

Unfair Competition Prevention Act (UCPA) in Japan

JAUIP Summer Seminar

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1. Introduce myself



Shinya Suzuki

- Working for OKI Data corporation, printing manufacturing company, as IP stuff.
- Studied abroad at George Washington University Law school from 2013 to 2014.
- Working as legal internship at BakerHostetler LLP in Washington D.C. from 2014 to 2015.



BakerHostetler

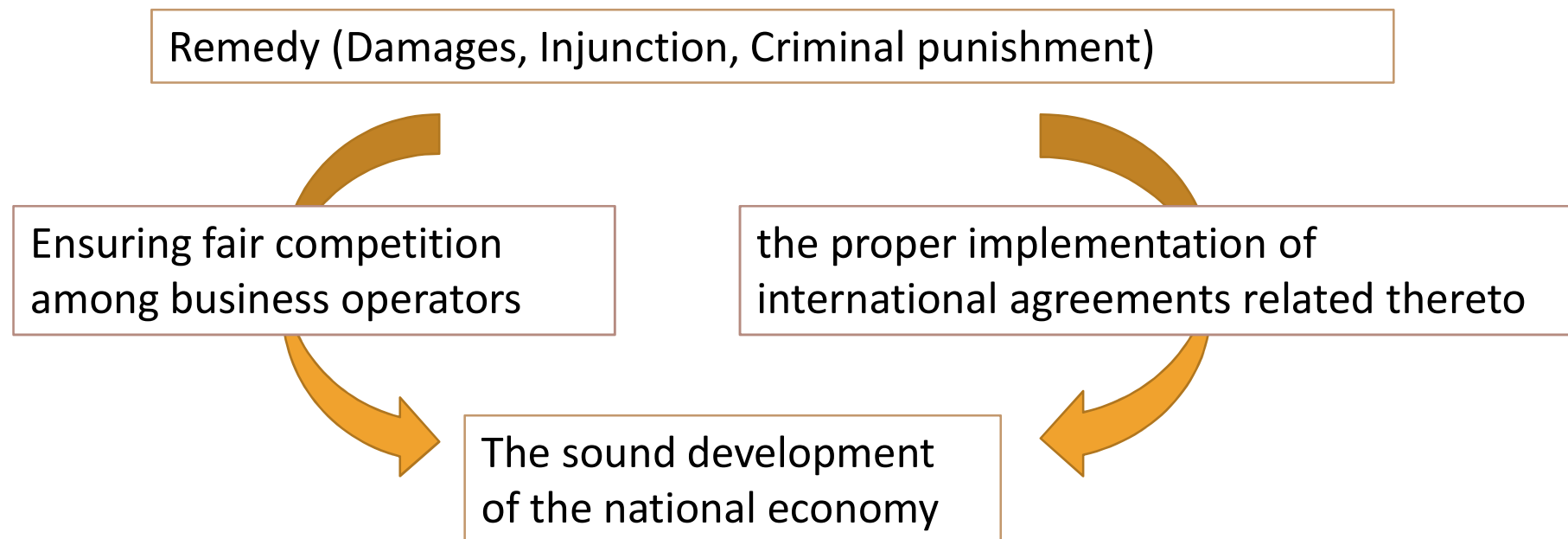
2. What is Unfair Competition Prevention Act (UCPA)?

[Purpose of this chapter]

- Learn the purpose of UCPA
- Learn the difference between UCPA and other IP rights
- Learn the types of “unfair competition”

Purpose of UCPA

- The purpose of this Act is, in order to ensure **fair competition** among **business operators** and the proper implementation of international agreements related thereto, to provide measures for the prevention of unfair competition and compensation for damages caused by unfair competition and thereby **contribute to the sound development of the national economy**. (Article 1)



Regulating “Unfair Competition”

- UCPA regulates the act which falls within “Unfair Competition” defined in Article 2.
- Damages, injunction, or criminal sanction would be applied if the act of third party falls within “Unfair Competition”



Do you know the case?



Using other's well known or famous indication of business



Imitating other company's products

Do you know the case?



False Advertising



Circumventing Copy Protection



Trade Secret Violation

Questions

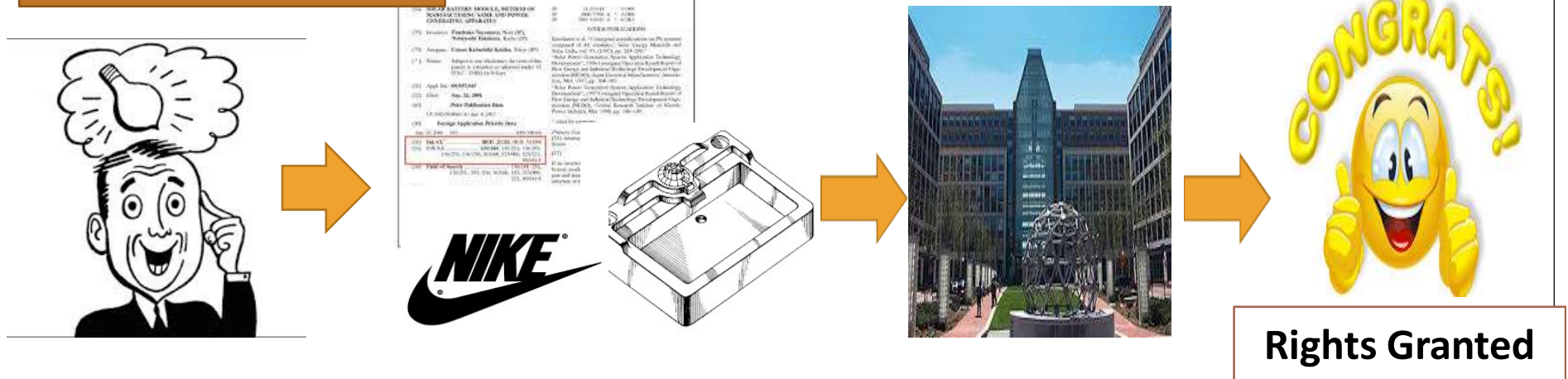
- If you are the party in above cases, how do you protect your right?
- IP rights such as Patent, Design, and Trademark?
- If you does not register such IP rights.



UCPA's Relationship with other IP rights

- Different from other IP laws UCPA **does not grant rights**.

IP Rights



UCPA

- No need to file something to Patent office.
- To get remedy under UCPA, some requirements are needed.

Types of “Unfair Competition” (Article 2)

- ① Acts causing confusion (i)
- ② Unjustifiable use of a famous indication as one's own (ii)
- ③ Imitation of the configuration of goods (iii)
- ④ Unfair acts related to trade secrets (iv) to (ix)
- ⑤ Acts invalidating copy/access control technology (xi),(xii)
- ⑥ Acts of Infringing Domain Names (xiii)
- ⑦ Acts causing misleading (xiv)
- ⑧ Acts injurious to business reputations (xv)
- ⑨ Unjustifiable use of a trademark by an agent, etc. (xvi)

① Acts causing confusion (Art 2 (1) (i))

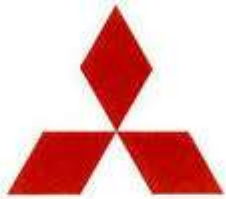
1. “indication of goods, etc
2. the “indication of goods” are **well known** among consumers
3. **Creation of confusion** with another person’s goods or business



Third party used a trade name “Walkman Ltd” which is identical mark of “WALKMAN”, famous products by SONY”. The Court in Japan ordered injunction for using the trade name.

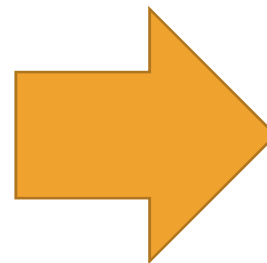
② Unjustifiable use of a famous indication as one's own (Art 2 (1) (ii))

1. “indication of goods, etc
2. the “indication of goods” are **famous**
 - “famous” means well known nationwide.
 - “famous” > “well known”
3. No need to cause creation of confusion with another person's goods or business



“Mistubishi” Mark
Famous trademark in Japan

The Court grants injunction against some companies including credit company, construction company and investment company, those are no relations with Mitsubishi group, for using “Mitsubishi” mark.



Unfair use of goodwill

Pollution of brand image

Dilution of brand image

③ Imitation of the configuration of goods (Art 2 (1) (iii))

1. **imitating the form** of another person's goods
2. assignment, lease or display such imitating products.
3. It does not matter whether the imitated products are famous or well-known.



Genuine



Fake



- Very famous game products called “Tamagotchi” made by Japanese companies.
- After releasing the products, a lot of counterfeited products are sold everywhere.
- JP company filed a litigation under UCPA under Article 2 (iii)

④ Unfair acts related to trade secrets

(Art 2 (1) (iv) to (ix) and Article 2 (4))

1. acquisition of a **trade secret** by theft, fraud, duress or any other wrongful method.

- **What is the trade secret?**

(1) Confidentiality – managed secretly

(2) Useful

(3) No-public

(A list of customers for men's wig (katsura)

An employee who works for men's wig selling company left his company. At that time he copied a list of customers without authorization and he started his own men's wig company based on the list of customers.



As Business Perspective

- Patent right or Trade Secret.
- Patent : 20 years
- Trade Secret : no limitation if it does not become public.

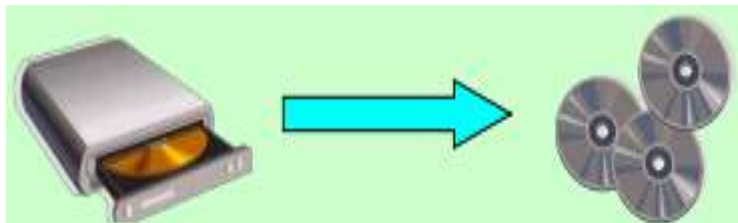


⑤ Acts invalidating copy/access control technology (Art 2 (1) (xi),(xii))

1. The act of assigning, delivering, importing, etc.
2. Any device having the function of **circumventing technological restriction measures** used in business.

- **Technological restriction measures** means the technology which prevents unauthorized copying or viewing for contents such as music, movies, pictures or games.

Copy Control (Limiting Copy)



Access Control (Limiting Access)



Other Unfair Competition

⑥ Acts of Infringing **Domain Names** (Art 2 (1) (xiii))

1. acquisition or holding of a right to use a domain name
2. for the purpose of acquiring an illicit gain or causing injury to another person;

⑦ Acts causing misleading (Art 2 (1) (xiv))

1. indication of information on goods or services
2. in a manner that is likely to **mislead the public** as to the place of origin, quality, content, manufacturing method, etc.

⑧ Acts injurious to business reputations (Art 2 (1) (xv))

1. A **falsehood** that is injurious to the business reputation of a **competitor**
2. Announcement or dissemination of a falsehood

Summary of 1st chapter

- UCPA is not laws which grant rights to parties. It just regulates “unfair competition”,
- UCPA often covers the action of third parties other IP laws cannot cover.
- Practically speaking, it is important to consider multi-protection measure for our products or services.



3. UCPA and digital contents

[Purpose of this chapter]

- Learn the development of digital contents
- Learn how IP rights protect digital contents
- Learn the legal issues regarding digital contents

Developing digital contents

NETFLIX

Apple iTunes

amazon

vudu

M GO PREMIUM Movies & TV

Google play

hulu

PlayStation

starz

HBO

SNAGFILMS

tubi tv



Background

- A lot of contents such as music, video pictures and books are become digitalized.
- Such digital contents are provided to customers via online, satellite broadcasting, or packaged media.

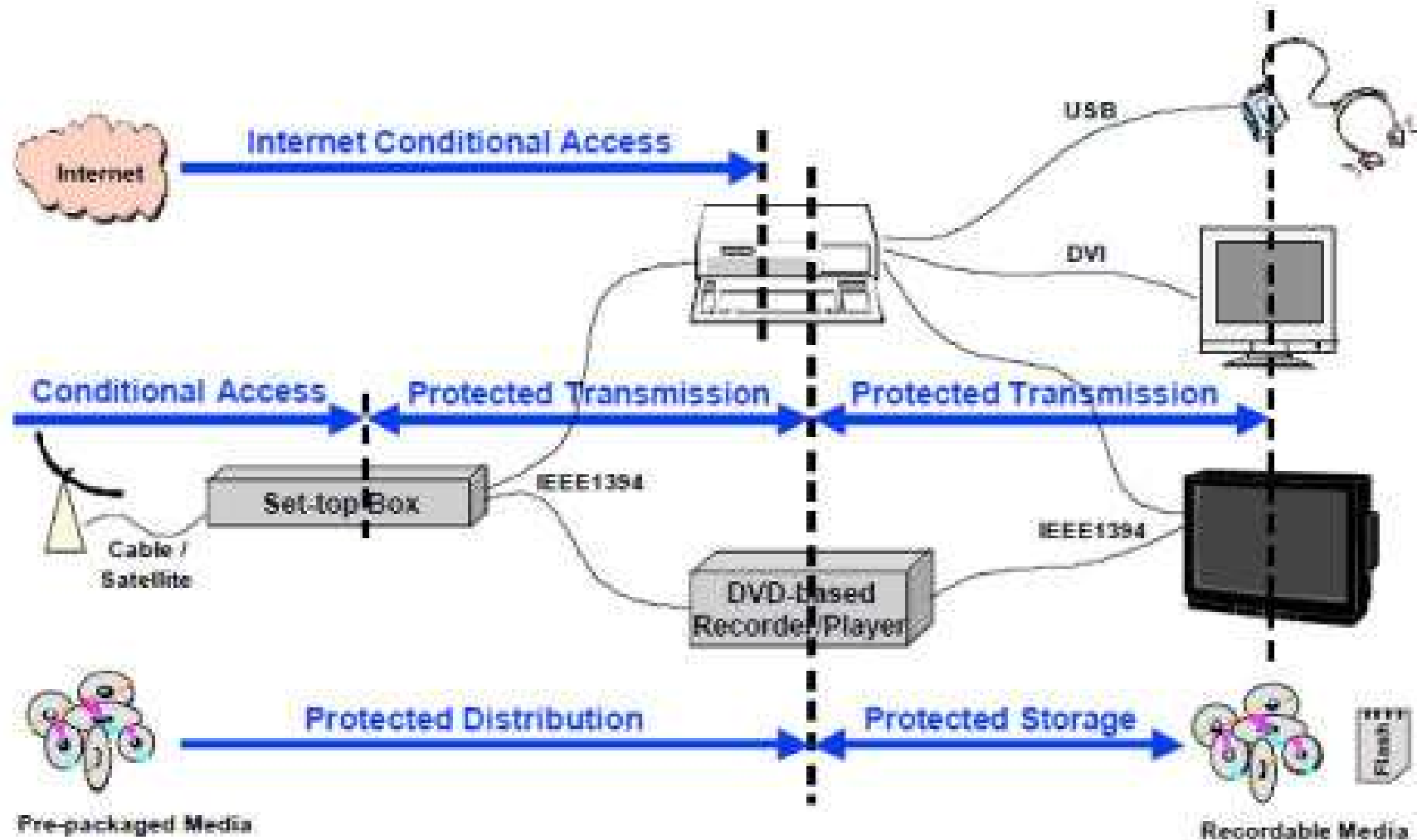


How to access digital contents?

- Free or Paid contents/ buy packages or buy contents via downloading or satellite broadcasting.
- In the online contents, a license to access digital contents is granted if you pay money.
- How to regulate your access to digital contents?

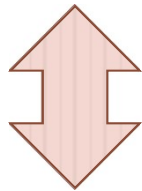


Protecting Copy or Access protection technology



Issues regarding digital contents

Illegal copy or access



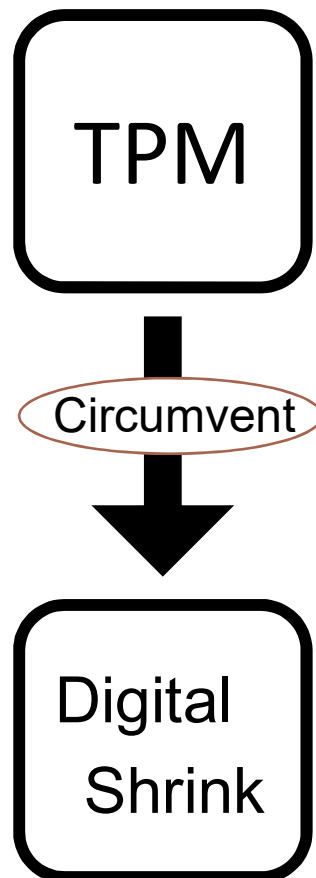
Developing technology to protect
Illegal copy or access



Developing circumventing such copy
or access protection technology



Problems of circumventing technological protection measure (TPM)



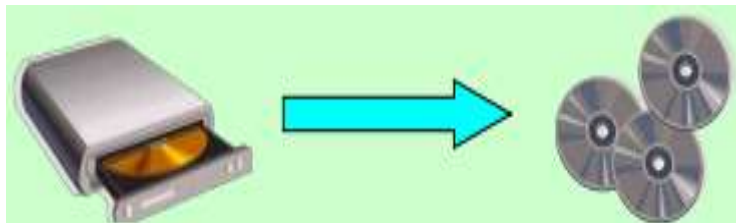
- The device or program which enable people to circumvent access/copy control technology are provided in the market.
- The problem called “Digital Shrink” will happen if illegal contents become pervasive.
- “Digital Shrink” means the market shrink phenomenon accompanying digitalized market.
- To prevent digital shrink, a lot of costs are needed including the cost for eradicating illegal contents and the cost for developing technological protection measure.

Previous Japanese UCPA : Acts invalidating copy/access control technology (Art 2 (1) (x),(xi))

1. The act of assigning, delivering, importing, etc.
2. Any device having the “Sole” function of **circumventing technological restriction measures** used in business.

- **Technological restriction measures** means the technology which prevents unauthorized coping or viewing for contents such as music, movies, pictures or games.

Copy Control (Limiting Copy)



Access Control (Limiting Access)

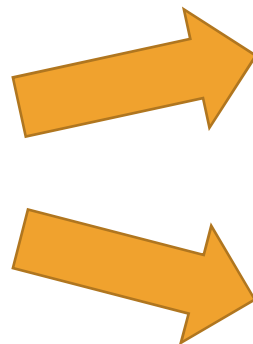


What is “sole” purpose?

- Literally, “Sole” means “there is no other ways”, “only”
- Previous UCPA cannot regulate the circumvention devices if they have **other function** except for **circumventing technological restriction measures**



Circumventing device



Illegal copy

Other function

4. Case Study “Magic Computer Case” (Device for circumventing technological restriction measures)

[Purpose of this chapter]

- Learn the specific case regarding unfair competition.
- Learn how the language of UCPA is interpreted
- Learn how Japanese Government and Courts handled the problems regarding digital contents.

History of Magic Computer

- Magic Computer is the device for **circumventing access control**.
- The famous magic computer is the device called “R4” which is available for Nintendo DS. The price is about 45\$ (¥5,000)
- Magic Computer which is available for Nintendo DS is used worldwide. Nintendo files a litigation worldwide.



Damage for Game industry caused by Magic Computer (Estimate)

- At least \$9 billion (In Japan)
- At least \$38 billion (worldwide)
 - “investigation for downloading illegal copied game soft”
by University of Tokyo
- This investigation does not include illegal download by using file sharing soft. Thus, the damage would be multiplied.



A situation in the world

- The court judged that “magic computer” is illegal in Japan, Italy, England, Germany, Australia, Belgium and the Netherlands



- On the other hand, the court in Spain and France discussed about the case of “legal using” and dismissed Nintendo. But, the judgement was later overruled.



How to use Magic Computer?

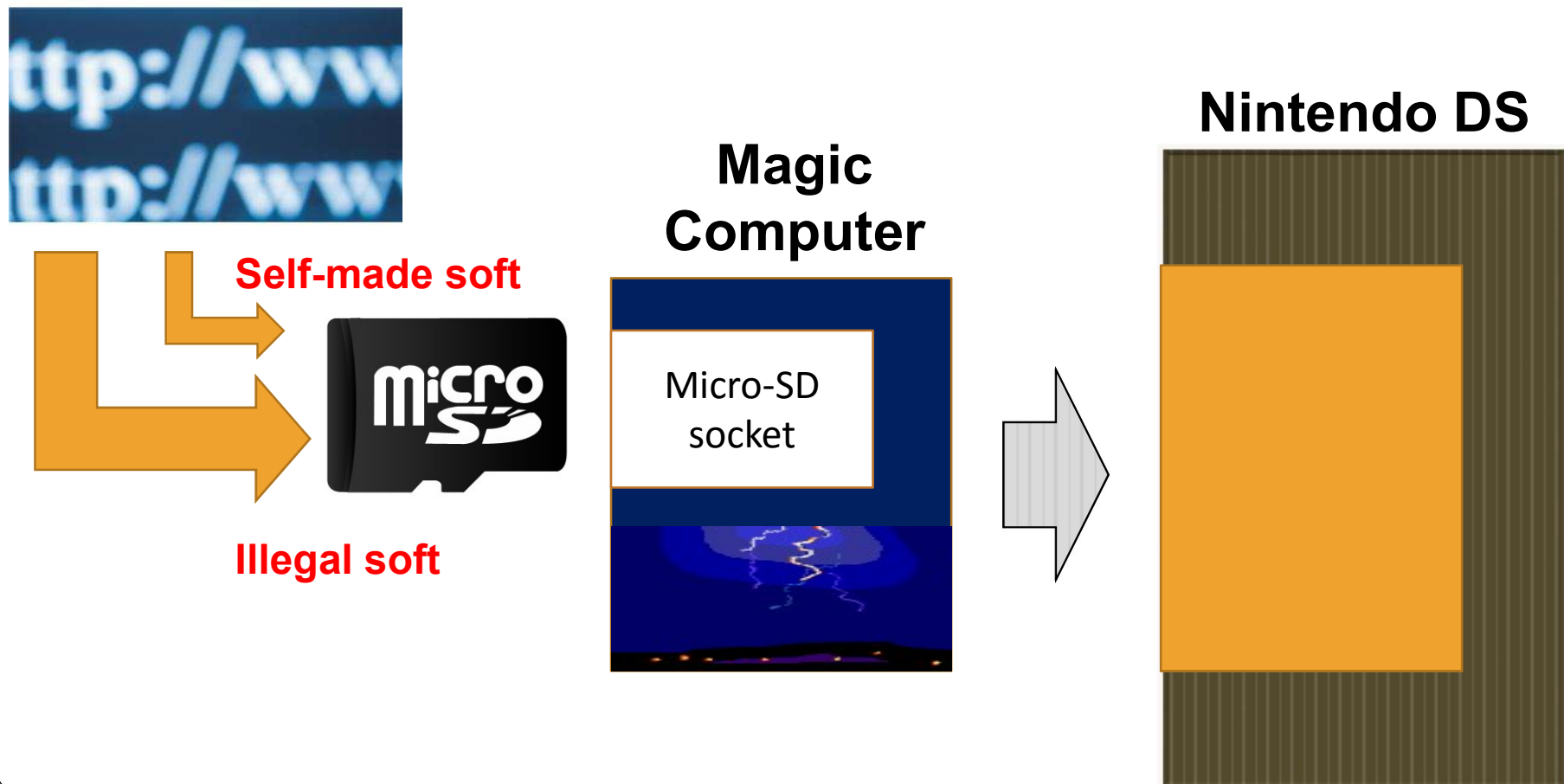


Comparison of shape between authentic soft and Magic Computer



They have almost same shape and
They can insert the slot of Nintendo DS

How to Use Magic Computer



How to Use Magic Computer

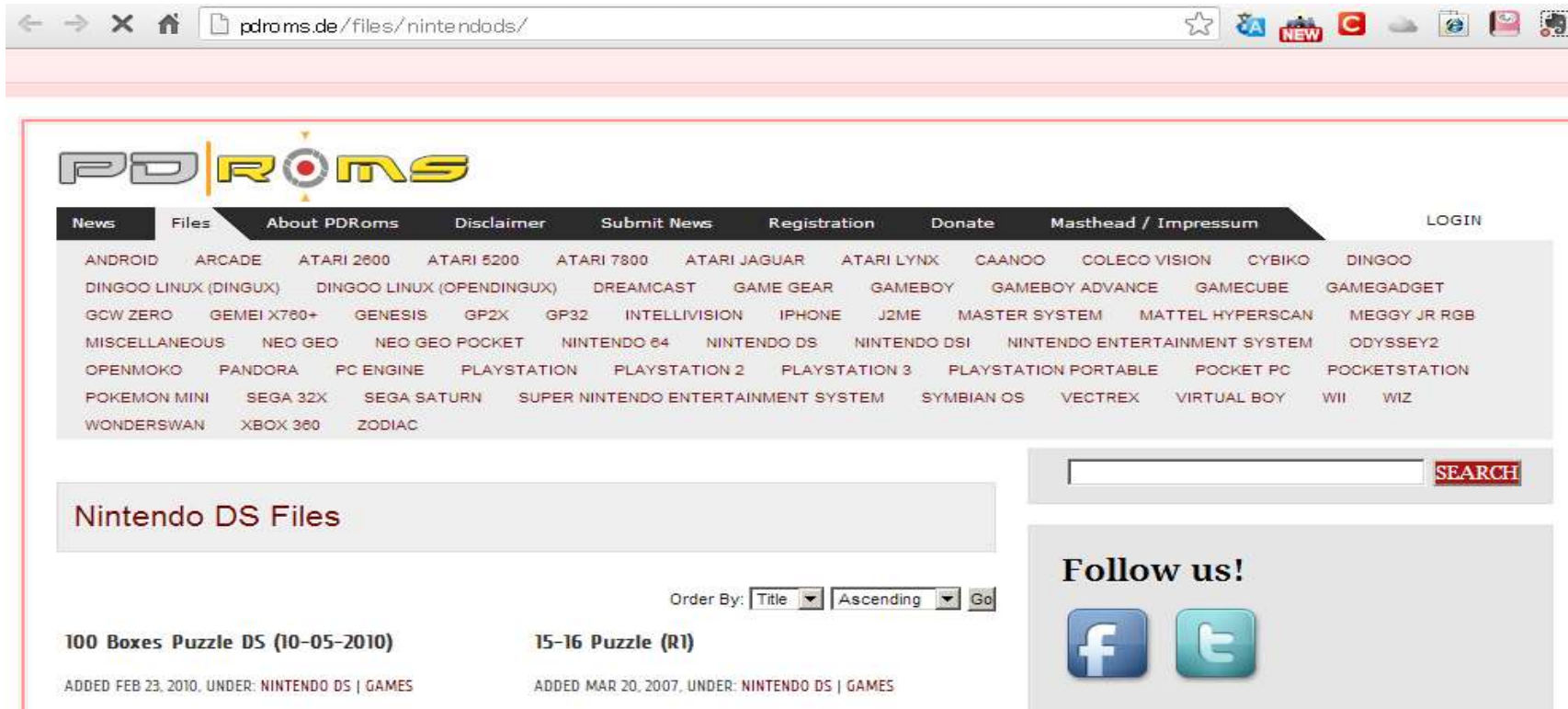
Magic Computer can generate same control signal which is same as authentic software. Thus, it enables user to activate games saved in the micro-SD in Nintendo DS.



Nintendo DS



How to get self-made software



The screenshot shows a web browser at the URL `pdroms.de/files/nintendods/`. The website has a navigation bar with links: News, Files, About PDROMS, Disclaimer, Submit News, Registration, Donate, Masthead / Impressum, and LOGIN. Below the navigation bar is a grid of game categories including ANDROID, ARCADE, ATARI 2600, ATARI 5200, ATARI 7800, ATARI JAGUAR, ATARI LYNX, CAANOO, COLECO VISION, CYBIKO, DINGOO, DINGOO LINUX (DINGUX), DINGOO LINUX (OPENDINGUX), DREAMCAST, GAME GEAR, GAMEBOY, GAMEBOY ADVANCE, GAMECUBE, GAMEGADGET, GCW ZERO, GEMEI X780+, GENESIS, GP2X, GP32, INTELLIVISION, IPHONE, J2ME, MASTER SYSTEM, MATTEL HYPERSCAN, MEGGY JR RGB, MISCELLANEOUS, NEO GEO, NEO GEO POCKET, NINTENDO 64, NINTENDO DS, NINTENDO DSI, NINTENDO ENTERTAINMENT SYSTEM, ODYSSEY2, OPENMOKO, PANDORA, PC ENGINE, PLAYSTATION, PLAYSTATION 2, PLAYSTATION 3, PLAYSTATION PORTABLE, POCKET PC, POCKETSTATION, POKEMON MINI, SEGA 32X, SEGA SATURN, SUPER NINTENDO ENTERTAINMENT SYSTEM, SYMBIAN OS, VECTREX, VIRTUAL BOY, WII, WIZ, WONDERSWAN, XBOX 360, and ZODIAC. A search bar is located on the right side of the page. The main content area is titled "Nintendo DS Files" and displays two game entries: "100 Boxes Puzzle DS (10-05-2010)" and "15-16 Puzzle (R1)". The "100 Boxes Puzzle DS" entry is dated FEB 23, 2010, and the "15-16 Puzzle" entry is dated MAR 20, 2007. Both entries are categorized under "NINTENDO DS | GAMES". A "Follow us!" section with Facebook and Twitter icons is also visible.

PDROMS

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DINGOO LINUX (DINGUX) DINGOO LINUX (OPENDINGUX) DREAMCAST GAME GEAR GAMEBOY GAMEBOY ADVANCE GAMECUBE GAMEGADGET
GCW ZERO GEMEI X780+ GENESIS GP2X GP32 INTELLIVISION IPHONE J2ME MASTER SYSTEM MATTEL HYPERSCAN MEGGY JR RGB
MISCELLANEOUS NEO GEO NEO GEO POCKET NINTENDO 64 NINTENDO DS NINTENDO DSI NINTENDO ENTERTAINMENT SYSTEM ODYSSEY2
OPENMOKO PANDORA PC ENGINE PLAYSTATION PLAYSTATION 2 PLAYSTATION 3 PLAYSTATION PORTABLE POCKET PC POCKETSTATION
POKEMON MINI SEGA 32X SEGA SATURN SUPER NINTENDO ENTERTAINMENT SYSTEM SYMBIAN OS VECTREX VIRTUAL BOY WII WIZ
WONDERSWAN XBOX 360 ZODIAC

Search

Nintendo DS Files

Order By: Title Ascending Go

100 Boxes Puzzle DS (10-05-2010)
ADDED FEB 23, 2010, UNDER: NINTENDO DS | GAMES

15-16 Puzzle (R1)
ADDED MAR 20, 2007, UNDER: NINTENDO DS | GAMES

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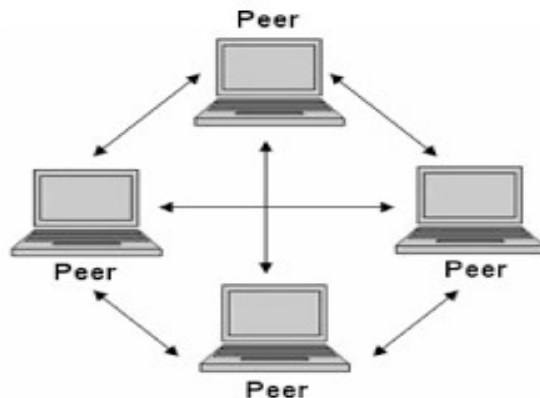
f t

Self-made software is often provided in the open platform on the Internet by paid or free.

Method to get illegal copied software

1. To download illegal copied software in some website.
2. To purchase packaged illegal copied software in the game shops.
3. The game shops download and provide illegal copied software as service
4. To get illegal copied software by getting media (CD/DVD) attached to game magazine.
5. To download illegal copied software via peer to peer technology.
 - “investigation for downloading illegal copied game soft”

by University of Tokyo



Download site for Magic Computer Software

游戏 模拟器 游戏ROM 私服 电视 ODAY 软件 电影 网址 音乐 论坛 IDC 域名 空间 主机 网速 代理

游戏下载 ChinaEmu

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软件名称 搜索

全部下载排行

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[NDS] 0839 - Kimito Soda..
[NDS] 0830 - Picross DS ..
[NDS] 0831 - Wish Room -..
[mame] kof97
[中文FC游戏] FC吞食天地2简体中文..
[中文GBA游戏] 口袋妖怪绿宝石中文..
[NDS] 0826 - San Goku Sh..
[NDS] 0817 - Kaitou Wari..
[NDS] 0834 - Nihongo Bun..
[NDS] 0846 - Luminous Ar..
[NDS] 0818 - Ochaken no..
[NDS] 0524 - Final Fanta..
[NDS] 0622 - Otona No Jo..
[NDS] 0858 - Death Note..
[NDS] 0577 - Pokemon Dia..
[中文GBA游戏] 《口袋妖怪绿宝

强烈推荐



2058 - Soma Bringer (J)



2052 - Tennis no Ouji-Sama Driving Smash! Side King (J)



2048 - B... Monogatari Taisetsu Kama Tachi (J)

最新更新

[NDS] 2068 - Bubble Bobble: Double Shot (U)(03-02)
[NDS] 2067 - Petz Wild Animals: Tigerz (U)(03-02)
[NDS] 2066 - Brain Assist (U)(03-02)
[NDS] 2065 - Bratz: Super Babyz (U)(03-01)
[NDS] 2064 - Keiji J.B. Harold no Jikenbo: Sat..(03-01)
[NDS] 2063 - Megaman ZX: Advent (E)(03-01)
[NDS] 2062 - Puzzle Quest: Challenge of the Wa..(03-01)

信息统计

今日更新: 0
软件总数: 270
点击总数: 1000000
点...
01-26 MAME新增全套ROM
> 09-24 ROM 组人员召集
> 01-20 GOODN64相关
> 01-19 GOODN64增加完毕
> 12-20 ZINC更新完毕

主要分类

∠ 街机游戏ROM (6113个)
∠ 家机游戏ROM (14410个)
∠ 掌机游戏ROM (6657个)
∠ ISO光盘游戏 (0个)
∠ 其他机种ROM (98个)



Free

Magic Computer is the device, What for?

- The device which activates illegal game soft?
- The device which activates self-made game soft?

★ Magic Computer can be used legally and illegally



Is the Magic Computer device having the “Sole” function of **circumventing technological restriction measures** used in business?

A Case in Japan

Nintendo vs Importers : [Magic Computer]

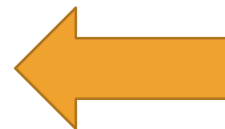


VS Importers



Fact:

- (1) Importers import and sell Magic Computer
- (2) Customer uses Magic computer to play Nintendo DS
- (3) Nintendo asserted Importers under UCPA



Nintendo Case

Issues: the devices falls within “**sole**” function?



- importers are selling products whose main purpose is enabling illegal copy games.
- R4(Magic Computer) falls within “sole” function.

Importers

- The devices (R4) have the economic and commercial function which enable self-made software.

Nintendo Case

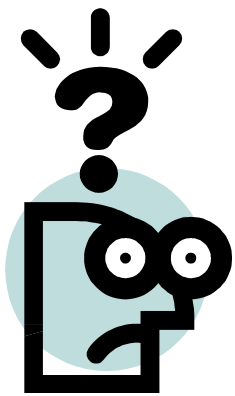
Judgement: **Nintendo won**



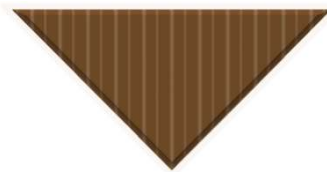
- The Court judged that though Importers' products have function enabling self-made software, it does not say that their products have incidentally function to circumvent technological protection measure.
 - The court interpreted that the main purpose of Magic Computer is enabling illegal copy which falls within unfair competition.
- Nintendo's assertion to stop selling magic computer was granted.

After Nintendo Case: Strengthening regulation

Amendment of Acts invalidating copy/access control technology (Art 2 (1) (x),(xi))



- Added that if the device have function other than access control circumvention, the device would be sanctioned if the device is used **substantially** to circumvent access control (Not “**Sole**”)



Enlarge the products which fall within unfair competition in addition to “sole” products

Finally

- UCPA is a law to promote fair competition for business operators in order to contribute to the development of our country by regulating unfair competition.
- Laws and its interpretation would be changed as the technology develops .
- It is important to consider how to protect our creative ideas, products, services from the multiple-perspective.

Thank you very much!!

Hope you spend wonderful time in Japan!



ありがとうございました!