and publishers have decreased by 20%.

◆ Damage caused by Japan's largest index site "Haruka Yume no Ato": Approximately 73.1 billion yen (during the one year until the detection)

=> There are still a lot of pirate sites, even after the above site was closed (at least 500 sites have been found by the Shuppan Koho Center alone). The total number of users per month of the top 10 sites alone reached 65 million (Of those 10 sites, 7 were "download-type pirate site")

=> Damage occurred regardless of the field or type of work, including not only manga and magazines, but also photo collections, literary and professional books, business software, games, academic papers, newspapers, etc.

=> Through links posted on index sites, infringing content uploaded without permission of copyright holders will be viewed approximately 62 times more often than when no link was posted (Survey by the University of Electro-Communications).

Unless measures are taken immediately, the creator/content industry may suffer irreparable damage.

<Urgent development of legislation>

1) Measures against index sites + 2) Illegalization of downloading/criminal punishment (Expanding the scope to all copyrighted works)

\*In addition, it is also necessary to promote private-sector initiatives, such as restricting the use of advertisements and implementing measures for search sites. (These measures are particularly important for streaming-type pirate sites.)

This will limit the extent of the damage due to pirated copies, contributing to the promotion of the content industry and "cultural development," which is the purpose of the Copyright Act.

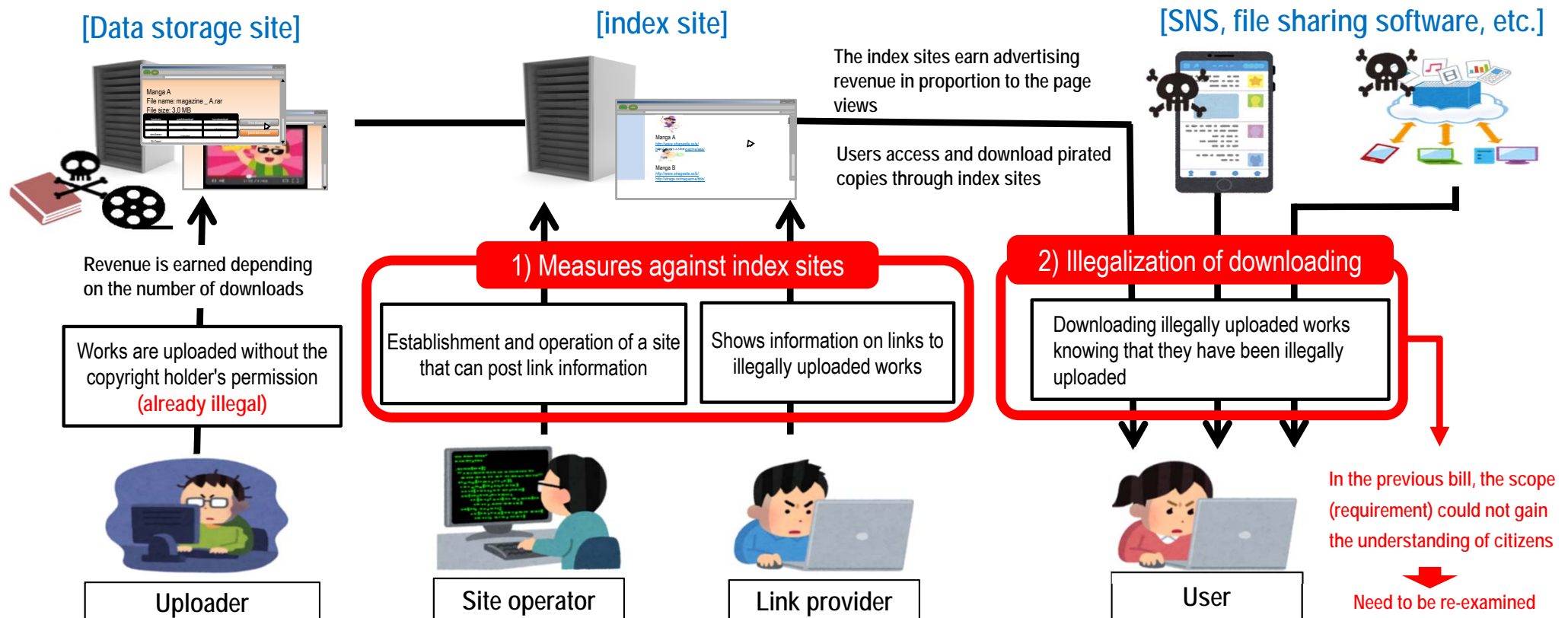
# Enhancement of Measures against Pirated Copies on the Internet (Conceptual Image)

## <Treatment under the current law>

- It is illegal to **upload** a work (in general) on the Internet without the permission of the copyright holder.
- It is illegal to **download** illegally uploaded **music and video contents** knowing that they have been illegally uploaded.

## <Details of the proposed amendment>

- 1) Regulate “**index sites**” that aggregate information on links to illegally uploaded copyrighted works (Regulate both (a) website operation and (b) link provision) [**Measures against index sites**]
- 2) Illegalize, under certain conditions, the **download** of illegally uploaded works (**comics, books, papers, computer programs, etc.**) knowing that they have been illegally uploaded [**illegalization of downloading**]



# Background of the Review to Date

Main factors that led to the postponement of the previous bill and the action policy in response to it

- 1) Growing concern that the daily use of the Internet by citizens will decline
- 2) There was an opinion from the victims of piracy, including cartoonists, saying that the scope of illegal acts is too wide

The Agency for Cultural Affairs will closely cooperate with cartoonists and other concerned parties and carefully listen to the citizen's voices of concern and anxiety as it reexamines the matter. In doing so, attention will be paid to the balance between the two requirements of "to take effective measures against serious piracy damage" and "not to impede the legitimate collection of information, etc., by citizens."

## <Details of discussions after the postponement>

**Joint statement by Japan Cartoonists Association and Shuppan Koho Center** (September 25, 2019)

- Cartoonists and publishers join forces to fight piracy
- Request rapid and balanced legislation, regardless of specific requirements

**Public comments** (September to October 2019)

\*Carefully grasp public concerns

**National survey** (October 2019)

\*Understand actual download status and impact

**Menu and process schedule for comprehensive anti-piracy measures on the Internet** (October 18, 2019)

\*The relevant ministers confirmed the action policy.

**Discussion at the expert discussion group** ((1) November 27, 2019; (2) December 18, 2019; and (3) January 7, 2020.)

**Compilation and publication of discussions** (January 16, 2020)

**Proposal by the LDP Intellectual Property Strategy Research Council** (Compiled on January 30, 2020)

**Recommendations by Komeito/Education, Culture, Sports, Science and Technology Subcommittee** (Compiled on February 3, 2020)

**Joint Statement by Japan Cartoonists Association and Shuppan Koho Center** (February 4, 2020)

- Requests that the government revise the relevant laws during the current ordinary Diet session in accordance with the summary of discussions by the Expert Committee and the recommendations of the ruling parties.

<Key points of the amendment>

Because piracy damage due to “index sites” and “index apps” that aggregate information on links to illegally uploaded works (infringing content) has become more serious, (1) the act of providing links to infringing content in index sites and index applications, and (2) the act of operating index sites and providing index applications will be regulated.

1. Definition of index site and index app [Items (i) and (ii), paragraph (2), Article 113]

- Websites and applications that are found to specifically direct the public to infringing content
- Websites and applications that are found to be used primarily for the use of infringing content by the public

2. Details of the regulation

	Details of the regulation (measures)
Link provider	<p><b>Civil measures</b> (It becomes possible to deem it as an act of infringement of copyrights, etc., and demand injunction and claim for damages) [Paragraph (2), Article 113] <small>*Only in cases where there is willful misconduct or negligence in relation to the fact that the link destination contains infringing content.</small></p> <p><b>Criminal punishment</b> (Imprisonment for not more than 3 years/a fine of not more than 3 million yen (can be cumulative))</p> <p><b>[Offense prosecutable upon a complaint]</b> <small>*Only criminal negligence will be punished [Item (iii), Article 120-2, etc.]</small></p>
Site operator App provider	<p><b>Criminal Punishment</b> (Imprisonment for not more than 5 years/a fine of not more than 5 million yen (can be cumulative))</p> <p><b>[Offense prosecutable upon a complaint]</b> [Items (iv) and (v), paragraph (2), Article 119, etc.]</p> <p><small>(*) If they recognize the provision of links to infringing content but leave it unattended, they shall bear civil liability for the provision of individual links, etc. (Rights holders can demand an injunction against the website operator, etc.). [paragraph (3), Article 113]</small></p> <p><small>(*) The so-called "platform service providers" are basically exempt from this regulation.</small></p>

(Reference) Amendments to the bill of February 2019

- 1) The criminal punishment for website operators and app providers was changed from "offense prosecutable without a complaint " to "offense prosecutable upon a complaint." [Article 123]
- 2) It was clarified in the clause that basically this regulation does not apply to the "platform service providers" that do not directly operate sites or provide applications by themselves. [Items (iv) and (v), paragraph (2), Article 119, etc.]
- 3) A provision for consideration in the application of criminal punishment was added to the supplementary provisions. [Article 4 of the Supplementary Provisions]

## 2) Illegalization of downloading of infringing content

[Relating to item (iv), paragraph (1), Article 30, etc.]

### <Key points of the amendment>

- **Expands** the scope of restrictions on downloading illegally uploaded copyrighted works (illegal even for private use) **from music, video, etc., to copyrighted works in general (comics, books, papers, computer programs, etc.)**.
- In doing so, in order to not excessively impede the collection of information by citizens, it is necessary to limit the subject of regulation to cases where contents are downloaded knowing that they have been illegally uploaded\*. Also, downloading of (1) **"small contents" such as one or a few frames of a comic**, (2) **secondary creation and parody**, and (3) **downloading of content "when there are special circumstances that are found to not unjustly harm the interests of the copyright holder"** is not subject to regulation.  
\*Downloading of contents not knowing that such contents were illegally uploaded due to gross negligence is not subject to regulation, either.
- Furthermore, to limit the scope of **criminal punishment** to particularly malicious acts, the following two conditions were added to the requirement: the download of **a copyrighted work for which a legitimate version is provided for a fee** and **repetitive and continuous download**. (Statutory penalty: imprisonment for not more than 2 years, a fine of not more than 2 million yen (can be cumulative). In all cases it will be an **"offense prosecutable upon a complaint"** (Legal action by the rights holder is required).)

### <Post-revision conceptual image>

	Civil measures [Article 30 (1) (iv); Article 30 (2)]	Criminal punishment [Article 119 (3) (ii); Article 119 (5), etc.]
Works and acts subject to regulation	<u>All illegally uploaded works</u>	Among <u>all illegally uploaded works</u> , those for which a legitimate version is offered for a fee
	[Exception (1)] <u>"Small contents" such as one or a few frames of a comic are not subject to the regulation.</u> *Screenshots in which illegal images appear are not considered illegal (Measures pursuant to Article 30-2 of the Act).	
	[Exception (2)] <u>Secondary creation and parody are not subject to the regulation.</u>	
	[Exception (3)] <u>"When there are special circumstances that are found to not unjustly harm the interests of the copyright holder" is not subject to the regulation.</u>	
Subjective requirement	Downloading of contents knowing that it has been uploaded illegally is subject to the regulation. *Downloading of contents not knowing that it was illegally uploaded due to gross negligence is not subject to regulation, either.	
Habitual		<u>Continuous or repetitive use</u> is subject to the regulation.
Level of statutory punishment	—	Imprisonment for not more than 2 years or a fine of not more than 2 million yen (can be cumulative)
Offense prosecutable upon a complaint or without a complaint.		In all cases, <u>offense prosecutable upon a complaint</u> will apply (legal action by rights holder is required)

\*In addition, the supplementary provisions include (i) enhancement of public awareness and education, (ii) promotion of granting of legal website marks, etc., (iii) consideration for the operation of criminal penalties, and (iv) follow-up after 1 year of the enforcement, (v) enrichment of measures against illegal uploads (international collaboration, international execution, collaboration with the private sector, etc.).

\*Regulations on illegal downloading of music and video contents shall remain basically the same as the current ones (will not be rolled back due to the latest amendment).