

Topic 5

Japanese Perspectives on IP Crime

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1. Negative Impact of IPR Infringements
2. Legal Framework
3. What are IPR Infringements?
 - Trademarks
 - Copyrights
4. JPO's Cooperation with Enforcement Agencies
5. Raising Public Awareness

【Health and Safety Threat】



Deaths caused by fake
medicines

**10,000 ~
100,000**
annually

【Health and Safety Threat】



【Negative Effects on Economic Growth】

Trade in Counterfeit and Pirated Goods

(OECD report in 2016)

- In 2013, international trade in counterfeit and pirated goods accounted up to 2.5% of world trade (as much as USD 461 billion)

*The total magnitude when including domestic & Internet trade could be more.



- Deprives governments of revenues
- Decreases investments from overseas
- Deprives workers of hundreds of thousands of legitimate jobs

【Financing of Terrorism & Crime】

- IPR infringements possibly finance criminal or terrorist organizations

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Structure of WTO Agreement

Body

Annex 1A: Multilateral Agreements on Trade in goods
1B: General Agreement on Trade in Services (GATS)
1C: Agreement on Trade-Related Aspects of
Intellectual Property Rights (TRIPS)

Annex 2: Understanding on Rules and Procedures Governing
the Settlement of Disputes (DSU)

Annex 3: Trade Policy Review Mechanism (TPRM)

Annex 4: Agreement on Trade in Civil Aircraft
Agreement on Government Procedures

- Part I: General Provisions and Basic Principle
- Part II: Standards Concerning the Availability, Scope and Use of Intellectual Property Rights

Part III: Enforcement of Intellectual Property Rights

Section 4:(Article 51-Article 60)

Special Requirements Related to Border Measures

Section 5:(Article 61)

Criminal Procedures

- Part IV: Acquisition and Maintenance of Intellectual Property Rights and Related *Inter-Partes* Procedure
- Part V: Dispute Prevention and Settlement
- Part VI: Transitional Arrangements
- Part VII: Institutional Arrangements; Final Provisions

Article 61

Members shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale.

Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity.

In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence.

Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed willfully and on a commercial scale.

TRIPS Agreement

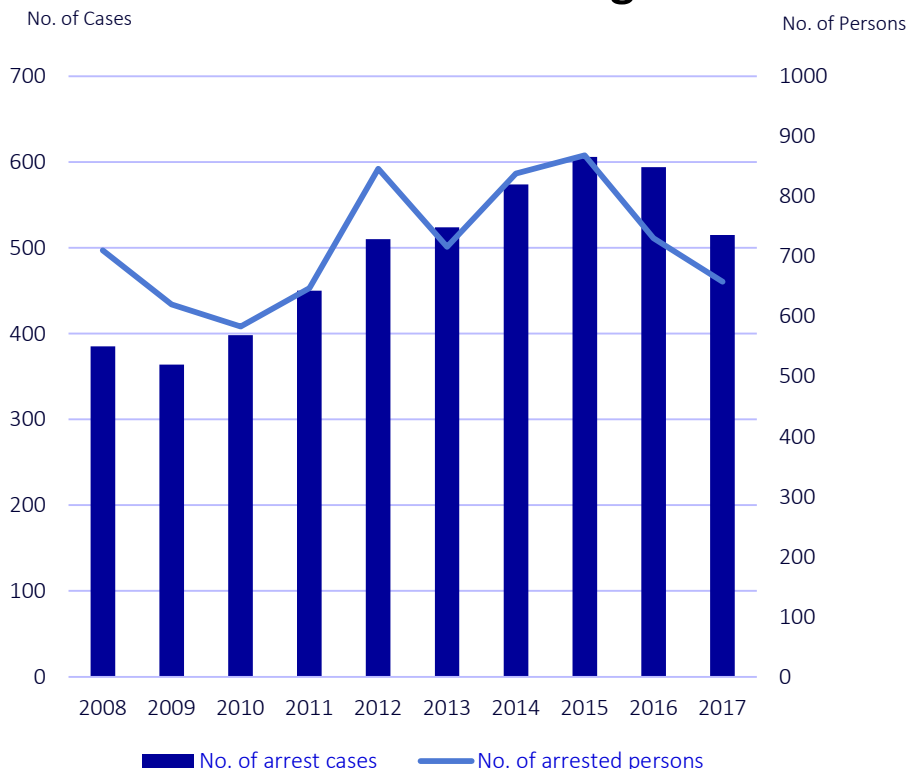
Trademark Act

Copyright Act

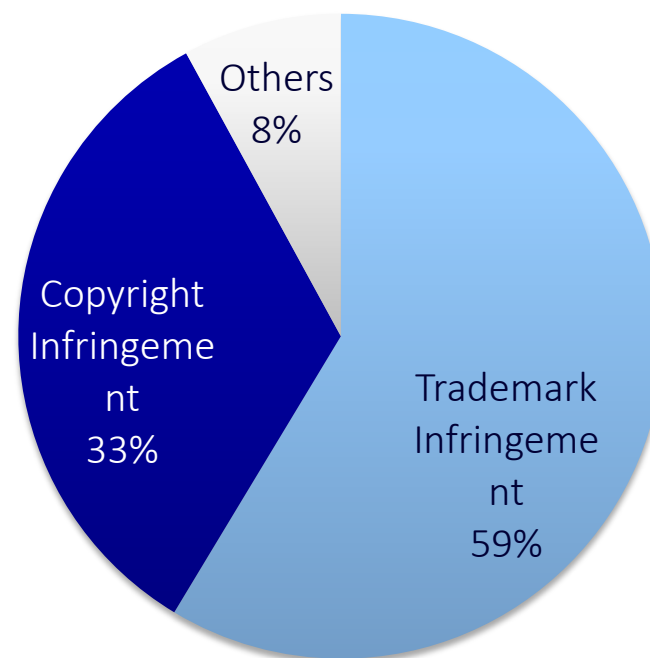
Individuals or organizations that infringe IPRs are subject to legal penalties

- Imprisonment with labor up to max 10 years or fine not exceeding 10 million yen, or both
- Under the joint punishment provision, the organization to which the offender belongs shall be fined not exceeding 30 million yen

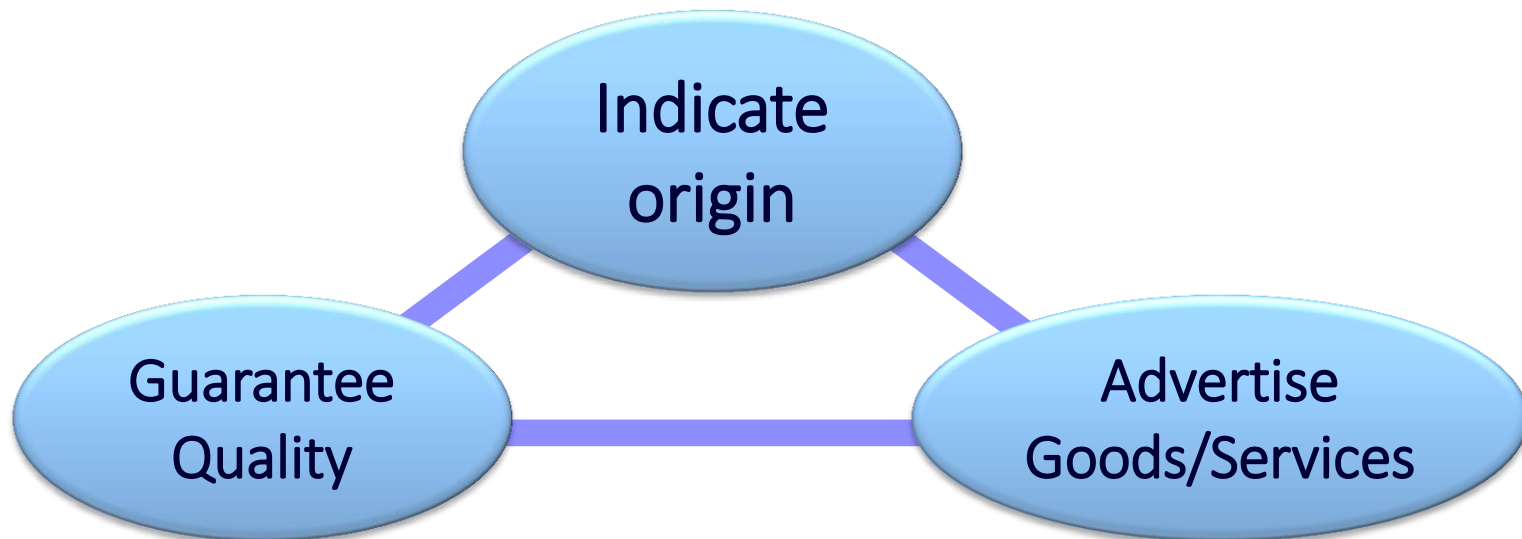
No. of arrests for IP infringements



Arrests by Type of Right(2017)

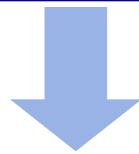


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- Trademarks are symbols or logos used to distinguish goods or services of one undertaking from those of other undertakings.
- For businesses : to highlight their goods or services based on their well-known trademarks
- For consumers : identify and choose goods or services based on the trademarks that are backed by the reputations of companies
- Using trademarks, and any goodwill and reputation thereof, will be compounded on such trademarks

Trademark users' **businesses, reputation, and goodwill**
are protected by trademarks



Well-ordered market



Development of industry



Protection of
consumer interest

Effect of a Trademark Right

Scope of trademark right		Designated goods/services		
		Identical	Similar	Not similar
Trademark	Identical	Exclusive	Prohibitive	×
	Similar	Prohibitive	Prohibitive	×
	Not similar	×	×	×

<Example>



Right holders

have rights to use their own trademarks exclusively

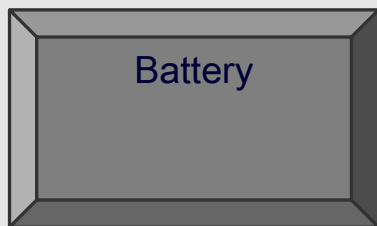
Goodwill and reputation
compounds on trademarks

- ✓ Loss of obtainable profits
- ✓ Harm to brand image and reputation



Use the trademark without permission.

Counterfeiter



Counterfeit battery

- ✓ The material is completely different from the genuine one.
- ✓ No quality= substandard goods.

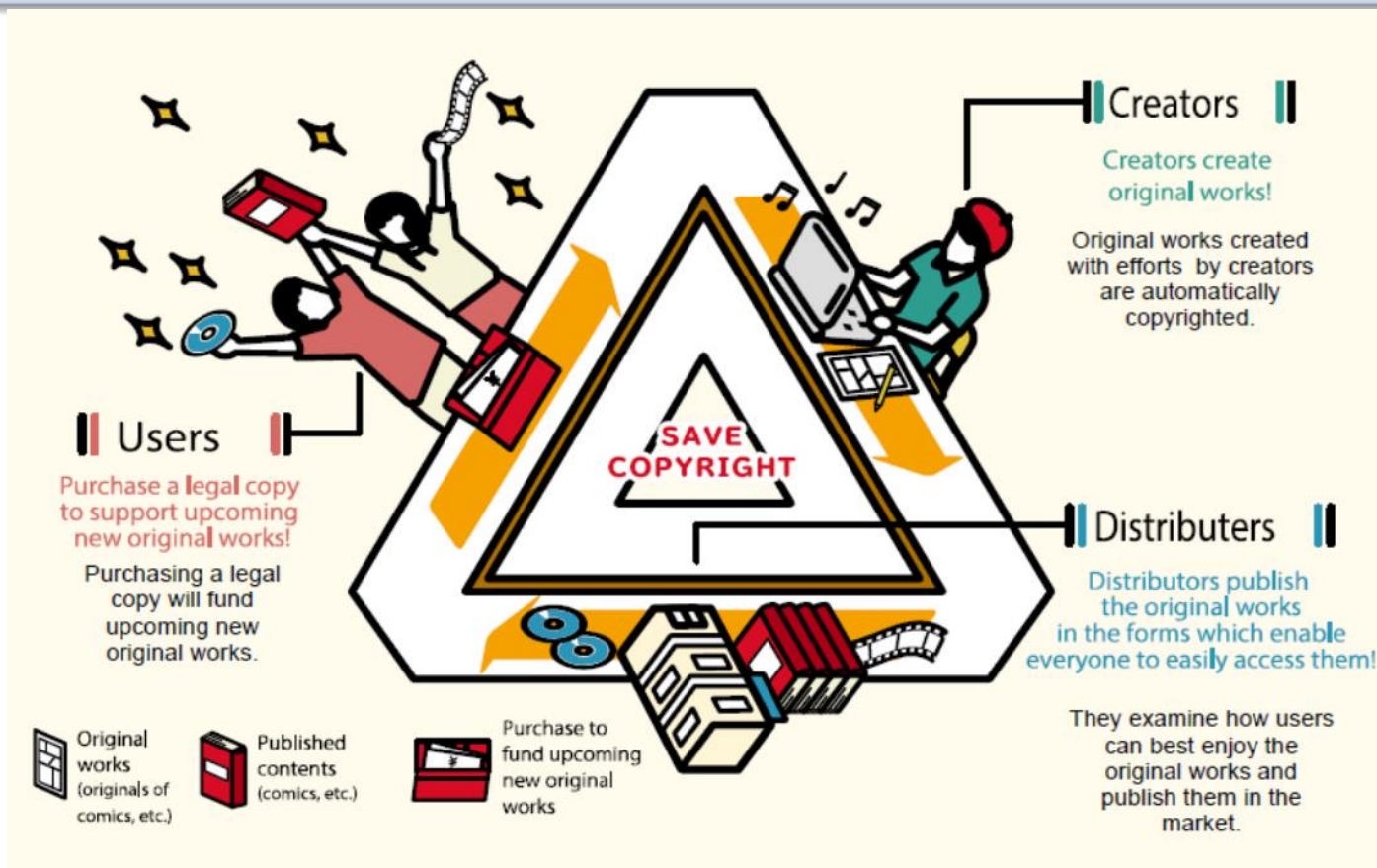


Have bad images,
Complain

Consumers

- ✓ Buy counterfeit products, believing they are genuine ones.
- ✓ The counterfeit product does not work as expected.
- ✓ Accidents caused by explosions.

The purpose of this law is, by providing for the rights of authors and the rights related thereon with respect to works as well as performances, phonograms, broadcasts and wire diffusions, to secure the protection of the rights of said authors, etc., with regard to just and fair exploitation of these cultural products, and thereby contribute to the development of culture. (Article 1)



Work = “A production in which thoughts or sentiments are expressed in a creative way and which falls within the literary, scientific, artistic, or musical domain” (Article 2 (1))

(1) “thoughts or sentiments”

“Simple data and the like” are excluded.

(2) “in a creative way”

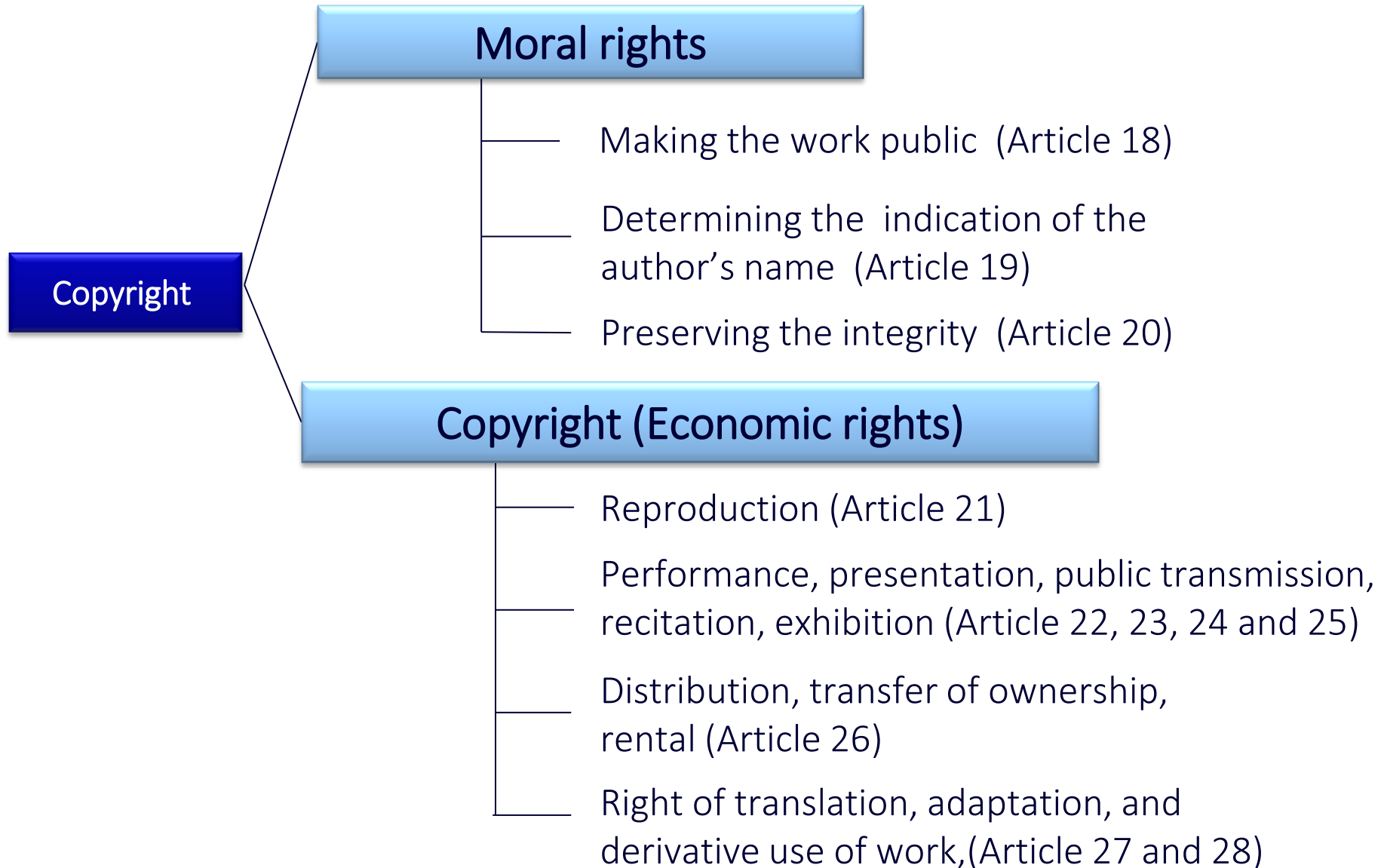
“Simple facts or imitative work” are excluded.

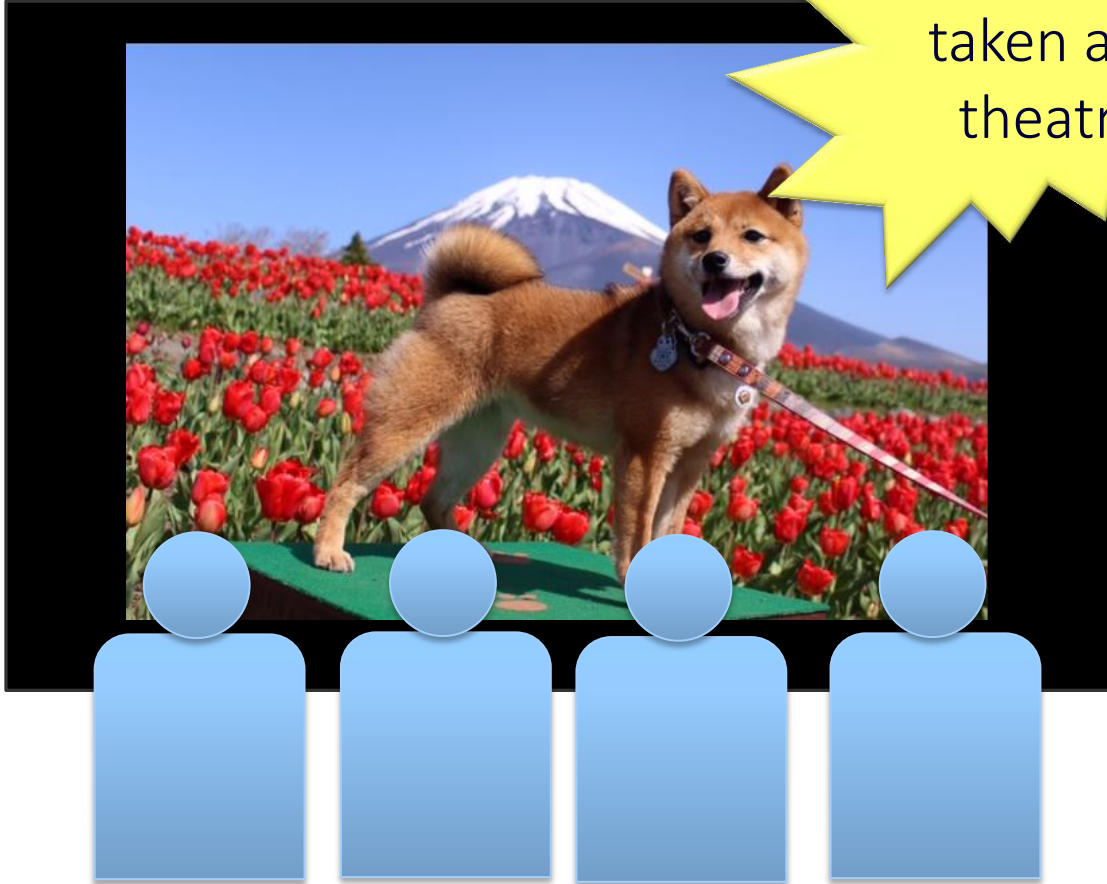
(3) “thoughts or sentiments are expressed”

“Ideas” are excluded.

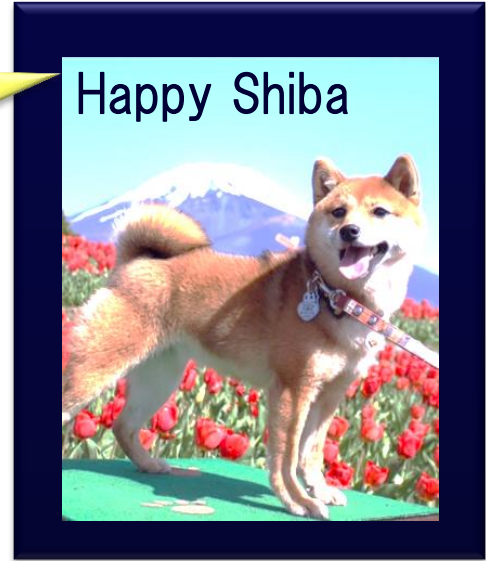
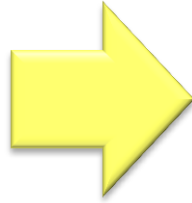
(4) “literary, scientific, artistic, or musical domain”

“Industrial products, etc.” are excluded.

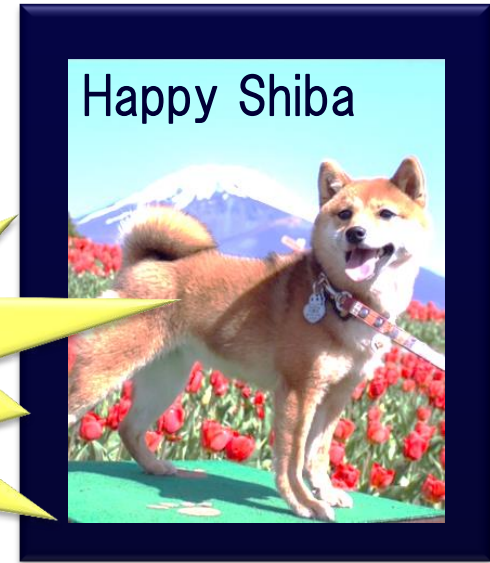
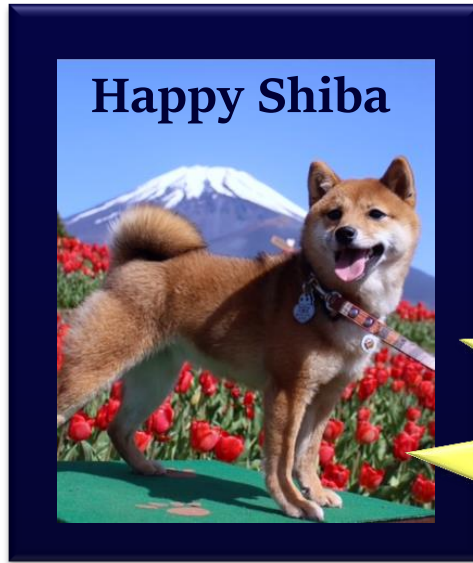




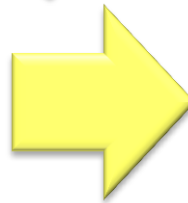
Secretly
taken at a
theatre



Pirated DVD



Reproduction
without
permission



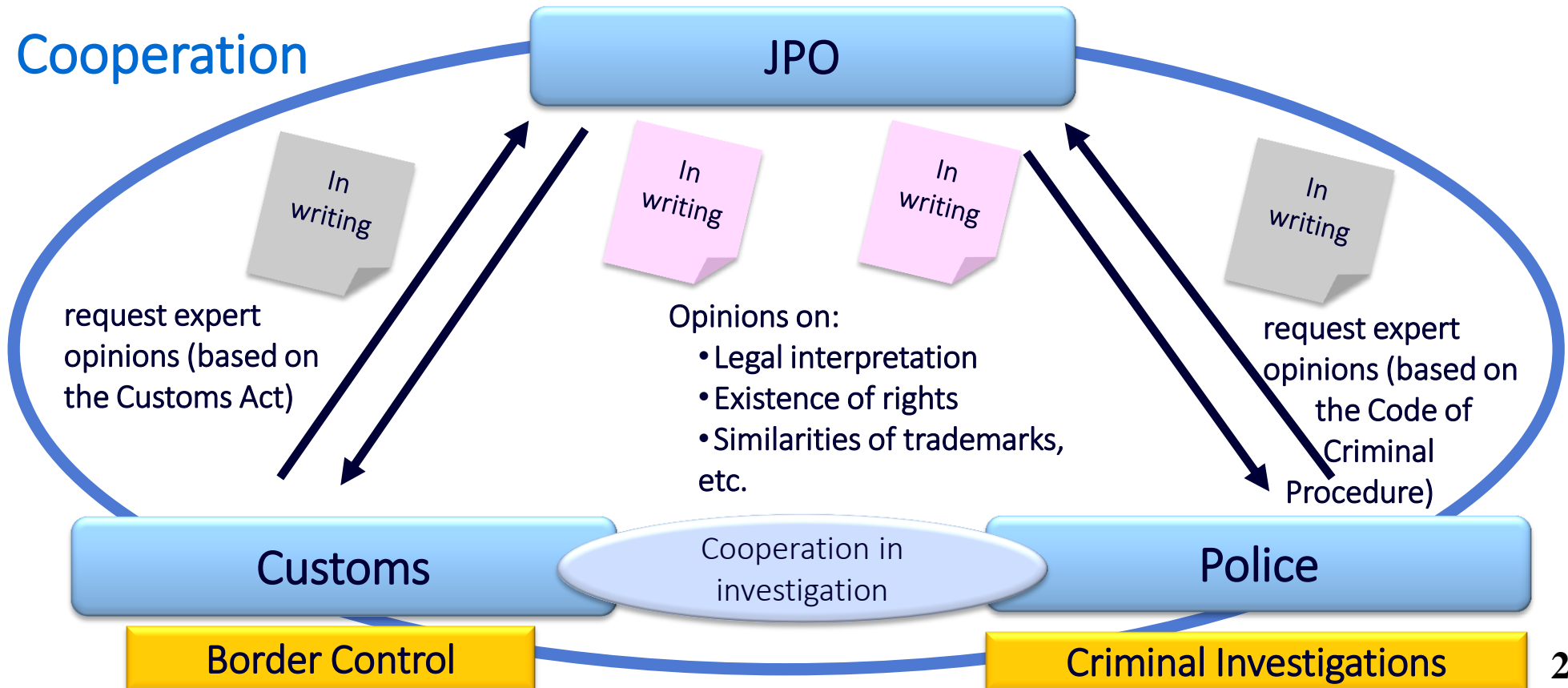
Original DVD



Pirated DVD

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- When the customs or the police request expert opinions from the JPO, they do so in writing and the JPO replies also in writing.
- Although expert opinions are not legally binding, the customs and police value the opinions and observations of the JPO as professional advice.

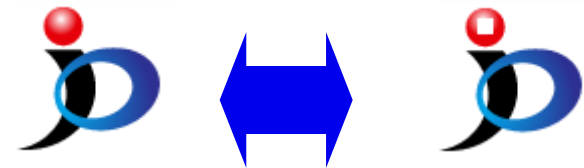


Judgment on the similarity of trademarks shall be made based on a comprehensive review of all the elements such as appearance, pronunciation (how to read/say) and concept (notion).

Judgments will be made, taking into consideration the actual state of the business transactions of the goods and services the trademark will be use for.

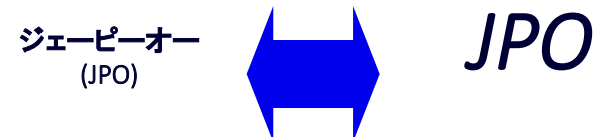
Similarity in appearance:

The exterior/mode of both trademarks are similar



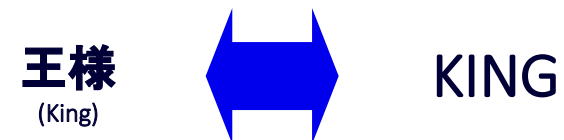
Similarity in pronunciation:

The name and pronunciation of both trademarks are similar



Similarity in concept:

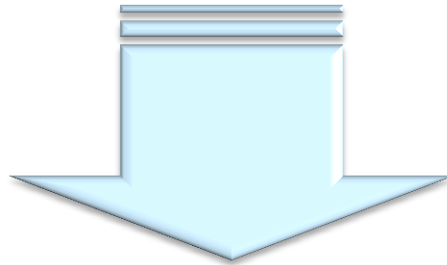
The meaning and content, etc. of both trademarks are similar



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National Opinion Survey on Intellectual Property (Conducted by the Cabinet Office in October 2014)

Almost half of the respondents (43.7%) said they might purchase counterfeit goods for various reasons such as counterfeiting goods are cheaper than the genuine ones.



Necessity to Raise Awareness in the Country
on Anti-Counterfeiting and Piracy



FY 2016 Campaign:
“This is Not Shopping-It’s Contracting with Criminals”



FY2017 Campaign:
“Buy genuine goods for a good future!”

During the campaign period, fake goods were exhibited in 4 cities nationwide at Fake Exhibitions.

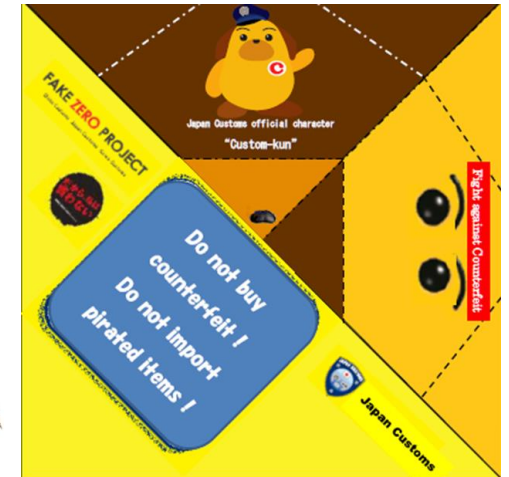
Genuine and counterfeit products were displayed side by side in front of shopping malls that are popular with young people. Many shoppers and pedestrians stopped to compare the products.



The National Police Agency supports activities of the Anti-Counterfeiting Association, which is a group of rights holders. They hold anti-counterfeiting and piracy events nationwide, working to enhance IPR protection and eradicate fake goods.



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Folding origami paper of "Custom-kun"



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Thank you!

