**ICANN Public Comment**

Japan Publisher’s Manga Anti-Piracy Conference (“JPMAC”)

**1. Description of our organization**

We are the Japan Publisher’s Manga Anti-Piracy Conference (“JPMAC”), an organization consisting of five major Japanese publishers (KADOKAWA Corporation, Kodansha, Ltd., Shueisha Inc., Shogakukan Inc., and Square Enix Co., Ltd.) and lawyers with expertise in intellectual property rights. Focusing on the study and implementation of measures against illegal manga piracy sites, JPMAC aims to ensure the appropriate distribution of manga works in a free and trustworthy internet environment through cooperation between the public and private sectors and with the IT industry, telecommunications industry, and other related organizations, as well as to disseminate opinions and information from copyright holders and publishers, thereby contributing to the development of culture. JPMAC is currently applying for membership in the IPC of ICANN.

**2. We welcome this revision.**

We welcome the revision of the RAA and RA to require, in the event of DNS Abuse, that registries and registrars promptly take the necessary (RAA) or contributing (RA) steps to stop or disrupting DNS Abuse. This is of great significance as ICANN has taken a positive first step toward restoring trust in the Internet and improving the Internet environment by curbing illegal activities that abuse the Internet’s ability to easily transmit and receive information.

**3. This revision should be the first step.**

In this revision, the definition of DNS Abuse is limited to malware, phishing fraud, and other security-related matters based upon SAC115. However, as stated by a speaker at the ICANN 77 Prep Week session “DNS Abuse Contract Amendments Update” on May 30, 2023, this revision is the first step. It is necessary and important for the ICANN community to discuss content-related abuse going forward. Similarly, at the ICANN 77 session “DNS Abuse Negotiation CPH Outreach session” held on June 13, another speaker explained the background of the proposed revision, stating that the revision is a minimum, not a best practice, and that everybody acknowledges that the contractual amendments are only a part of a large and wider process.

**4. Dead copy of copyrighted material is illegal in any jurisdiction or region.**

As pointed out in the above session at Prep Week, legal assessment of content-related abuse may vary based upon jurisdiction and region, and, therefore, some of such abuse does not fit the uniform definition of DNS Abuse in the RA and RAA. However, the unauthorized dead copy and wide distribution of the commercial copyrighted works of others is equally illegal in any jurisdiction or region. Protecting freedom of expression on the Internet is important, and while we do not seek to include all copyright infringement, it is possible to protect freedom of expression while preventing the illegal distribution of dead copies.

**5. Maliciousness of Internet Piracy**

Internet piracy, the practice of making large numbers of dead copies of manga available for free on the Internet, is extremely malicious. Not only is it malicious as an act of profiting by completely free-riding on the copyrighted works of others, but Internet piracy also attempts to maintain its own anonymity and evade detection by rights holders by using hosting servers (so-called bulletproof servers) located in a different jurisdiction from the rights holders that do not respond to the disclosure of information of its customers (senders) and are not proactive in removing illegal information. Currently, there are frequent cases where the same domain registrant makes it difficult for right holders to take measures against pirate sites that are virtually identical by changing the domain name one after another (see attached chart titled “Examples of Domain Hopping”).

**6. Damage to rights holders is very serious.**

The damage to rights holders caused by internet piracy is extremely serious. It is estimated that the annual damage caused by internet piracy in Japan alone will exceed 500 billion yen (approximately US$36.4 billion) (in 2022), and the number of accesses from Japan to the top 10 Japanese-language pirated sites (mainly located abroad) in December of the same year was approximately 200 million (The number of accesses for the entire world is far more than this. For example, in October of the same year, the top five English-language pirate sites received approximately 320 million hits from all over the world).

**7. Difficult to remedy rights holders**

Remedies for rights holders are difficult to obtain. As mentioned above, since the operators of Internet piracy sites use bulletproof servers located in different jurisdictions from the right holders, it is impossible or extremely difficult for the right holders to take countermeasures. If the right holder attempts to take serious measures, the operator of the pirated site can easily escape pursuit, for example, by switching to another bulletproof server located in a different jurisdiction or by changing the domain (domain hopping).

**8. Governance through RA and RAA is extremely important**

Internet piracy operators use the internet to disseminate information, which requires contracts with hosting servers, registrars, or third parties such as ad-serving companies to generate revenue. Among them, only registry and registrar require contracts with ICANN and thus it is possible to exert governance over them. This is very significant. For example, although there is a growing number of cooperative ad-serving organizations that have agreements not to advertise on illegal sites, there are still outsiders who are not members of these organizations. Since pirate site operators use such outsiders, there are limits to the measures that can be taken through ad-serving companies. Search engines, SNS, and CDNs are gradually moving toward cooperation with right holders in taking measures against the spread and distribution of illegal sites, but there are still some uncooperative intermediaries as loopholes to help with the spread and distribution. There is no organization like ICANN for hosting servers. Therefore, the role that a registry and registrar can play as an intermediary of the internet is extremely important. Domain hopping, by which site operators change registrars from one country to another, is easy and, therefore, there is limit to measures taken through national laws, whereas RAs and RAAs can enforce the same rules worldwide, making governance through RAs and RAAs extremely effective.

9. Rulemaking is important also in light of fair competition among registries and registrars

The current RAs and RAAs (even if the proposed revisions are implemented) require prompt and appropriate action for DNS abuse, but for malicious conduct (RA) or Illegal Activity (RAA), which does not constitute DNS abuse, the registry or registrar is basically free to decide whether or not to take any action. However, such a system that relies on the autonomy of registries or registrars leads to an irrational outcome, in that, such a system put registries and registrars that invest effort and resources in implementing voluntary measures at a disadvantageous position in the competition among registries and registrars, who compete in the environment where limited differentiation can be made in the content of services provided and where margins that can be generated through its operation tends to be thin. From this perspective, it is important that registries and registrars fairly assume the responsibility for taking feasible measures to stop malicious conduct (RA) or illegal activity (RAA) by RA or RAA.

10. Conclusion

For reasons described above, we strongly request that continued discussions will be made to include content-related abuse (including internet piracy), which can cause serious damage, as a case requiring appropriate mitigation action under RA and RAA.