

Unfair Competition Prevention Act

Intellectual Property Policy Office
Ministry of Economy, Trade and Industry

Table of Contents

I Overview of the Unfair Competition Prevention Act

1. Purpose of the Unfair Competition Prevention Act	6
2. History of the Unfair Competition Prevention Act	7
3. The position of the Act in the Japanese legal system	9
4. System of the Unfair Competition Prevention	1 1
5. Overview of types of acts of unfair competition	1 3
[1] Acts of creating confusion with well-known indications of goods or business	
[2] Acts of unauthorized use of famous indications of goods or business	
[3] Acts of providing goods that imitate the form of another person's goods	
[4] Infringement of trade secrets	
[5] Wrongful acquisition, etc., of shared data with limited access	
[6] Acts of providing a device, etc., that interferes with the effectiveness of technological restriction measures	
[7] Act of wrongful acquisition, etc., of domain names	
[8] Acts of misleading	
[9] Acts of harming the business reputation	
[10] Acts of unauthorized use of trademarks by agents, etc.	

6.	Exclusion from Application	5 2
7.	Overview of prohibited acts under international agreements	5 4
8.	Overview of civil measures	6 0
9.	Overview of criminal measures	6 7
1 0.	Overview of border measures under the Customs Act	7 4

II References

• (Reference)	Handbook for Protection of Confidential Information	7 9
• (Reference)	Tips for Data Utilization and Guidance for Data Utilization	8 6
• (Reference)	Comparison of civil measures of intellectual property laws	8 7

I Overview of the Unfair Competition Prevention Act

Have you ever heard of these examples?

Minced meat containing pork was shipped with a label of “minced beef.” Beef croquettes made with such meat were recalled.

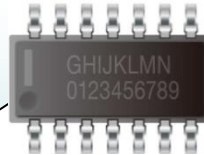
(A company's president was sentenced to imprisonment)

Beef 100%
Minced meat



Technical data of semiconductor memories managed as secret was divulged by an ex-employee of a business partner to an overseas competitor.

(The ex-employee was sentenced to imprisonment)



A steel maker falsified inspection data of metal products as if they met quality standards.

(The maker was sentenced to a fine of 100 million yen)

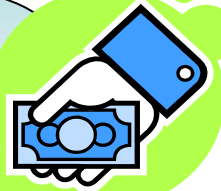


After the release of a new game console with a characteristic design, goods of a similar form started appearing.



Selling a malicious program that allows users to watch pay satellite television programs for free without permission.
(The seller was arrested)

About 40 million yen was given to a foreign official for the purpose of obtaining tacit approval for violating the permit conditions.
(Three persons, including a former operating officer, of a Japanese company received suspended sentences)



Selling a product with the same name as another's best-selling product.

A company's tightly-controlled client list was taken away by an ex-employee while in office and used by another company.



These actions are prohibited
by the Unfair Competition
Prevention Act.

Brazilian chicken thighs with false indications of origin (e.g., "Made in Miyazaki, Japan") were delivered to a school lunch center.
(The company's officer was arrested)

1 . Purpose of the Unfair Competition Prevention Act

Article 1

The purpose of this Act is to provide measures for preventing unfair competition and compensating loss or damage caused by such competition, in order to ensure fair competition among businesses and the proper implementation of related international agreements, thereby contributing to the sound development of the national economy.

Specific measures

Measures for prevention of unfair competition, injunction for unfair competition, and compensation for loss or damage caused by such competition

Purpose

Promotion of fair competition among businesses

- Protection of business interests (→Private interests)
- Maintenance of fair competition order (→ Public interests)

Purpose

Implementation of related international agreements

- Paris Convention, Madrid Agreement*, TRIPS Agreement, OECD Anti-Bribery Convention, etc.

Final purpose

Sound development of the national economy

*Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods

2. History of the Unfair Competition Prevention Act

Moves toward enactment

- 1911 (Meiji 44) The bill for the Act was considered, inspired by the amendment of Act Against Unfair Competition in Germany (1909)
- 1926 (Taisho 15) A bill was drafted in response to the Paris Convention for the Protection of Industrial Property (the Hague Act)

- Japan's industry was still underdeveloped
- Issues related to interpretation of the Civil Code
(No legal liability arises from acts of "non-infringement of rights")

Enactment of the Unfair Competition Prevention Act was postponed.

- Consideration for international situation
(e.g., increase in imitation of Japanese goods by foreign companies along with the development of Japanese industry, growing foreign demand for Japan's legislative effort, necessity of Japan to join the Paris Convention)
- Changes in the interpretation of the Civil Code
(Requirements for a tort changed from "infringement of rights" to "Illegality")

Amendment of the Act in the Showa era

- 1934 (Showa 9) The Act was enacted to fulfil the obligations under the Paris Convention (the Hague Act, 1925) following its ratification by Japan
- 1938 (Showa 13) Partially amended in response to the London Act of the Paris Convention
- 1950 (Showa 25) Partially amended to ensure international credibility in response to the instructions given under memorandum from GHQ to the Japanese government
- 1953 (Showa 28) Partially amended in response to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods
- 1965 (Showa 40) Partially amended in response to the Lisbon Act of the Paris Convention and the Madrid Agreement
- 1975 (Showa 50) Partially amended in response to the Stockholm Act of the Paris Convention

Major amendments of the Act since the Heisei era

- | | |
|------------------|---|
| 1990 (Heisei 2) | Wrongful act involving “trade secrets” was added as acts of unfair competition (enforced on June 15, 1991) in anticipation of the GATT Uruguay Round negotiations |
| 1993 (Heisei 5) | Overall amendment (including [1] change of text to hiragana, [2] specification of the purpose of the Act, [3] expansion of types of unfair competition acts (acts of unauthorized use of famous indication of goods or business; acts of imitating the form of another person’s goods), [4] addition of provisions for presumption of amounts for loss or damage, and [5] establishment of provisions for imposing heavier penalties on corporations) (enforced on May 1, 1994) |
| 1998 (Heisei 10) | Establishment of the crime of bribery of foreign public officials (enforced on February 15, 1999) to implement the OECD Anti-Bribery Convention |
| 1999 (Heisei 11) | Wrongful act involving “technological restriction measures” was added as acts of unfair competition (enforced on October 1, 1999) to protect digital content |
| 2001 (Heisei 13) | [1] Wrongful act involving domain names was added as acts of unfair competition, and [2] expansion of regulatory subjects of the crime of bribery of foreign public officials (enforced on December 25, 2001) |
| 2003 (Heisei 15) | [1] Introduction of criminal protection of trade secrets, [2] strengthening of civil remedies, and [3] responses to the networking environment (enforced on January 1, 2004) to implement the items identified in the Intellectual Property Policy Outline (July 2002) |
| 2004 (Heisei 16) | [1] Addition of crimes committed outside Japan to the subject of punishment for the crime of bribery of foreign public officials (enforced on January 1, 2005)
[2] Strengthening of the protection of trade secrets and facilitation of proving acts of infringement (e.g., introduction of the protective order system, and establishment of requirements and procedures for suspension of public disclosure in litigation where trade secrets are at issue) (the act partially amending the Court Act, etc.) (enforced on April 1, 2005) |
| 2005 (Heisei 17) | Strengthening of the protection of trade secrets, strengthening of measures against imitation and pirated products, strengthening of penalties, and arrangement of article numbers (enforced on November 1, 2005)
→ Introduction of the system of import injunction at customs for goods, etc., that constitute the act of creating confusion with well-known indications (partial amendment of the Customs Tariff Act) |

Major amendments of the Act since the Heisei era

- 2006 (Heisei 18) Strengthening of criminal penalties involving crimes of violation of trade secrets and protective order; and strengthening of criminal penalties for acts of imitating the form of another person's goods (enforced on January 1, 2007)
→ Introduction of the system of export injunction at customs for goods violating the Unfair Competition Prevention Act (partial amendment of the Customs Act) (enforced on January 1, 2007)
- 2009 (Heisei 21) Strengthening of penalties for crimes of trade secret infringement (e.g., [1] addition of acts of unjustly continuing to possess trade secrets (acts of unjust possession) as punishable acts and [2] expansion of purpose requirements (changed from the purpose of unfair competition to the purpose of wrongful gain or to cause damage)) (enforced on July 1, 2010)
- 2011 (Heisei 23) [1] Establishment of the criminal litigation proceedings to protect the content of trade secrets (e.g. protective rulings, ruling on a naming, etc., and examination of witnesses on days other than trial dates), [2] strengthening of discipline for technological restriction measures (expansion of the scope of regulated devices, introduction of criminal penalties, and subjects of the system for import/export injunction at customs (partial amendment of the Customs Act)) (enforced on December 1, 2011)
- 2015 (Heisei 27) [1] Strengthening of deterrence against acts of trade secret infringement (introduction of heavier statutory penalties, definition of such acts as offences prosecutable without complaint, addition of provisions for presumption of unauthorized use, and regulation of acts such as the act of transferring things created by infringement of trade secrets); and [2] Arrangement of the scope of punishment for the crime of trade secret infringement (expansion of the scope of punishment for attempted offences, subsequent acquirers and crimes committed outside Japan) (enforced on January 1, 2016; only the part of the extension of statute of limitations was enforced on July 10, 2015)
→ Introduction of the system for import/export injunction at customs against things created by infringement of trade secrets (partial amendment of the Customs Act in 2016) (enforced on June 1, 2016)
- 2018 (Heisei 30) [1] Wrongful act involving "shared data with limited access" was added as acts of unfair competition; [2] strengthening of discipline for technological restriction measures, and [3] enhancement of evidence gathering procedures ([2] was enforced on November 29, 2018; [1] and [3], July 1, 2019)
- 2023 (Reiwa 5) [1] The act of providing goods that imitate the form of another person's goods through telecommunications lines was added as acts of unfair competition; [2] expansion of the protection of trade secrets and shared data with limited access (review of the definition of shared data with limited access, expansion of the provisions on calculation of amounts for loss or damage and provision for presumption of use, etc., and addition of procedures for international trade secret infringement (jurisdiction, applicable scope)); and [3] strengthening of discipline for the crime of bribery of foreign public officials (introduction of heavier statutory penalties; expansion of locational scope of application), etc. (enforced on April 1, 2024)

3. The position of the Act in the Japanese legal system

1 Relationship with the Civil Code: Special law of tort law

- Article 709 of the Civil Code → Claim for compensation for loss or damage caused by tort
“A person that has intentionally or negligently infringed the rights or legally protected interests of another person is liable to compensate for damage resulting in consequence”
- Unfair Competition Prevention Act → Legally establishes the right to claim for an injunction

2 Relationship with intellectual property law: The Act as part of intellectual property law

- Ensuring protection of intellectual property through regulations (i.e., conduct control) of acts that fall under “unfair competition”
Note: Industrial property law (patent, utility model, design, trademark) ensures protection of intellectual property by means of granting rights to objects of law (creation of rights)

3 Relationship with the Penal Code and the Code of Criminal Procedure:

Supplementation, etc., by punishment of wrongful acts involving foreign bribery and trade secrets

- Supplementing the crimes of fraud, bribery, theft, misappropriation, etc.
- Statute of limitation period for corporate punishment (extended up to the limitation period for the relevant individual's crime that serves as the basis for corporate punishment)
- Special provisions on criminal proceedings for the crime of trade secret infringement

4 Relationship with the Antimonopoly Act, etc.: Playing a part in maintaining the competitive order

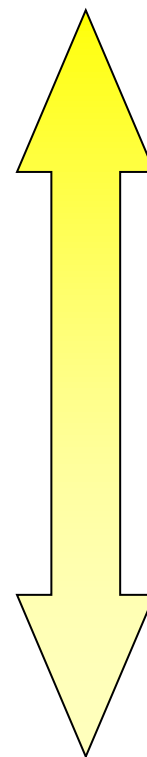
- Antimonopoly Act (Act on Prohibition of Private Monopolization and Maintenance of Fair Trade)
 - ・ Maintenance of “fair and free” competitive order
- Truth-in-advertising law (Act against Unjustifiable Premiums and Misleading Representations)
 - ・ Protection of general consumers' interests (general consumers' voluntary and rational choice-making)

etc.

(Reference) Structured understanding of Japanese intellectual property laws

Types of intellectual property laws	Advantage	Disadvantage
Examination-based registration / right-granting type (Patent Act Design Act Trademark Act)	<ul style="list-style-type: none"> Whether the intellectual property deserves protection can be determined at the right-granting stage By establishing examination bodies outside the judicial branch, the mitigation of burdens on courts and stable and high-quality decisions by specialized bodies can be expected. 	<ul style="list-style-type: none"> Examiners are required Registration organizations are required
Non-examination-based registration / right-granting type (Utility Model Act)	<ul style="list-style-type: none"> Clarification of presence / absence of rights By allowing the transfer of intellectual property based on the registration system, there can be a greater variety of means of recouping funds 	Registration organizations are required
No registration / right-granting type (Copyright Act)	<ul style="list-style-type: none"> Slightly stronger protection than the conduct-controlling type (allowed to claim for an injunction without reference to requirements of infringement of business interests) 	Potentially over-protective, depending on the subject to protection
Conduct-controlling type (Unfair Competition Prevention Act)	Types of illegal acts are clearer than those in tort law	Transfer of the protected status may not be allowed
Tort law	Allowing flexible responses to new cases	<ul style="list-style-type: none"> Lacking clarity of the regulated acts Only allowed to claim for compensation for loss or damage
Protection by contract	Protection is available according to the intention of the relevant party	No effect on third parties (i.e., parties other than the contracting parties)

Social cost : High
Clarity of regulated acts : High



Social cost : Low
Clarity of regulated acts : Low

4. System of the Unfair Competition Prevention Act (entire structure of the Act)

Purpose of the Act (Article 1)

Definitions of unfair competition (Article 2)

[1] Creation of confusion with a well-known indication of goods or business (i)

[2] Unauthorized use of a famous indication of goods or business (ii)

[3] Provision of goods that imitate the form of another person's goods (iii)

[4] Infringement of trade secrets (iv) - (x)

[5] Wrongful acquisition, etc., of shared data with limited access (xi) - (xvi)

[6] Provision of a device, etc., that interferes with the effectiveness of technological restriction measures (xvii) and (xviii)

[7] Wrongful acquisition, etc., of domain names (xix)

[8] Indication that misleads as to the place of origin, quality, etc., of goods or services (xx)

[9] Acts of harming the business reputation (xxi)

[10] Unauthorized use of a trademark by agents, etc. (xxii)

Prohibited acts under international agreements

1 Unauthorized use of a foreign state's national flag, coat of arms, etc. (Art. 16)

2 Unauthorized use of marks of international organizations (Art. 17)

3 Bribery of foreign public officials, etc. (Art. 18)

Civil and criminal measures are available ([1][2][3][4][6][8])

Civil measures only ([5][7][9][10])

Criminal measures only

Content of measures

Civil measures

- Right to claim for an injunction (Art. 3)
- Right to claim for compensation for loss or damage (Art. 4)
- Presumption of amounts for loss or damage / unauthorized use (e.g., Art. 5)
- Order of document submission (Art. 7)
- Civil procedural protection of trade secrets (e.g., Art. 10)
(Protective order, restriction on inspection of case records, non-public trial)
- Measures to restore business reputation (Art. 14)
- Procedures for international trade secrets infringement (e.g., Art. 19-2)
(Jurisdiction, scope of application)

Criminal measures (criminal penalties)

The following punishments are provided for persons who committed a certain act of unfair competition.

- Penal provisions (Art. 21) Note: Cumulative imposition applicable to any of the following
 - Crime of bribery of foreign public officials :
Imprisonment for not more than 10 years, a fine of not more than 30 million yen, or both
 - Crime of trade secrets infringement :
Imprisonment for not more than 10 years, a fine of not more than 20 million yen (or not more than 30 million yen for overseas use, etc.), or both
 - Others : Imprisonment for not more than 5 years, a fine of not more than 5 million yen, or both
- Dual criminal liability provisions (Art. 22)
 - Crime of bribery of foreign public officials : A fine of not more than 1 billion yen
 - Crime of trade secrets infringement (in part) :
A fine of not more than 500 million yen (or 1 billion yen for overseas use, etc.)
 - Others : A fine of not more than 300 million yen
- Punishment of acts outside Japan (Art. 21(8), (9), (10) and (11))
(Crimes of trade secrets infringement and of bribery of foreign public officials, and violation of protective order)
- Confiscation of unjust proceeds, etc., gained from acts of trade secrets infringement (e.g., Art. 21(13))

Special provisions on criminal proceedings (Arts. 23 - 31)

Special provisions on criminal proceedings for the protection of the content of trade secrets (e.g., paraphrase of the content of trade secrets, and examination to be conducted on days other than trial dates)

Procedures for confiscation (Arts. 32 - 40)

e.g., procedures for confiscation of assets that belong to third parties, for preservation for the freezing of assets, or for mutual legal assistance concerning confiscation

(Reference) Prohibited acts and remedial measures under the Unfair Competition Prevention Act

Types of prohibited acts		Corresponding provisions	Relevant international treaties	Civil measures						Criminal measures *2				Border measures (Customs Act)	
				Right to claim for an injunction (Art. 3)	Right to claim for compensation for loss or damage (Art. 4)	Provisions for presumption of amounts for loss or damage (Art. 5) *1			Presumption of use (Art. 5-2)	Determination of reasonable amount of loss or damage (Art. 9)	Penal provisions (Art. 21(1)-(5))	Punishment for an attempt of offences (Art. 21(6))	Provisions for confiscation		Dual criminal liability provisions (Art. 22(1))
Para. (1)	Para. (2)	Para. (3)													
Unfair competition	Creation of confusion with well-known indication of goods or business	Art. 2(1)(i)	Art. 10-2(3)1 of the Paris Convention	○	○	○	○	○		○	[3]			[3]	○
	Unauthorized use of a famous indication of goods or business	Art. 2(1)(ii)		○	○	○	○	○		○	[3]			[3]	○
	Provision of goods that imitate the form of another person's goods	Art. 2(1)(iii)		○	○	○	○	○		○	[3]			[3]	○
	Infringement of trade secrets	Art. 2(1)(iv)-(x)	Art. 39(2) of TRIPS Agreement	○	○	○	○	○ (Excluding item (x))	○ (Manufacturing methods, etc., only)	○	[2] ([1] for overseas use, etc.,)	○ (Except some exceptions)	○	[2] (Partially applicable) ([1] for overseas use, etc. (partially applicable))	○
	Wrongful acquisition, etc., of shared data with limited access	Art. 2(1)(xi)-(xvi)		○	○	○	○	○		○					
	Provision of adevice to defeat technological restriction measures	Art. 2(1)(xvii) and (xviii)		○	○		○			○	[3]			[3]	○
	Wrongful acquisition, etc., of domain names	Art. 2(1)(xix)		○	○		○	○		○					
	Indication that misleads as to the place of origin, quality, etc., of goods or services	Art. 2(1)(xx)	Arts. 10(1) and 10-2(3)3 of the Paris Convention	○	○		○			○	[3]			[3]	
	Acts of harming the business reputation	Art. 2(1)(xxi)	Art. 10-2(3)2 of the Paris Convention	○	○		○			○					
	Unauthorized use of a trademark by agents, etc.	Art. 2(1)(xxii)	Art. 6-7 of the Paris Convention	○	○	○	○	○		○					
Prohibited acts under international agreements	Unauthorized use of a foreign state's national flag, coat of arms, etc.	Art. 16	Arts. 6-3(1)a, (9) and (2) of the Paris Convention								[3]			[3]	
	Unauthorized use of marks of international organizations	Art. 17	Art. 6-3(1)b of the Paris Convention								[3]			[3]	
	Bribery of a foreign public official, etc.	Art. 18	OECD Anti-Bribery Convention								[1]			[1]	
Others	Violation of protective order	Art. 10									[3]			[3]	

*1 Calculation method for the presumed amount under Article 5 (Presumption of amounts for loss or damage) *2 Content of criminal measures

Para. (1) : Infringed party's profit per unit of goods × transferred quantity of the infringing goods (Item (i))

+

Reasonable royalties proportionate to the quantity deducted pursuant to item (i) (Item (iii))

☆A quantity of relevant things exceeding the quantity proportionate to the infringed party's ability to sell, etc., or a quantity of the things corresponding to circumstances, if any, that would have prevented the infringed party from selling, is to be deducted from the transferred quantity of the infringing goods under item (i).

Para. (2) : Profit made by the infringer

Para. (3) : Amount equivalent to royalties

[1](Individual) Imprisonment of not more than 10 years, a fine of not more than 30 million yen, or both (Corporation) A fine of not more than 1 billion yen

[2](Individual) Imprisonment of not more than 10 years, a fine of not more than 20 million yen, or both (Corporation) A fine of not more than 500 million yen

[3](Individual) Imprisonment of not more than 5 years, a fine of not more than 5 million yen, or both (Corporation) A fine of not more than 300 million yen

5. Overview of types of acts of unfair competition (1)

[1] Acts of creating confusion with well-known indications of goods or business

(Arts. 2(1)(i) and 21(3)(i))

The act of creating confusion with another person's goods or business, by using an indication of goods or business that is identical or similar to another person's indication of goods or business that is well-known among consumers as belonging to that person

Case example (Civil)

A court approved a request for cancellation of the trade name registration of a business who used the same indication as “ウォークマン” (Walkman) (i.e., Sony's famous indication) for its signboards while using the trade name “有限会社ウォークマン” (Walkman LLC).

(Chiba District Court judgement of April 17, 1996)

Case example (Civil)

Authentic product Similar product



(Tokyo District Court judgement of December 26, 2008)

Case example (Civil)

For a competitor whose shops used an external appearance that is similar to that of the shops of “Komeda's Coffee,” a famous coffee chain, a court prohibited the competitor from using such appearance for its shops.

(Tokyo District Court judgment of December 19, 2016)

Case example (Civil)

Authentic product (BAO BAO ISSEY MIYAKE) Similar product



(Tokyo District Court judgement of June 18, 2019)

Civil provisions (Article 2(1)(i))

The act of creating confusion with another person's goods or business by using an indication of goods or business (meaning a name, trade name, trademark, marks, containers, or packaging for goods belonging to a person's business, or any other indication of a person's goods or business; the same applies below) that is identical or similar to another person's indication of goods or business that is well-known among consumers as belonging to that person, or by transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through telecommunications lines goods that use such an indication

Exclusion from Application (Article 19)

See pages 52-53

[1] Using a common name for goods or business or an indication of goods or business that is in common usage in the manner this is normally done (Paragraph (1), item (i))

Examples)

Common name: “Bento”; “Sake”; “Shoyu”; “Kurozu”; “Beniimo Tart”

Indication that is in common usage: “Makunouchi” (lunch box); sign pole (barber)

[2] Using one's own name without wrongful purpose (Paragraph (1), item (ii))

[3] Using a registered trademark that is registered in the consent system without wrongful purpose (Paragraph (1), item (iii))

[4] Using an indication without wrongful purpose prior to another person's indication becoming well-known (Paragraph (1), item (iv))

☆ “Indication of goods or business” (Article 2(1)(i))

- A name, trade name, trademark, or marks belonging to a person's business
- Containers/packaging for goods
- Any other indication of a person's goods or business

⇒ Indication must indicate the “source of goods” or “business entity”!

- “Trademark” means the trademark provided in Article 2(1) of the Trademark Act (Art. 2(2))
- “Marks” means the mark provided in Article 2(1) of the Trademark Act (Art. 2(3))

☆ “Well-known among consumers” (Well-knownness)

- “Consumers”: the opposing parties in transactions of goods or business, including businesses at each stage up to the final consumers.
- “Well-known”: Not necessary to be known throughout the country, but enough to be well known only in a region.

☆ “Act of creating confusion with another person's goods or business”

- ⇒ For confusion, it does not need to occur in reality, but it is sufficient if there is a likelihood of occurrence.
- ⇒ “Confusion in a broad sense” is also deemed to be included.

Trademark Container for goods

Moving billboard

Form of goods

ウオークマン



Note: “Indication of goods or business” must have an ability to self-distinguish itself from others or a function of indicating the source, and does not include the indication that merely indicates the use or content. For example, in a judicial precedent, a court held that a title of a book or film does not fall under “indication of goods or business” because the title is intended to specify the book or film that constitutes a work and is not recognized as an indication that identifies other goods, or their place of origin or broadcasting/distribution business entity.

Criminal provisions (Article 21(3)(i))

If a person, for a wrongful purpose, commits any act of unfair competition stated in Article 2, paragraph (1), item (i) or (xx)

→ Penal provisions: Imprisonment for not more than 5 years or a fine of not more than 5 million yen (or both)
For dual criminal liability provisions, a fine of not more than 300 million yen (Article 22(1)(iii))

Border measures

Customs Act (Articles 69-4 and 69-13)

See pages 74-77

See pages 67-73

5. Overview of types of acts of unfair competition (2)

[2] Acts of unauthorized use of famous indications of goods or business (Articles 2(1)(ii) and 21(3)(ii))

The act of using another person's famous indication of goods or business as one's own



It doesn't create
confusion, but...

**Abuse of the power to
attract customers**

**Tarnishing of
the brand image**

Dilution of the brand image

See pages 52-53

Civil provisions (Article 2(1)(ii))

The act of using an indication of goods or business that is identical or similar to another person's famous indication of goods or business as one's own, or the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through telecommunications lines goods using such an indication

Exclusion from Application (Article 19)

- [1] Using a common name for goods or business or an indication of goods or business that is in common usage in the manner this is normally done (Paragraph (1), item (i))
- [2] Using one's own name without wrongful purpose (paragraph (1), item (ii))
- [3] Using a registered trademark that is registered in the consent system without wrongful purpose (Paragraph (1), item (iii))
- [4] Using an indication without wrongful purpose prior to another person's indication becoming famous (Paragraph (1), item (v))

☆ “Famous”

- Needs to be well known throughout the country – not enough to be merely “well known.”
- Known to not only clients or consumers belonging to a specific field but also society at large as an indication of a specific person.

Criminal provisions (Article 21(3)(ii))

See pages 67-73

If a person, for the purpose of wrongful gain through the use of the reputation or fame of another person’s famous indication of goods or business, or for the purpose of injuring that reputation or fame, commits any act of unfair competition stated in Article 2, paragraph (1), item (ii)

→ Penal provisions: Imprisonment for not more than 5 years or a fine of not more than 5 million yen (or both)
For dual criminal liability provisions, a fine of not more than 300 million yen (Article 22(1)(iii))

Border measures

See pages 74-77

Customs Act (Articles 69-4 and 69-13)

**Case example
(Civil)**

Plaintiff's indication



(Louis Vuitton Case, Intellectual Property High Court judgement of October 23, 2018)

Defendant's goods



**Case example
(Civil)**

Courts issued injunctions preventing credit companies, construction firms and investment funds from using Mitsubishi's name and mark (three-diamond mark) because they are famous as the indication that indicates the Mitsubishi Group and companies belonging thereto.

(Mitsubishi Credit Case, Intellectual Property High Court judgement of July 28, 2010)

(Mitsubishi Home Case, Tokyo District Court judgement of July 18, 2002)

Mitsubishi Quantum Fund Case, Tokyo District Court judgement of April 25, 2002)

**Case example
(Civil)**

For the defendant who used indications such as "MariCar" and character costumes that are similar to those of Nintendo's "MARIO KART," "Mario," etc., the court ordered them to cease use, etc., and pay compensation on the grounds that they constitute acts of unauthorized use of famous indications.



Plaintiff's indication



Defendant's costume

(MariCar Case, Intellectual Property High Court judgement of January 29, 2020)

(Reference) Comparisons between items (i) and (ii), and between the Unfair Competition Prevention Act and the Trademark Act

Comparison of elements of acts of creating confusion with well-known indications (item (i))
and acts of unauthorized use of famous indications (item (ii))

	Publicity and recognition of indication of goods or business	Scope of indication of goods or business	Whether or not an act of creating confusion is necessary	Manners of acts which are to be deemed unfair	
Item (i)	Widely known <u>among consumers</u> <Well known>	Identical or similar	○	—	Using the indication; or transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through telecommunications lines goods using such an indication
Item (ii)	Widely known <u>also to people other than consumers throughout the country</u> <Famous>		×	Necessary to set a famous indication "as the indication of one's own goods and business" and conduct acts listed in the right column	

Examples of indication of goods or business in Court Cases

Well known

VOGUE, SHIPS, arch-shaped embroidery on Levi jeans, Levi red tabs, 501, ファイアーエムブレム(Fire Emblem), 堂島ロール(Dojima Roll), マイクロダイエット(Micro Diet), 花柳流(Hanayagiryu), Shibuya Girls Collection

Famous

Chanel, Louis Vuitton, 三菱(Mitsubishi), Mitsubishi's trademark (three-diamond mark), JAL (red crane mark), PETER RABBIT, MARIO KART, Budweiser, 菊正宗(Kikumasa-mune), 青山学院(Aoyama Gakuin), セイロガン糖衣A(Seirogan Toi-A)

×

歌川(Utagawa), 歌川正国(UTAGAWA SHOKOKU), UTAGAWA, "Who Moved my Cheese?," マクロス(MACROSS), 505, 寒天オリゴ糖(Kanten Origo-to)

Cases where the relevant acts were deemed not to fall under the "indication of goods or business"

Comparison between the Unfair Competition Prevention Act and the Trademark Act

		Unfair Competition Prevention Act	Trademark Act
Subject of protection	Indication	"Indication of goods or business" (Article 2(1)(i))	
	Goods/services	A name, trade name, trademark, marks (meaning the "trademark" and "mark" prescribed in Article 2(1) of the Trademark Act), containers or packaging, or other indication of goods or business belonging to a person's business	"Trademark" (Article 2(1)) [1] Indications used for the relevant goods [...] on a regular basis, or [2] Indications used for the relevant services [...] on a regular basis, which are marks (character, figure, sign, three-dimensional shape or colors, or any combination thereof, sound, or others specified by Cabinet Order) that can be recognized by the human senses
Method of Protection		Prohibition of acts of using, etc., another person's indication of goods or business as "unfair competition" (Registration is not required)	Protected by a grant of "trademark rights" (Examination and registration by Japan Patent Office are required)
Scope of protection	Indication	Use by others can be prohibited to the extent identical or similar	
	Goods/services	—	To the extent that they are identical or similar to the designated goods/services

5. Overview of types of acts of unfair competition (3)

[3] Acts of providing goods that imitate the form of another person's goods (Articles 2(1)(iii) and 21(3)(iii))

The act of transferring, etc., goods that imitate the form of another person's goods

Case example (Civil)

Authentic product
(Tamagotchi)



(Tokyo District Court judgment of February 25, 1998)

Imitation product



It is difficult to manage to squeeze time and raise money to obtain design rights for goods of high-mix low-volume production such as toys or goods having a short shelf life such as fashion products.

Case example (Civil)

Authentic product
(THE RERACS)



(Tokyo District Court judgment of August 30, 2018)

Imitation product



Civil provisions (Article 2(1)(iii))

The act of transferring, leasing, displaying for the purpose of transfer or lease, exporting, importing, or providing through telecommunications lines goods that imitate the form of another person's goods (excluding what is indispensable to their functioning)

Note: "Form of goods" as prescribed in Article 2(4)

Note: "Imitate" as prescribed in Article 2(5)

See the next page

Criminal provisions (Article 21(3)(iii))

See pages 67-73

If a person, for the purpose of wrongful gain, commits any act of unfair competition stated in Article 2(1)(iii)

→ Penal provisions: Imprisonment for not more than 5 years or a fine of not more than 5 million yen (or both)
For dual criminal liability provisions, a fine of not more than 300 million yen (Article 22(1)(iii))

Exclusion from Application (Article 19)

- (1) The act of transferring, importing, etc., goods that imitate the form of goods if three years have elapsed since the date they were first sold in Japan (Paragraph (1), item (vi), sub-item (a))
- (2) The act of transferring, importing, etc., goods by a person that, at the time of receiving the goods, did not know, without gross negligence, that the goods imitated the form of another person's goods (Paragraph (1), item (vi), sub-item (b))

See pages 52-53

Border measures

See pages 74-77

Customs Act (Articles 69-4 and 69-13)

★ “Form of goods” (Article 2(4))

the external and internal shape of goods, as well as the pattern, color, gloss, and texture combined with the shape, which can be perceived by consumers when they use the goods in an ordinary manner

★ “Imitate” (Article 2(5))

the act of using the form of another person's goods to create goods that have a form substantially similar to that of the original goods

Internal shape and structure of goods **Note: Whether recognizable by appearance**

- Accepted case: Small shoulder bag (Tokyo District Court judgment of December 27, 2001)
- Denied case: Heat-insulating drain hose (Osaka District Court judgment of November 28, 1996)

Form that cannot receive protection

- Form which is indispensable to the functioning of goods (Brackets in item (iii))
- Common form (Touch Pen with Coil Strap Case, Tokyo District Court judgment of December 25, 2012)
 - Since it is possible, without funds and efforts, to make general and unremarkable goods compared with other goods, such goods should not be considered to fall under the “form of goods” to be protected.
- Not applicable to independently created goods.
- When there is any modification to the form, substantial identity will be judged in a comprehensive manner based on the difficulty in finding inspiration for the modification, content/extent of the modification, morphological effects by the modification and other factors.

(Reference) Comparison between the Unfair Competition Prevention Act and the Design Act

	Unfair Competition Prevention Act	Design Act
Subject of protection	“Form of goods” (Article 2(4)) The external and internal <u>shape of goods</u> , as well as the <u>pattern, color, gloss, and texture combined with the shape</u> Note: In either case, limited to those that “can be perceived by consumers when they use the goods in an ordinary manner.”	“Trademark” (Article 2(1)) <u>Shape, pattern, color of goods (including part thereof) or any combination thereof.</u> <u>Shape, pattern, color of a building (including part thereof) or any combination thereof.</u> Image (or partial image only in limited cases). Note: In either case, limited to those that “are aesthetically pleasing in its visual presentation.”
Method of Protection	Prohibition of acts of transferring, etc., imitation goods as “unfair competition” (Registration is not required) Note: The novelty or creative difficulty is not required, like the Design Act.	Protected by a grant of “design rights” (Examination and registration by the Japan Patent Office are required) <Main requirements for registration (Article 3)> <ul style="list-style-type: none"> • Designs must be industrially applicable (enabling mass production) - Designs that are not publicly known (including those with similar designs) (Novelty) - Designs that have not been easily created (Creative difficulty)
Term of protection	Within three years of the date they were first sold in Japan (Article 19(1)(vi)(a))	Up to 25 years since the filing date of design (Article 21)
What is not protected	<ul style="list-style-type: none"> - Form which is indispensable to the functioning of goods (Brackets in item (iii)) - Common form (Tokyo District Court judgment of December 25, 2012) 	<ul style="list-style-type: none"> - Designs that could disrupt public order and morals - Design that risks giving rise to confusion with goods connected with another person's business - Design consisting solely of shapes that are essential to ensure the functioning of articles (Article 5)

5. Overview of types of acts of unfair competition (4)

[4] Infringement of trade secrets (Article 2(1)(iv) - (x); Article 21(1), (2), (4) and (5))

Acts such as those of acquiring trade secrets by theft or other wrongful means, using trade secrets on one's own, or disclosing trade secrets to a third party



Company's incentive to make reasonable efforts will diminish

Adverse effect on competitive order and therefore on innovation in Japan

Various trade secrets created in the course of companies' research/development or business activities

(Examples)

- Client list, new business project, price information, response manual (**Business information**)
- Production method/know-how, new substance information, design drawing (**Technical information**)

Secrecy makes it valuable. It is difficult to protect the secret with a patent that is open to the public.

Case example (Civil)

When an employee who worked for a company engaged in investment condominium business took out the company's client information that was a trade secret at the time of resigning the company and started the person's own company, the ex-employee provided a client named in the information with false information that defamed the previous company. Claim for compensation for loss or damage was approved. (Intellectual Property High Court judgement of July 4, 2012)

Case example (Civil)

A case where an ex-executive of a leading electronics retail company illegally took out tens of thousands of trade secrets with respect to housing renovation business, etc., at the time of resigning the company and making a career move to another company in the same industry and improperly disclosed them to the new company. Claims for suspension of use of the trade secrets and for compensation for loss or damage were approved. (Osaka District Court judgment of October 1, 2020)

Case example (Criminal)

A case where a person (as a dispatched worker) worked on system development for a company engaged in distance learning business reproduced the data of about 30 million clients into the person's personal smartphone, etc., took the data out, and disclosed the data to a mailing list company, etc., by uploading part of the data of about 10 million clients on the Internet. The person was sentenced to 2 years and six months' imprisonment and a fine of 3 million yen. (Benesse Case, Tokyo High Court judgement of March 21, 2017)

Case example (Criminal)

A case where a technology employee of a Toshiba partner company engaged in the joint development of flash memories reproduced the trade secret data on the flash memory development into a recording medium from Toshiba's database, took them out of the company, and disclosed them to a Korean company. The employee was sentenced to 5 years imprisonment and a fine of 3 million yen. (Toshiba Flash Memory Case, Tokyo High Court judgement of September 4, 2015)

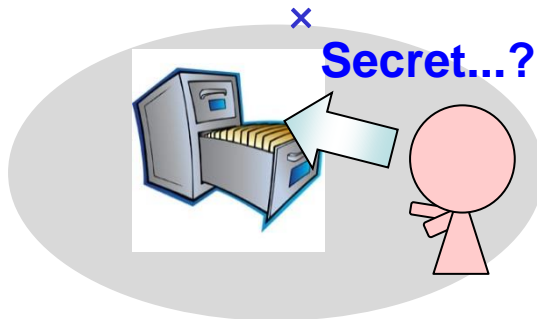
Three requirements for receiving legal protection as “trade secrets”

Article 2(6) of the Unfair Competition Prevention Act

The term "trade secret" as used in this Act means **[2] technical or business information useful for business activities**, such as manufacturing or marketing methods, that is **[1] kept secret** and **[3] not publicly known**.

[1] The information must be kept secret. (Secrecy management)

Secret management measures, such as restriction of access and confidentiality labels, must be taken to the extent that employees, etc., who have legal and actual access to the relevant information can recognize that such information is intended to be secret for the company.
(Management Guidelines for Trade Secrets (see the next page))



- Confidentiality labels
- Lock management etc.



[2] It must be useful technical or business information. (Usefulness)

This requirement is intended mainly to exclude from the scope of legal protection the information that disturbs public order, such as information on tax evasion or on discharge of harmful substances; other information can usually be seen as useful. This also applies to information that is not actually used; negative information such as unsuccessful experiment data can also be deemed useful.

[3] It must be information that is not publicly known. (Non-public domain)

Trade secrets must not be information that is generally available outside the control of the relevant secret holder (e.g., not published in publications that can be obtained with reasonable efforts). A combination of public-domain information can be deemed as non-publicly known information in light of the combinability or cost of such combination.

(Reference) Management Guidelines for Trade Secrets

<https://www.meti.go.jp/english/policy/economy/chizai/chiteki/pdf/0813mgtc.pdf>

About the Management Guidelines for Trade Secrets

- The Guidelines were established to show the **minimum level of measures** necessary to receive legal protection.
- After that, in view of changes in the environment surrounding trade secrets, including shifts in the working environment and information management, as well as the accumulation of court cases, the Guidelines were revised.

*1 Explanation on the Handbook for Protection of Confidential Information is given in page 79 and thereafter below.

Handbook for Protection of
Confidential Information*1
(Level of divulgence protection)

**Management Guidelines
for Trade Secrets**
(Level of legal protection)

<Level of legal protection of secrecy management>

It is necessary to indicate clearly to the employees the intention of the trade secrets holder to manage their secrets (*2) by means of secrecy management measures, thereby allowing the employees to recognize (*3) the said intention to manage the secrets. (page 6 in the Guidelines)

*2 The intention to manage specific information as secrets

*3 To allow those who have accessed the information to recognize that it is a trade secret

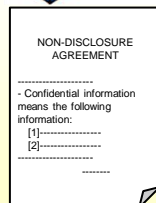
⇒ That is, **measures** sufficient to allow employees and other workers who have access to the information to recognize that it is a secret are necessary.



It is sufficient to use reasonable means according to the company's real conditions, scale, etc.

<Examples of measures sufficient to allow employees to recognize that it is a secret >

- Confidentiality labels on paper, electronic recording media
- Listing up of embodiments (e.g., mold)
- Restricted access
- Specification of subjects in non-disclosure agreements, etc.



The above-mentioned information is merely an example;
recognizability is the key.

Let's think about the cases on page 21 (Information/data that were accepted as trade secrets in each case)

Case example

When an employee who worked for a company engaged in investment condominium business took out the company's client information that was a trade secret at the time of resigning the company and started the person's own company, the ex-employee provided a client named in the information with false information that defames the previous company. Claim for compensation for loss or damage was approved. (Intellectual Property High Court judgement of July 4, 2012)

Case example

A case where an ex-executive of a leading electronics retail company illegally took out tens of thousands of trade secrets with respect to housing renovation business, etc., at the time of resigning the company and making a career move to another company in the same industry and improperly disclosed them to the new company. Claims for suspension of use of the trade secrets and for compensation for loss or damage were approved. (Osaka District Court judgment of October 1, 2020)

	Case example 1	Case example 2
Trade secrets	Client information (composed of names, ages, workplaces, annual income, own properties, rent status, etc.)	Confidential information regarding the renovation business
Secrecy management	<ul style="list-style-type: none"> - Stored in a lockable room with restrictions on entry - Only the employees, etc., at the business headquarters are allowed to use such information <p>Note: Recognition of the information as secret won't be lost even if the information was taken to the employee's home due to sales activities outside the company.</p>	<ul style="list-style-type: none"> - Development of provisions for information management (Establishment of rules of employment, etc.; operations of rules for information management) - Restriction of access to data - Nature/content of information <p>Note: Information that is prepared and internally stored, and can be recognized that their external disclosure is naturally not allowed</p>
Usefulness	Information that can contribute to the efficient conclusion of contracts if used for sales activities	Information that serves as a useful reference for product development of competitors and contribute to their business efficiency improvement, etc.
Non-public domain	Non-public information	Non-public information

Types of acts of trade secret infringement (Civil)

Subjects of acts of unfair competition Outside the scope of acts of unfair competition

Trade Secret Holder A


Unauthorized Person B

Subsequent Acquirer D
who was in bad faith at the time of acquisition


Article 2, paragraph (6)

“Trade secrets”

- i Secrecy management
- ii Usefulness
- iii Non-public domain



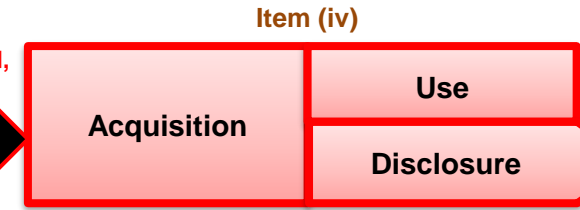
Production method



Client list

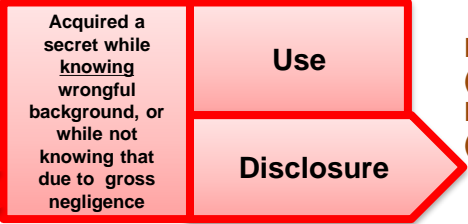
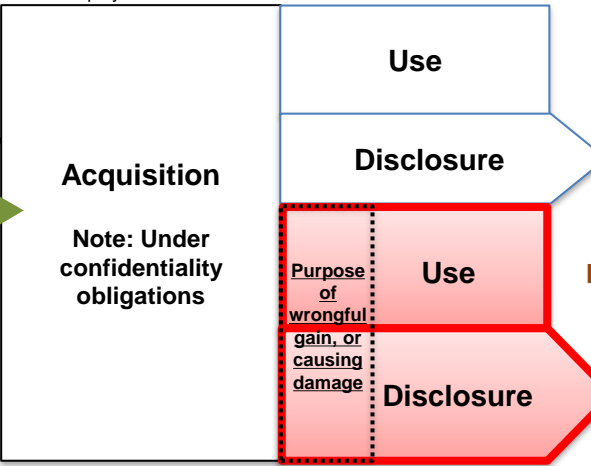
Theft, fraud, etc.

Access by employees, contractors, etc.



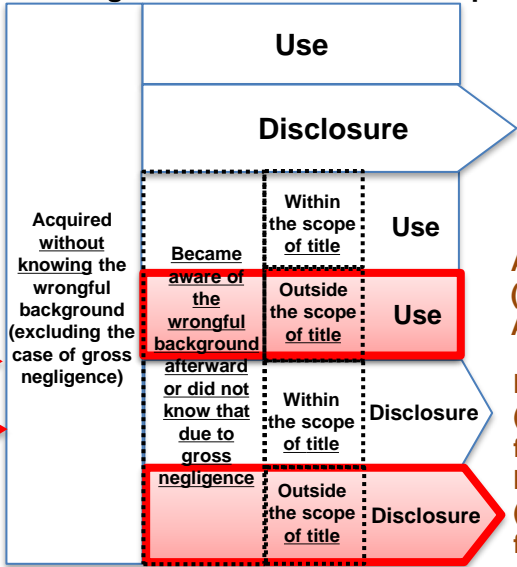
Authorized Person C
(A's employee, contractor, subcontractor, etc.)

Note: Compared with cases of “shared data with limited access,” in case of “trade secrets,” Authorized Person C may often be more closely associated with Trade Secret Holder A, such as its employee.



Note: “Wrongful background” refers to B’s act of wrongful acquisition and C’s act of improper disclosure (act of disclosure for the purpose of wrongful gain or causing damage or act of disclosure in breach of a legal duty to maintain secrecy).

Subsequent Acquirer E
who was in good faith at the time of acquisition



Note: “Scope of title” refers to the scope where E is allowed to use or disclose trade secrets in a trade secret acquisition agreement, etc., concluded with B or C.

● **Handling of things created through the act of unauthorized use**
Transferring, etc., things created by unauthorized use of trade secrets is also covered. (Item (x))

Exclusion from Application (Article 19) See pages 52-53

- Items [4] - [9] do not apply to any acts of use/disclosure of trade secrets within the scope of a license agreement, etc., by a person who acquired the trade secrets in good faith or without gross negligence with respect to the fact that the trade secrets were wrongfully acquired or improperly disclosed (including the case where the acquirer turned into a bad faith acquirer after the acquisition). (Article 19(1)(vii))
- Item [10] does not apply to things created through the act of using trade secrets for which a claim for an injunction can no longer be filed due to the expiration of the statute of limitations. (Article 19(1)(viii))

Civil provisions (Article 2, paragraph (1), items (iv) - (x))

- (iv) the act of acquiring trade secrets by theft, fraud, duress, or other wrongful means (referred to as "act of wrongful acquisition of trade secrets" below), or the act of using or disclosing trade secrets acquired through an act of wrongful acquisition of trade secrets (including their disclosure in confidence to a specific person; the same applies to the following items, from the next one through item (ix), in Article 19, paragraph (1), item (vii), in Article 21, and in Article 4, item (i) of the Supplementary Provisions);
- (v) the act of acquiring trade secrets while knowing that there has been a wrongful acquisition of trade secrets, or while not knowing this fact due to gross negligence; or the act of using or disclosing trade secrets acquired in such a manner;
- (vi) the act of using or disclosing trade secrets, after acquiring those trade secrets and learning that there had been an act of wrongful acquisition, or while not knowing this fact due to gross negligence;
- (vii) the act of using or disclosing trade secrets provided by a business holding those trade secrets (referred to as "trade secret holder" below) for the purpose of wrongful gain or to cause damage to the trade secret holder;
- (viii) the act of acquiring trade secrets while knowing that the disclosure of trade secrets constitutes improper disclosure (meaning, in the case prescribed in the preceding item, the act of disclosing trade secrets for the purpose prescribed in the same item, or the act of disclosing trade secrets in breach of a legal duty to maintain secrecy; the same applies below), or knowing that there has been improper disclosure of the relevant trade secrets, or while not knowing this fact due to gross negligence; or the act of using or disclosing trade secrets acquired in such a manner;
- (ix) the act of using or disclosing trade secrets, after acquiring those trade secrets and learning that the relevant acquisition constitutes an act of improper disclosure of trade secrets, or that there had been an act of improper disclosure with regard to the relevant trade secrets, or while not knowing this fact due to gross negligence;
- (x) the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through telecommunications lines things created by any of the acts stated in item (iv) through the preceding item (those acts being limited to acts of using a technical secret, meaning trade secrets that constitute technical information; the same applies below; referred to as "act of unauthorized use" in this item below); provided that the relevant case excludes situations in which a person that has received the things by transfer (limited to a person that, at the time of receiving the things, was unaware that they were created through an act of unauthorized use, and the lack of knowledge was not due to gross negligence) subsequently conducts an act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through telecommunications lines those things);

"Purpose of wrongful gain, or to cause damage to the trade secret holder" **(purpose of wrongful gain or causing damage) means...**

- **"Purpose of wrongful gain"** means the **purpose of seeking wrongful gain in violation of the public order or principle of good faith**, which **includes not only the purpose of wrongful gain personally (purpose of seeking personal gain) but also the purpose of having third parties earn wrongful gain (purpose of seeking gains of third parties)**.
Note: As long as the acquisition is in violation of the public order or principle of good faith, **it does not matter whether it is intended for economic or non-economic gains**.
Note: **Third parties include not only competitors and research agencies, etc., but also foreign government organizations and officials, etc.**
- **"Purpose to cause damage to the trade secret holder"** means the **purpose to cause financial damage, loss of credibility, or other wrongful tangible/intangible damage to the trade secret holder**, **which does not require that actual damage is caused**.
- **The same applies to the purpose of wrongful gain or causing damage in the criminal provisions.**

Border measures

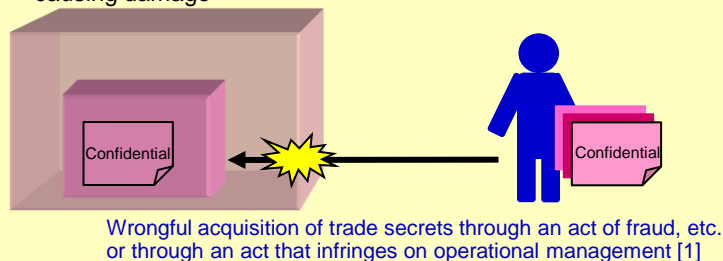
Customs Act (Articles 69-4 and 69-13)

See pages 74-77

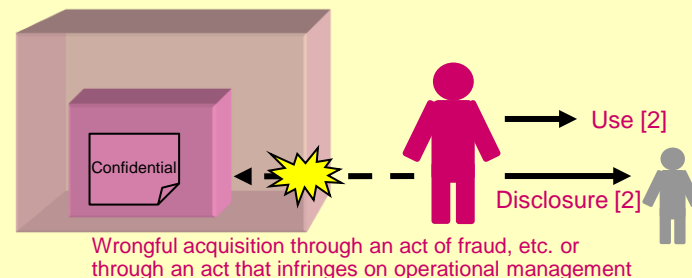
Types of the crime of trade secret infringement (Criminal) (Article 21, paragraphs (1), (2), (4) and (5)) [1]

○ Patterns of acquisition by wrongful means such as fraud, duress or unauthorized access (Article 21(1))

Item (i): Acts of wrongful acquisition of trade secrets through an act of fraud, etc. or through an act that infringes on operational management for the purpose of wrongful gain or causing damage

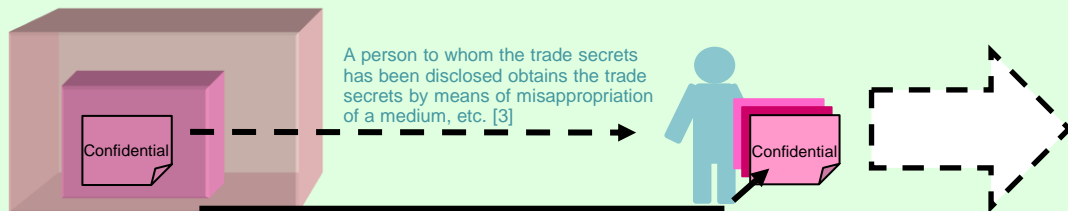


Item (ii): Acts of use or disclosure of the trade secrets wrongfully acquired for the purpose of wrongful gain or causing damage

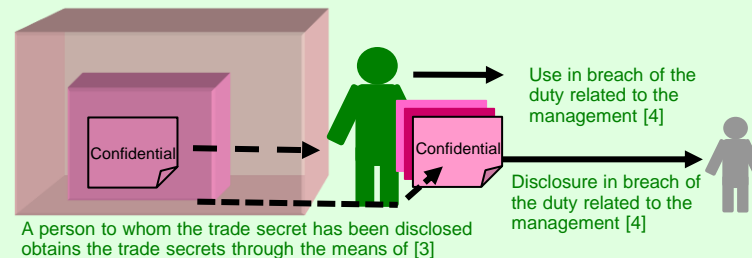


○ Patterns of acts of betrayal by a person to whom trade secrets were properly disclosed (Article 21(2))

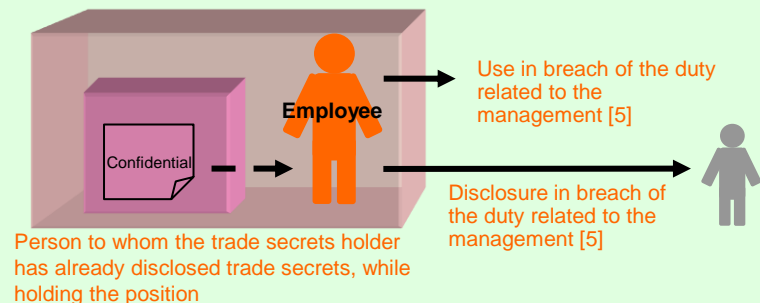
Item (i): Acts of acquisition of a trade secrets through the means of (a) misappropriation of a medium, etc., (b) reproduction, or (c) a breach of deletion obligation and disguising act, by a person to whom the trade secret holder has disclosed their trade secrets for the purpose of wrongful gain or causing damage, in breach of duties related to the management of the trade secrets



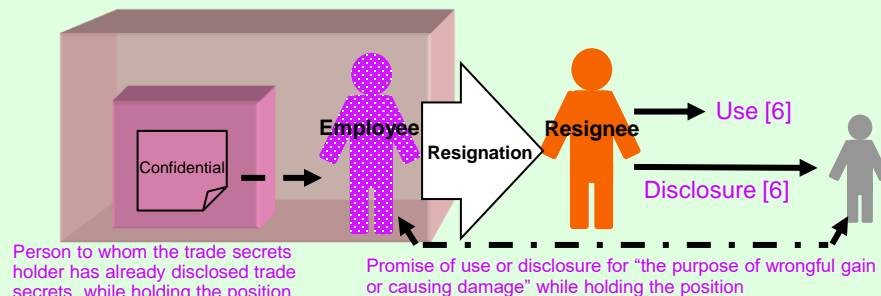
Item (ii): Acts of use or disclosure of the trade secrets obtained through the means stated in paragraph (2), item (i) by a person to whom the trade secrets holder has disclosed their trade secrets, for the purpose of wrongful gain or causing damage in breach of the duty related to the management of the trade secrets



Item (iii): Acts of use or disclosure of trade secrets committed by a current officer or employee to whom the trade secrets holder has disclosed their trade secrets, for the purpose of wrongful gain or causing damage in breach of the duty related to the management of the trade secrets



Item (iv): Acts of offering to disclose trade secrets or receiving a request to use or disclose the trade secrets committed by a person that was an officer or employee, to whom the trade secrets holder had disclosed their trade secrets, while holding that position, for the purpose of wrongful gain or causing damage in breach of the duty related to the management of the trade secrets, and subsequently using or disclosing them after leaving that position

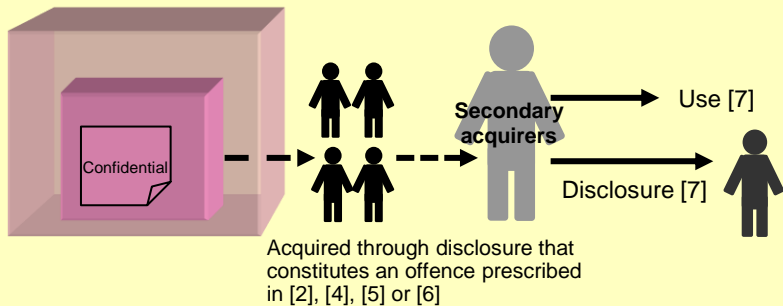


Types of the crime of trade secret infringement (Criminal) (Article 21, paragraphs (1), (2), (4) and (5)) [2]

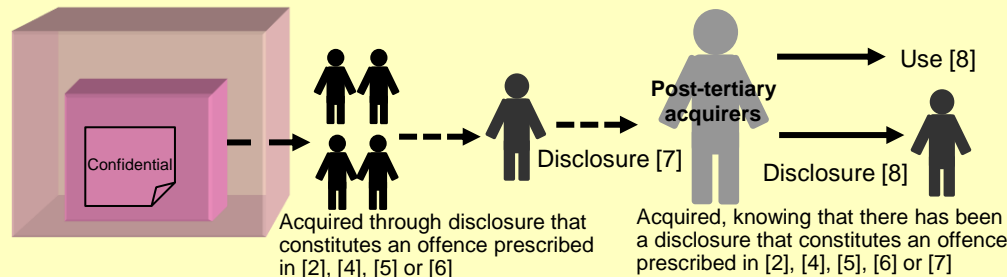
○ Patterns of use/disclosure by subsequent acquirers (Article 21(1))

Item (iii): Acts of use or disclosure of trade secrets acquired by a disclosure that constitutes an offence prescribed in [2], [4], [5] or [6] (including severe penalties for offences committed outside Japan) for the purpose of wrongful gain or causing damage

(Applicable to secondary acquirers)



Item (iv): Acts of use or disclosure of trade secrets acquired, knowing that there has been a disclosure that constitutes an offence prescribed in [2], [4], [5], [6] or [7] (including severe penalties for offences committed outside Japan) for the purpose of wrongful gain or causing damage (Applicable to all the post-tertiary acquirers)

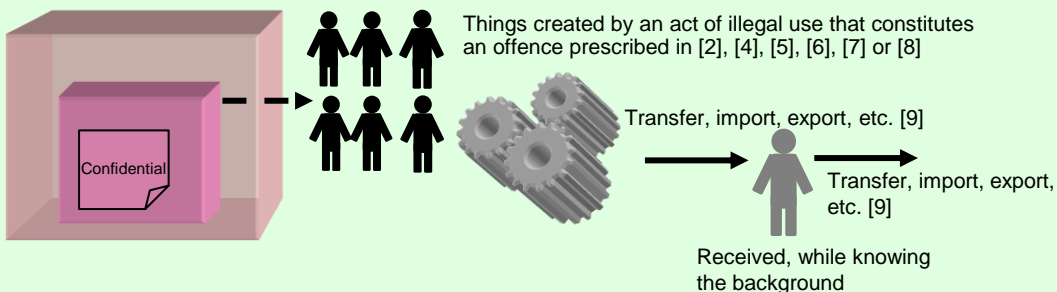


Note: Even in the case where a good-faith acquirer exists in the course of trade secrets distribution to post-tertiary acquirers, if the post-tertiary acquirer obtains trade secrets, knowing that there has been a "improper disclosure" by any person, and wrongfully uses or discloses such secrets, the acquirer can be subject to punishment.

○ Patterns of transfer, etc., of goods infringing trade secrets (Articles 21(1) and (2))

(Paragraph (1) item (v) and paragraph (2) item (v))

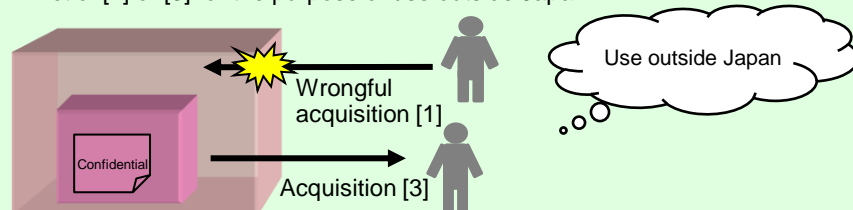
Acts of transfer, import or export of things created by an act of illegal use that constitutes an offence prescribed in [2], [4], [5], [6], [7] or [8] (including severe penalties for offences committed outside Japan) for the purpose of wrongful gain or causing damage



○ Patterns of severe penalties for offences committed outside Japan (Articles 21(4) and (5))

(Paragraph (4), item (i); paragraph (5), item (i))

Act of [1] or [3] for the purpose of use outside Japan

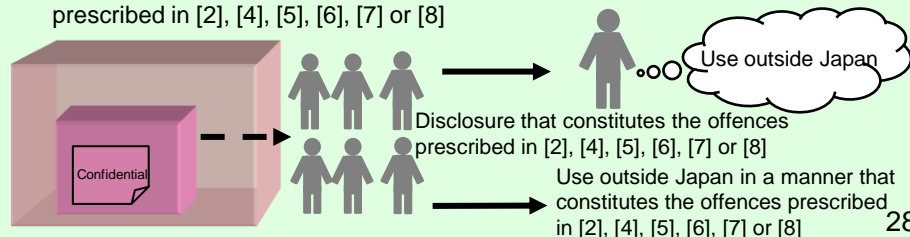


(Paragraphs (4), item (ii); paragraph (5), item (ii))

Act of disclosure that constitutes offences prescribed in [2], [4], [5], [6], [7] or [8], knowing that the receiving party has the purpose of their use outside Japan that constitutes the offences

(Paragraphs (4), item (iii); paragraph (5), item (iii))

Acts of use outside Japan in a manner that constitutes the offences prescribed in [2], [4], [5], [6], [7] or [8]



Criminal provisions (Article 21, paragraphs (1), (2), (4) and (5))

Penal provisions: Imprisonment for not more than 10 years or a fine of not more than 20 million yen (or both)

For dual criminal liability provisions, a fine of not more than 500 million yen (Article 22(1)(ii))

Note: For use outside Japan, etc., not more than 30 million yen for an individual and 1 billion yen for a corporation

Article 21 (1) If any of the following items applies, the person that has committed the act of violation is subject to imprisonment for not more than 10 years, a fine of not more than 20 million yen, or both:

- (i) if a person acquires trade secrets through an act of fraud, etc. (meaning acts of deceiving, assaulting, or intimidating a person; the same applies in the following item), or through an act that infringes on operational management (meaning acts of stealing assets, breaking into a facility, making unauthorized access (as prescribed in Article 2, paragraph (4) of the Unauthorized Computer Access Act (Act No. 128 of 1999)), or any other act prejudicing the management maintained by the trade secret holder; the same applies in the following item), for the purpose of wrongful gain or causing damage to the trade secret holder;
 - (ii) if a person uses or discloses trade secrets acquired through an act of fraud, etc., or through infringing on management, for the purpose of wrongful gain or causing damage to the trade secret holder;
 - (iii) if a person, for the purpose of wrongful gain or causing damage to the trade secret holder, uses or discloses trade secrets acquired by a disclosure that constitutes an offence prescribed in the preceding item or items (ii) through (iv) of the following paragraph, paragraph (4), item (ii) (limited to the part regarding a disclosure that constitutes an offence prescribed in the preceding three items) or paragraph (5), item (ii);
 - (iv) if a person, for the purpose of wrongful gain or causing damage to the trade secret holder, uses or discloses trade secrets acquired, knowing that there has been a disclosure that constitutes an offence prescribed in the preceding two items or items (ii) through (iv) of the following paragraph, a crime as referred to in paragraph (4), item (ii) (limited to the part regarding a disclosure that constitutes an offence prescribed in the preceding two items); or
 - (v) if a person, for the purpose of wrongful gain or causing damage to the trade secret holder, assigns, delivers, displays for the purpose of transfer or delivery, exports, imports, or provides through telecommunications lines things created by an act conducted by the same person or another person that constitutes an offence prescribed in item (ii) through the preceding item or paragraph (4), item (iii) (limited to the act of using a technical secret; referred to as "act of illegal use" in this item below) (excluding a person that has received the things by transfer without knowing that the things were created by an act of illegal use, and has transferred, delivered, displayed for the purpose of transfer or delivery, exported, imported, or provided through telecommunications lines those things).
- (2) A person that falls under any of the following items is subject to imprisonment for not more than 10 years, a fine of not more than 20 million yen, or both:
- (i) a person to whom the trade secret holder has disclosed their trade secrets, and who, for the purpose of wrongful gain or causing damage to the trade secret holder, obtains the trade secrets by any of the following means, in breach of duties related to the management of the trade secrets;
 - (a) misappropriating a recording medium containing trade secrets, etc. (meaning a document, a drawing, or a recording medium on which trade secrets are described or recorded; the same applies in this item below) or an object that represents trade secrets;
 - (b) reproducing a description or a record from a recording medium containing trade secrets, etc., or an object that represents trade secrets;
 - (c) not deleting a description or a record that should be deleted from a recording medium containing trade secrets, etc., and disguising this act as if the description or record in the recording medium containing the trade secrets, etc. had been deleted;
 - (ii) a person to whom the trade secret holder has disclosed trade secrets, and who, for the purpose of wrongful gain or causing damage to the trade secret holder, uses or discloses trade secrets obtained through the means stated in (a) through (c) of the preceding item, in breach of the duty related to the management of the trade secrets;
 - (iii) a person that is an officer (meaning a council member, director, executive officer, executive member, inspector or auditor, or other equivalent person; the same applies in the following item) or employee of the trade secret holder; to whom the trade secret holder has disclosed trade secrets; and who, for the purpose of wrongful gain or causing damage to the trade secret holder, uses or discloses the trade secrets in breach of the duty related to the management of the trade secrets (excluding the person stated in the preceding item);
 - (iv) a person that was an officer or employee of the trade secret holder, to whom the trade secret holder had disclosed trade secrets, and who, for the purpose of wrongful gain or causing damage to the trade secret holder, offered to disclose the trade secrets, or received a request to use or disclose the trade secrets, while holding that position, in breach of the legal duty related to the management of the trade secrets, and uses or discloses them after leaving that position (excluding the person stated in item (ii)); or
 - (v) a person that, for the purpose of wrongful gain or causing damage to the trade secret holder, assigns, delivers, displays for the purpose of transfer or delivery, exports, imports, or provides through a telecommunications lines things created by an act, committed by the person or another person, that constitutes an offense referred to in item (ii) through the preceding item or paragraph (5), item (iii) (limited to an act of using a technical secret; referred to as "act of illegal use by an employee, etc." in this item below) (except for a person that has accepted those things by transfer without knowing that they were created by an act of illegal use by an employee, etc., and has transferred, delivered, displayed for the purpose of transfer or delivery, exported, imported, or provided through a telecommunications lines those things).

- (4) If any of the following items apply, the person that has committed the violation is subject to imprisonment for not more than 10 years, a fine of not more than 30 million yen, or both:
- (i) if a person commits offences prescribed in paragraph (1), item (i) for the purpose of use outside Japan;
 - (ii) if a person makes a disclosure that constitutes offences prescribed in paragraph (1), item (ii) through (iv), knowing that the receiving party has the purpose of their use outside Japan that constitutes the offences;
 - (iii) if a person outside Japan uses the trade secrets of a trade secret holder conducting business within Japan in a manner that constitutes the offences prescribed in paragraph (1), items (ii) through (iv); or
 - (iv) (An omission).
- (5) A person that falls under any of the following items is subject to imprisonment for not more than 10 years, a fine of not more than 30 million yen, or both:
- (i) a person that commits offences prescribed in paragraph (2), item (i) for the purpose of use outside Japan;
 - (ii) a person that makes a disclosure that constitutes offences prescribed in paragraph (2), item (ii) through (iv), knowing that the receiving party has the purpose of their use outside Japan that constitutes the offences; or
 - (iii) a person outside Japan uses the trade secrets of a trade secret holder conducting business within Japan in a manner that constitutes the offences prescribed in paragraph (2), items (ii) through (iv).

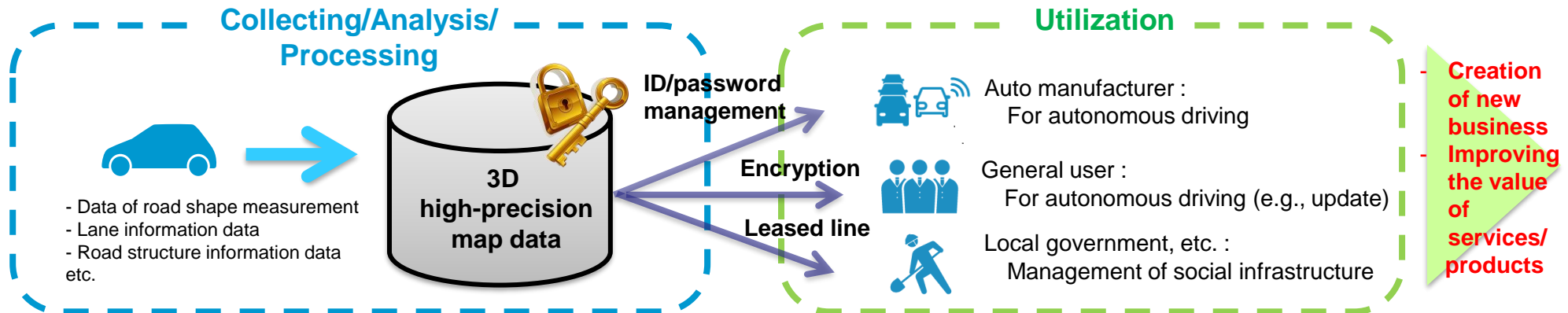
5. Overview of types of acts of unfair competition (5)

[5] Wrongful acquisition, etc., of shared data with limited access (Article 2, paragraph (1), items (xi) - (xvi))

The act of acquiring shared data with limited access by theft or other wrongful means, personally using said data or disclosing it to a third party

<Overview of shared data with limited access>

Data that is expected to be utilized, such as creating new businesses and increasing the added value of services and products, mainly by being provided and shared by multiple parties among companies.



Examples of shared data with limited access

Data for external provision	Data provider	Usage
<u>Machine operational data</u> (Operational data of ship engine, etc.)	<u>Data analysis agency</u> (Collecting data from shipping companies, ship manufacturers, etc.)	Data analysis agency <u>collects, analyses, processes the real data collected by ships</u> and provides the analyzed and processed data to shipyards, ship equipment manufacturers, weather information service companies, insurance companies, etc. Data recipient companies <u>make use of such data for improvement of shipbuilding technology, maintenance and inspection, new business, etc.</u>
<u>Vehicle driving data</u>	<u>Auto manufacturer</u>	Auto manufacturers provide their <u>vehicle driving data</u> to public institutions in times of disaster. Public institutions <u>make use of the data for grasping road conditions.</u>

Three requirements for receiving legal protection as “shared data with limited access”

Article 2, paragraph (7) of the Unfair Competition Prevention Act

The term “shared data with limited access” as used in this Act means technical or business information that is **[2] accumulated to a significant extent** and **[3] managed by electronic or magnetic means** (meaning an electronic, magnetic, or any other form that cannot be perceived by the human senses alone; the same applies in the following paragraph), and is intended to be **[1] provided to specific persons** on a regular basis (excluding trade secrets).

“Provided to specific persons on a regular basis” (**Limited provision**)

“On a regular basis” refers to the cases where data holder provides data repeatedly and continuously (including cases where the intention of the data holder to provide repeatedly and continuously is recognized even if data holder does not actually provide it). “Specific persons” refer to those who receive data under certain conditions.

Example “On a regular basis”: where data holder provides data repeatedly (including cases where data is provided to each person once)
“Specific persons”: members allowed to access members-only databases

“Accumulated to a significant extent by electronic or magnetic means” (**Significant accumulation**)

In light of socially accepted conventions, data has value as a result of accumulation by electronic or magnetic means. “To a significant extent” is determined depending on the nature of each data type, but the following and other factors are considered: value added to the data as a result of accumulation by electronic or magnetic means; possibility of utilization; transaction prices; and labor, time, costs, etc., used for collection and analysis. Note that the concept of significant accumulation applies to cases where labor, time and costs are used to collect or analyze a part of data, resulting in value being created for that part of data.

Example If a business operator that accumulates information on mobile phone locations nationwide extracts data for specific areas and sells it, the data for specific areas satisfies this requirement (if data is considered to have value from the commercial viewpoint as a result of the data being accumulated by electromagnetic means).

“Managed by electronic or magnetic means” (**Electromagnetic manageability**)

The holder’s intention of managing data to provide the data only to specific persons is made clear to outside parties. More specifically, it is necessary to take measures such as implementation of technologies that restrict access, such as ID and password settings.

Example Access restriction by IDs, passwords, smart cards, specified terminals, tokens or biometric authentication.

Items not subject to protection

- Trade secrets (Brackets in Article 2(7))
- The same as any information that has been made publicly available without compensation (Article 19(1)(ix)(b))

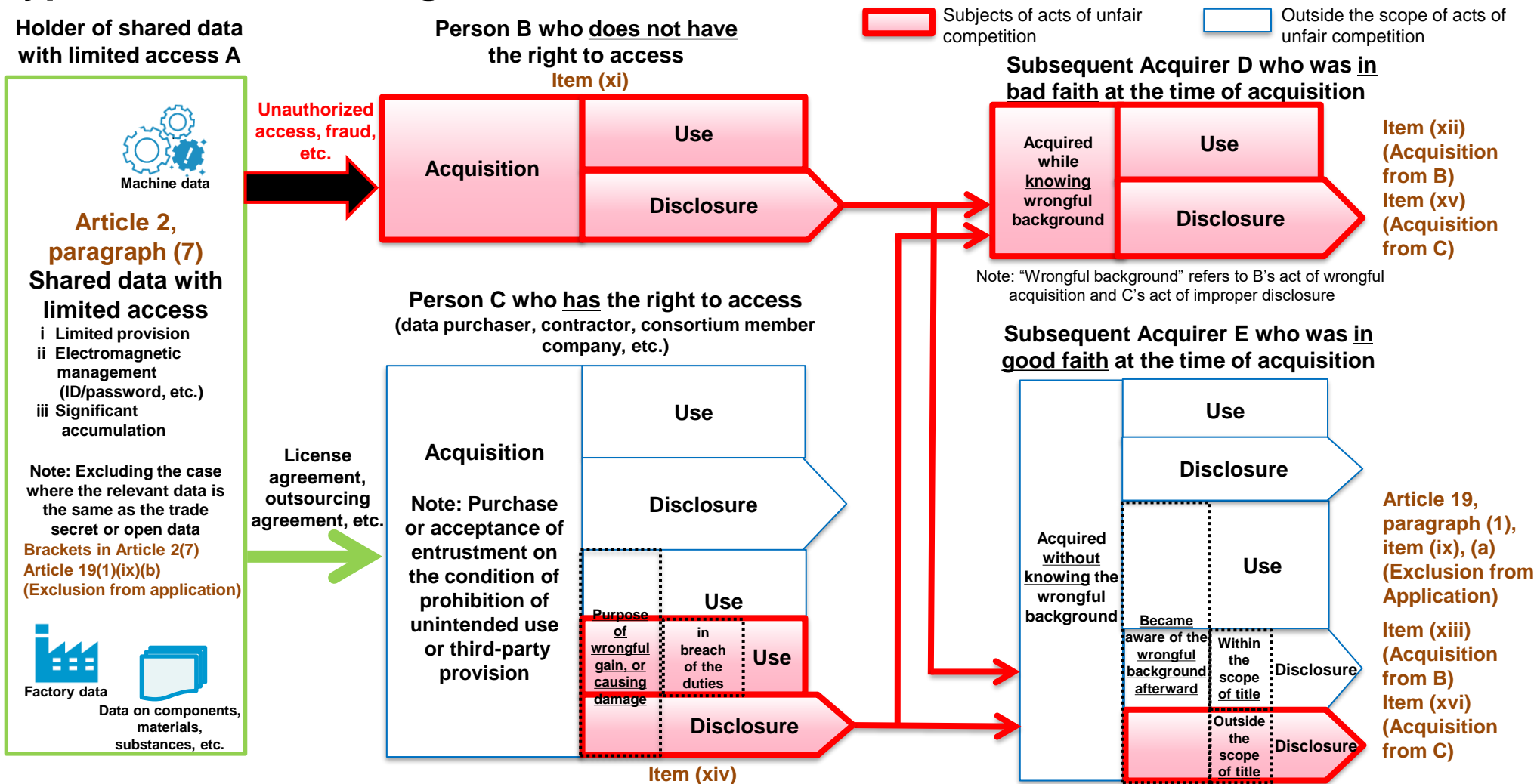
See pages 52-53



Three requirements for
shared data with limited access



Types of acts of infringement of shared data with limited access



● **Handling of things created through the act of unauthorized use**
Acts of transfer, etc., of things created through unauthorized use of data (goods, programs that AI has learned, etc.) **are not covered.**

Exclusion from Application (Article 19(1)(ix)(a)) See pages 52-53

- Acts of disclosure within the scope of the title acquired through the transaction, in the case where a person that was unaware that there had been an act of improper disclosure of shared data with limited access acquired the data and then turned into a bad faith acquirer after the acquisition.

Civil provisions (Article 2, paragraph (1), items (xi) - (xvi))

- (xi) the act of acquiring shared data with limited access by theft, fraud, duress, or other wrongful means (referred to as "act of wrongful acquisition of shared data with limited access" below); or the act of using or disclosing shared data with limited access acquired through such wrongful acquisition;
- (xii) the act of acquiring shared data with limited access with the knowledge that there has been a wrongful acquisition of such data, or the act of using or disclosing shared data with limited access acquired in this manner;
- (xiii) the act of disclosing shared data with limited access after having acquired it and learning that there had been a wrongful acquisition of such data;
- (xiv) the act of using or disclosing shared data with limited access provided by a business holding that data (referred to as "holder of shared data with limited access" below), for the purpose of wrongful gain or to cause damage to the holder of shared data with limited access (provided that such use of the data for that purpose is limited to acts conducted in breach of the duties related to the management of that data);
- (xv) the act of acquiring shared data with limited access with knowledge that disclosing that data constitutes improper disclosure of shared data with limited access (meaning, in the case prescribed in the preceding item, the act of disclosing shared data with limited access for the purpose prescribed in the same item; the same applies below), or knowing that there has been improper disclosure of shared data with limited access regarding the relevant data, or the act of using or disclosing shared data with limited access acquired in such a manner;
- (xvi) the act of disclosing shared data with limited access after acquiring the data and learning that the relevant acquisition constitutes an act of improper disclosure of shared data with limited access, or that there has been an act of improper disclosure of such data;

Note: Civil provisions only. No criminal provisions.

(Reference) Guidelines on Shared Data with Limited Access

<https://www.meti.go.jp/policy/economy/chizai/chiteki/guideline/h31pd.pdf>

About the Guidelines on Shared Data with Limited Access

- The Guidelines explain, with specific examples, the requirements for the objects of shared data with limited access, category of wrongful acquisition, category of significant violations of the principle of good faith, and category of subsequent acquisition.
- The Guidelines present one way of thinking about definitions of shared data with limited access, requirements prescribed in unfair competition, or other topics, which is not, however, legally binding.

Table of contents of the Guidelines on Shared Data with Limited Access

Shared Data with Limited Access (II.)

- ✓ Explaining definitions of shared data with limited access.

Acts of “unfair competition” (III.)

- ✓ Explaining each act (“acquisition,” “use,” and “disclosure”).

Category of unauthorized acquisition (IV.)

- ✓ Explaining acquisition by “theft, fraud, duress, or other wrongful means.”

Category of significant violations of the principle of good faith (V.)

- ✓ Explaining the purpose of wrongful gain or causing damage.
- ✓ Explaining acts “conducted in breach of the duties regarding the management of shared data with limited access”

Category of subsequent acquisition (VI.)

- ✓ Explaining the types of subsequent acquisition in bad faith at the time of acquisition.
- ✓ Explaining the types of subsequent acquisition in good faith at the time of acquisition.

Claimants (VII.)

- ✓ Explaining claimants.

**(Reference) Comparisons of objects and of covered acts between “trade secrets”
and “shared data with limited access”**

			Trade secrets	Shared data with limited access
Objects	Requirements		Secrecy management, usefulness, non-public domain	Limited provision, significant accumulation, electromagnetic management
	Exclusion provisions		-	Trade secrets are excluded
			-	The same as any information that has been made publicly available without compensation is excluded
Covered acts	Third party (Unauthorized person)	Acquisition	Acts of acquisition by theft, fraud, or other wrongful means	
		Use	Acts of use after wrongful acquisition	
		Disclosure	Acts of disclosure after wrongful acquisition	
	Valid acquirer (Authorized person)	Acquisition	-	
		Use	Acts of use for the purpose of wrongful gain or causing damage	Acts of use for the purpose of wrongful gain or causing damage <u>and in a manner equivalent to misappropriation or breach of trust</u>
		Disclosure	Acts of disclosure for the purpose of wrongful gain or causing damage	
	Subsequent acquirer (Bad faith at the time of acquisition)	Acquisition	Acts of acquisition while knowing wrongful background (i.e., in bad faith) or <u>through gross negligence</u>	Acts of acquisition while knowing wrongful background (i.e., in bad faith)
		Use	Acts of use after wrongful acquisition	
		Disclosure	Acts of disclosure after wrongful acquisition	
	Subsequent acquirer (Good faith at the time of acquisition)	Acquisition	-	
		Use	Acts of use outside the scope of title acquired through the transaction while knowing wrongful background, or while not knowing that fact through <u>gross negligence</u>	-
		Disclosure	Acts of disclosure outside the scope of title acquired through the transaction while knowing wrongful background, or while not knowing that fact through <u>gross negligence</u>	Acts of disclosure outside the scope of title acquired through the transaction while knowing wrongful background
	Things created by infringement	Transfer	<u>Acts of transfer of things created through unauthorized use of trade secrets</u>	-

(Reference) Major legal systems against authorized use, etc., of data

	Requirements		Civil measures		Criminal penalties	Comparison with shared data with limited access
	Protected data	Covered acts	Injunction	Compensation for loss or damage	Imprisonment/ fine	
Database works (Article 12-2(1) of the Copyright Act)	A database that, by reason of the selection or systematic construction of information contained therein, constitutes a creation	Reproduction, etc., without consent of the right holder (Maliciousness of the manner does not matter)	○		○	No protection for data without creation (e.g., factory operational data)
Patented inventions (Articles 2(1) and 29 of the Patent Act)	[1] Highly advanced creation of technical ideas utilizing the laws of nature [2] Patented inventions	Work, etc., without consent of the right holder (Maliciousness of the manner does not matter)	○		○	
Trade secrets (Article 2(1)(iv) - (x) of the Unfair Competition Prevention Act)	[1] Secrecy management [2] Non-public domain [3] Usefulness	Wrongful acquisition, unauthorized use, etc. (Malicious acts listed)	○		○	No protection for data that is made widely available
Shared data with limited access (Article 2(1)(xi) - (xvi) of the Unfair Competition Prevention Act)	[1] Limited provision [2] Electromagnetic management [3] Significant accumulation	Wrongful acquisition, unauthorized use, etc. (Malicious acts listed)	○		×	—
Protection of data from torts (Article 709 of Civil Code)	General data	Acts of intentionally or negligently infringing rights	×	○	×	In principle, no injunctions are allowed
Protection by a data agreement (default) (Article 415 of the Civil Code)	General data (Depending on the content of the contract)	Acts of breach of contracts	○ (But limited to contracting parties)		×	Not applicable to parties other than contracting parties

5. Overview of types of acts of unfair competition (6)

[6] Acts of providing a device, etc., that interferes with the effectiveness of technological restriction measures (Articles 2(1)(xvii), 2(1)(xviii) and 21(3)(iv))

The act of providing, etc., a device, program, code, or service, that enables viewing of, listening to or recording of the content, running of the program, and processing of the information restricted by technological restriction measures (or that defeats the effects of technological restriction measures)

Case example (Civil)

A case in which a court approved a claim filed by Nintendo and 54 software makers that produce and sell portable game consoles such as the “Nintendo DS,” against a person who had **imported/sold the device called “Magicon” that enables the Nintendo DS to play pirated software** downloaded from the Internet, seeking an injunction on import/sales and disposal of “Magicon” (Tokyo District Court judgment of February 27, 2009)



Magicon

Case example (Criminal)

A case in which a court sentenced a person to two years of imprisonment (suspension of four years) for **performing unauthorized modification to “B-CAS cards” to allow people to watch pay-TV for free, and transferring them to someone other than a pay-TV subscriber** (Kyoto District Court judgment of October 10, 2012)



(Genuine products)

Case example (Civil)

A case in which a court sentenced a person to imprisonment and a fine for distributing via the Internet a program that disabled the screen capture prevention function implemented in dedicated viewer software to prevent viewing of e-books with software other than the designated viewer. Of the three defendants in this case, one was sentenced to two years of imprisonment (suspension of four years) and a fine of two million yen, while the other two were each sentenced to one year and six months of imprisonment (suspension of four years) and a fine of five hundred thousand yen (Supreme Court judgement of March 1, 2021)

(*) Item (xviii) is a provision for technological restriction measures used by another person in order to only allow specific persons to view images, etc. Item (xvii) is a provision for technological restriction measures for cases other than those prescribed in item (xviii).

Civil provisions (Articles 2(1)(xvii) and 2(1)(xviii)*)

- (xvii) the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, or importing, a device (including a machine that incorporates a device, and a set of parts from which a device can be easily assembled) with a function that interferes with the effectiveness of technological restriction measures that are used for business purposes (excluding those which the relevant person uses to restrict all but specific persons from viewing images, listening to sounds, running programs, or processing information (limited to information recorded in an electronic or magnetic record (meaning a record used in computerized information processing which is created in electronic form, magnetic form, or any other form that is impossible to perceive through the human senses alone ; the same applies hereinafter); the same applies hereinafter in this item, the following item, and paragraph (8)), or from recording images, sounds, programs, or any other information), and makes it possible to view images, listen to sounds, run programs, process information, or record images, sounds, programs, or any other information (that viewing, listening, running, processing, or recording is hereinafter referred to as "viewing images, etc." in this item) when those activities are restricted by the relevant technological restriction measures, a recording medium on which a program with that function (including a combination of the program with other programs) or code with that function (meaning a single instruction given to a computer which only can produce a specific result; the same applies in the following item) has been recorded, or a machine on which the program or code with that function has been stored; the act of providing that program or code through telecommunications lines (if the device or program in question has also any function other than the relevant function with it, those acts mentioned above are limited to an act conducted in order to provide the device or program for the purpose of making it possible to view images, etc. by interfering with the effectiveness of the technological restriction measures); or the act of providing a service for making it possible to view images, etc. by interfering with the effectiveness of the technological restriction measures;
- (xviii) the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting or importing, a device (including a machine that incorporates a device, and a set of parts from which a device can be easily assembled) with a function that interferes with technological restriction measures used by another person in their business in order to only allow specific persons to view images, listen to sounds, run programs, process information, or record images, sounds, programs, or any other information, and makes it possible for any person other than those specific persons to view images, listen to sounds, run programs, process information, or record images, sounds, programs, or any other information (that viewing, listening, running, processing, or recording is hereinafter referred to as "to view images, etc." in this item), when those activities are restricted by the relevant technological restriction measures, a recording medium on which a program with that function (including a combination of the program with other programs) or code with that function has been recorded, or a machine on which that program or code has been stored; or the act of providing that program or code through telecommunication lines to any person other than the relevant specific persons (if the device or program has also any functions other than the relevant function, those acts mentioned above are limited to an act conducted in order to provide the device or program for the purpose of making it possible to view images, etc. by interfering with the technological restriction measures); or the act of providing any person other than the relevant specific persons with a service for making it possible to view images, etc. by interfering with the technological restriction measures;

Criminal provisions (Article 21(3)(iv))

See pages 67-73

If a person, for the purpose of wrongful gain, or for the purpose of causing damage to another person that is using technological restriction measures for their business purposes, commits any act of unfair competition stated in Article 2, paragraph (1), item (xvii) or (xviii).

→ Penal provisions: Imprisonment for not more than 5 years or a fine of not more than 5 million yen (or both)
For dual criminal liability provisions, a fine of not more than 300 million yen (Article 22(1)(iii))

Exclusion from Application (Article 19)

See pages 52-53

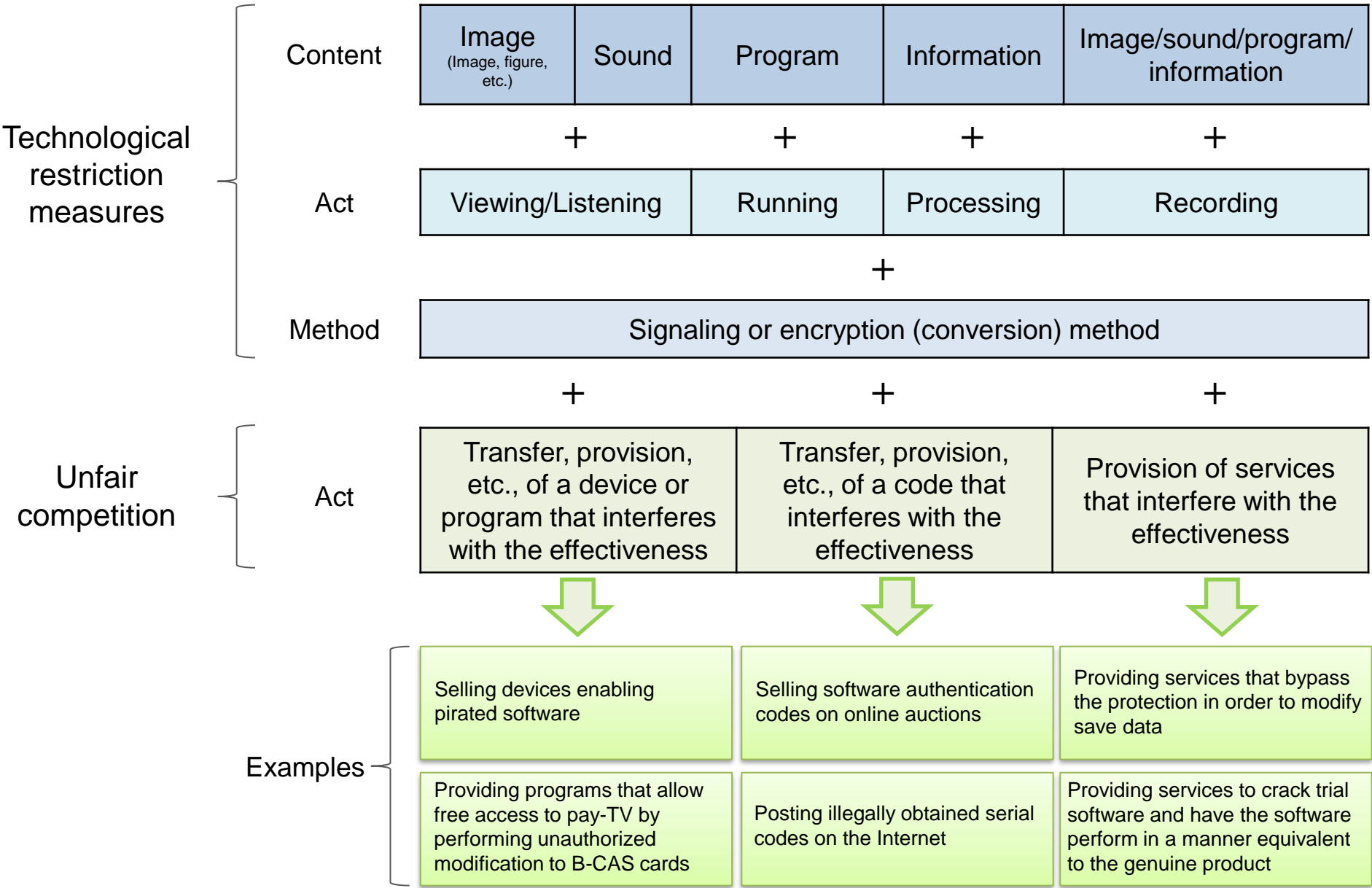
The act of transferring, etc., a device, etc., used for testing or research related to technological restriction measures; the act of providing a service conducted for testing or research on technological restriction measures (Article 19(1)(x))

Border measures

Customs Act (Articles 69-4 and 69-13)

See pages 74-77

Overview of disciplines against acts that interfere with the effectiveness of technological restriction measures



What are technological restriction measures? (Article 2(8))

★ Technology to prevent unauthorized copying or viewing/listening of the content such as music, movies, photos, and games.

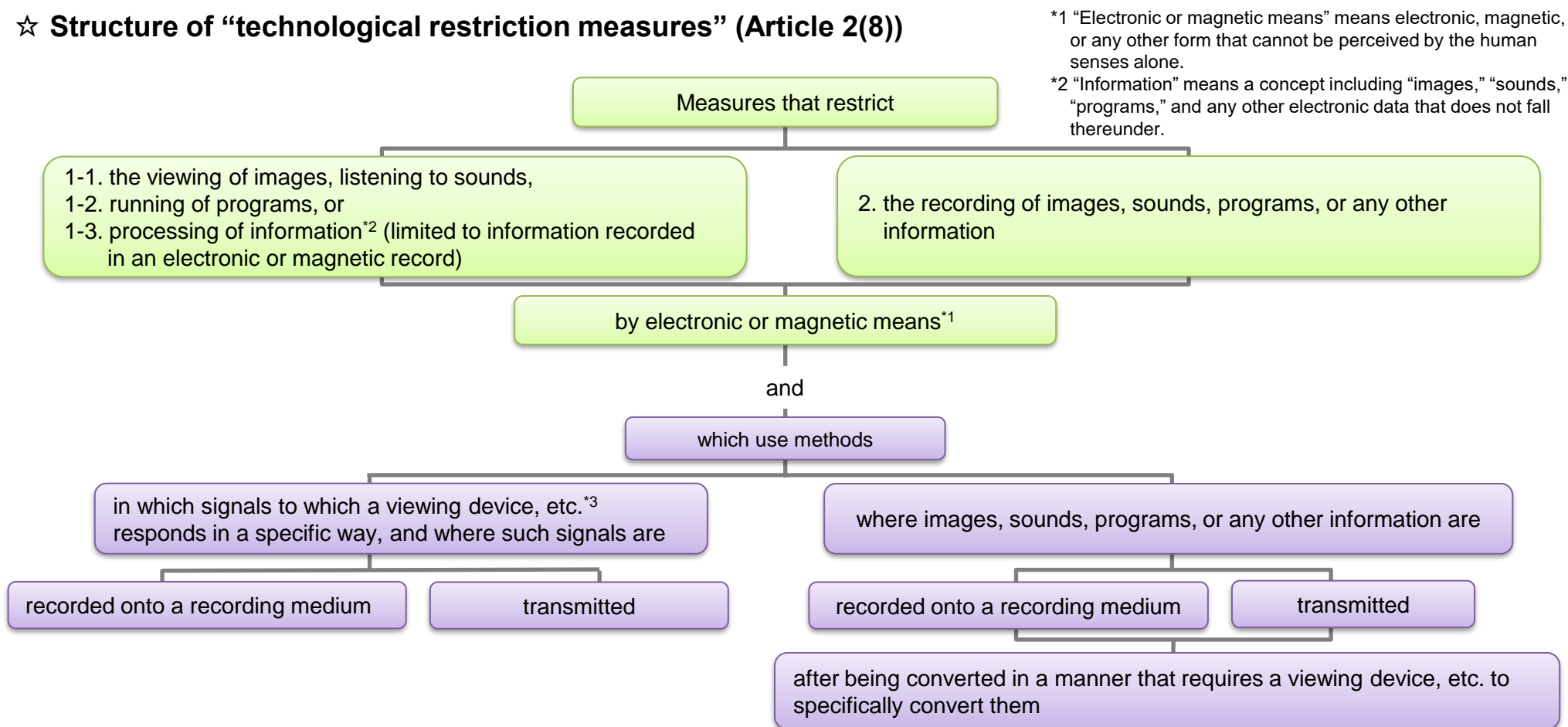
➤ Copy control technology (examples)

- Restricting copying by embedding signals in the content (SCMS; CGMS)
- Generating noise instead of transmitting authentic data in response to an attempt to copy the content (Producing incomplete copies: Macrovision)

➤ Access control technology (examples)

- Restricting viewing by non-subscribers by encrypting content (Scrambled broadcasts)

☆ Structure of “technological restriction measures” (Article 2(8))



*3 “A viewing device, etc.” means “a device used for viewing images, listening to sounds, running programs, processing information, or recording images, sounds, programs, or any other information.”

What is “unfair competition” against technological restriction measures? (Articles 2(1)(xvii) and 2(1)(xviii))

➤ Transfer, etc., of an unauthorized modification device

Acts of selling, etc., modification devices that attach to official game consoles and enable pirated game software to run on such consoles

➤ Provisions of programs that disable the encryption

Provisions of programs that disable the encryption of satellite broadcasting via Internet

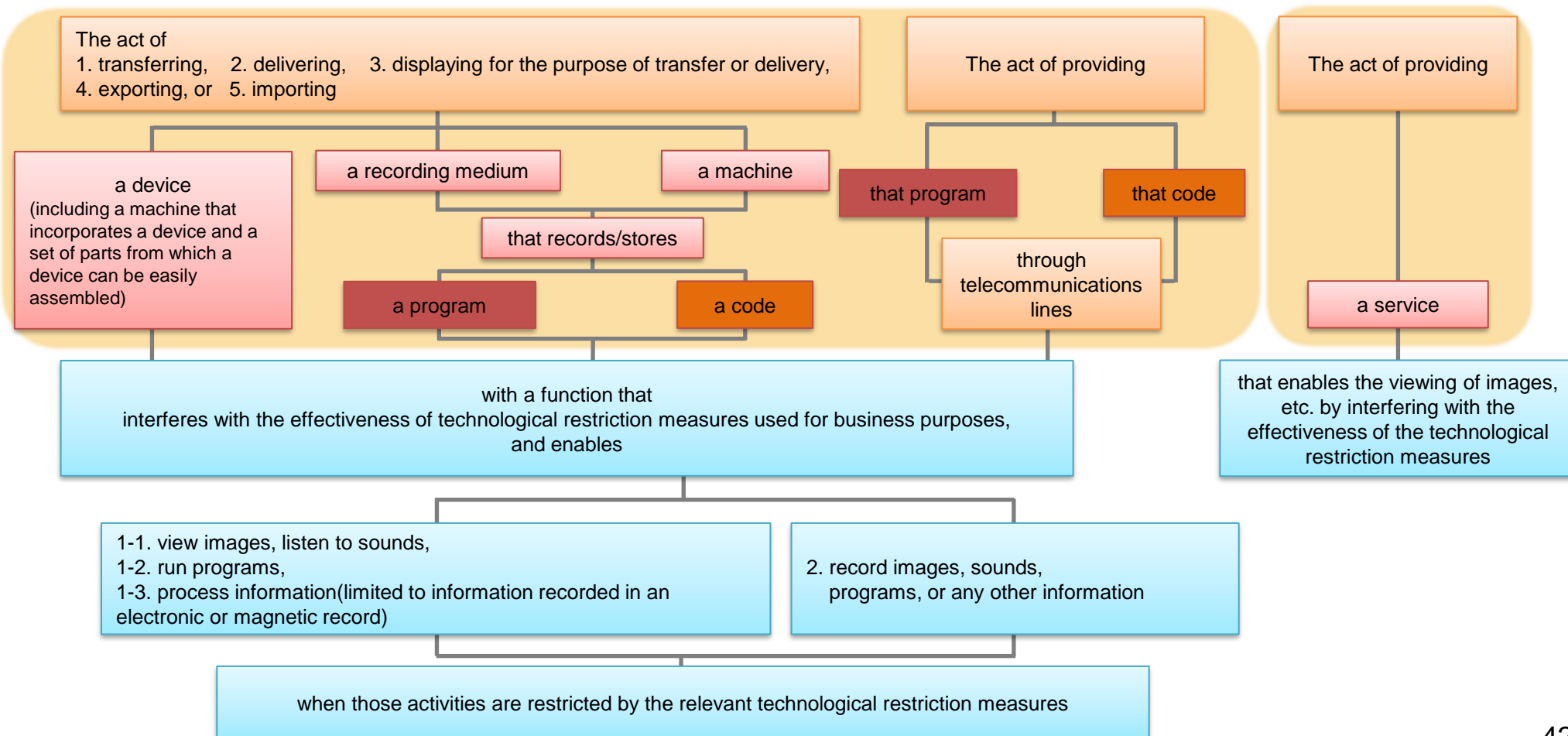
➤ Provisions of proxy falsification services

Services to receive game consoles from clients to modify them for execution of pirated games or falsify save data.

➤ Provisions of unauthorized serial codes

Provisions of serial codes for unauthorized activation of business software

☆ Structure of “unfair competition” against technological restriction measures (Articles 2(1)(xvii) and 2(1)(xviii))



5. Overview of types of acts of unfair competition (7)

[7] Act of wrongful acquisition, etc., of domain names

(Article 2, paragraph (1), item (xix))

The act of acquiring or holding the right to use a domain name that is identical or similar to another person's indication of goods or service (specific indication of goods or business), or using such a domain name for the purpose of wrongful gain or causing damage to that person

★ "Domain name(s)" (Article 2, paragraph (10))

letters, numbers, signs, or other symbols, or a combination of them that corresponds to a combination of numbers, signs, or letters (IP addresses) assigned to identify individual computers on the Internet

(Examples of domain names)

In the case of URL

<https://www.meti.go.jp>

In the case of email address

example@meti.go.jp

Note: Strings corresponding to numeric addresses (i.e., private IP addresses) used in networks (e.g., LAN) only to specific individuals is not included.

Case example (Civil)

The company that created its website using a domain name called "maxellgrp.com" which is similar to "maxell," i.e., an indication of the plaintiff's famous indication of goods or business, and promoted its restaurant (amusement business) received an order to pay the amount equivalent to royalties (Article 5(3)) in compensation (about 5.3 million yen) (maxell Corporation Case, Osaka District Court judgment of July 15, 2004)

Case example (Civil)

The defendant that obtained and held eight domain names including "dentsu," such as "dentsu.org," which are similar to the plaintiff's trade name "dentsu" and sent a notice to the plaintiff to buy them for 1 billion yen or more, was issued with orders to stop acquisition, holding and use of such domain names, take application procedures for deregistration, and pay compensation (500 thousand yen). (dentsu Domain Name Case, Tokyo District Court judgment of March 13, 2007)

☆ “Purpose of wrongful gain” or “Purpose of causing damage to another person”

(Purpose of wrongful gain or causing damage)

- Purpose of seeking one's own or other's benefit in violation of the public order or principle of good faith
- Causing tangible or intangible damage, such as financial damage or loss of credibility, to another person

Examples

- Unfairly reselling one's own domain names at excessively high prices.
- Unfairly utilizing another person's customer attraction to conduct business.
- Acquiring a domain name that is identical or similar to another person's specific indication of goods or business and causing damage to another person by creating an adult site.

☆ “Specific indication of goods or business” (Article 2(1)(xix))

- A name, trade name, trademark or marks belonging to a person's business
- Other indication of goods or services

- “Trademark” means a trademark as prescribed in Article 2, paragraph (1) of the Trademark Act (Article 2(2))
- “Marks” means marks as prescribed in Article 2, paragraph (1) of the Trademark Act (Article 2(3))

Note: Civil provisions only. No criminal provisions.

(However, an act of using a domain name falling under Article 2, paragraph (1), item (i) or (ii) may be subject to a criminal penalties.)

5. Overview of types of acts of unfair competition (8)

[8] Acts of misleading (Articles 2(1)(xx); 21(3)(i) and 21(3)(v))

The act of using an indication on goods/services, or in an advertisement for the goods/services, in a way that is likely to mislead as to the place of origin, quality, content, or the act of transferring, etc., goods using such an indication

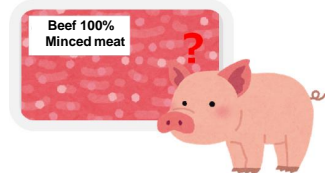
Case example (Civil)

Compensation (about 240 million yen) was ordered on the grounds that the act of selling the Udon noodles, neither the place of their production nor the place of the production of their raw materials is Himi City, Toyama Prefecture, by affixing indications such as “Himi Udon” falls under the act of misleading as to the place of origin. (Himi Udon Case: Toyama District Court judgement of November 10, 2006; Nagoya High Court judgement of October 24, 2007)



Case example (Criminal)

An ex-president of a meat processing company was sentenced to 4 years imprisonment for violation of the Unfair Competition Prevention Act and the Penal Code (fraud) on the grounds that its act of defrauding the price of about 39 million yen such as by shipping approximately 138 tons of minced meat made with chicken, pork or others to a dozen of its customers, with indications such as “beef 100%,” misleads as to the quality and content of the goods. (Sapporo District Court judgement of March 19, 2008)



Case example (Criminal)

The defendant, a steelmaker, was sentenced to a fine of 100 million yen, on the grounds that its act of delivering its metal products to customers while falsifying the inspection data as if they meet quality standards, falls under a false indication on goods that is likely to mislead as to the quality of goods. (Tachikawa Summary Court judgement of March 14, 2019)



Exclusion from Application (Article 19)

Using a common name or indication that is in common usage for goods or business in the manner this is normally done (paragraph (1), item (i))

See pages 52-53

Civil Claimants (e.g., Article 3)

A person whose business interests have been or are likely to be harmed by infringement

Note: It is usually an undertaking in competition with the defendant that falls under this definition, and general consumers are not in principle entitled to file a claim.

<Structure of provisions>

- The act of using an indication

- The act of transferring

- The act of delivering

- The act of displaying for the purpose of transfer or delivery

- The act of exporting

- The act of importing

- The act of providing through telecommunications lines (goods using an indication)

- The act of providing (services using an indication)

[1] What is the "act" in question?

on

- goods
- services

in

- an advertisement (for the goods or services)
- trade documents
- trade communications (related to the goods or services)

[2] "Where" is the indication placed?

in a way that is likely to mislead

as to

[3] Whether falling under "indication that is likely to mislead"

- the place of origin
- quality
- content
- manufacturing process
- purpose
- quantity (of the goods)

- quality
- content
- purpose
- quantity (of the services)

[4] "What" is indicated?

☆ **“Advertisement,” “trade documents or communications”** ([2] “Where” is the indication placed?)

- **“Advertisement”**: Indication made to the public for business purposes.
Examples) Advertisement on newspapers, magazines, TVs or the Internet; POP advertisement
- **“Trade documents or communications”**:
Examples) Order forms, quotations, purchase slips, receipts, emails, faxes, online orders, telephone calls, etc.

☆ **“In a way that is likely to mislead”** ([3] Whether falling under “indication that is likely to mislead”)

- Based on the specific circumstances of each individual case, considering various factors such as the content of the indication or the actual conditions of the transaction, the determination is made as to whether it is likely to mislead traders/consumers.

☆ **“Place of origin,” “quality,” “content,” “manufacturing process,” “purpose,” “quantity”** ([4] “What” is indicated?)

- **“Place of origin”**: The place where goods are produced, manufactured or processed, and where the value of goods is added
Note: For goods whose value is significantly affected by the nature of the processing, the place of processing is generally considered the “place of origin.”
Examples) - Eel “produced in Japan”
 - Indication of the Italian flag and “Italian type”
- **“Quality”**: Examples)
 - Ingredients of processed foods
 - Mileage of a used car
 - Whether or not it is certified/guaranteed by the government, public agency, etc.
 - Statement of patented invention
 - “Number of reviews” or “ranking” that deviate from the actual numbers/content on the review sites
- **“manufacturing process”**: Example) Sloping salt-terrace method for salt production
- **“Purpose”**: Example) Regarding fuel, there are types for cars, jet propulsion aircraft, etc.

Criminal provisions (Articles 21(3)(i) and 21(3)(v))

See pages 67-73

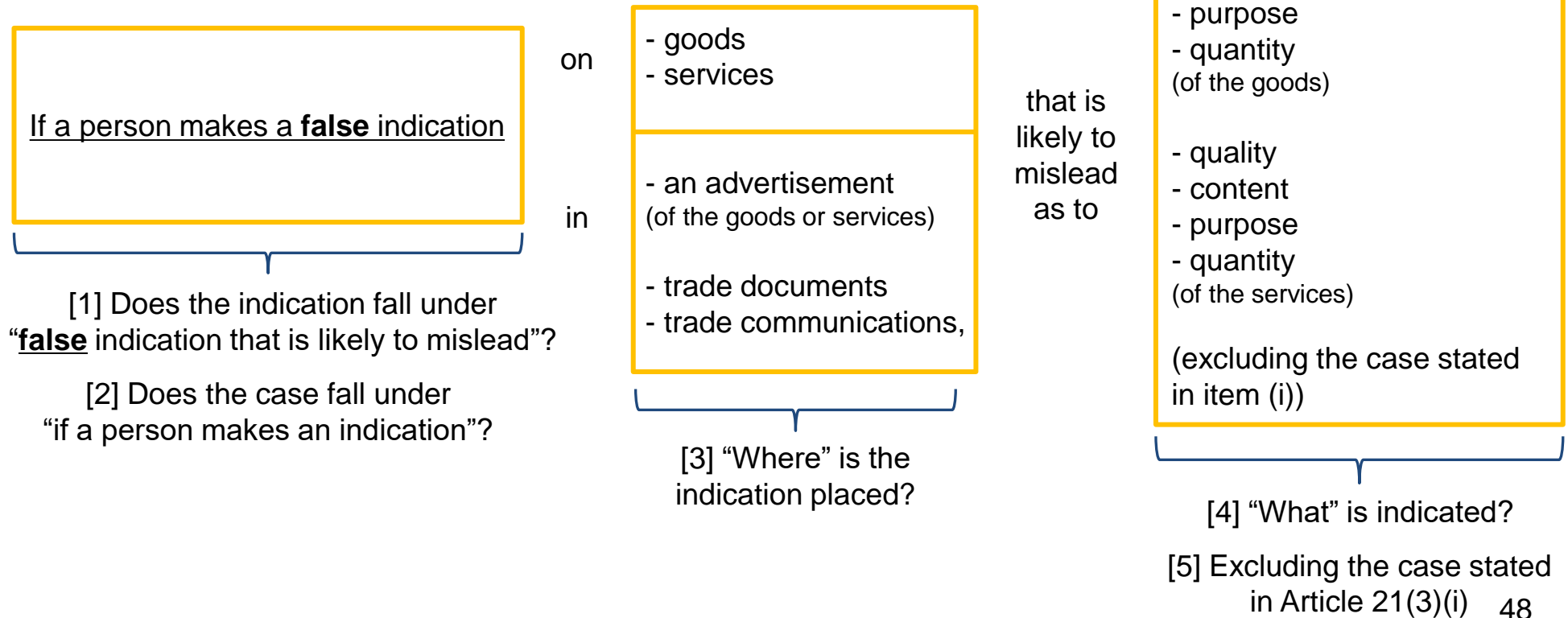
(i) If a person, for a wrongful purpose, commits any act of unfair competition stated in Article 2, paragraph (1), item (i) or (xx);

(v) If a person makes a false indication on goods, services, in an advertisement of goods or services, or in trade documents or communications, that is likely to mislead as to the place of origin, quality, contents, manufacturing process, purpose, or quantity of the goods, or as to the quality, contents, purpose, or quantity of the services (excluding a case stated in item (i));

→ Penal provisions: Imprisonment for not more than 5 years or a fine of not more than 5 million yen (or both)
For dual criminal liability provisions, a fine of not more than 300 million yen (Article 22(1)(iii))

False indication that is likely to mislead **(Criminal)** (Article 21(3)(v))

<Structure of provisions>



Court cases related to acts of misleading

Indication accompanied by negation such as “XX style”

- Indication accompanied by negation, such as “XX style,” or “XX type,” may fall under acts of misleading if the indication as a whole is likely to mislead.

Indication that make it appear as if the goods are certified/guaranteed

- Indication that make it appear as if the goods are certified or guaranteed by the government, public agency, etc., may fall under acts of misleading even if the quality and content of the goods substantially meet the certification standards, etc.

Indication of a place name that is part of well-known and famous trademark

- This type of indication may not fall under the indication that misleads as to the place of origin.

Case example (Civil)

A court held that the act of selling a liquid seasoning, which is not deemed “Mirin” under the Liquor Tax Act, with the indication of “Hon Mirin type” in a manner that leaves a strong impression of only the “Hon Mirin” part while leaving little impression of the “type” part, falls under acts of misleading.

(Hon Mirin Type Seasoning Case, Kyoto District Court judgement of April 25, 1990)



Case example (Criminal)

A court held that the act of attaching labels of “highest-grade sake” on the bottles of sake, which was graded as the “second-grade sake” (i.e., the lowest grade) under the former Liquor Tax Act because it was not examined and graded pursuant to the grading system, falls under acts of misleading even if the quality of the sake is substantially comparable to that of the highest-grade sake.

(Highest-Grade Sake Case, Supreme Court judgement of March 22, 1978)

Case example (Civil)

For a mark consisting of “circled M mark mosrite” and “of California” attached to electric guitars, etc., made in Japan, a court held that the mark does not fall under the indication that misleads as to the place of origin because it was not intended to mean “made in the State of California,” but has already been a well-known and famous trademark that indicates a guitar manufactured and sold by a specific company, and recognized by traders/consumers in Japan as such.

(Mosrite Guitar Case, Intellectual Property High Court judgement of August 28, 2008)



5. Overview of types of acts of unfair competition (9)

[9] Acts of harming the business reputation

(Article 2, paragraph (1), item (xxi))

The act of making or circulating false allegations that harm the business reputation of a business competitor

☆ “Business competitor”

It is sufficient that each party’s business potentially have common consumers or traders.

Note: The act of defaming or other similar act may be the issue of general torts (Article 709 of the Civil Code), rather than that of the Unfair Competition Prevention Act.

☆ “Competitor”

Even if the name of “competitor” is not clearly indicated, it is sufficient if the informed party can understand who the “competitor” refers to based on the content of the notification and information within the industry, etc.

Case example (Civil)

The act of the defendant (the holder of the utility model rights for furniture devise) of notifying the plaintiff’s client (the defendant’s business competitor) to the effect that the plaintiff’s goods infringe on the defendant’s utility model rights, was held by the court to be nothing but fall under the act of making false allegations that harms the business reputation of a business competitor on the grounds that the defendant made such notification without presenting the report of utility model technical opinion it had received (which indicated that the devise did not involve an inventive step), or in other words, as if there was no problem with the validity of the rights. (Osaka District Court judgement of March 26, 2015)

Case example (Civil)

With respect to the act of the defendant (engaged in import and sale of pillows, mattresses, etc.) of notifying an operator of an online shopping site that the plaintiff’s goods infringe on the defendant’s trademark rights, the court held that the plaintiff’s goods do not infringe on the defendant’s trademark rights, and that the content of such notification can be deemed as the false allegations that harm the business reputation of the plaintiff, which is in competition with the defendant, on the grounds that the plaintiff’s goods are pillows, mattresses, etc., labelled with the plaintiff’s trademarks under the Goods Category 20 (mattress, pillow, etc.), while the defendant’s trademarks are under Category 17 (rubber, natural rubber). (Tokyo District Court judgement of July 10, 2020)

Note: Civil provisions only. No criminal provisions.

(Such acts may be punished for damage to credibility and obstruction of business under Article 233 of the Penal Code)

5. Overview of types of acts of unfair competition (10)

[10] Acts of unauthorized use of trademarks by agents, etc. (Article 2(1)(xxii))

Acts of using a trademark, without a just cause, performed by an agent of a person who has the right pertaining to the trademark in a contracting party to the Paris Convention, etc.

Article 2(1)(xxii)

(xxii) an act by an agent or representative of a holder of a right to a trademark (the right is limited to a right that is equivalent to a trademark right; simply referred to as "right" in this item below), or by a person that was such an agent or representative within one year of the date of the act in question, without justifiable grounds and without the consent of the holder of the right, in a country that is a member of the Union established by the Paris Convention (as prescribed in Article 4, paragraph (1), item (ii) of the Trademark Act (Act No. 127 of 1959)), a country that is a member of the World Trade Organization, or a country that is a contracting party to the Trademark Law Treaty, which constitutes the use of a trademark identical or similar to the holder's trademark on goods or services identical or similar to those related to the holder's right; the transfer, delivery, display for the purpose of transfer or delivery, export, import, or provision through telecommunications lines of goods that are identical or similar to those related to the holder's right, on which a trademark identical or similar to the holder's trademark has been used; or the provision of services identical or similar to those related to the holder's right, using a trademark identical or similar to the holder's trademark.

Note: Civil provisions only. No criminal provisions.

Exclusion from Application (Article 19)

See pages 52-53

[1] Using a common name for goods or business or an indication of goods or business that is in common usage in the manner this is normally done (paragraph (1), item (i))

[2] Using one's own name without wrongful purpose (paragraph (1), item (ii))

6. Exclusion from Application

[1] Exclusion from Application

(Article 19(1))

This paragraph provides for cases where the provisions on the right to claim for an injunction, compensation for loss or damage, and penal provisions do not apply even in the case falling under “unfair competition” (Article 2(1)) as a matter of form.

- | | |
|--|----------------|
| [1] Using a common name for goods or business or an indication of goods or business that is in common usage | (Item (i)) |
| [2] Using one's own name without wrongful purpose | (Item (ii)) |
| [3] Using a registered trademark that is registered in the consent system without wrongful purpose | (Item (iii)) |
| [4] Using an indication prior to another person's indication becoming well-known | (Item (iv)) |
| [5] Using an indication prior to another person's indication becoming famous | (Item (v)) |
| [6] Transferring, etc., goods if three years have elapsed since the date they were first sold in Japan | (Item (vi)(a)) |
| [7] Protection of good-faith acquirers of goods that imitate the form of another person's goods | (Item (vi)(b)) |
| [8] Protection of good-faith acquirers of trade secrets | (Item (vii)) |
| [9] Transferring, etc., things created by the use of trade secrets after the right to claim for an injunction have been extinguished | (Item (viii)) |
| [10] Protection of good-faith acquirers of shared data with limited access | (Item (ix)(a)) |
| [11] Acquiring, etc., open data identical to shared data with limited access | (Item (ix)(b)) |
| [12] Transferring, etc., a device, etc., used for testing or research related to technological restriction measures | (Item (x)) |

[2] Request to affix an indication to prevent confusion

(Article 19(2))

- This paragraph is provided for the purpose of readjustment of interests between a person who used the relevant indication and a person who is compelled to tolerate (e.g., a holder of a well-known indication of goods or business) in the case where the provisions of the exclusion from application apply and the use of the indication of goods or business is allowed (Article 19, paragraph (1), items (ii) through (iv)).
- A person whose business interests have been harmed by infringement may request the infringer to affix an indication to prevent confusion.

(Reference) Relationship between unfair competition and exclusion from application

<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> Article 2, paragraph (1) (Types of unfair competition) </div> <div style="width: 45%;"> Article 19, paragraph (1) (Types of exclusion from application) </div> </div>		Item (i)	Item (ii)	Item (iii)	Items (iv) - (ix)	Item (x)	Items (xi) - (xvi)	Items (xvii), (xviii)	Item (xix)	Item (xx)	Item (xxi)	Item (xxii)
		Creation of confusion with a well-known indication of goods or business	Unauthorized use of a famous indication of goods or business	Provision of goods that imitate the form of another person's goods	Infringement of trade secrets	Transferring, etc., things created by infringement of trade secrets	Wrongful act involving shared data with limited access	Provision of a device, etc., that interferes with the effectiveness of technological restriction measures	Wrongful acquisition, etc., of domain names	Indication that misleads as to the content, etc., of goods or services	Acts of harming the business reputation	Unauthorized use of a trademark by agents, etc.
Item (i)	Using a common name for goods or business or an indication of goods or business that is in common usage	○	○							○		○
Item (ii)	Using one's own name without wrongful purpose	☆	☆									☆
Item (iii)	Using a registered trademark that is registered in the consent system without wrongful purpose	☆	☆									
Item (iv)	Using an indication prior to another person's indication becoming well-known	☆										
Item (v)	Using an indication prior to another person's indication becoming famous		○									
Item (vi)(a)	Transferring, etc., goods if three years have elapsed since the date they were first sold in Japan			○								
Item (vi)(b)	Protection of good-faith acquirers of goods that imitate the form of another person's goods			○								
Item (vii)	Protection of good-faith acquirers of trade secrets				○							
Item (viii)	Transferring, etc., things created by the use of trade secrets after the right to claim for an injunction have been extinguished					○						
Item (ix)(a)	Protection of good-faith acquirers of shared data with limited access						○					
Item (ix)(b)	Acquiring, etc., open data identical to shared data with limited access						○					
Item (x)	Transferring, etc., a device, etc., used for testing or research related to technological restriction measures							○				

☆ indicates the type for which it is allowed to make an additional request to prevent confusion as prescribed in Article 19(2) if the exclusion from application applies under the provisions of Article 19(1).

7. Overview of prohibited acts under international agreements (1)

[1] Prohibition of commercial use of foreign state's national flags, etc.

(Articles 16 and 21(3)(vii))

Art. 6-3(1)(a) of the Paris Convention
Article 2(1) of WTO TRIPS Agreement

These provisions prohibit the use of a foreign state's national flag, coat of arms, or the seal or sign used by the national government of a foreign state, etc., specified by the Order of the Ministry of Economy, Trade and Industry, as a trademark and prohibit the use of a foreign state's coat of arms in a manner likely to mislead as to the place of origin of goods.

(Examples)



Switzerland's national flag



Norwegian coat of arms



Emblem of the United States



Seal of a Dutch cheese

Criminal provisions (Article 16)

See pages 67-73

- (1) No person may use anything that is identical or similar to a foreign state's national flag, coat of arms, or any other emblem specified by the Order of the Ministry of Economy, Trade and Industry (referred to as "foreign state's national flag, etc." below) (such identical or similar items are referred to as "emblems similar to a foreign state's national flag, etc." below) as their trademark. No person may transfer, deliver, display for the purpose of transfer or delivery, export, import, or provide through telecommunications lines goods using an emblem similar to a foreign state's national flag, etc. as their trademark. No person may provide services while using an emblem similar to a foreign state's national flag, etc. as a trademark; provided, however, that this does not apply if permission has been obtained from the government agency of the foreign state authorized to grant permission (including an administrative action similar to permission; the same applies below) for the use of the foreign state's national flag, etc.
- (2) Beyond what is prescribed in the preceding paragraph, no person may use a foreign state's coat of arms specified by the Order of the Ministry of Economy, Trade and Industry, as referred to in the preceding paragraph (referred to as "coat of arms of a foreign state" below) in a manner likely to mislead as to the place of origin of goods; no person may transfer, deliver, display for the purpose of transfer or delivery, export, import or provide through telecommunications lines goods using the coat of arms of a foreign state in that manner. No person may provide services while using the coat of arms of a foreign state in the same manner; provided, however, that this does not apply if permission has been obtained from the government agency of the foreign state authorized to grant permission to use the coat of arms of a foreign state.
- (3) No person may use anything that is identical or similar to the seal or sign used by the national or local government of a foreign state for supervision or certification purposes, as specified by the Order of the Ministry of Economy, Trade and Industry (referred to as "official markings of a foreign national government, etc." below) (such identical or similar items are referred to as "official markings similar to that of a foreign national government, etc." below) as a trademark on goods or for services that are identical or similar to those for which the official marking of a foreign national government, etc. is used. No person may transfer, deliver, display for the purpose of transfer or delivery, export, import or provide through telecommunications lines goods using an official marking similar to that of a foreign national government, etc. as their trademark. No person may provide services while using an official marking similar to that of a foreign national government, etc. as a trademark; provided, however, that this does not apply if permission has been obtained from the government agency of the foreign state that is authorized to grant permission for use of the official marking of a foreign national government, etc.

→ Penal provisions: Imprisonment for not more than 5 years or a fine of not more than 5 million yen (or both) (Article 21(3)(vii))
For dual criminal liability provisions, a fine of not more than 300 million yen (Article 22(1)(iii))

7. Overview of prohibited acts under international agreements (2)

[2] Prohibition of the commercial use of marks of international organizations

(Articles 17 and 21(3)(vii))

Art. 6-3(1)(b) of the Paris Convention
Article 2(1) of WTO TRIPS Agreement

The provisions prohibit the use of a mark representing an international organization, which is specified by the Order of the Ministry of Economy, Trade and Industry, as a trademark in a manner likely to mislead as to the existence of a relationship with that international organization.

(Examples)



United Nations



International Criminal Police Organization (ICPO)



World Trade Organization (WTO)



World Intellectual Property Organization (WIPO)



International Olympic Committee (IOC)

Criminal provisions (Article 17)

See pages 67-73

No person may use anything that is identical or similar to a mark representing an international organization (meaning an intergovernmental organization or an equivalent organization specified by the Order of the Ministry of Economy, Trade and Industry; the same applies in this Article below), which is specified by the Order of the Ministry of Economy, Trade and Industry (such identical or similar items are referred to as "mark similar to that of an international organization" below) as a trademark in a manner likely to mislead as to the existence of a relationship with that international organization. No person may transfer, deliver, display for the purpose of transfer or delivery, export, import or provide through telecommunications lines, goods using a mark similar to that of an international organization as their trademark in that manner. No person may provide services while using a mark similar to that of an international organization as their trademark, in the same manner; provided, however, that this does not apply if permission from the relevant international organization has been obtained.

→ Penal provisions: Imprisonment for not more than 5 years or a fine of not more than 5 million yen (or both) (Article 21(3)(vii))
For dual criminal liability provisions, a fine of not more than 300 million yen (Article 22(1)(iii))

[Order of the Ministry of Economy, Trade and Industry]

The Ministerial Order to Provide for Foreign States' National Flags or Coats of Arms, or Any Other Emblems, and Seals or Signs Used for Supervision or Certification by the National or Local Governments of Foreign States, as well as International Organizations and Marks Representing International Organizations, as Specified in Articles 16(1), 16(3) and 17 of the Unfair Competition Prevention Act

(Order of the Ministry of International Trade and Industry No. 36 of April 19, 1994; latest amendment: Order of the Ministry of Economy, Trade and Industry No. 24 of May 15, 2023)

7. Overview of prohibited acts under international agreements (3)

[3] Crime of bribery of foreign public officials (Crime of provision of wrongful gains to foreign public officials) (Articles 18 and 21(4)(iv))

OECD Anti-Bribery Convention

<https://www.oecd.org/daf/anti-bribery/oecdantibriberyconvention.htm>

Prohibition of bribery, etc., to a foreign public official in order to make any wrongful gain in business regarding international commercial transactions.

■ Guidelines for the Prevention of Bribery of Foreign Public Officials

https://www.meti.go.jp/policy/external_economy/zouwai/overviewofguidelines.html

■ Introduction of the Guidelines for the Prevention of Bribery of Foreign Public Officials

https://www.meti.go.jp/policy/external_economy/zouwai/pdf/zouwai_shishin_tebiki.pdf

See pages 67-73

Criminal provisions (Article 18(1))

No person may give, offer to give, or promise to give any money or other benefit to a foreign public official, etc. in order to have them act or refrain from acting in relation to the performance of their official duties, or to have them use their position to influence another foreign public official, etc. to act or refrain from acting in such a manner, so that the person in question can make any wrongful gain in business regarding international commercial transactions.

→ Penal provisions: Imprisonment for not more than 10 years or a fine of not more than 30 million yen (or both) (Article 21(4)(iv))
For dual criminal liability provisions, a fine of not more than 1 billion yen (Article 22(1)(i))

Definition of “foreign public official, etc.” (Article 18(2))

- Any person that engages in public service for a national or local foreign government (item (i))
- Any person that engages in the business operations of the relevant organization of a foreign government (item (ii))
- Any person that engages in the business operations of a foreign public company (item (iii))
- Any person that engages in the public service for a public international organization (item (iv))
- Any person that engages in business operations under the authority of a foreign government, etc., and that are delegated by any of them (item (v))

See Article 3 of the Order for Enforcement of the Unfair Competition Prevention Act.

For example, there may be cases where one or more national or local governments of foreign states own more than 50 percent of capital subscription.

It doesn't mean that the punishment is exempted just because the money or goods provided are of small value.



It's no longer the age where bribes are a necessary evil in overseas business development!



Is it OK to farm out the management of bribery risks involving foreign public officials entirely to overseas subsidiaries or branches?



Let's never accept bribery demands!!

Brochure on prevention of bribery of foreign public officials: "A Must-See for Companies with Offices Abroad – Do you know the Crime of Bribery of Foreign Public officials?" J (https://www.meti.go.jp/policy/external_economy/zouwai/pdf/damezowaipamph.pdf)

Case example (Criminal)

For the purpose of enjoying favorable treatment, a president and other two employees of a Japanese company engaged in business such as railroad consulting, provided about 70 million yen to persons related to Vietnam Railways in connection with the Yen Credit to Vietnam "Hanoi City Urban Railway Construction Project (Line 1)," provided the total amount (in yen and rupiah) equivalent to about 20 million yen to persons related to Directorate General of Railway, Ministry of Transportation of Indonesia in connection with the Yen Credit to Indonesia "Railway Double Tracking on Java South Line Project," and provided the money (in USD) equivalent to approximately 54.77 million yen to persons related to Uzbekistan Railways in connection with the Yen Credit to Uzbekistan "Karshi-Termez Railway Electrification Project."

In this case, three defendants were sentenced to imprisonment of 2 years (suspension of 3 years), 3 years (suspension of 4 years) and 2 years and 6 months (suspension of 3 years), respectively, and the defendant corporation was sentenced to a fine of 90 million yen.

(Tokyo District Court judgement of February 4, 2015)

Case example (Criminal)

Three employees, including an executive managing officer, of a Japanese company undertaking the construction work of a thermal power plant in Thailand provided money (Thai baht) equivalent to approximately 39.93 million yen to foreign officials in Thailand, aiming to receive favorable and convenient arrangements such as silent acquiescence with the breach of the permission conditions, or non-prohibition of berthing at a temporary pier and of unloading of cargo.

In this case, two defendants were sentenced to imprisonment of 1 year and 6 months (suspension of 3 years), respectively, and one defendant was sentenced to imprisonment of 1 year and 4 months (suspension of 3 years). The corporation has not been subject to criminal prosecution as a result of the application of the Agreement Procedure.

(Tokyo District Court judgement of March 1, 2019; Supreme Court judgement of May 20, 2022)

1. About the Guidelines for the Prevention of Bribery of Foreign Public Officials

The Guidelines were formulated to support companies engaged in international commercial transactions to take a voluntary/preventive approach for the prevention of bribery of foreign public officials, etc., and illustrate best practices to establish the preventive systems.

2. About the Compliance Systems for Prevention of Bribery of Foreign Public Officials by Business

(1) Basic Views

- It is required to establish/operate the compliance systems for prevention of bribery of foreign public officials in order to comply with relevant laws and regulations in Japan and overseas and preserve corporate value.
- What is important is the top management's attitude/message aimed at "compliance with laws and regulations." To eliminate employees' mistaken belief that "bribes benefit the company," it is effective to show the top management's attitude to all employees clearly and repeatedly in various ways.
- Companies should focus on taking measures for high-risk acts based on the "risk-based approach" in view of risks by country and business field, and of types of acts vulnerable to being used for bribery, while they are allowed to take more simplified measures for low-risk business divisions, etc.
- The parent company must ensure that the preventive systems based on the degree of risk is appropriately established and operated in the subsidiaries belonging to the company group.

(2) Desirable Preventive Systems Methodologies for Business

- The details of the establishment/operation of the specific preventive systems in each company is left to the broad discretion of the officers, etc., in light of the degree of risk and the potential effects depending on the actual conditions of its business.
- Desirable factors for the preventive systems are as follows:
 - [1] Formulation of a basic policy that sets the compliance with laws and regulations above short-term benefits and prohibits any act that constitutes a crime of bribery of foreign public officials
 - [2] Formulation of internal procedures and internal rules such as the criteria for judgment, based on the risk-based approach*
 - [3] Development of an organizational system to ensure that internal role division, authorities and responsibilities are clear, based on the internal control, depending on company size, etc.
 - [4] Implementation of internal educational activities
 - [5] Implementation of audits of whether the prevention system works
 - [6] Review of the preventive systems by corporate manager or compliance officer, etc., based on audit results

*Note: It is desirable that the internal rules specify that small facilitation payment (SFP) is in principle prohibited.

(3) Parent company's Assistance and Guidance with the Preventive Systems of Subsidiaries

- Companies are required to apply the risk-based approach also to the scope of the subsidiaries that promote the establishment and operation of the preventive systems, and to the details thereof.
- Although each subsidiary is basically required to autonomously establish/operate its preventive system, if necessary, the parent company is required to supplement resources and lead the establishment/operation of the preventive system.
- In M&A, companies are required to perform due diligence before acquisition and immediate validation after acquisition, based on the risk-based approach.

(4) Response in an Emergency Situation (if a foreign public official, etc. does demand bribes in reality or it is found that local staff may have paid bribes)

- It is required to ensure compliance with laws and regulations and take prompt actions to minimize adverse impacts on one's own company.
- In a subsidiary that lacks response capabilities, an important option will be active involvement by the parent company.
- In an emergency system, it is required to pay attention to [1] the establishment of its rules in advance, [2] the consideration of the reporting to an investigating authority, surrender, or the offering of the application of the agreement procedure to a prosecutor, in the case where a particular act is judged highly likely to be act of bribery.

(5) Consultation to local agencies

- If a bribe is requested, it is often difficult for a company to take appropriate measures alone.
- It is seen as appropriate to consult with "contact points for Japanese companies" located in local Japanese embassies/consulates, the Japan International Cooperation Agency, local chambers of commerce and industry, etc.

3. Scope of Punishment Under the Unfair Competition Prevention Act

Elements of a crime of bribery of foreign public officials (Article 18(1))

- "Wrongful gain in business"
 - It is a basic rule to refuse to pay money even for the purpose of avoiding unreasonable and discriminatory treatment from the local government such as at customs.
 - False records or informal approval procedures may lead to the presumption of fraud.
 - Gifts, entertainment, payment for travel cost, etc., aiming at pure socialization or deepening of understanding of the company's own products may not necessarily be considered bribes.
 - (Case 1) Provision of a seasonal small gift based on the local social practices
 - (Case 2) Certain travel cost required to visit one's own company's plant (in Japan or a third country) (including costs for dinner within the reasonable and appropriate scope incidental to a visit, and sightseeing implemented in free time during the visit).
- In the case of falling under necessity as prescribed in Article 37 of the Penal Code, the illegality is negated, and no punishment will be imposed.

8. Overview of civil measures

[1] Right to claim for injunction (Article 3)

A person whose business interests have been or are likely to be harmed by infringement through unfair competition may file a claim against the person to suspend or prevent the infringement that has or is likely to harm business interests and request the destruction of things that constitute the act of infringement.

Extinctive prescription (Article 15)

The right to claim for an injunction against the act of unauthorized use of trade secrets or shared data with limited access is extinguished by prescription if the person does not exercise the right within three years from the time the holder becomes aware of the act and the identity of the person conducting it, or if twenty years have elapsed from the time the act in question began.

Reference

Article 15 (1) The right to claim suspension or prevention of infringement under the provisions of Article 3, paragraph (1) against the act of using trade secrets in the unfair competition stated in Article 2, paragraph (1), items (iv) through (ix) is extinguished by prescription in the following cases:

- (i) if the person conducting the act of infringement does so continuously, and the trade secret holder whose business interests have been or are likely to be harmed by that act does not exercise the right within three years from the time the holder becomes aware of the act and the identity of the person conducting it; and
- (ii) if twenty years have elapsed from the time the act in question began.

[2] Claim for compensation for loss or damage (Article 4)

A person that intentionally or negligently commits an infringement that harms the business interests of another person through unfair competition is liable to compensate for any loss or damage resulting from it.

- Provisions for Presumption of Amounts for Loss or Damage (Article 5)
- Expert Opinions on the Calculation of the Amount of Loss or Damage (Article 8)
- Determination of Reasonable Amount of Loss or Damage (Article 9)

See pages 61 and 65

[3] Request for measures to restore business reputation (Article 14)

The court may order the person that has intentionally or negligently engaged in unfair competition and thereby injured the business reputation of that other person to take necessary measures to restore the other person's business reputation.

[4] Presumption of amounts for loss or damage (Article 5)

In light of the fact that it is difficult to prove the amount of loss or damage resulting from the infringement of business interests through “unfair competition” because the loss or damage occurs through economic activities, the following amount may be claimed as the amount of loss or damage in order to mitigate the burden of proof on the victim:

(1) The amount of profit per unit of infringed things × the quantity of the things transferred by the infringer

The quantity of the things transferred by the infringer multiplied by the amount of profit per unit of the things that the infringed party could have sold if there had been no such act of infringement may be fixed as the amount of loss or damage suffered by the infringed party.

(Article 5(1)(i))

Note: The quantity of the things that exceeds the quantity corresponding to the infringed party's ability to sell those things, or the quantity corresponding to the circumstances that the infringed party is unable to sell the quantity of those will be deducted from the quantity of the things transferred by the infringer under item (i). Instead, pursuant to Article 5(1)(ii), the amount equivalent to the royalties that corresponds to the deducted quantity may be fixed as the amount of loss or damage.

<Subject types>

Creation of confusion with a well-known indication of goods or business (Item (i)), unauthorized use of a famous indications of goods or business (item (ii)), provision of goods that imitate the form of another person's goods (item (iii)), infringement of trade secrets (items (iv) - (x)), wrongful act involving shared data with limited access (items (xi) - (xvi)), and unauthorized use of a trademark by agents, etc. (item (xxii))

(2) The amount of profit made by an infringer through the act of infringement

The amount of profit made by an infringer through the act of infringement may be presumed to be the amount of loss or damage. (Article 5(2))

<Subject types>

All unfair competition

(3) The amount equivalent to the royalties

A person whose business interests have been harmed by infringement through the “unfair competition” may file a claim that seeks an amount equivalent to the royalties for compensation for loss or damage against the infringer. (Articles 5(1)(ii) and 5(3))

Note: When a court determines the amount equivalent to the royalties under Articles 5(1)(ii) and 5(3), the court may consider the compensation that the person whose business interests have been harmed by the infringement would have received if they had reached an agreement on compensation for the act with the person that engaged in unfair competition, on the premise that unfair competition occurred. (Article 5(4))

Note: The amount equivalent to the royalties under Article 5(3) is the “minimum” amount of loss or damage suffered by a person whose business interests have been harmed by the infringement through the unfair competition. (Article 5(5))

<Subject types>

Creation of confusion with a well-known indication of goods or business (Item (i)), unauthorized use of a famous indications of goods or business (item (ii)), provision of goods that imitate the form of another person's goods (item (iii)), infringement of trade secrets (items (iv) - (x)), wrongful act involving shared data with limited access (items (xi) - (xvi)), wrongful acquisition, etc., of domain names (item (xix)), and unauthorized use of a trademark by agents, etc. (item (xxii))

[5] Presumption of unauthorized use, etc., of trade secrets

(Article 5-2 of the Unfair Competition Prevention Act;
Articles 1 and 2 of the Order for Enforcement thereof)

If the plaintiff proves (1) that trade secrets including manufacturing methods were wrongfully acquired by the defendant, and (2) that the defendant has manufactured products that can be manufactured using the manufacturing methods, the defendant is presumed to have carried out unauthorized use.

<Example of structure of proof in a trial for unauthorized use of manufacturing methods>

Ordinary case

The matters that the **plaintiff** must prove

The manufacturing method was wrongfully acquired

Defendant has used the manufacturing method

It is difficult for plaintiff to prove that.

The matters that the defendant must prove

Presumption provisions

The matters that the **plaintiff** must prove

(1) The manufacturing method was wrongfully acquired

(2) Defendant has manufactured products that can be manufactured using the manufacturing method

Presumption based on two points of proof (Plaintiff no longer has to prove defendant's use)

The matters that the defendant must prove

Defendant has not used the manufacturing method

<Acts from which it can be clearly understood that the trade secret in question and the technical secret has been used>

	[1] Trade secrets in question (Technical secrets)	[2] Acts from which it can be clearly understood that the technical secret has been used
Article 5-2 of the Unfair Competition Prevention Act	Manufacturing methods <Examples> Automobile assembly technology; technique for creating chemicals	Production of things through using the technical secret <Examples> Production of automobiles that can be produced using the automobile assembly technology; production of chemical goods using the raw materials
Articles 1 and 2 of the Order for Enforcement of the Unfair Competition Prevention Act	Methods for evaluating or analyzing information <Example> Method of assessing risk of acquiring specific disease based on chemical analysis of blood	Provision of services of evaluation or analysis using technical secrets <Example> Provision of services to provide results of assessment of specific disease risks by blood analysis, which can be made by using the analysis methods

Plaintiff must prove:

1. Defendant's acts of illegal acquisition, etc.

- A Types of wrongful acquisition (Article 5-2(1))**
- Acts of wrongful acquisition (Article 2(1)(iv))
- B-1 Types of subsequent acquisition in bad faith or by gross negligence at the time of acquisition (Article 5-2(1))**
- Acquired while knowing an intervening act of wrongful acquisition, or while not knowing this fact due to gross negligence (Article 2(1)(v))
- B-2 Types of subsequent acquisition in bad faith or by gross negligence at the time of acquisition (Article 5-2(1))**
- Acquired while knowing an act of improper disclosure or an intervening act of improper disclosure, or while not knowing this fact due to gross negligence (Article 2(1)(viii))
- C Types of violation of the principle of good faith (Article 5-2(3))**
- After a technical secret has been disclosed by its holder, "obtained" the technical secret in violation of the duty to manage the technical secret, for the purpose of wrongful gain or causing damage.
- D Types of subsequent acquisition in good faith or without gross negligence at the time of acquisition (Articles 5-2(2) and 5-2(4))**
- Acquired a technical secret
 - After acquiring the technical secret, learning that there had been an intervening act of wrongful acquisition, that an act of improper disclosure has occurred, or that there had been an intervening act of improper disclosure, or being unaware of this fact due to gross negligence
 - Possessing a recording medium, etc., containing a technical secret even after turning to bad faith or gross negligence



2. Defendant's acts

<Wrongfully acquired trade secrets>

Manufacturing methods of things

- (Case 1) Technology to improve the anti-deterioration functions by adding minor components to paints
- (Case 2) Technology to strengthen the durability function of ordinary automobile fuel cells

Technical secrets specified by Cabinet Order

- (Case 1) Method of assessing risk of acquiring specific disease based on chemical analysis of blood
- (Case 2) Method of analyzing the operation information of devices and assessing the future operation status based on the analysis

[Trade secrets out of range]

- × Technology unrelated to specific products (e.g., measurement methods of temperature at manufacturing facilities for all products)
- × Business information (including client lists, customer service manual, sales manual)

<Defendant's acts>

Acts of manufacturing

Manufacturing of products that the technology affects the differentiators in terms of functions, costs, etc.

- (Case 1) Defendant produces paints with high anti-deterioration functions
- (Case 2) Defendant produces tractor fuel cells with high durability

Acts involving the obvious use of the technical secrets (specified by Cabinet Order)

- (Case 1) Provision of services to provide results of assessment of specific disease risks by blood analysis, which can be made by using the analysis methods written on the left
- (Case 2) Provision of equipment diagnosis services that is enabled by use of the methods written on the left

[Acts out of range]

- × Products that are typically manufactured without using trade secrets that have been wrongfully acquired (e.g., pharmaceutical manufacturing in the case of the theft of technology for magnetic properties of magnetic steel sheet)
- × Businesses that are typically provided without using trade secrets that have been wrongfully acquired (e.g., developments of water quality inspection services in the case of the theft of blood analysis technology)

Shift of the burden of proof

Defendant must prove:

The equivalent effects can be achieved even by use of self-development technology that differs from the relevant technology

(Example) In the case of the theft of the plaintiff's trade secrets related to additives that can halve the amount of rare metals used in products

→ It is sufficient to prove that the use of rare metals can be halved by an additive different from that of the plaintiff, and that the defendant is using that additive independently

Note: In the case of the type of subsequent acquisition in good faith or without gross negligence at the time of acquisition, if the defendant can provide evidence that they do not possess any recording medium, etc., containing technical secret (such as through disposal or deletion), the requirement of 'possession' will not be met, and therefore, the presumption of use, etc., will not apply.

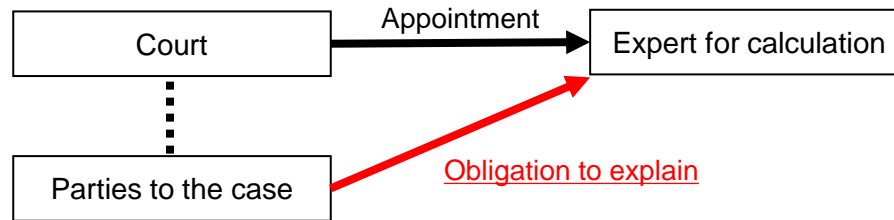
Article 5-2 of the Act (presumption provisions)

(Presumptions Regarding a Person Using a Technical Secret they Acquired)

- Article 5-2 (1) If any of the acts stated in Article 2, paragraph (1), item (iv), (v), or (viii) (limited to acts of acquiring trade secrets) have been conducted with regard to a technical secret (limited to a technical secret concerning manufacturing methods or other information specified by Cabinet Order; the same applies below in this Article), and a person that has conducted such an act produces things using the technical secret or engages in other acts specified by Cabinet Order as acts from which it can be clearly understood that the technical secret has been used (referred to as "production, etc." in this Article below), the person is presumed to have engaged in production, etc. as an act stated in each item (limited to acts of using trade secrets).
- (2) If a person possesses a recording medium containing a technical secret (meaning a document, drawing, or recording medium on which technical secrets are described or recorded; the same applies below in this Article), an object that represents the technical secret, or a transmitter identification code (meaning letters, numbers, symbols, or any other codes used to identify the transmitter of an automatic public transmission (meaning a transmission made automatically in response to a public request for direct reception by the public, excluding an automatic public transmissions that are classified as broadcasts or cablecasts); the same applies in paragraph (4)) associated with the recording medium containing the technical secret, after acquiring the technical secret, learns that there had been an intervening act of wrongful acquisition of trade secrets with regard to the relevant technical secret, or is unaware of that fact due to gross negligence, and the person engages in production, etc., the person is presumed to have engaged in production, etc. as an act of unfair competition as stated in Article 2, paragraph (1), item (vi) (limited to the act of using a trade secret).
- (3) If, after a technical secret has been disclosed by its holder, a person obtains the technical secret by any of the following means in violation of the duty to manage the technical secret, for the purpose of wrongful gain or causing damage to the holder of the technical secret, and the person engages in production, etc., the person is presumed to have engaged in production, etc., as an act of unfair competition (limited to the act of using a trade secret) as stated in Article 2, paragraph (1), item (vii):
- (i) misappropriating a recording medium containing technical secrets, etc. or an object that represents technical secrets;
 - (ii) reproducing a description or a record from a recording medium containing technical secrets, etc., or an object that represents technical secrets; or
 - (iii) not deleting a description or a record that should be deleted from a recording medium containing a technical secret, etc., and disguising this act as if the description or record in the recording medium containing the technical secrets, etc. had been deleted.
- (4) If a person possesses a recording medium containing the technical secret, an object that represents the technical secret, or a transmitter identification code associated with a recording medium containing the technical secret, after acquiring the technical secret, learns that an act of improper disclosure of the trade secret has occurred with regard to the technical secret, or that there had been an intervening act of improper disclosure, or is unaware of this fact due to gross negligence, and the person engages in production, etc., the person is presumed to have engaged in production, etc., as unfair competition as stated in Article 2, paragraph (1), item (ix) (limited to the act of using a trade secret).

[6] Expert opinions on the calculation of the amount of loss or damage (Article 8)

The parties must explain the necessary matters to the expert for calculating the amount of loss or damage.

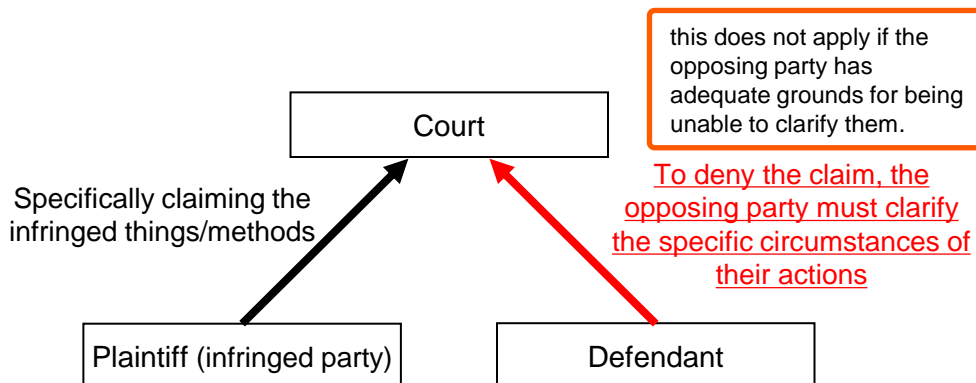


[7] Determination of reasonable amount of loss or damage (Article 9)

When it is extremely difficult to prove the facts necessary to determine the amount of loss or damage, the court may determine a reasonable amount of loss or damage based on the entirety of the oral arguments and the results of the examination of evidence.

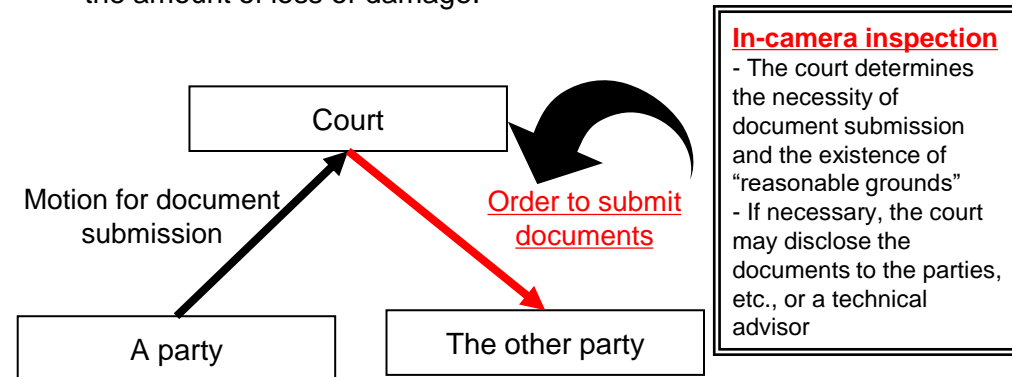
[8] Obligation to clarify specific circumstances (Article 6)

In denying the infringed party's claim, the opposing party must clarify the specific circumstances of their actions.



[9] Order of document submission (Article 7)

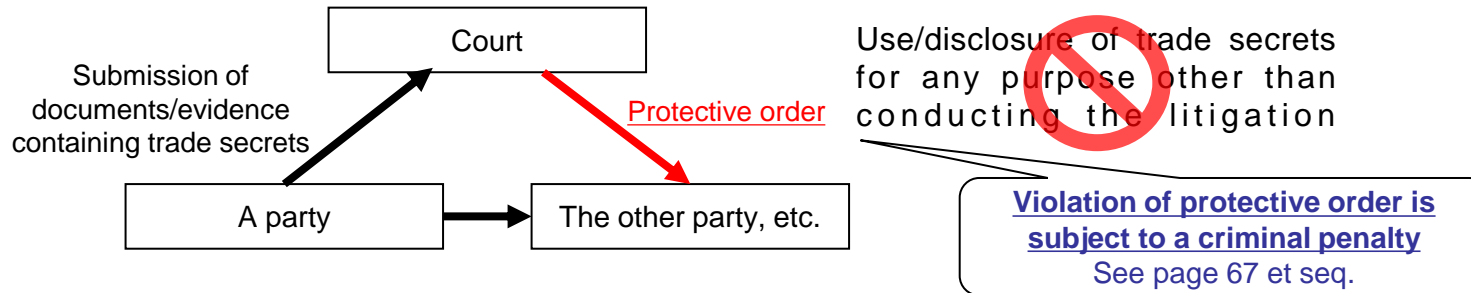
The court may, on the motion of a party, order the other party to submit any documents necessary to prove the act of infringement or calculate the amount of loss or damage.



[10] Provisions related to protective order

(Articles 10 and 11)

The court may order a party, etc. not to use or disclose the trade secrets contained in the brief or evidence for any purpose other than conducting the litigation.



Reference

A case of the protective order under Article 105-4 of the Patent Act

In the case seeking a provisional disposition order for an injunction against the obligor on the grounds that the obligor's import, sales, etc., of liquid crystal televisions and monitors infringe the obligee's patent, the court ruled that the obligee be allowed to file a petition for a protective order under Article 105-4 of the Patent Act. (Samsung Japan Corporation Case, Supreme Court determination of January 27, 2009)

[11] Suspension of the open examination of parties

(Article 13)

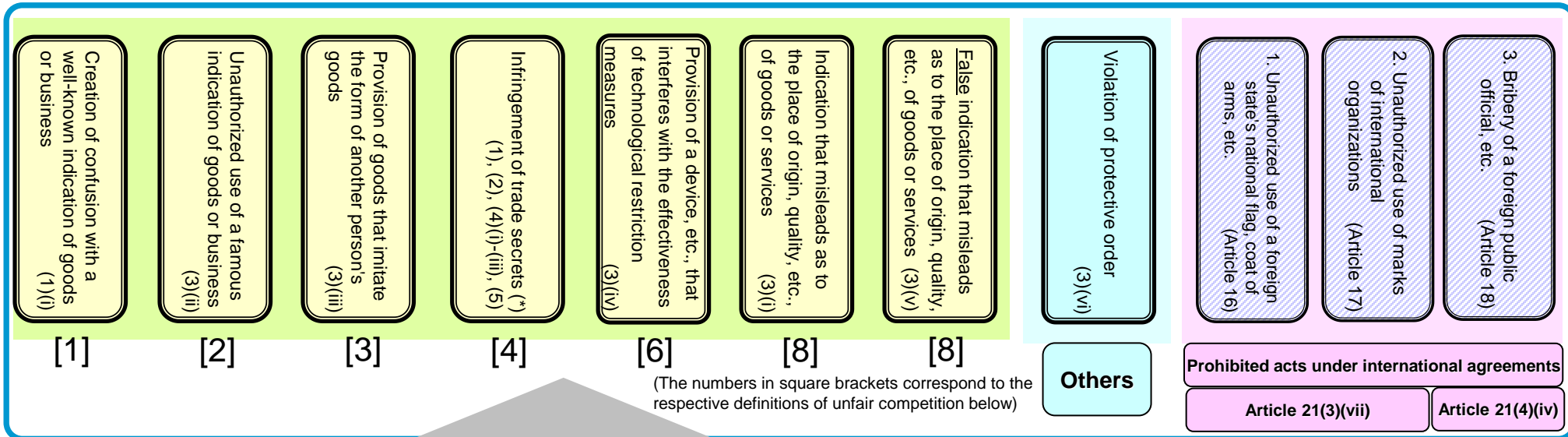
In litigation involving the infringement that may harm business interests through unfair competition, if a party, etc. is to be examined regarding a matter that serves as the basis for determining whether the infringement occurred and the matter falls under trade secrets, the court may rule to conduct the examination of the matter in a closed session.

[12] Jurisdiction over actions involving international infringement of trade secrets and scope of application (Articles 19-2 and 19-3)

A civil action in connection with trade secrets managed within Japan by a company conducting business within Japan may be filed with a Japanese court, and Japan's Unfair Competition Prevention Act applies, even in the case of an act of infringement committed outside Japan.

9. Overview of criminal measures (1)

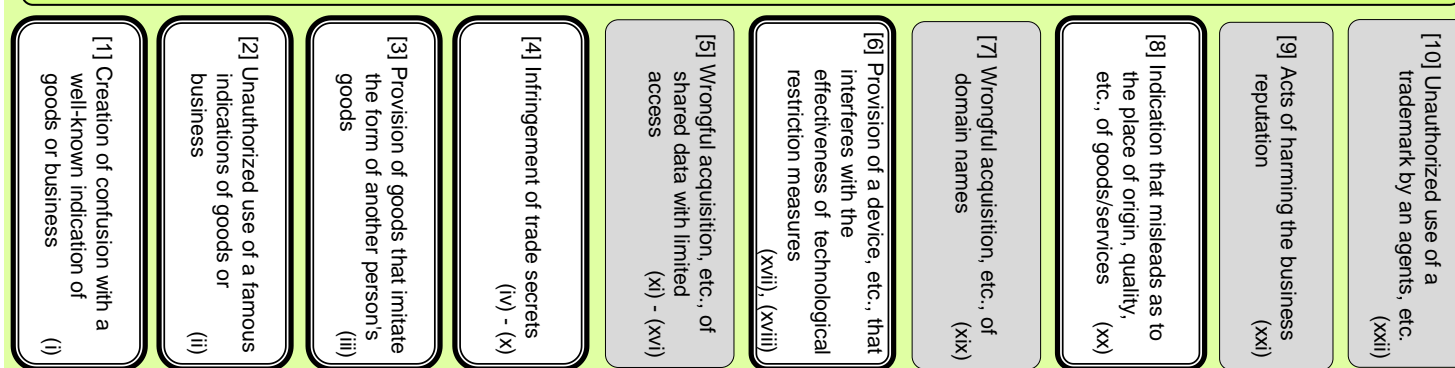
Acts subject to criminal penalties (Article 21)



Subjective requirements such as the purpose of wrongful gain or causing damage (partially apply)

(*) For infringement of trade secrets, acts themselves subject to criminal penalties are prescribed in Article 21, paragraphs (1) and (2), paragraph (4), items (i) through (iii), and paragraph (5).

Definitions of "unfair competition" (Article 2) = Civil measures (claims for injunctions and compensation for loss or damage)



Part of "unfair competition" (acts that are especially highly illegal) is subject to criminal penalties

(However, criminal provisions have partially different requirements, e.g., the purpose of wrongful gain or causing damage)

9. Overview of criminal measures (2)

Penal provisions

(Articles 21, paragraphs (1) - (5))

➤ **Paragraphs (1) and (2): Crimes of trade secret infringement**

Imprisonment for not more than 10 years

or a fine of not more than 20 million yen (or both)

Note: When severe penalties for offences committed outside Japan are applied, a fine of not more than 30 million yen (or in combination with imprisonment for not more than 10 years)

➤ **Paragraph (3): Other crimes of infringement, etc. (excluding crime of bribery of foreign public officials)**

Imprisonment for not more than 5 years

or a fine of not more than 5 million yen (or both)

➤ **Paragraph (4)(iv): Crime of bribery of foreign public officials**

Imprisonment for not more than 10 years

or a fine of not more than 30 million yen (or both)

An attempt of offences of trade secret infringement is subject to punishment.
(Excluding the act of obtaining under Article 21(2)(i))

Punishment for attempted offences related to trade secret infringement

(Article 21(6))

Offence prosecutable

(Article 21(7))

Penal provisions for **violations of protective order** (paragraph (3), item (vi)) require a criminal complaint.

Crimes of trade secret infringement committed outside Japan

(Articles 21(8) and 21(9))

✓ **Crimes of trade secret infringement (excluding transferring, etc., things created by infringement of trade secrets)** also apply to a person that commits the offences outside Japan in connection with the trade secrets of a trade secret holder conducting business within Japan.

✓ The crime of violation of protective order also applies to a person that commits the crime outside Japan.

Crimes committed by Japanese nationals outside Japan

(Article 21(10))

Crimes of bribery of foreign public officials also apply to Japanese nationals who commit the crimes outside Japan.

9. Overview of criminal measures (3)

Crimes committed by foreign employees outside Japan (Article 21(11))

The crime of bribery of foreign public officials also applies to any non-Japanese national who is an employee of a corporation having its principal offices in Japan and who has committed the crime outside Japan with regard to the business of the corporation.

Relationship with the Penal Code (Article 21(12))

With respect to the determination of the number of crimes, it is clearly stated that the Penal Code and other penal provisions do not have a general law and special law relationship with the Unfair Competition Prevention Act. If an act violates both penal provisions under the Unfair Competition Prevention Act and other penal provisions, both can be applied (calculated as one crime).

Confiscation/collection of crime proceeds, etc., related to trade secret infringement (Articles 21(13), 21(14) and 21(15))

The assets resulting from the crime of trade secret infringement may be confiscated without limit from the offender and the corporation to which dual criminal liability provisions apply, based on the court's judgment. Also, for example, when the assets cannot be confiscated because the offender has used up the assets, the equivalent value of the assets may be collected from the offender.

Examples of assets subject to confiscation

- Reward gained in return for illegally taking trade secrets to the ex-employee's new company (assets gained as reward for the criminal acts)
- Products themselves manufactured by unauthorized use of trade secrets (assets resulting from criminal acts)
- Total sales gained by selling the products (assets gained in exchange for the assets resulting from criminal acts)

(Reference) Summary of penal provisions (criminal penalties) in the 2023 amendment

- Following examples of penal provisions in other legislation, [1] the provisions are organized based on the existence of dual criminal liability provisions, and [2] the timing of the acts that fall under the elements of the penal provisions is clarified. [e.g., Article 21]

Note: With respect to the penal provisions other than the strengthened/expanded penal provisions against bribery of foreign public officials, the content/level of both constitutive requirements and statutory penalties remain the same as those of the pre-amendment provisions.

○ Provisions related to the crime of trade secret infringement (Article 21(1) before the amendment)

Note: Imprisonment for not more than 10 years or a fine of not more than 20 million yen (or both)

Before the amendment	Item (i)	Item (ii)	Item (iii)	Item (iv)	Item (v)	Item (vi)	Item (vii)	Item (viii)	Item (ix)
After the amendment	↓	↓	↓	↓	↓	↓	↓	↓	↓
Para. (1)	Item (i)	Item (ii)	↓	↓	↓	↓	Item (iii)	Item (iv)	Item (v)
Para. (2)			Item (i)	Item (ii)	Item (iii)	Item (iv)			Item (v)

○ Provisions related to crimes other than the crime of trade secret infringement (Article 21(2) before the amendment)

Note: Imprisonment for not more than 5 years or a fine of not more than 5 million yen (or both)

Before the amendment	Item (i)	Item (ii)	Item (iii)	Item (iv)	Item (v)	Item (vi)	Item (vii)
After the amendment	↓	↓	↓	↓	↓	↓	↓
Para. (3)	Item (i)	Item (ii)	Item (iii)	Item (iv)	Item (v)	Item (vi)	Item (vii)
Para. (4)							Item (iv)

- Crime of unauthorized use of foreign state's national flags, etc.
- Crime of bribery of foreign public officials

- Crime of unauthorized use of a foreign state's national flag, etc.
- Crime of bribery of foreign public officials

○ Provisions related to severe penalties for offences committed outside Japan (Article 21(3) before the amendment)

Note: Imprisonment for not more than 10 years or a fine of not more than 30 million yen (or both)

Before the amendment	Item (i)	Item (ii)	Item (iii)
After the amendment	↓	↓	↓
Para. (4)	Item (i)	Item (ii)	Item (iii)
Para. (5)	Item (i)	Item (ii)	Item (iii)

The paragraph on the crime of bribery of foreign public officials has been moved due to the amendment of statutory penalties

[Legend]

Dual criminal liability	No dual criminal liability	Mixed
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9. Overview of criminal measures (4)

Corporate punishment (Article 22(1))

If any of the following crimes is committed with regard to the business of a corporation, the offender is subject to punishment (by imprisonment/fine) and the corporation to which the offender belongs is subject to punishment (by fine), respectively, as follows:

- Articles 21(4) and 21(6) (limited to the part regarding Article 21(4))

(Severe penalties for offences committed outside Japan related to the crime of trade secret infringement;
the crime of bribery of foreign public officials)

Not more than 1 billion yen

- Articles 21(1) and 21(6) (limited to the part regarding Article 21(1))

(Including attempts: Part of the crime of trade secret infringement)

Not more than 500 million yen

- Article 21(3) (All crimes of infringement falling under the items of paragraph (3))

Not more than 300 million yen

<Presumption of negligence of the corporation>

With respect to corporate punishment in general, the employer's negligence is presumed for not exercising the necessary care to prevent acts of violation by employees (e.g., their appointment, supervision), and the employer cannot be exempted from criminal liability without proof of the exercise of such due care. In order to be exempt from corporate punishment, the employer is required to have exercised necessary care to prevent a violation in an active and detailed manner. (Supreme Court judgement of March 26, 1965)

<Actual cases of punishment for corporations>

- Tokyo High Court judgement of October 9, 2024 (Criminal penalties against the trade secrets infringement)
A fine of 30 million yen
- Tachikawa Summary Court judgement of March 13, 2019 (Criminal penalties against the act of misleading)
A fine of 100 million yen
- Tokyo District Court judgement of February 4, 2015 (Crime of bribery of foreign public officials)
A fine of 90 million yen
- Tokyo District Court judgement of January 29, 2009 (Crime of bribery of foreign public officials)
A fine of 70 million yen
- Sendai District Court judgement of July 17, 2003 (Criminal penalties against the act of misleading)
A fine of 36 million yen

Statute of limitations period for corporations (Article 22(3))

The crimes under the Unfair Competition Prevention Act are typically assumed to be committed with the intent to benefit business of corporations rather than for personal gain, and it is substantially unfair that the statute of limitation period for employees who acted for the benefit of the corporation is longer than that for the corporation itself.

This paragraph provides that the period of prescription for the punishment by fine imposed on a corporation or other entity is stipulated to be based on the statute of limitations for the underlying offense.

Individual punishment
(imprisonment/fine)

◆ **Crime of trade secret infringement; crime of bribery of foreign public officials** (related to Articles 21(1), 21(4) and 21(6))

Imprisonment for not more than 10 years

7 years

◆ **Other crimes** (related to Article 21(3))

Imprisonment for not more than 5 years

5 years

Corporate punishment
(fine)

3 years



A corporation's statute of limitations period is 5 or 7 years to keep a balance with the individual punishment

9. Overview of criminal measures (5)

[1] Protective rulings

(Article 23, paragraphs (1) - (3))

- When a victim files a petition regarding information constituting trade secrets related to the case, or
- when a defendant, etc. files a petition regarding information in their possession that constitutes trade secrets, the court may decide not to disclose in open court any matters that would identify all or part of the information constituting trade secrets.

[2] Ruling on a naming, etc. (Article 23(4))

When the court has made a protective ruling, the court may decide on a substitute name or other expression to be used in a open court in lieu of the name or other expression for the matter that is subject to the protective ruling (matter allowing trade secrets to be identified).

[3] Reading out charging sheets (Article 24)

If a protective ruling has been issued, the charging sheet must be read out, in a manner that does not disclose any matter allowing trade secrets to be identified. In this case, the charging sheet must be shown to the accused (but there are exceptions).

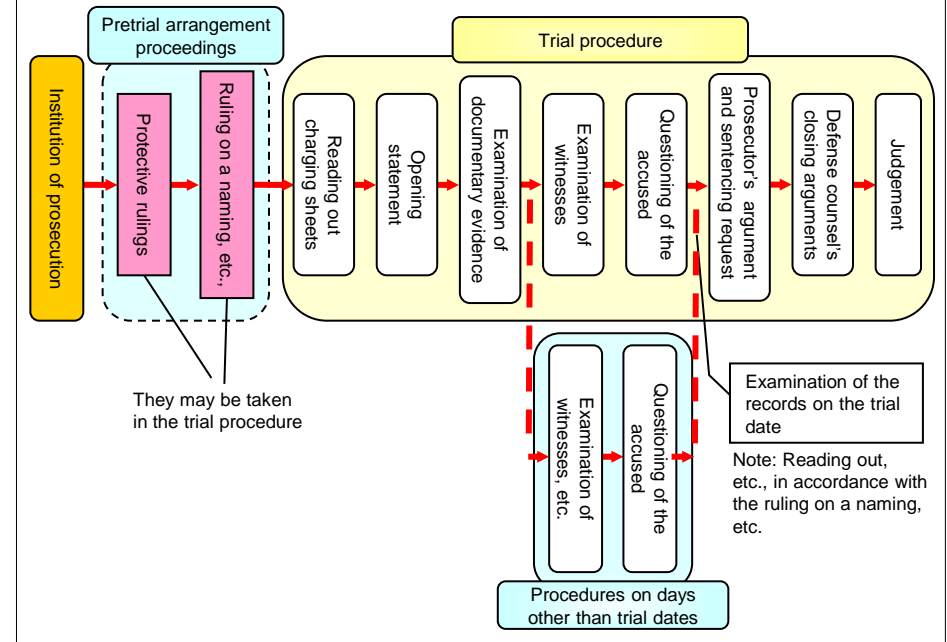
[4] Limiting examinations (Article 25)

If a protective ruling has been issued and examinations, etc., by persons concerned in the case include the matter allowing trade secrets to be identified, the presiding judge may limit examinations, etc. If the public prosecutor or attorney has disobeyed an order of limiting examinations, a court may request that appropriate measures be taken.

[5] Examination of witnesses on days other than trial dates (Article 26)

When the court has issued a protective ruling, if certain requirements are satisfied, the court may conduct the examination of witnesses or questioning of the accused on a day other than a trial date.

(Reference) Process of criminal proceedings



[6] Order to present documents that outline matters (Article 27)

In issuing a ruling on a naming, etc. or in conducting the examination of witnesses on a day other than trial date, the court may order the public prosecutor and the accused or defense counsel to present a document outlining the matters involved in the examination, etc., to be made by the persons concerned in the case.

[7] Reading out documentary evidence (Article 28)

If a protective ruling has been issued, the documentary evidence must be read out, in a manner that does not reveal the matter allowing trade secrets to be identified.

[8] Requests for protective handling of trade secrets in the disclosure of evidence (Article 30)

In providing an opportunity to inspect documentary evidence, etc., for which examination has been requested, the public prosecutor or defense counsel may request the opposing party that the opportunity be provided in such a way that the concerned parties, including the accused, do not learn of the matters allowing trade secrets to be identified.

[9] Special provisions on the procedures for confiscation (Chapter 7, Articles 32 - 34)

This chapter includes provisions stating that when assets (limited to claims, etc.) belonging to a person other than the offender are to be confiscated, that person must also be included in the litigation regarding the confiscation of the assets.

[10] Procedures for the freezing of assets (Chapter 8, Articles 35 and 36)

This chapter includes provisions stating that if a court finds circumstances that would prevent the confiscation of assets (e.g., the offender sells the assets to be confiscated prior to the trial for confiscation), the court may, by its decision, issue an order to prohibit the disposition of those assets to prevent that situation in advance.

[11] Procedures for international mutual legal assistance in the enforcement of judicial decisions on the confiscation of assets (Chapter 9, Articles 37 - 40)

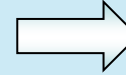
In connection with a court case of trade secret infringement in a foreign state, when the enforcement of a final and binding decision on confiscation or the collection of equivalent value has been made by the court of that foreign state, and if the assets to be confiscated are present in Japan, that foreign state may request assistance in the enforcement of that decision. This chapter includes provisions regarding the conditions and procedures for providing such assistance in response to the request.

10. Overview of border measures under the Customs Act

Customs can suspend the import/export of goods violating the Unfair Competition Prevention Act (UCPA) in accordance with the Customs Act (border measures) .

<Goods violating the UCPA>

- Goods creating confusion with a well-known indication (Item (i))
- Goods unauthorizedly using a famous indication (Item (ii))
- Goods that imitate the form of another person's goods (item (iii))
- Goods created by infringement of trade secrets (Item (X))
- Devices, etc., that interfere with the effectiveness of technological restriction measures (Items(xvii) and (xviii))



In filing a petition for an injunction against the goods violating the UCPA, a written opinion or certificate of the Minister of Economy, Trade and Industry (METI) must be submitted to the Director General of Customs.

Application for suspension

Detection of infringement

Application from claimant to the METI Minister for a written opinion or certification (*1)

Issuance of a written opinion or certification from the METI Minister to the claimant
(As necessary, the METI Minister consult with experts in the field, etc.)

Application from claimant to the Director General of Customs for suspension of import/export (*2)

Publication of the content of the application for suspension of import/export
(Excluding created by infringement of trade secrets)

Acceptance of the application for suspension of import/export

Announcement of acceptance of the application for suspension of import/export
(Customs website)

Verification procedures

Declaration of imports/exports

Discovery of suspected infringing goods

Commencement of verification procedures by the Director General of Customs
(Notification from the Director General of Customs to the infringed party and the importer/exporter regarding both parties' names, addresses, etc.)

Inspection of goods and submission of opinions/evidence by the claimant and the importer/exporter
(Claimant may be ordered to provide security as necessary)

Inquiries by the Director General of Customs to the METI Minister

- Goods created by infringement of trade secrets
→ As necessary or at the request of the importer/exporter
- Goods that infringe other than trade secrets → As necessary

Preparation of a written opinion by the METI Minister
(METI Minister's consultation with the parties, etc.)

Verification of infringement by the Director General of Customs

Prohibition/permission of import/export

*1 Provisions for written opinions/certifications for suspension of import/export

A person who has the right to seek an injunction against unfair competition, pursuant to the provisions of METI Order, must seek from the Minister of the Ministry,

- when the cargo violates items (i) through (iii) or (xvii) and (xviii), **the opinion** with respect to the matters specified by the Order, or

- if the cargo violates item (x), **the certification** with respect to the fact that the cargo concerned has been generated by an act of unauthorized use and that a person who is likely to export the cargo was, at the time when the cargo was transferred, not aware that it was generated by that act of unauthorized use and that the person was not grossly negligent in not knowing that it was so generated,

and submit the details of those opinions or certification in writing to the Director General of Customs with whom the petition has been filed.

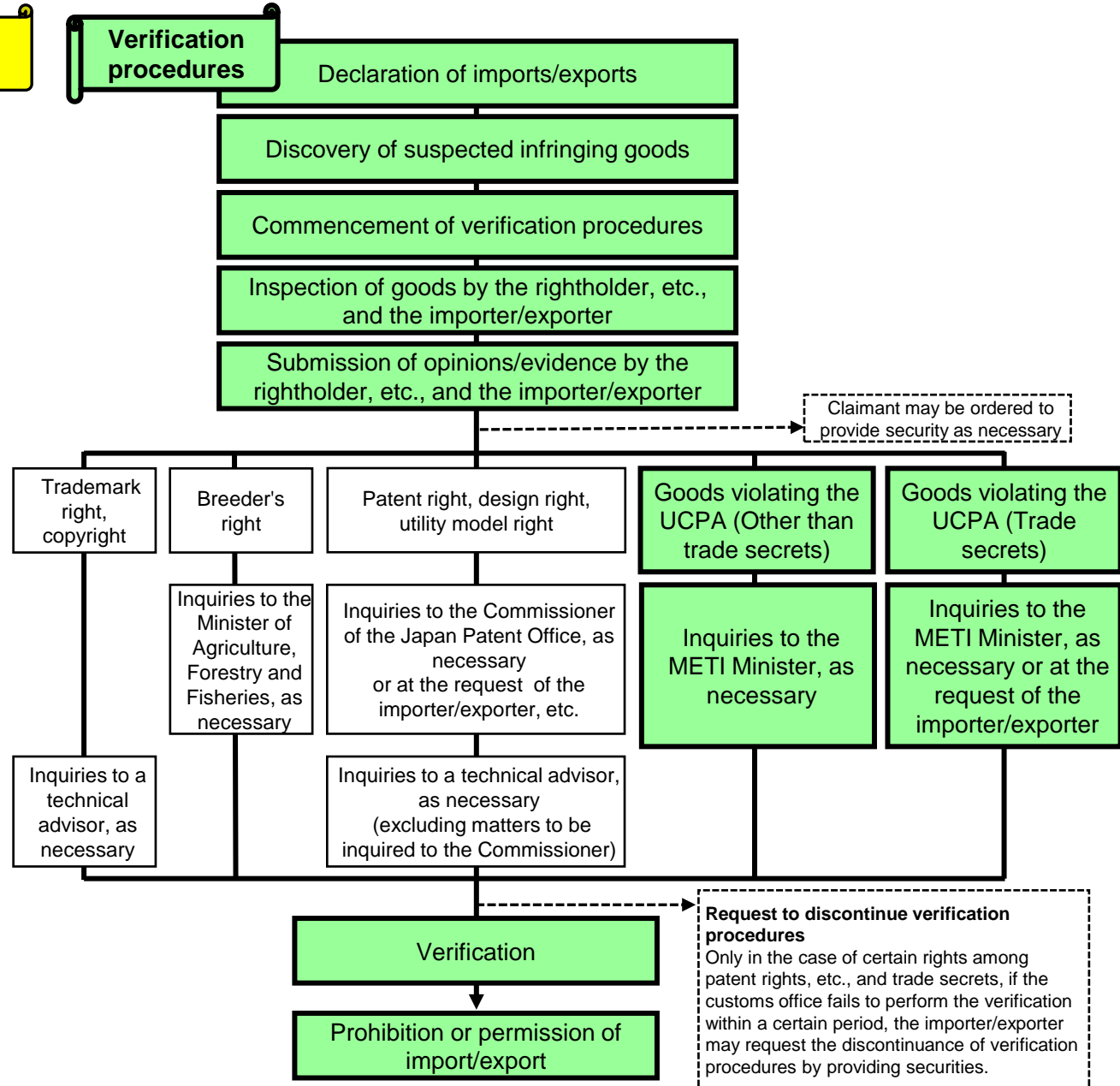
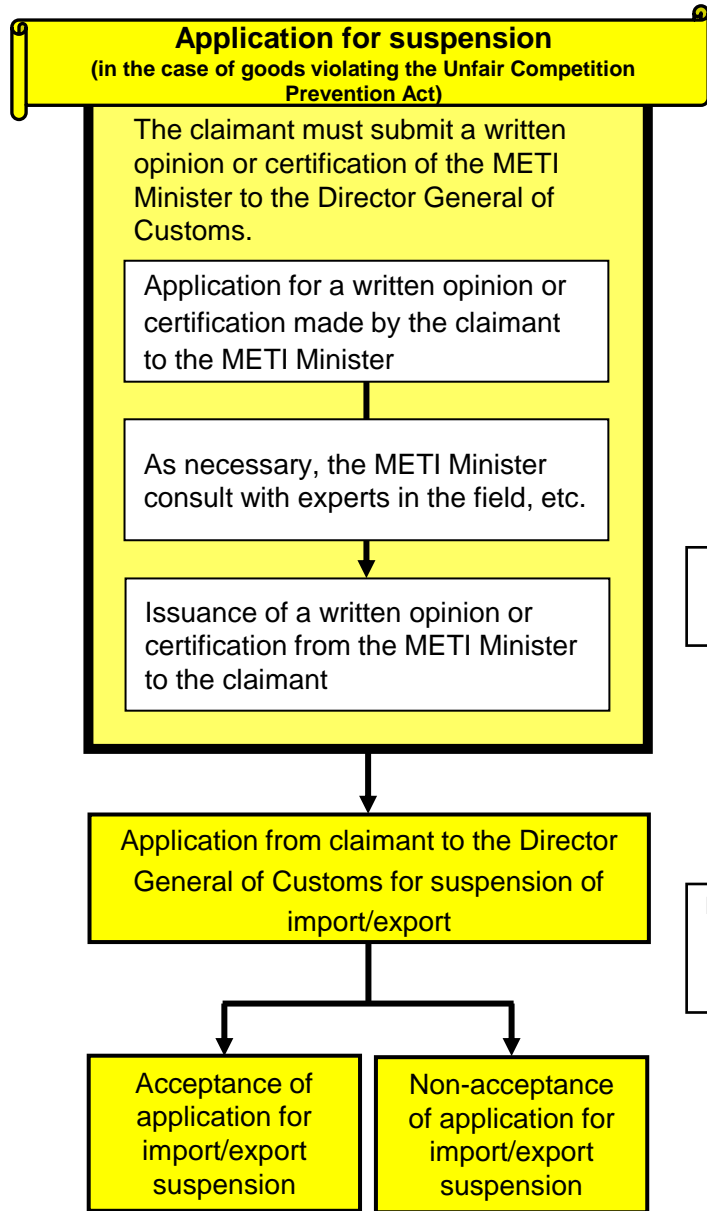
(Second sentences of Articles 69-4(1) and 69-13(1) of the Customs Act)

*2 Provisions concerning application for suspension of import/export

A rightholder for an injunction against unfair competition may, pursuant to the provisions of Cabinet Order, submit to any of the Directors General of Customs evidence necessary for prima facie showing of the facts of the infringement with respect to cargo which, they believe, infringe their business interests, and may a petition file with any of the Director General of Customs for that Director General or any other Director General to implement verification procedures for any such cargo that a person seeks to export (import) in accordance with the provisions of this Chapter.

(First sentences of Articles 69-4(1) and 69-13(1) of the Customs Act)

(Reference) Flowchart of verification procedures for goods infringing intellectual property



**(Reference) Status of applications for import suspension based on
the Unfair Competition Prevention Act**

	2020	2021	2022	2023	2024
Goods creating confusion with a well-known indication	1	1	1	1	2
Goods unauthorizedly using a famous indication	0	0	0	0	0
Goods that imitate the form of another person's goods	0	0	0	0	0
Goods created by infringement of trade secrets	0	0	0	0	0
Devices, etc., that interfere with the effectiveness of technological restriction measures	2	2	3	2	1

(Note) The above figures show the number of active petitions for import suspension as of December 31 each year. The effective period of a petition for suspension is a maximum of four years.

(Another application for suspension of the same infringing goods may be filed even after the expiration of the effective period)

Customs has cracked down on devices that interfere with the effectiveness of technological restriction measures and on goods created by infringement of trade secrets as goods that must not be imported or exported since December 1, 2011 and June 1, 2016, respectively.

[Source: Customs Office's website]

(Reference) Status of applications for import suspension based on the Unfair Competition Prevention Act

○ Number of applications submitted for import suspension: 5 cases (Valid cases as of May 14, 2025)

Applicant: Nintendo Co., Ltd.
Subject goods: SXCore, a tool for unauthorized use of Nintendo Switch



Applicant: Nintendo Co., Ltd.
Subject goods: RCM Loader, a tool for unauthorized use of Nintendo Switch



Applicant: Uka Co., Ltd.
Subject goods: Silicone scalp brush



(Genuine products)



(Imitation product)

Applicant: Balance lab Co., Ltd.
Subject goods: Balance chair



(Genuine products)



(Imitation product)

Applicant: Tsukishima Kankyo Engineering Ltd.
Subject goods: "TELLERETTE" S-II Type, irregular packing



(Genuine products)



(Imitation product)

II References

(<https://www.meti.go.jp/policy/economy/chizai/chiteki/pdf/handbook/full.pdf>) only available in Japanese

About the “Handbook for Protection of Confidential Information”

- Beyond the minimum level of legal protection, the Handbook was established to collect and **comprehensively present effective measures against information leakage** as well as measures recommended in the event of the leakage.
- It **comprehensively provides various measures** so that many companies which want to implement better measures for information leakage can select or refer to according to the current situation of the companies.
- “**Guide to Handbook for Protection of Confidential Information**”, compiled as a digest of said book, is available.

Handbook for Protection of Confidential Information (Level of divulgation protection)

Management Guidelines for Trade Secrets*
(Level of legal protection)

* “Management Guidelines for Trade Secrets” is explained in page 23 of this text.

(Key points)

Various measures are comprehensively provided. For example,

- Approaches to determining which information your company has should be kept secret
- Effective selection of measures for preventing leakage of confidential information, the structure of internal systems, and measures to avoid involvement in a dispute on another company’s confidential information
- Measures in the event of information leakage
- Samples of various rules, contracts, etc., and **consultation counters**

(Reference) Three steps of measures against information leakage for protecting companies

A

Determine what kind of information your company has by checking one by one.

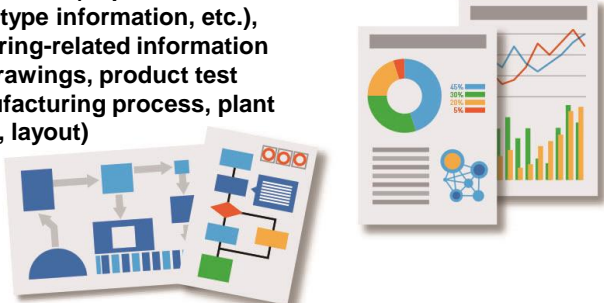

B

Determine how important the information is, and decide which information to be kept secret.

C

Determine the measures to be taken according to the importance of the information in terms of balancing secrecy management and utilization of the information.

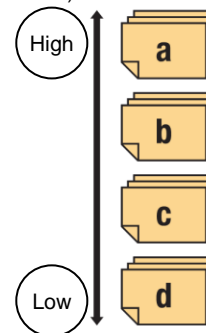
Examples of information assets that are strengths of the company

Technical information	<p>R&D information (Experimental data, prototype information, etc.), manufacturing-related information (product drawings, product test data, manufacturing process, plant equipment, layout)</p> 
Commercial information	<p>Customer information (customer lists, complaint information, product information by customer, etc.), market-related information (market analysis information, competitors' analysis information), price information (purchase prices, product prices, profit margins, etc.), clients' information, customer service manual</p> 





Images of the relative hierarchization and absolute estimation

– A case of information evaluation by loss –

Relative hierarchization
(Grading of information in order of size of loss)



Absolute hierarchization
(Evaluation of degree of loss)

Extremely serious loss at the time of leakage	
Serious loss at the time of leakage	
Minor loss at the time of leakage	  

An example of information utilization by a company

– Technical information regarding the machinery products of a machine manufacturer –

Make public (standard/patent)	Keep secret (know-how)
<ul style="list-style-type: none"> - Method for performance evaluation of machinery operation - Component structure (easily identifiable by others) 	<ul style="list-style-type: none"> - Manufacturing process - Material combination

(Reference) Measures against information leakage – Five categories of the measures –

- Setting five “categories of the measures” based on leakage factors.
- Based on each company’s situation, they can select appropriate measures.

Physical and Technical measures

Restriction of access



Measures to prevent access to confidential information

Difficulty of removal



Measures making removal of confidential information difficult

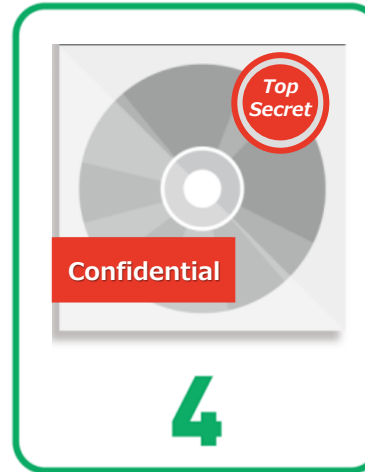
Psychological measures

Ensuring visibility



Measures that make discovering information leakage easier

Increasing recognition of confidentiality



Measures that make confidentiality of information recognizable

Work environment

Maintenance and enhancement of loyalty



Measures that motivate employees to make stealing information unthinkable

Concrete measures

- ❑ Setting access rights
- ❑ Not connecting PCs with confidential information to external networks
- ❑ Restricting routes in companies
- ❑ Entry and exit measures
- ❑ Separating folders
- ❑ Paperless
- ❑ Introducing firewalls, etc.

- ❑ Prohibiting the use of or possession of personal USB devices in the workplace
- ❑ Collect all meeting documentation after a meeting
- ❑ Encrypting of electronic data
- ❑ Restricting external uploads, etc.

- ❑ Designing seat arrangement and layout
- ❑ Installing security cameras
- ❑ Cleaning up workplace
- ❑ Installing “No entry” signs
- ❑ Saving PC logs
- ❑ Recording work operations, etc.

- ❑ Clearly display confidentiality indications
- ❑ Establishing and enforcing rules
- ❑ Signing NDAs
- ❑ Utilizing “Unauthorized removal prohibited” signs and other indicators
- ❑ Implementing training, etc.

- ❑ Promoting work-life balance
- ❑ Promoting communication
- ❑ Company awards
- ❑ Raising awareness of leakage cases, etc.

(Reference) Measures to avoid involvement in a dispute on another company's confidential information

To avoid being sued over another company's confidential information...

- It introduces methods of preventing disputes and of preparing for a defense in cases where companies are unintentionally involved in disputes. These preparations can lead to enhanced trust and the acquisition of various human resources from other companies.

Substantiation of unique ownership of companies' information

It is important to regularly, objectively substantiate that the information is unique information owned by the company to prepare for instances of other companies initiating litigation based on infringements of confidential information. (Ex. Preservation of documents)

Prevention of infringing on confidential information owned by other companies

(i) In employing people from such potential companies

Ex. Check contracts of previous employers

(ii) In Joint research and development

Ex. Store confidential information owned by other companies separately

(iii) In receiving confidential information in a deal

Ex. Check documents in receiving samples etc.

(iv) In selling confidential information

Ex. Check contracts on source of the information

Prevention of disputes related to items created by infringement of trade secrets

It is necessary to take adequate measures to substantiate that due attention was paid in suspicious situations.

(Reference) Measures in the event of information leakage

If information leakage has occurred...

- It is difficult to completely prevent information leakage even if companies manage information appropriately.
- Therefore, the Handbook introduces procedures so that companies can deal with an emergency situation quickly if information leakage has occurred.

Recognizing and checking signs

- (i) Recognition of leakage signs
- (ii) Investigate suspicion of leakage

First action

- (i) In-house investigation, recognition of accurate status and investigation of the cause
- (ii) Investigation of damage
- (iii) Perspective on first action
- (iv) Establish an emergency response team, etc.

Pursuing liabilities

- (1) Criminal measures, (2) Civil measures, (3) Disciplinary action

Preservation and collection of proof



(Reference) If you have any problem with trade secrets: Information on consultation counters and relevant information

<Consultation counters>

◆ INPIT (National Center for Industrial Property Information and Training)

● For those who wish to consult about trade secrets

- ✓ In the case that you want to review the management system and related regulations for the confidential information held by the company
- ✓ In the case that our trade secrets may have been leaked

In such situations, you can consult the Trade Secret Protection Support Services for free.

- ▶ [Website](#)
- ▶ E-MAIL: trade-secret@inpit.go.jp



● For those who wish to consider business challenges from IP perspectives

- ✓ In the case that you want to utilize your company's strengths as "IP"
- ✓ In the case that you want to consult with a nearby organization for free first

The IP Comprehensive Helpdesks in 47 areas are community-based consultation counters.

- ▶ [Website](#)
 - ▶ TEL: 0570-082-100
- Note: We will put you through to the nearest counter among all 47 prefectures.
Service hours: Weekdays, 9:00 a.m. - 5:00 p.m.



◆ IPA (Information-technology Promotion Agency) Information Security Safety Consultation Desk

● For those who wish to consult about information security, such as computer viruses or unauthorized access

- ▶ [Website](#)



<Relevant documents>

◆ METI's website on the Unfair Competition Prevention Act (UCPA)

● For those who wish to see materials related to the UCPA

Various materials related to the UCPA available on the website include: the Management Guidelines for Trade Secrets, the Handbook for Protection of Confidential Information, and the overview documents regarding the revision of UCPA.



Unfair Competition Prevention Act
Intellectual Property Policy Office

Search



◆ Website for information related to trade secrets [Key Points of Trade Secrets] (only available in Japanese)

● For those who wish to see the back numbers of the Trade Secret Public-Private Forum's newsletter

Practitioners from both the public and private sectors regularly distribute articles related to trade secrets and announcements for events such as various seminars.

- ▶ [Back numbers](#)



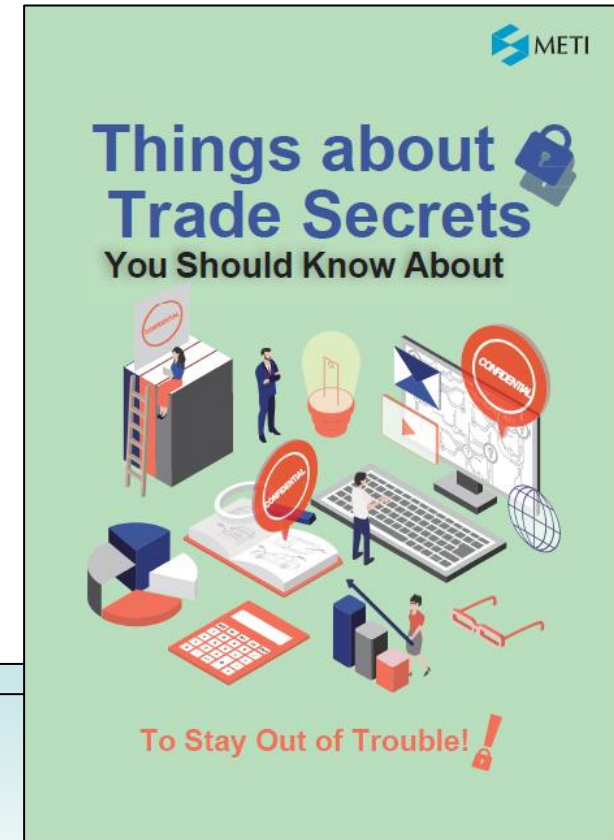
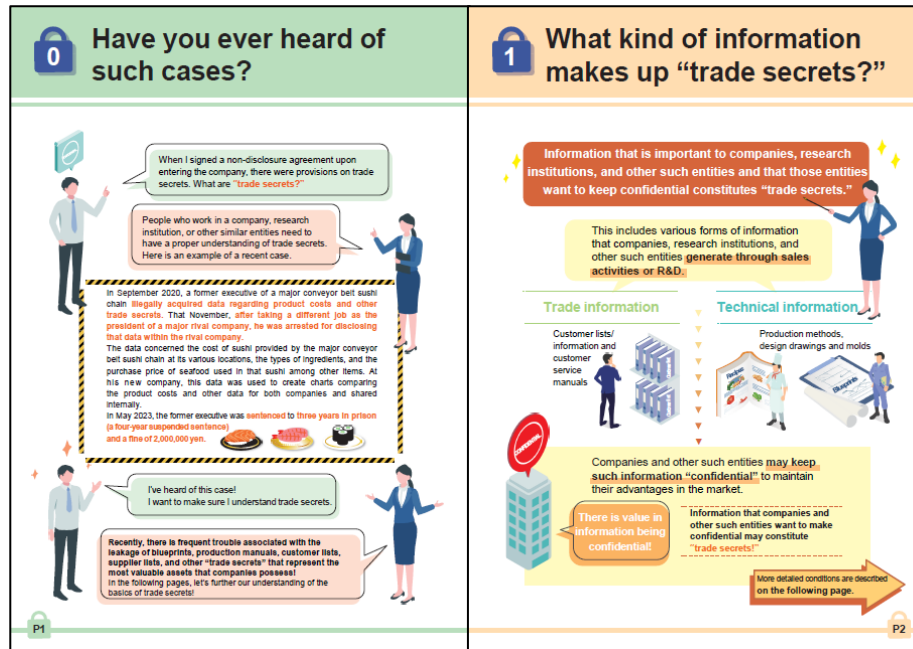
Please contact us if you have any questions regarding the general interpretation of the Unfair Competition Prevention Act.

E-MAIL: bzl-ip_policy_office@meti.go.jp
Intellectual Property Policy Office
Economic and Industrial Policy Bureau

Please note that some websites may not be able to accept inquiries in English.

(Reference) Pamphlet for Employees: “Things about Trade Secrets You Should Know About”

An easy-to-understand explanation of trade secrets from the employee’s perspective



(Key Points)

This educational material is designed to help employees who actually handle trade secrets in their daily work understand, from their own perspective:

- ① What kinds of actions constitute violations of the Unfair Competition Prevention Act
- ② What types of information are considered trade secrets
- ③ What precautions should be taken on a daily basis

【Japanese Version】

https://www.meti.go.jp/policy/economy/chizai/chit eki/pdf/shitteokitai_eigyohimitsu.pdf

【English Version】

https://www.meti.go.jp/policy/economy/chizai/chit eki/pdf/shitteokitai_eigyohimitsu_english.pdf

(Reference) Tips for Data Utilization and Guidance for Data Utilization (Issued on June 3, 2020)

These were prepared with the aim of **reducing concerns of companies pursuing data utilization**, by organizing key points to consider and introducing countermeasures for data utilization.

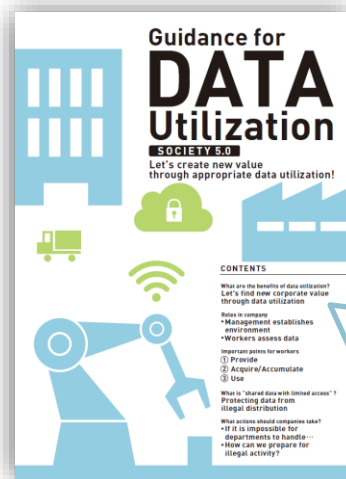


Tips for Data Utilization
(Detailed version)
(only available in Japanese)

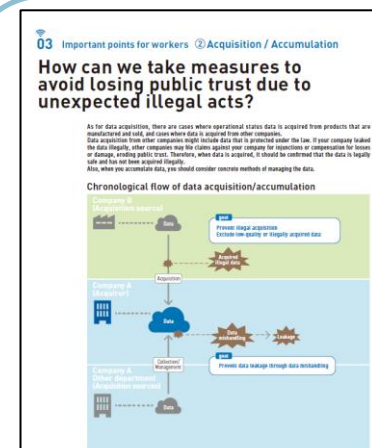
【表5. データ使用におけるQ&Aのチェックシート】

項目	Q 番号	データを利用するとき の疑問点	実行を推奨する事項	チ ェ ッ ク	頁
取得	Q01	取得データを加工等々 使用する場合に、どの ような点に留意すれば よいのか。	a. 他社との契約内容を確認	<input type="checkbox"/>	106 頁
			b. 物理的・技術的に自社データと区別	<input type="checkbox"/>	
			c. データ取得の際に営業秘密・限定提供データを含まないこ との保証を要求、不従法上の類型を確認	<input type="checkbox"/>	
			d. 著作権法平成10年改正を踏まえつつ、著作権や著作人格 権を侵害しないよう留意のうえ、データを取り扱う	<input type="checkbox"/>	
使用	Q02	取得データを基にした 派生データ等を自由に 使用する場合に、どの ような点に留意すれば よいのか。	a. 契約における利用権限を確認	<input type="checkbox"/>	108 頁
			b. データ取得の際に営業秘密・限定提供データを含まないこ との保証を要求、不従法上の類型を確認	<input type="checkbox"/>	
			c. データの取得元が買収 等された場合に、デ ータ提供を継続させる 何か手立てはないか。	<input type="checkbox"/>	
			d. データ提供の継続を契約書に明記	<input type="checkbox"/>	
提供	Q03	取得データを業務委託 先に使用させる場 合に、どのような点に 留意すればよいのか。	a. 他社との契約における第三者提供の禁止を確認	<input type="checkbox"/>	111 頁
			b. 不従法上の類型を確認	<input type="checkbox"/>	
			c. 個人情報等が含まれていないか確認	<input type="checkbox"/>	
				<input type="checkbox"/>	

Items are arranged in Q&A
format to assist your search



Guidance for Data Utilization
(Summary version)



Readable description with diagrams

(Key points)

Various measures are **comprehensively provided**. For example:

Communicate the roles expected of management as a message

- **Clarification of purposes** of data utilization and **presentation of policies**
- **Support for the necessary environment** to implement the purpose and policies

Provide a Q&A section with a focus on clarity for practitioners

- Sorted into phases of **provision, acquisition/accumulation and use**
- Compiled from the perspectives of **contracts, systems and laws**

Note: Basic questions tailored to persons in charge of contracts of development divisions

Contains many case studies based on interviews with companies

- Responded to new needs by digitizing plant know-how
- A platform analyzing the data of the entire construction project
- A consortium providing purchase data and creating collaborative goods

(Reference) Comparison of civil measures of intellectual property laws

<div>Laws</div> <div>Article headings</div>	Unfair Competition Prevention Act	Patent Act	Design Act	Trademark Act	Copyright Act	Plant Variety Protection and Seed Act	Act on the Circuit Layout of a Semiconductor Integrated Circuits
Claim for an Injunction	Article 3	Article 100	Article 37	Article 36	Article 112	Article 33	Article 22
Claim for compensation for loss or damage	Article 4	(Article 709 of Civil Code)	(Article 709 of Civil Code)	(Article 709 of Civil Code)	(Article 709 of Civil Code)	(Article 709 of Civil Code)	(Article 709 of Civil Code)
Presumption of amounts for loss or damage	Article 5	Article 102	Article 39	Article 38	Article 114	Article 34	Article 25
Presumption of use, etc.	Article 5-2	(Article 104)	—	—	—	—	—
Presumption of negligence	—	Article 103	Article 40	Article 39 ^{*1}	—	Article 35	—
Obligation to clarify specific circumstances	Article 6	Article 104-2	Article 41 ^{*1}		Article 114-2	Article 36	—
Order of document submission	Article 7	Article 105			Article 114-3	Article 37	Article 26 ^{*3}
Visa	—	Article 105-2, etc.	—	—	—	—	—
Expert opinions on the calculation of the amount of loss or damage	Article 8	Article 105-2-11	Article 41 ^{*1}	Article 39 ^{*1}	Article 114-4	Article 38	—
Determination of reasonable amount of loss or damage	Article 9	Article 105-3			Article 114-5	Article 39	—
Orders to Protect Confidentiality	Article 10, etc.	Article 105-4, etc.			Article 114-6, etc.	Article 40, etc.	—
Suspension of the open examination of parties	Article 13	Article 105-7	—	—	—	Article 43	—
Measures to restore business reputation	Article 14	Article 106	Article 41 ^{*1}	Article 39 ^{*1}	Article 115 ^{*2}	Article 44	—

*1 Patent Act applies mutatis mutandis

*2 Under the Copyright Act, it refers to measures for the restoration of the author's or performer's honor or reputation, among other things.

*3 The order of document submission under the Act on the Circuit Layout of a Semiconductor Integrated Circuits is intended for the calculation of the amount of loss or damage. (Other Acts include the proof of acts of infringement.)