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January 2012: Japanese Litigation Update

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Japanese Record Labels Sue YouTube Downloader Site: The Recording Industry Association of Japan (RIAJ), an organization representing the Japanese music recording industry, issued a press release stating that 31 Japanese record labels filed a collective lawsuit on August 19th in Tokyo District Court against local firm MusicGate. According to the lawsuit, the defendant MusicGate operates an internet site called Tubefire that enables free downloads of music videos posted on YouTube. The labels are demanding 230 million Yen (around \$3 million) in damages from MusicGate. RIAJ states that Tubefire attracts more than 2.2 million visitors a month, and that a huge volume of music video files have been illegally downloaded through the site. RIAJ claims that Tubefire replicated music video without permission of the copyright owners, which violated Japanese Copyright Law by infringing on the reproduction and distribution rights of the copyright owners. According to a RIAJ survey of Tubefire users, files protected by the labels' copyrights were illegally replicated around 10,000 times a month. Based on the results, the labels calculated damages equal to the amount they would have earned if the music files were bought from official distributors. Although Tubefire has already ceased operations, several other websites still provide the same service. A RIAJ survey estimates that about 1.2 billion music files are illegally downloaded annually, while legitimately purchased music during 2010 amounted to about only 0.44 billion. At the first hearing, held on October 12th, MusicGate sought dismissal of the claims against it.

Canon Wins Ink Cartridge Patent Infringement Suit in the Japanese Supreme Court: Canon Inc. had sued six other ink cartridge makers claiming that their products, which are compatible with Canon-manufactured ink-jet printers infringe one of Canon's patents. The defendant makers imported and sold allegedly infringing ink cartridges manufactured in Hong Kong. They were widely sold at lower prices than genuine Canon cartridges. The Intellectual Property High Court recognized that the defendants' products had infringed the Canon patent and ordered the defendants to stop importing and selling those products. The defendants appealed, but the Japanese Supreme Court upheld the ruling of the High Court on September 29th. This case represents a major victory in the battle printer manufacturers have waged in recent years -- in Japan, the U.S. and Europe -- against the manufacturers of consumables made for use in their printers.

New Regulation Against Organized Crime Group Takes Effect in Tokyo: In October, the Tokyo Metropolitan Government introduced a new regulation against organized crime groups (commonly known as "Yakuza"). Although similar regulations had already taken effect in other prefectures, the enforcement in the capital city of Japan has a substantial impact. Yakuza was listed as one of four significant transnational criminal organizations in U.S. President Barack Obama's July 25th executive order authorizing new sanctions against criminal cartels (the others are Los Zetas, Camorra and the Brothers' Circle). The principal intent of this regulation is to weaken the economic power of members of such organizations (which are defined by the act as "gangsters") by encouraging companies in their efforts to refrain from entering into contracts with them. Three important aspects of the regulation should be noted. First, whenever entering into a contract, companies must make their efforts to make sure the other party is not a "gangster" under the Act. In addition, companies are strongly encouraged to include contract clauses enabling them to cancel a contract if they find later find cause to believe that the other party qualifies as a "gangster" under the Act. Second, companies must not provide any "profits" to covered "gangsters." Third, companies should watch for "gangsters by association"-- the act makes clear that a "gangster" includes those who have a "close relationship" with other "gangsters," in addition to official members of organized crime groups.

It is not clear yet, however, how courts will interpret the term "profit" or what is a "close relationship" with gangsters. If companies are not able to determinations as to issues related to the regulation, consultation with police may be warranted.