



## TOPIC

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3. The National People's Congress of China adopts the revision of the Patent Law

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4. Sounds and moving images may become registrable as trademarks

音声・動画も商標登録



## Determination of the date of enforcement of a number of revisions to Japanese Intellectual Property Law, including the reconsideration of the registration system for non-exclusive licenses

通常実施権等登録制度の見直し等、改正項目の一部に係る施行日の決定

The "Law on the partial revision of Japanese Intellectual Property Law", issued on April 18, 2008 as Law No. 16 of 2008, stated that a certain number of revisions would take effect "within one year from the date of issue (that is April 18, 2008), on a date to be determined by government ordinance".

In this regard, the December 24, 2008 Cabinet Meeting, through the "Government ordinance determining the date of enforcement of the Law on the partial revision of Japanese Intellectual Property Law", fixed the date of enforcement of the revisions to April 1, 2009.

The revisions to take effect on this date are as follows:

- Reconsideration of the registration system for non-exclusive licenses;
- Extension of the period for requesting an appeal against a Decision of Refusal;
- Expansion of the cooperating countries with which priority documents can be electronically exchanged.

Reference websites:

- (i) <http://www.meti.go.jp/press/20081224003/20081224003.html>



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平成20年4月18日に公布された「特許法等の一部を改正する法律」(平成20年法律第16号)において、下記の改正項目については、施行日が「公布の日から起算して1年を超えない範囲内において政令で定める日」とされていた。

- 通常実施権等登録制度の見直し
- 拒絶査定不服審判請求期間の拡大
- 優先権書類の電子的交換の対象国の拡大

これに関し、「特許法等の一部を改正する法律の一部の施行期日を定める政令」が平成20年12月24日閣議決定され、上記改正項目の施行期日は平成21年4月1日と定められた。

参考URL:

(i) <http://www.meti.go.jp/press/20081224003/20081224003.html>

## Revision of the Japan Copyright Law: download of pirated versions by using peer-to-peer software to become illegal 著作権法改正へ ファイル交換ソフト使い海賊版入手は違法

The Private Music and Video Recording Subcommittee of the Culture Advisory Board held its fifth meeting on December 16, 2008. Following the meeting, the Subcommittee issued a report describing the appropriate extent that should be given to the revision of the Section 30 of the Japan Copyright Law. Based on this report, the Ministry of Education, Culture, Sports, Science and Technology will submit a draft revision of the Copyright law during the next ordinary session of the Diet of Japan, this draft revision forbidding the illegal recording of sound or videos or download from illegal sources.

Further, regarding the proposal made by the Agency for Cultural Affairs on May 2008 to reform the compensation system for private music and video recording in order to include in the said system devices such as portable music players (e.g. iPod), HDD recorders, next generation DVD players, personal computers and the like, the Subcommittee stated that "it had not been possible to obtain the agreement of the parties concerned".

Reference websites:

(i) <http://mainichi.jp/select/jiken/news/20081217k0000e040016000c.html>

(ii) <http://japan.cnet.com/news/biz/story/0,2000056020,20385449,00.htm>

(iii) <http://journal.mycom.co.jp/news/2008/12/16/053/index.html>



文化審議会の私的録音録画小委員会は、2008年12月16日に第5回会合を開催した。

同委員会は、著作権法第30条の適用範囲の見直しに関する報告書をまとめた。文部科学省は、違法録音録画物や違法配信からのダウンロードを禁止する著作権法改正法案を次期通常国会に提出する方針である。

一方、2008年5月に文化庁が提案した私的録音録画補償金制度の見直し(iPodなどの携帯音楽プレイヤーやHDDレコーダー、次世代DVD、PCといった現行の補償金制度外の機器を課金対象に含める案)については、「関係者の合意が得られなかった」と結論づけた。

参考URL:

- (i) <http://mainichi.jp/select/jiken/news/20081217k0000e040016000c.html>
- (ii) <http://japan.cnet.com/news/biz/story/0,2000056020,20385449,00.htm>
- (iii) <http://journal.mycom.co.jp/news/2008/12/16/053/index.html>

## The National People's Congress of China adopts the revision of the Patent Law 中国 改正特許法可決

The Standing Committee of the National People's Congress, China's highest legislature, approved the revised Patent Law on December 27, 2008.

The revised law aims at making a complete protection of Intellectual Property rights in China possible by strengthening the potential penalties for patent infringement. Under the revised law, the maximum penalty fee for patent infringement can reach an amount equal to four times the income illegally obtained by the defendant, while the maximum penalty fee in cases where the defendant obtained no illegal income went up from the actual 50,000 yuan to 200,000 yuan. Further, the compensation fees will also cover the sums that the patent owner paid in order to maintain his intellectual property right and to prevent it from being infringed.

In order to enhance China's competitiveness, it will also be possible to file a patent application directly in a foreign country before filing it in China. In this case, however, it will be necessary, for security reasons, to have the patent application preliminary reviewed by the State Intellectual Property Office (i.e. the patent office of China).

Reference websites:

- (i) <http://japanese.cri.cn/881/2008/12/28/1s132890.html>



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中国の最高立法機関である全国人民代表大会(全人代=国会に相当)常務委員会は2008年12月27日、改正特許法を可決した。

改正法は、知的財産権保護の徹底を狙い、特許権侵害行為に対する処罰を強化。最高罰金額を違法所得の4倍に増額し、違法所得がない場合の最高罰金額も現行の5万元を20万元に増額する。さらに、賠償額には知的所有権の維持費や侵犯行為の阻止のために権利者が支払った費用などが含まれる。

また、国際競争力を高める理由から、中国での特許出願を経ずに海外に直接出願することも認めた。ただし、中国当局による安全保障上の事前審査が義務付けられる。

参考URL:

(i) <http://japanese.cri.cn/881/2008/12/28/1s132890.html>



## Sounds and moving images may become registrable as trademarks 音声・動画も商標登録

On January 9, 2009, a working group of the Industrial Structure Council issued a draft report stating that sounds, colors and moving images should be registrable as trademarks. The JPO now hopes to revise the Trademark Law accordingly during the 2010 ordinary session of the Diet at the earliest.

If the Trademark Law is revised in accordance with these recommendations, graphic forms moving on a television or a personal computer screen, three-dimensional holograms of photos, sounds creating in the listener an impression linked to a company or a product name, or simple graphic forms used as position indicators in order to specify a location on the product will become registrable as trademarks.

### Reference websites:

- (i) <http://www.business-i.jp/news/ind-page/news/200901100039a.nwc>
- (ii) [http://headlines.yahoo.co.jp/hl?a=20090109-00000126-jij-bus\\_all](http://headlines.yahoo.co.jp/hl?a=20090109-00000126-jij-bus_all)

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2009年1月9日、産業構造審議会のワーキンググループは、音声や色、動画を登録対象にするよう求める報告書案をまとめた。特許庁は、早ければ2010年の通常国会での商標法改正につなげたい考えだ。テレビやパソコンなどの画面で動く図形、写真などを立体的にみせるホログラム、企業名や商品名を印象づける音声、商品の特定の位置に単純な図形が付される位置指標などが新たに商標として保護される見込み。

### 参考URL:

- (i) <http://www.business-i.jp/news/ind-page/news/200901100039a.nwc>
- (ii) [http://headlines.yahoo.co.jp/hl?a=20090109-00000126-jij-bus\\_all](http://headlines.yahoo.co.jp/hl?a=20090109-00000126-jij-bus_all)



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Please contact us if you have any comments or require any information.

Please acknowledge that the purpose of our column is to provide general information on the field of intellectual property, and that the description here does not represent our legal opinion on a specific theme.

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